

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2018 OF 2024**

Harshit Harish Jain & Anr.

.. Petitioners

Versus

State of Maharashtra & Ors.

.. Respondents

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Mr. Prathamesh Kamath a/w Ms. Heenal Wadhwa i/b The Law Point, for Petitioners.

Mr. Vishal Thadani, Addl. GP for State-Respondent Nos. 1 & 3.

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CORAM : SANDEEP V. MARNE J.

DATED : 18 APRIL 2024.

JUDGMENT :-

1) By this Petition, Petitioners challenge Order dated 16 December 2022 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune rejecting their Appeal and holding that they are not eligible for grant of refund of Rs.27,34,500/- against stamp duty.

2) Facts of the case are that Petitioners entered into Agreement for Sale dated 30 August 2014 with M/s Krona Realities Private Limited for purchase of Flat No. 5102 at East tower in Lodha Venezia Project. Petitioners paid stamp duty of Rs.27,34,500/- on the Agreement, which was registered on payment of registration charges of Rs.30,000/-. It is Petitioners' case that

on 5 November 2014 the developer informed them that it was not possible to hand over possession of the flat by 31 March 2017 on account of some issues relating to adjacent slums and that the developer gave three options of either transferring the booking in another project or refund on cancellation along with interest at the rate of 12% per annum or choosing to continue in the booking with change of date of possession. Petitioners opted for cancellation of the transaction and accordingly a Deed of Cancellation was executed between Petitioners and the Developer on 17 March 2015, by which the Agreement earlier executed on 28 January 2013 and registered on 18 September 2014 was cancelled. According to Petitioners, though the Cancellation Deed was executed on 17 March 2015, the same came to be registered in the office of Sub Registrar of Assurances, Mumbai City on 28 April 2015. It appears that a Deed of Rectification was also executed between the parties on 23 May 2016 for the purpose of stating the amount refunded to Petitioners.

3) Petitioners filed application for refund of stamp duty of Rs.27,34,500/- in the office of Collector of Stamps on 6 August 2016. The Petitioners received communication dated 30 October 2017 from Additional Stamp Inspector Mumbai, stating that the reason for cancellation of the transaction did not appear logical as the date agreed for possession was March 2017, but the transaction was cancelled two years before in March 2015. Petitioners were therefore directed to remain present for hearing. Another communication was received by Petitioners on 23 November 2016 for presentation of relevant documents.

4) It appears that Petitioners' Application for refund was forwarded by the office of Collector of Stamp, Mumbai to Chief Controlling Revenue Authority cum Inspector General of Registration, Maharashtra

State, Pune (CCRA) for appropriate decision. CCRA passed Order dated 8 January 2018 allowing refund of amount of Rs.27,33,500/- to Petitioners.

5) However shortly thereafter, CCRA issued Order dated 3 March 2018 rejecting the application for refund by referring to provisions of Section 48(1) of the Maharashtra Stamp Act (**the Stamp Act**) stating that the application for refund was not made within six months from date of registration of the Cancellation Deed.

6) Petitioners were advised to prefer an Appeal before CCRA under Section 53 of the Stamp Act. The said Appeal came to be rejected by CCRA by Order dated 16 April 2019. Petitioners preferred Writ Petition No.8276 of 2019 in this Court challenging Orders dated 3 March 2018 and 16 April 2019 passed by CCRA. This Court disposed of the Petition by Order dated 4 October 2022 observing that the Order dated 3 March 2018 was passed behind the back of Petitioners and that the objection about absence of power of review was not decided. This Court therefore set aside Orders dated 3 March 2018 and 16 April 2019 and directed CCRA to decide the application for refund afresh after hearing the Petitioners. CCRA thereafter proceeded to pass Order dated 16 December 2022 rejecting the Appeal holding that Petitioners are not eligible for grant of refund of stamp duty. Aggrieved by the Order dated 16 December 2022 passed by CCRA, Petitioners have preferred the present Petition.

7) Mr. Kamath the learned counsel appearing for Petitioners would submit that Petitioners' application for refund was sanctioned by Order dated 8 January 2018 and CCRA does not have jurisdiction to review his own Order. That CCRA is not clothed with power of review under the provisions of Stamp Act. That power of review is not inherent and needs to

be statutorily conferred. In support of his contention, Mr. Kamath would rely upon the Judgment of the Apex Court in ***Kalabharati Advertising Vs. Hemant Vimalnath Narichania & Ors.***¹

