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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10447 OF 2016

Balu Yallappa Machigar … Petitioner

V/s.

The State of Maharashtra & Ors. … Respondents

Mr. Pradip R. Kadam for the petitioner.
Mr. R.S. Pawar, AGP for the State/respondents.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 6, 2024

P.C.:

1. **Rule**. Rule is made returnable forthwith.

2. The petitioner challenges order dated 29th January 2015 passed by respondent No.4 and seeking direction against the respondents to refund stamp duty paid on an agreement to sell which was treated as conveyance under Article 25 of the Maharashtra Stamp Act, 1958

3. On 18th June 2013, the petitioner entered into agreement to sell for purchase of Flat No.502 admeasuring 50.92 Square Meter in 'A' wing, 5th Floor of building known as "Symphony Heights" situated at Bharati Park, Mira-Bhayandar, District Thane for total consideration of Rs.31,51,000/-. The petitioner paid Rs.3,51,000/- towards earnest money and paid stamp duty of Rs.1,89,090/- on the date of registration i.e. 18th June 2013.

4. Even after completion of one year from the date of registration of agreement, there was no satisfactory progress in the matter, therefore, the petitioner decided to cancel agreement to sell and requested the developer to cancel the agreement and refund his earnest amount. The developer, therefore, prepared cancellation deed and registered it on 11th August 2014 by refunding earnest money of Rs.3,15,000/-.

5. On 25th August 2014, the petitioner filed application before respondent No.3 for refund of stamp duty under section 47(5) of the Maharashtra Act, 1958. On 29th January 2015, respondent No.3 rejected the petitioner's application. Aggrieved thereby, the petitioner filed appeal before respondent No.4 which was dismissed on 8th December 2015. Hence, the present writ petition.

6. Learned advocate for the petitioner relying on judgment in **Sanman Trade Impex Pvt. Ltd vs. State of Maharashtra and Others** reported in AIR 2005 Bombay 94, submitted that the petitioner's case is covered by section 47(5) of the Maharashtra Stamp Act 1958. The reason assigned by the First Authority of inconsistency of reason is of no relevance. According to him, it was obligatory on the Stamp Authority to consider as to whether ingredients of section 47(5) of the Maharashtra Stamp Act, 1958 are complied with or not and, therefore, the impugned order deserves to be quashed and set aside.

7. Per contra, learned AGP for the State supported the order by contending that the parties have mutually cancelled the agreement and, therefore, it would not fall within the parameters of section

47(5) of the Maharashtra Stamp Act, 1958 which requires refusal on the part of developer. According to him, the reason assigned by the authorities under the act was legal and proper. He, therefore, prayed for dismissal of the writ petition.

8. Having heard learned advocates for the parties and having considered the material on record, in my opinion, the issue involved in the writ petition is squarely covered by the judgment of this Court in **Sanman Trade Impex Pvt. Ltd.** (supra). In the facts of the said case, this Court was considering refund of stamp duty paid on agreement to sell treated as conveyance under Article 25 of the Maharashtra Stamp Act, 1958. This Court observed that clause (c)(5) of section 47 nowhere distinguishes between agreement of sale and deed of sale. It applies to all instruments irrespective of the fact whether it is a deed of sale or a mere agreement for sale. It is held that once the party is able to establish that the purpose for which instrument was executed has totally failed, the case would fall within the parameters of section 47(c)(5) of the said act.

9. In the facts of the present case, according to the petitioner, there was no progress in the work and, therefore, he requested the developer for cancellation of agreement and accordingly cancellation deed was executed, which was thereafter corrected by the developer. Once it is established that the purpose of document that is execution of sale deed was not going to take place, it will amount to refusal by the developer and hence the case would be covered under section 47(5) of the Maharashtra Stamp Act, 1958. Therefore, the impugned order cannot be sustained.

10. Rule is made absolute in terms of prayer clauses (a) and (c).

11. The respondents shall refund stamp duty within six weeks from today.

12. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)