

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 17245 of 2022

**Sk. Shekhar and another
Vs.**

The State of West Bengal and others

For the petitioners : Mr. Nilanjan Adhikari

Hearing concluded on : 16.04.2024

Judgment on : 22.04.2024

Sabyasachi Bhattacharyya, J:-

1. A deed of conveyance was entered into between the petitioners and the private respondents on September 16, 2020. A query was raised in respect of the stamp duty payable on June 22, 2020 and the stamp and registration fees were paid on July 21, 2020. The payment was approved on July 27, 2020.
2. The deed was presented on December 16, 2020 for registration before the District Sub-Registrar-IV at Alipur. However, one of the vendors was absent, for which the registration could not take place. The Sub-Registrar accordingly refused to complete the registration. A representation given by the petitioners was forwarded to the District Registrar.
3. Being aggrieved with the non-completion of registration, the petitioners preferred an appeal under Section 72 of the Registration Act, 1908 (for short, "the 1908 Act") to the District Registrar on

January 31, 2022. The District Registrar, *vide* order dated February 3, 2022, directed the Sub-Registrar to admit the deed of registration under Section 75(1) of the Act, with requisite fine under Rule 39 of the West Bengal Registration Rules, 1962.

4. A second query was raised accordingly on February 22, 2022, in which the market value was shown to have increased.
5. The petitioners applied to the District Registrar on March 8, 2022 for exemption of fine under Rule 39 in terms of a Notification dated February 1, 2021 issued by the Inspector General of Registration and Commissioner of Stamp and Revenue, West Bengal. The Assistant Commissioner of Stamp and Revenue directed the District Registrar to look into the matter on March 16, 2022.
6. The District Registrar, by the impugned decision dated April 11, 2022, held that there could not be any registration of the document since 30 days had elapsed after the order under Section 75(1) was passed on February 3, 2022.
7. The petitioners now seek a direction on the authorities to register the deed.
8. Learned Counsel for the petitioners argues that the registration fees were already received long back and as such there could not be any refusal of the registration. It is contended that the fines to be imposed under Sections 25 and 34 of the 1908 Act were waived by the Notification dated February 1, 2021 bearing no. IGR-163/2021.
9. It is further contended that due to the pandemic period, the time for presenting the document was extended to 12 months. Hence, the

time-period for presentation of the pending deed for completion of registration with fine, which was earlier four months, is now twelve months.

10. The District Registrar accepted the contents of the Notification dated February 1, 2021 by extending and/or enlarging the period mentioned in Sections 25 and 34 of the 1908 Act but the Registering Authority acted contrary to such notification in imposing fine and generating new query.
11. It is thus argued that the registration ought to be completed as per the previously existing market value.
12. Although the State was initially represented by counsel and were directed to file written notes of arguments, on the scheduled hearing date, that is, on April 16, 2024 none appeared for the State. Thus, the matter there taken up for hearing *ex parte*.
13. The bone of contention is whether the petitioners are now entitled to registration of the documents in view of the specific bar under Section 75(2) of the Registration Act.
14. Surprisingly, the petitioners have not specifically challenged the refusal by the District Registrar to register the deed by his decision dated April 11, 2022. In the teeth of such decision, the question of exemption of fine under Rule 39 and/or enlargement of time under Sections 25 and 34 become immaterial.
15. Even in their written arguments, the petitioners do not advance any argument on Section 75(2) or challenge such refusal but bypasses the entire issue and attempt to turn the focus on an entirely different

aspect, as if the delay was in the first presentation of the deed which has not been condoned.

- 16.** However, it is to be noted that, Sections 25 and 34 do not apply in the present context at all.
- 17.** Both Sections 25 and 34 relate to the first presentation of the document for registration. Section 23 stipulates the time for presenting documents subject to the provisions of Sections 24, 25 and 26.
- 18.** Section 23-A speaks about re-registration of certain documents where a document requiring registration has been accepted for registration from a person not duly empowered to present the same and has been registered.
- 19.** Section 24 speaks about several persons executing a document at different times and that such document may be presented for registration and re-registration within 4 months from the date of each execution.
- 20.** The “re-registration” contemplated in Sections 23-A and 24 have nothing to do with a document presented for registration after the successful appeal in terms of a direction under Section 75 of the Registration Act and are, thus, not applicable in the present context.
- 21.** Section 25(1) provides that if owing to urgent necessity or unavoidable accident any executed document is not presented for registration till after the expiration of the time prescribed thereinbefore, the Registrar, where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of

the proper registration fee, such document shall be accepted for registration.