8) Mr. Kamath would further submit that even otherwise, Petitioners are entitled to refund of the amount of stamp duty after cancellation of transaction of purchase of flat. That the case of Petitioners would be governed by unamended provisions of the Stamp Act. That prior to 24 April 2015, when Proviso to Section 48 (1) was amended, permissible period for filing an application seeking refund was two years from the date of registered Cancellation Deed. That in the present case the Cancellation Deed was executed on 17 March 2015 i.e. before coming into effect of amended Proviso to Section 48(1) of the Stamp Act. He would submit that though the registration of Cancellation Deed took place on 28 April 2015. Under the provisions of Section 47 of the Registration Act, the registration would date back to the date of execution of the Cancellation Deed. In support of his contention that the Deed of Cancellation operates from the date of execution, Mr. Kamath would rely upon the judgment of the Apex Court in ***Kanwar Raj Singh (D) Through Legal Representatives Vs. Gejo (D) Through Legal Representatives & Ors.***² He would also invite my attention to the marked difference in the terminology used in the pre-amended Proviso to Section 48(1) which uses the words "*within two years from the date of such registered cancellation deed*", as opposed to use of the words "*within a period of six months from the date of registration of the cancellation deed*" in amended Proviso to Section 48(1). Mr. Kamath would therefore submit that date of execution of "*registered deed*" in the present case would determine applicability of the amended or un-amended

¹ (2010) 9 SCC 437.

² (2024) 2 SCC 416.

provisions of the Stamp Act. That since the Cancellation Deed is executed on 17 March 2015, unamended Proviso to Section 48(1) of Stamp Act permitted filing of application for refund within two years. Mr. Kamath would therefore pray for setting aside the Order dated 16 December 2022 passed by CCRA and would pray for confirming CCRA's earlier Order dated 8 January 2018.

9) *Per contra*, Mr. Thadani the learned Additional Government Pleader appearing for Respondents would oppose the Petition and support the Order passed by CCRA on 16 December 2022. He would submit that the right to seek refund arises only after registration of the Deed of Cancellation. That in the present case, the act of registration took place on 28 April 2015, i.e. after coming into force the amended Proviso to Section 48(1) of the Stamp Act. That under the amended Proviso to Section 48(1), application for refund is required to be filed within six months from the date of registration of Cancellation Deed. That Stamp Act, being fiscal statute, the same must be construed and interpreted strictly and that there is no scope for condoning the statutorily fixed period.

10) So far as authority of CCRA in withdrawing Order dated 8 January 2018 is concerned, Mr. Thadani would submit that the said Order suffered from an error and has rightly been corrected. That the Order was passed on recommendation of Collector of Stamp, Mumbai and Additional Controller of Stamp, Mumbai, whose recommendations were erroneous. That therefore what is done by CCRA is to correct the errors committed by the said two authorities and therefore it cannot be stated that CCRA has exercised power of review in the present case. Mr. Thadani would pray for dismissal of the Petition.

11) Rival contentions of the parties now fall for my consideration.

12) The present Petition essentially raises two issues for determination. Firstly, whether action of CCRA in passing subsequent Order dated 3 March 2018 can be construed to mean exercise of power of review and whether CCRA is entitled to review its own Order. Secondly, whether application for refund of stamp duty filed by Petitioners was required to be dealt with in accordance with unamended Proviso to Section 48(1), which permitted period of two years for submission of such application or whether it ought to be dealt with in accordance with amended Proviso to Section 48(1) which permits period of only six months for submission of such application.

13) So far as the first issue of exercise of power of review by CCRA is concerned, there can be no doubt about settled position of law that power of review is never inherent and the same can be exercised only if it is statutorily conferred. In absence of the statute conferring power of review, no Court or Authority can review its own Order. In this connection reliance of Mr. Kamath on the judgment of Apex Court in ***Kalabharati Advertising*** (supra) is apposite. The Apex Court has held in para 12, 13 and 14 as under:

"12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial Orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar and Harbhajan Singh v. Karam Singh.)

13. In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji, Major Chandra Bhan Singh v. Latafat Ullah Khan, Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya, State of Orissa v. Commr. of Land Records and Settlement and Sunita Jain v. Pawan Kumar Jain this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/rules, review of an earlier

order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible."

(emphasis supplied)

14) No provision is pointed out to me, which enables or empowers CCRA to review its own orders. In that sense, CCRA is not clothed with power of review under the provisions of the Stamp Act. The issue here is however slightly different. To my mind, there are at least two factors which would protect the impugned order dated 16 December 2022 passed by CCRA from falling foul of absence of statutory power of review. The first reason being the conduct of Petitioners coupled with Order passed by this Court in previous round of litigation on 4 October 2022. After CCRA rejected application for refund by Order dated 3 March 2018, which was directly contradictory to the previous Order dated 8 January 2018, Petitioners choose to file an "Appeal" under Section 53 of the Stamp Act before CCRA. Thus, Appeal against decision of CCRA was filed by Petitioners before CCRA. Under Section 53(1A) of Stamp Act, Appeal before CCRA lies against an Order passed Collector. However, Petitioner choose to file Appeal under Section 53 challenging the decision of CCRA. Without going further into the issue of maintainability of that Appeal, it would be relevant to note that the Petitioners believed that CCRA had power to correct the Order dated 3 March 2018. This appears to be the reason why in the Appeal filed before CCRA, Petitioners did not raise a ground that CCRA did not have power of reviewing its own Order. This was done as Petitioners, in that sense, was seeking review of CCRA's Order dated 3 March 2018 through proceedings which were branded as "Appeal". In Ground Clause IV, Petitioners vaguely stated that the Order could not be reversed *suo moto* by

