S.R.JOSHI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO. 4339 OF 2024

Madhurkumar R.Bajaj … Petitioner

Versus

The State of Maharashtra & Others …Respondents

Ms. Lata Dhruv with Ms. Keya Raval and Ms. Swati Sutar i/b. Dhru & Co., for the Petitioner.
Ms. Shruti D. Vyas, Addl. G. P. with Ms. P. N. Diwan, AGP for the Respondent-State.

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.

DATED: 18th APRIL, 2024

P.C.

We have heard learned Counsel for the parties. The prayers as made in the Petition read as under:-

> *a) this Hon'ble Court be pleased to issue a Writ of Certiorari or writ in the nature of Certiorari or any other appropriate Writ, Order or Direction to quash and set aside the Impugned Demand Notice dated February 20, 2024 (Exhibit "K" hereto);*
>
> *b) this Hon'ble Court by an appropriate Writ/Order/ direction be pleased to direct the Respondents not to impound the Conveyance dated December 17, 2019 (Exhibit "A" hereto) until the alleged liability of the Petitioner to pay the sum of 1,66,26,690/- or interest or penalty as claimed in the Notice (Exhibit "G" hereto) and in the Impugned Demand Notice (Exhibit "K" hereto) is finally adjudicated/determined after following due process of law and in accordance with the provisions of the Stamp*

This order is modified as per order dated 24th April, 2024.

Act

c) Pending the hearing and final disposal of Petition this Hon'ble Court be pleased to:

(i) Stay the effect, implementation, and operation of the Impugned Demand Notice dated February 20, 2024 (Exhibit "K" hereto);

(ii)retrain the Respondents by themselves through their servants, agents and or officers from in any manner taking any steps or action or issuing any process (a) for recovery of the sum of 1,66, 26,690/- or interest or penalty as claimed in the Notice (Exhibit "G" hereto) and in the Impugned Demand Notice (Exhibit "K" hereto) and (b) for the impounding of the Conveyance dated December 17, 2019 (Exhibit "A" hereto); and or

(iii) Stay further proceedings initiated against the Petitioner, if any, by or before any of the Revenue authorities;

d) Ad-interim reliefs in terms of prayer (b) above may kindly be granted;

e) For such further and other reliefs as the nature and circumstances of the case may require."

2 The primary contention as urged on behalf of the Petitioner is to the effect that the document in question was duly registered, as also stamp duty of an amount of Rs.2,99,72,000/-, along with registration fees, also duly paid. The document came to be registered on 17th December, 2019. After the said registration, on an internal scrutiny, a communication dated on 24th November, 2023, came to issued to the Petitioner, whereby, it was alleged that there was a short payment of stamp duty to the extent of Rs, 1, 66,26,690/- which the Petitioner was called upon to pay, along with penalty of 2% p.m., in accordance with Section 39 of the Maharashtra Stamp Act, 1958.

3 It was also recorded in the impugned communication dated 24th November, 2023 that if the Petitioner did not agree to pay the amounts as mentioned therein, the proceedings would be sent to the Collector of Stamps, Pune Rural, Pune for taking further action for recovery. Also a copy of the agreement available with the office of the Sub-Registrar would be impugned, in accordance with Section 33-A of the Act. The said communication dated 24th November, 2023 reads as under:-

"To,

Mr. Madhur Bajaj,

Dt. 24/11/2023

R/at: 134, B Wing, N.C.P.A. Apartment, Sir Dorabjee Tata Marg, Nariman Point, Mumbai-400021.

Subject : In respect of payment of deficit stamp duty and registration fees to the Government which has been paid on the document viz. Sale Deed registered at St. No. 8024/2019 Dt. 17/12/2019 as mentioned in the Local Inspection Report 2018-2022

Reference: 1. A letter of Hon'ble Accountant General, Pagpur bearing No. R.R.L.P. (M)/NP/ Ja. Kra. 163 Dt. 07/07/2022

2. A letter of Hon'ble Jt. District Registrar, Class-1 and Collector of Stamps. Pune Rural, Pune bearing No. SJN/PuGra/ML/MJA/5160/2022 Dt. 24/11/2023. 3. A letter of Sub-Registrar Vadgaon Maval bearing O. No. D. N. Maval / MLP TP /227/2023 Dr. 19/06/2023.

4. A letter of Joint District Registrar, Class-1 and Collector of Stamps, Pune Rural Pune bearing O. No. SJN/Anoupcharik Sandarbh/2651/2023 Dt. 21/06/2023

5. A letter of Joint District Registrar, Class-1 & Collector of Stamps, Pune Rural Pune O.No.SIN/PuGra/SthaTaA 2018-2022/Maval-1/3523/2023 Dt. 26/7/2023.

During the internal inspection of the Sale Deeds registered in the office of Sub-Registrar, Vadgaon Maval Office, Tal. Maval,

This order is modified as per order dated 24th April, 2024.

Dist. Pune the valuation of the property mentioned in your Deed No. 8024/2019 dated 17/12/2019 is fixed by the Senior Office as Rs. 77,66,11,500/- There is short levy of stamp duty and registration fees Details whereof are as under :-

Amount payable		Paid on the deed		Short payment made on the deed	
Stamp duty	Registration fees	Stamp duty	Registration fees	Stamp duty	Registration fees
4,65,96,690/-	30,000/-	2,99,70,000/-	30,000/-	1,66,26, 690/-	0/-

Thus, within 8 days from the date of receipt of this notice, you have to pay an amount of deficit stamp duty and registration fees as mentioned hereinabove alongwith penalty 2% per month maximum upto 4 times in accordance with Section 39 of the Maharashtra Stamps Act.

