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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10714 OF 2022

Baban Shankar Lavate ... Petitioner
V/s.
The Deputy Inspector General of Registration and Deputy Controller of Stamps, Pune & Ors. ... Respondents

WITH
WRIT PETITION NO.10640 OF 2022

Baban Shankar Lavate ... Petitioner
V/s.
The Deputy Inspector General of Registration and Deputy Controller of Stamps, Pune & Anr. ... Respondents

Mr. Umesh R. Mankapure for the petitioner.
Mr. P. G. Sawant, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 13, 2024

P.C.:

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

2. The petitioner has raised a challenge to the order dated 3rd June 2017 passed by the Deputy Inspector General of Registration and the Deputy Control of Stamp, Pune thereby dismissing the petitioner's appeal under section 32B of the Maharashtra Stamp Act, 1958.

3. The facts giving rise to the present writ petition are as under:

4. The petitioner in both petitions was appointed as Power of Attorney holder by Court court-appointed manager about properties owned by Chintamanrao Appasaheb Patwardhan by Power of Attorney dated 20th October 2011. The document was executed before the Notary Public on stamp paper of Rs.100/-. The Power of Attorney conferred rights of development of land, construction and other consequential work. Deleted respondent No.1 filed a complaint on 11th June 2014 before the authorities under the Maharashtra Stamp Act, 1958, contending that the Power of Attorney dated 20th October 2011 was deficiently stamped. Respondent No.3, by order dated 6th February 2015, directed the petitioner to pay an amount of Rs.30,58,125/- along with interest at the rate of 2% per month by way of penalty. The petitioner challenged the order dated 6th February 2015 by way of Appeal No.22 of 2016.

5. In Writ Petition No.10640 of 2022, the petitioner was directed by order dated 6th February 2015 to pay an amount of Rs.24,56,150/- along with interest at the rate of 2% per month by way of penalty. Aggrieved thereby, the petitioner filed Appeal No.23 of 2016.

6. The Appellate Authority dismissed both appeals mainly on the ground that the petitioner was conferred with development rights. Aggrieved thereby, the petitioner has filed present writ petitions.

7. Learned advocate for the petitioner submitted that respondent No.3 has exercised powers under section 33 of the Maharashtra Stamp Act, 1958. He relied on paragraph No.11 of the reply filed by respondent No.3 wherein respondent No.3 contended that power under section 33 of the Maharashtra Stamp Act, 1958 was exercised. Moreover, the order passed by respondent No.3 indicates that such an order was passed under section 33 of the Maharashtra Stamp Act, 1958. He, therefore, submitted that there was complete non-compliance with provisions of section 33 of the Act as section 33 requires the person having authority to receive evidence to adjudicate on the point of deficit stamp duty and refer to the authority. In the facts of the case, respondent No.1 being a private individual and having filed a complaint with respondent No.3, could not have exercised power under section 33 of the Maharashtra Stamp Act, 1958.

8. Per contra, learned AGP submitted that respondent No.3 has rightly exercised its power. He submitted that the Power of Attorney executed in favour of the petitioner was used in the suit and, therefore, power under section 33 of the Maharashtra Stamp Act, 1958, was available with respondent No.3.

9. Having heard the learned advocate for the parties, in my opinion, the following issue arises for consideration:

> Whether respondent No.3 could have exercised power under section 33 of the Maharashtra Stamp Act, 1958 in the absence of reference by a person having authority to receive evidence.

10. For adjudication of the issue involved it is necessary to set out provisions of section 33 of the Maharashtra Stamp Act, 1958 which are as under:

> "**33. Examination and impounding of instruments**
>
> *(1)* Subject to the provisions of section 32-A, every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police or any other officer, empowered by law to investigate offences under any law for the time being in force, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same irrespective whether the instrument is or is not valid in law.
>
> *(2)* For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed:
>
> **Provided** that—
>
> (a) nothing herein contained shall be deemed to require any Magistrate or Judge of Criminal Court to examine or impound, if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973;
>
> (b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.
>
> *(3)* For the purposes of this section, in cases of doubt,—

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

33A. Impounding of instruments after registration

When through mistake or otherwise any instrument which is not duly stamped is registered under the Registration Act, 1908, the registering officer may call for the original instrument from the party and, after giving the party an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it. On failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be the original of such instrument."

11. On careful reading of provisions of section 33 of the Maharashtra Stamp Act, 1958, it is evident that the authority under the Maharashtra Stamp Act can decide the quantum of deficit stamp duty only upon the person authorized to receive evidence or a person in charge of public office, except an officer of police or any other officer, empowered by law to investigate into offences comes across in performance of his duties that the instrument is not duly stamped, it confers power on him to impound the document irrespective whether such document is valid or not. Unless power under section 33*(1)* of the Maharashtra Stamp Act, 1958, is exercised by the person enumerated in the said sub-section, and unless the document is impounded, the authorities under the Act, on a complaint filed by third person, could not have entertained such complaint in absence of specific provision.

12. Section 33A of the Maharashtra Stamp Act, 1958, is in relation to impounding of instruments after registration. However, in the facts of the case, the instrument in question is unregistered. Moreover, section 31 of the Maharashtra Stamp Act, 1958, confers power on the Collector if one of the parties to the instrument applies before him for adjudication of the proper stamp. Except for the aforesaid provision, no other provision is brought to my notice that confers power on the authorities under the Maharashtra Stamp Act, 1958 to charge sufficiently stamped instruments. However, in the facts of the case, it appears that the exercise of power by the authorities is only under section 33 of the Maharashtra Stamp Act, 1958, which is inapplicable. Therefore, the impugned order passed by the authorities under the Act directing the petitioner to pay the deficit stamp duty on the instrument cannot be sustained. Hence, the following order:

13. Rule is made absolute in terms of prayer clause (a).

14. However, it is clarified that in case during the pendency of the suit, if the Civil Court concludes that power under section 33 of the Maharashtra Stamp Act, 1958, is required to be exercised, it shall be open for the Civil Court to pass appropriate order if permissible in law.

15. The writ petitions stand disposed of. No costs.

(AMIT BORKAR, J.)