



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
977 WRIT PETITION NO.5824 OF 2024

ANZAR HUSSAIN S/O MOHAMMED AHMED HUSSAIN

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Shaikh Tarek Mobin H., Advocate for petitioner

Mr. A.S. Shinde, AGP for respondent Nos.1 and 2

...

CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 18th JULY, 2024

PRONOUNCED ON : 20th JULY, 2024

ORDER :

1 Petitioner impugns order dated 12.03.2019 passed by respondent No.2, thereby imposing penalty under Section 32 of the Bombay Stamp Act, 1958.

2 Mr. Shaikh Tarek Mobin H., learned Advocate appearing for petitioner submits that petitioner owns land in Gat Nos.688 and 687 at village Saygaon, Tq. Ambajogai, Dist. Beed. He transferred it under registered Lease Deed dated 15.07.2013 in favour of an educational institution viz. Nawab Mohammed Ahmed Hussain Shikshan Sanstha. After five years of execution of document i.e. on 27.12.2018 respondent No.2 served a notice upon petitioner alleging that market value of land under

deed is determined @ Rs.40,95,000/-, which counts for stamp duty of Rs.1,47,420/- towards deficit stamp in addition to penalty @ 2% per month from date of execution of document. According to petitioner, in response to aforesaid notice petitioner caused his appearance on 09.01.2019 in the office of respondent No.2, however, proceeding was adjourned and he was assured of providing further date of hearing. However, without providing further date of hearing impugned order dated 12.03.2019 has been passed directing petitioner to deposit Rs.3,12,900/- towards deficit stamp duty, penalty and interest. Petitioner came to know about such order on 11.10.2023, when he is served with demand notice of Rs.4,54,650/-.

3 Mr. A.S. Shinde, learned AGP appearing for respondent Nos.1 and 2 raises objection to maintainability of petition. He points out that impugned order is passed on 12.03.2019, present petition is filed after almost five years and there is no explanation for delay and laches. Further, impugned order is appealable under Section 32(B) of the Bombay Stamp Act, 1958 before Deputy Inspector General of Registration and Deputy Controller of Stamps. However, without availing such remedy, writ petition has been filed. Mr. A.S. Shinde would further invite attention of this Court to extract of Outward Register and postal receipt indicating that petitioner was served with initial notice of hearing as well as final order dated 12.03.2019.

4 Having considered submissions advanced and on perusal of documents, it can be observed that petitioner was duly served with notice dated 27.12.2018 issued by respondent No.2 and he was called upon along with necessary documents on 09.01.2019. Postal receipts and acknowledgments are placed on record. Extract of Outward Register supports the fact that notice was dispatched to him. Final order dated 12.03.2019 also appears to have been served upon petitioner. Although petitioner is trying to make out a case that on the date of hearing he presented himself, but same was adjourned, such contention is not acceptable. Pertinently, petitioner was served with final order dated 12.03.2019, which records that in spite of service of notice petitioner failed to comply demand or submit his stand as regards to demand notice. In spite of service of final order petitioner did not raise any objection till filing of this petition for five years. Had the final order passed behind back of petitioner, he would have immediately raised his concern or approached the appellate authority. In that view of matter, this Court is not inclined to accept contention of petitioner that order is passed without granting sufficient opportunity.

5 Although learned Advocate appearing for petitioner relies upon Judgment of this Court in case of **Sunil vs. The State of Maharashtra and**

others in Writ Petition No.1437 of 1993 decided on 12.04.2005 and Judgment and order in case of **Sandip Dinkarrao Deshmukh and another vs. The State of Maharashtra, through Joint District Registrar, Jalna** in Writ Petition No.7072 of 2017 decided on 22.02.2018, facts in both cases are clearly distinguishable.

6. In present case, it appears that notices were served upon petitioner. In that view of the matter, petitioner shall be at liberty to avail remedy of appeal under Section 32(B) of the Bombay Stamp Act, 1958, subject to limitation as provided under law. Writ Petition stands dismissed accordingly.

(S.G. CHAPALGAONKAR)
JUDGE

agd