If you are not agree with the amount mentioned hereinabove and as the original deed has been handed you, you have to furnish your version or say in writing about what you have to state in respect of the original deed and in this regard within 8 days from the date of receipt of this notice,

If you fail to sub

mit original deed with say in the aforementioned period, the said matter will be sent to the Collector of Stamps, Pune Rural, Pune for taking further action of recovery on the basis of copy available with this office in accordance with Section 33-A of the aforementioned Act, note of which may be taken. Thus, this is hereby informed to you by this notice.

Sd/-

24/11/2023

Sub-Registrar, Vadgaon Maval

(emphasis supplied)

4 In pursuance of the said communication, a Defaulter Demand Notice dated 20th February, 2024 was issued to the Petitioner under Section 178 of the Maharashtra Land Revenue Code.

This order is modified as per order dated 24th April, 2024.

5 In these circumstances, the present Petition is filed. The primary contention as urged on behalf of the Petitioner is two fold. That in the impugned communication dated 24th November, 2023, there is a reference to several documents and none of these documents have been furnished to the Petitioner. It is further contended that, if any action under Section 33-A of the Act is to be resorted, it can be taken only after granting to the Petitioner an opportunity of being heard.

6 The contention as urged on behalf of the Petitioner was opposed by the State Government. The contention of the State Government is that the communication dated 24th November, 2023 is legal and the deficit stamp duty has to be paid by the Petitioner.

7 We have heard this Petition on an earlier occasion i.e. yesterday (17th April, 2024), when we passed the following order:-

> "*1. Not on board. Upon mentioning, taken on board on a praecipe as moved on behalf of the petitioner.*
>
> *2. We have heard Mr. Godbole, learned Senior Advocate and Mr. Soman, learned advocate for the petitioner.*
>
> *3. The challenge in this petition is to the impugned action which in fact amounts to impounding the petitioner's documents without following the provisions of Section 33A of the Maharashtra Stamp Act, 1958 which contemplates a hearing. Ms. Gavhane to take instructions and inform the Court on the adjourned date of hearing.*
>
> *4. Accordingly, stand over to 18 April 2024.*
>
> *5. In the event, she has instructions that the concerned officer can follow the procedure in law, in that case the petition itself can be disposed of."*

8 On such backdrop, we heard the learned Counsel for the parties. We are of the opinion that there is much substance in the contentions as urged on behalf of the Petitioner and, more particularly, in the light of the fact that

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the document in question was duly registered as also the stamp duty thereon was paid. However, on some information and/or enquiry which was undertaken by the Sub-Registrar, the issue in regard to the payment of stamp duty has been opened by the Sub-Registrar by issuing the said notice dated 24th November, 2023 and straight way an action is purported to be taken to recover the deficit amount of stamp duty, without any opportunity of a hearing being granted to the Petitioner. Since the notice seeks to take action under Section 33-A of the Act, it could be appropriate to set out the provisions of Section 33-A of the Act, which read as under:-

> *"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."*
>
> *(emphasis supplied)*

9 On a bare perusal of these provisions, it is clear that, with regard to any action of impounding of any instrument after registration on the ground that it is not duly stamped, 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 after furnishing a copy thereof to the party, impound it. On failure to produce such original instrument by the party, a true copy of the said instrument can be taken out

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from the Registration record, which shall, for the purpose of Section 33-A be deemed to be the original of the instrument.

10 The facts clearly demonstrate that the concerned officer has not adhered to the provisions of Section 33-A of the Act. In fact, it can be clearly seen that the communication dated 24th November, 2023 is in the teeth of the said provisions, for more than one reason. Firstly, that no opportunity of hearing was granted to the Petitioner. Hence, without giving an opportunity of hearing, which can only be by prior notice, a decision as reflected in the communication dated 24th November, 2023 could never have been taken, much less any consequent action could have been taken under the Maharashtra Land Revenue Code, 1966.

11 Another aspect of the matter is that there is a reference in the impugned communication dated 24th November, 2023, to five documents. The Petitioner, by its letter dated 8th January, 2024, categorically called upon the concerned officer to furnish such documents to the Petitioner. Without such documents being furnished to the Petitioner would not be possible for the Petitioner to make any effective representation in respect of the contents of the communication dated 24th November, 2023. This certainly deprived the Petitioner of an effective opportunity of being heard.

12 In the above circumstances, the Communication dated 24th November, 2023 and the Notice dated 20th February, 2024 have been issued in violation of the provisions of Section 33-A of the Act as also in breach of the principles of natural justice.

13 We, accordingly, dispose of this Petition by the following order:-

ORDER

This order is modified as per order dated 24th April, 2024.

(a) The impugned communication dated 24th November, 2023 and notice dated 20th February, 2024 are quashed and set aside. The concerned officer is directed to furnish copies of all the documents which are sought to be referred to re-open the registration of document in question, which be provided to the Petitioner within ten days from today;

(b) After the documents are furnished to the Petitioner, a notice be issued to the Petitioner in accordance with law for granting him a personal hearing;

(c) The Petitioner is permitted to file a reply to the notice along with all the supportive materials;

(d) The concerned authority shall, after considering the Petitioner's reply, grant a personal hearing to the Petitioner, and pass appropriate orders in accordance with law in regard to the payment of any deficit stamp duty;

(e) All contentions of the parties in that regards are expressly kept open;

(f) Petition disposed of. No costs.

(h) The entire exercise be completed within a period of three months from today.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**

This order is modified as per order dated 24th April, 2024.