Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9999 OF 2016

H. L. Daulatjade Family Trust … Petitioner
V/s.
The State of Maharashtra & Ors … Respondents

Mr. Rubin Vakil a/w Ms. Krutika Mehta i/by Dhjaval Vussonji & Associates, for Petitioner.

Mr. R. S. Pawar, AGP, for State/Respondent Nos.1 to 3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 4, 2024

P.C.:

1. **Rule.** Rule made returnable forthwith and heard finally by consent of the parties

2. The challenge in the writ petition is to the order dated 18 June 2016 passed by respondent No.2 in exercise of power under Section 53A of the Maharashtra Stamp Act, 1958.

3. The instrument dated 28 July 2008 titled as conveyance of reversionary rights was executed between the petitioner and National Textile Corporation Limited, Western Region, Mumbai (NTC). On the same day, another instrument entitled as deed of surrender as lease was executed between the same parties in respect of same property. The Stamp Authority charged conveyance of reversionary rights instrument under Article 25(b) of the Schedule I of the Maharashtra Stamp Act, 1958. Section 31 of the Maharashtra Stamp Act, 1958, determining the market value of the property to the extent of Rs.23,15,86,000/- and directing petitioner to deposit the amount of Rs.1,15,79,300/- towards the stamp duty. Accordingly, the petitioner deposited the said amount.

4. The Audit Team of the Accountant General (II), Nagpur, thereafter in its inspection of office of Collector of Stamps, Mumbai, raised an objection of mis-classification of instrument which resulted in short levy of stamp duty of Rs.4,65,30,930/-. According to an objection, the instrument in question was the instrument of exchange which is chargeable based on market value of property of greatest value.

5. Respondent No.2 issued notice to the petitioner on 13 June 2014 purportedly under Section 53A of the Maharashtra Stamp Act, 1958. Calling upon the petitioner to submit explanation as to why he should not be paid short levy of stamp duty of Rs.4,65,30,930/-.

6. The petitioner by reply dated 18 July 2014 submitted that the stamp duty had been rightly charged treating the instrument as conveyance of reversionary rights. The market value was correctly calculated of Rs.23,15,86,000/- by allowing depreciation of 40% considering transfer of only reversionary rights.

7. Respondent No.2, by the impugned order accepted an objection raised by the Auditor and classified the instrument in question as “deed of exchange” chargeable to stamp duty under Article 32 of the Maharashtra Stamp Act, 1958. Aggrieved thereby the petitioner has filed the present writ petition.

8. According to the petitioner, on careful reading of the entire instrument dated 28 July 2008, it is evident that only reversionary rights in relation to property in dispute were transferred. He invited my attention to the various clauses in the instrument to urge that what is transferred in effect were the reversionary rights in relation to property ad-measuring 28,322.45. According to him, what was entitled to the parties, are the rights available in law with the parties on the date of instrument which were only reversionary rights. However, based on incorrect interpretation of provisions of NTC Act, respondent No.2 incorrectly recorded a finding that the effect of transfer of property under the provisions of NTC Act, confers ownership on the petitioner which is contrary to the provisions of the law. In support of his submission, he reliance on the judgment of Apex Court in the case of **The Madras Refineries Ltd. Vs. The Chief Controlling Revenue Authority, Board of Revenue, Madras**, reported in (1977) 2 SCC 308 and in Easter Term, XXXV Viot, in the case of **Limmer Asphalte Paving Company, Limited Vs. Commissioners of Inland Revenue**, reported in 211 Vol. VII. Learned Advocate for the petitioner, invited my attention to the clause (b) of the instrument.

9. Per contra, learned AGP invited my attention to the relevant clauses in the instrument, which according to him, confers ownership rights on NTC. The relevant clauses reads as under:

“ **NOW THIS DEED WITNESSETH THAT** pursuant to the said agreement and for the reasons hereinbefore stated and without any monetary consideration, the Assignor do hereby transfer, convey and assure its right, title and interest including the reversionary rights ad-measuring 28,322.45 sq. yards (i.e. 23,681.25 sq. mtrs.) being part of the said larger property being part of C.S. bearing new Cadastral Survey No.12 in the Registration District.

S. Pursuant to the exchange of correspondence between the parties vide letters dated 3 October 2007, 4 October 2007, 25 October 2007, and 17 December 2007, it was mutually agreed and confirmed that approx 28,322.45 sq. yards (i.e. 23,681.25 sq. mtrs.) of the said larger property to be retained by the Assignee should be located at a particular identified place and that the balance 15,250.55 sq. yards (i.e.12,751.44 sq. mtrs.) of the said larger property to be kept with the Assignor should also be located at another place. The above agreement between the parties identifying their respective share in the said larger property is reflected on the plan and the said plan identifying the location of the respective areas of the Assignee and the Assignor is hereto annexed and marked as **Annexure – A**. The area retained by the Assignee is marked in red colour and marked as Plot A and the area to be surrendered to the Assignor is marked in blue colour and marked as Plot B thereon.”

10. I have considered the submission on behalf of both the sides.

The parameters of adjudication of stamp duty on an instrument are well settled to determine what stamp duty is chargeable, the real true meaning of the instrument need to be ascertained. The question, therefore, arises for consideration that the Authorities, in the facts of the case, is whether on careful reading of instrument as a whole, it can be termed as instrument of exchange chargeable under Article 32 of the Maharashtra Stamp Act, 1958; whether by virtue of NTC Act ownership was transferred on NTC; and whether on reading of entire instrument, it can be treated as "deed of exchange" or "conveyance of reversionary rights" needs to be re-adjudicated by the Authority below.

11. The effect of clause (S) and the relevant clause of instrument mentioned at page 44 referred above along with all other clauses are required to be considered to ascertain real and true meaning of the instrument. Respondent No.2 in the impugned order has not considered aforesaid aspect. However, recorded a finding that NTC became owner of the property by virtue of NTC Act, and the instrument in question amounts to "deed of exchange". The Authority needs to consider another factor that the deed of surrender of lease dated 28 July 2008 still remains to be properly charged the instrument. Therefore, the petitioner would be entitled to raise all questions before respondent No.2, which respondent No.2 shall consider in accordance with law and pass fresh order. Hence, following order:

a) The impugned order passed by respondent No.2 dated 18 June 2016 in Revision Case No.34 of 2014 is quashed and set aside.

b) Respondent No.2 shall re-hear the parties and shall pass fresh order in accordance with law.

c) Parties shall appear before respondent No.2 on **18 March 2024 at 10:30 a.m.**

d) Accordingly, respondent No.2 fix the date of hearing and shall decide the classification of instrument in accordance with law.

12. Rule is made partly absolute.

13. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)