- 22.** Section 34(1), on the other hand, speaks about no document being registered unless the persons executing the same or their representatives, assigns or agents appear before the Registering Officer within time allowed for presentation under Sections 23, 24, 25 and 26. Thus, a reference to the said Sections clearly indicates that Section 34 also refers to the first presentation or re-registration under Section 23-A at the first instance where a non-empowered person presented the same for registration. However, Section 34 makes itself subject to several Sections including Section 75 of the Registration Act but does not refer to a case where a deed has been directed to be registered upon appeal, within the contemplation of Section 75(1) of the Act.
- 23.** The proviso to Section 34(1) empowers the Registrar in cases where the delay in appearing does not exceed four months owing to urgent necessity or unavoidable accident in the executing persons not appearing, to direct that on payment of a fine not exceeding ten times, the amount of proper registration fee, in addition to the fine payable under Section 25, the document may be registered.
- 24.** Thus, Section 25(1) operates in cases where the presentation of the document itself is delayed and Section 34(1), proviso applies to cases where the executing parties or their representatives do not appear in time. Both provide for imposition of fine up to 10 times if the delay

does not exceed four months, in which case the document may be registered.

- 25.** It is, thus, seen that both Section 25 and Section 34 relate to the first presentation of the deed of registration and do not refer to a Section 75 scenario at all.
- 26.** A scrutiny of Notification No. IGR-163/2021 dated February 1, 2021 shows that the same also speaks about remission of fine chargeable under the proviso to Section 34 on the one hand and, on the other, the total time-period for appearance allowable under Section 25 to be extended to a maximum of twelve months without any fine.
- 27.** Hence, the Notification relied on by the petitioners also relates to Section 25 and Section 34 situations only. Rule 39 of the West Bengal Registration Rules also pertains to a Section 25 scenario. In the present case, such initial stage was long over and the registration of the deed of the petitioners having been refused, an appeal was preferred under Section 72 of the 1908 Act. Ultimately, the appeal culminated in an order by the Registrar under Section 75(1) who, on being satisfied that the document had been executed and the requirements had been complied with, directed the document to be registered.
- 28.** Sub-section (2) of Section 75, however, incorporates a specific bar, providing that if the document is duly presented for registration within 30 days after making of the order, the registering officer shall obey the same and thereupon shall, as far as practicable, follow the procedure prescribed in Sections 58, 59 and 60.

- 29.** Only upon the said hurdle of the 30 days' limitation under Section 75(2) being crossed, sub-section (3) of Section 75 comes into play and the registration takes effect as if the document had been registered when it was first duly presented for registration.
- 30.** In the present case, however, the order under Section 75(1) was admittedly passed on February 3, 2022 whereas, thereafter, the document was placed before the District Registrar for registration long after the stipulated 30 days. Hence, the District Registrar was justified *vide* order dated April 11, 2022 to refuse such registration, neither on the ground of non-payment of fine under Section 25 or Section 34, nor on the ground that the same was delayed beyond four months in its first presentation, but on the ground of operation of the bar incorporated in Section 75 (2) of the Act.
- 31.** Since the Notification dated February 1, 2021, does not pertain to Section 75(2) in any manner, the petitioners have failed to cross the said hurdle.
- 32.** In such view of the matter, the entire arguments advanced by the petitioners on Sections 25, 24 and Rule 39 and/or the said Notification are beside the point.
- 33.** In view of the petitioners having presented the deed much after 30 days from the passing of the order by the Appellate Authority under Section 75(2) on February 3, 2022, the District Registrar was justified in refusing to register the same by invoking Section 75(2) of the Registration Act.

34. Hence, there is no scope of granting the relief sought in the writ petition, which is to direct registration of the document, with or without fine.
35. Accordingly, WPA No. 17245 of 2022 is dismissed on contest without any order as costs.
36. However, nothing in this order shall preclude the petitioners from applying before the appropriate authority for refund of the deposits already made by them by way of registration fees and stamp duty. If the petitioners are so entitled otherwise in law, the said authority shall decide such application in accordance with law, without being deterred by any of the observations made above.
37. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)