



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8361 OF 2018

NISHIKANT WAMANRAO KOLTE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. Ajay G. Talhar, Advocate for the Petitioners.
Mr. V. S. Badakh, AGP for Respondents-State.
Mr. Ravi R. Khandebharad, Advocate for Respondent No.4.
...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 15th JULY, 2024.**

P.C.:-

1. The petitioners impugn the order dated 07.09.2017 passed by respondent no.2-Deputy Inspector General and Deputy Controller of Stamp, Nashik Division, Nashik.

2. Mr. Talhar, learned Advocate appearing for the petitioners submits that by order dated 03.07.2017 respondent no.2 had remanded matter for reconsideration to the District Stamp Collector, Jalgaon. Accordingly, respondent no.3- District Stamp Collector took fresh decision dated 14.07.2017. Aggrieved by the said order, the petitioner preferred Appeal before respondent no.2. However, same has been rejected as not maintainable. Mr. Talhar, learned Advocate would further submit that the Appeal would lie before respondent no.2 under Section 32(B) of the Maharashtra Stamp Act, 1958 and in previous round such Appeal was entertained. Therefore, he urges to set aside the impugned order and direct respondent no.2 to consider and decide the Appeal filed by the petitioners on merits.

3. The learned A.G.P., however, strongly opposes the prayer relying upon the affidavit dated 29.10.2018 filed by Mrs. Sarita Sunil Narke. He would point out that certain findings have been recorded by respondent no.2 in order dated 03.07.2017. Therefore, again Appeal cannot be entertained as regards to such findings.

4. Per contra, Mr. Talhar, learned Advocate would point out that the matter was remanded back by respondent no.2 for fresh hearing. The respondent no.3 on remand of the matter has reconsidered all the aspects and recorded his findings on all the issues, therefore, the Appeal would be maintainable.

5. Having considered submissions advanced, it is apparent from the order dated 03.07.2017 that the Appeal filed by the petitioners against the order passed by respondent no.3 was partly allowed by setting aside order dated 29.03.2017 and directions were given to respondent no.3 to reconsider matter. Perusal of the order dated 14.07.2017 passed by respondent no.3 depicts that he has recorded fresh findings on every aspects and re-calculated the stamp duty alongwith fine. In this scenario, the Appeal filed under Section 32(B) of the Maharashtra Stamp Act, 1958 was maintainable and respondent no.2 was expected to hear and decide such Appeal on merit. In that view of the matter, impugned order needs to be quashed and set aside. Hence, the following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 07.09.2017 passed by respondent no.2-Deputy Inspector General and Deputy Controller of Stamp, Nashik Division, Nashik is hereby quashed and set aside.

c. The respondent no.2 shall consider and decide the Appeal filed by the petitioners under Section 32(B) of the Maharashtra Stamps Act, 1958 on its own merits and pass fresh order after giving opportunity of hearing to all the concerned.

d. Writ Petition stands disposed of in aforesaid terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024