CCRA. Thus what was emphasized was, thus not lack of power of review, but lack of power to reverse the Order "*suo moto*". Petitioners, however believed that 'on application' power of reversal could be exercised by CCRA and therefore sought reversal of order dated 3 March 2018.

15) After the Appeal was rejected by CCRA by Order dated 16 April 2019, Petitioners filed Writ Petition No. 8276 of 2019 challenging the Orders dated 3 March 2018 and 16 April 2019 before this Court. Petitioners did not press for setting aside Order dated 3 March 2019 on the ground of lack of power of review, but agreed for remand of the proceedings before CCRA for being decided afresh. Though it cannot be stated that the Order passed by this Court on 4 October 2022 was with consent of Petitioners, it is also true that Petitioners did not challenge the Order dated 4 October 2022 and participated in proceedings before CCRA, which ultimately resulted in passing Order dated 16 December 2022. Considering the above position, in the peculiar facts and circumstances of the present case, I am not inclined to set aside the Order dated 16 December 2022 only on the ground that lack of power of review with CCRA.

16) The second reason for not interfering with the Order of CCRA on the ground of lack of power of review is the manner in which the cases for refund of stamp duty are processed. In the present case, the application for refund was submitted by Petitioners before Collector of Stamps, Mumbai. The same was apparently processed by the Additional Collector of Stamps, Mumbai, who invited Petitioners for hearing by letter on 30 October 2017. The Collector of Stamps, Mumbai conducted further hearing, which is apparent from letter dated 23 November 2016. The hearing in the matter is thus held by Collector of Stamps and Additional Collector of Stamps. What is done by CCRA is not adjudication of proposal

for refund, as he did not conduct hearing. Apparently, he merely relied upon proposal submitted by Additional Collector of Stamps recommending refund of stamp duty to the Petitioners and possibly accorded his approval to the recommendation. CCRA merely accepted the said proposal and directed refund vide Order dated 8 January 2018. The enquiry with regard to permissibility for sanction of refund was apparently conducted by Additional Collector of Stamps, who recommended the refund to CCRA. It appears that, though Section 47 of the Stamp Act empowers Collector to make an Order of refund, the case was forwarded to CCRA, possibly on account of distribution of financial powers amongst authorities. The proposal was accordingly sanctioned by CCRA on 8 January 2018. Thus the entire adjudication in the present case is not conducted by CCRA and most part thereof is done by Collector of Stamps and Additional Collector of Stamp Mumbai. This is however not to suggest that CCRA is entitled to review his own Orders. In the peculiar facts and circumstances of the present case, CCRA appears to have erroneously accepted the proposal submitted by Additional Collector of Stamp Mumbai. The error is corrected by subsequent Order dated 3 March 2018. I am therefore not inclined to set aside the impugned Orders on technical reason of absence of power of review with CCRA.

17) Coming to the merits of the case, the debate is about applicability of amended or unamended Proviso of Section 48 as observed above. Unamended Proviso to Section 48(1) permitted period of two years for submission of application under Section 47 for making an Order of refund. The amended Proviso, which came into effect from 24 April 2015, prescribes period of six months for making application under Section 47. It would be apposite to reproduce unamended and amended Proviso to Section 48 (1) as under:

The un-amended Proviso reads thus:

“Provided that where an Agreement to sell immovable property, on which stamp duty is paid under Article 25 of the Schedule I, is presented for registration under the provisions of the Registration Act, 1908 and if the seller refuses to deliver possession of the immovable property which is subject matter of such agreement the application may be made within two years of the date of the instrument or where such agreement is cancelled by a registered cancellation deed on the grounds of, dispute regarding the premises concerned, inadequate finance, financial dispute in terms of agreed consideration, or afterwards found to be illegal construction or suppression of any other material fact, the application may be made within two years from the date of such registered cancellation deed”

(emphasis and underling supplied)

The amended Proviso, which came into effect for 24 April 2015, reads thus:

“Provided that where an Agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale, then the application for relief may be made within a period of six months from the date of registration of cancellation deed”

(emphasis and underling supplied)

18) Mr. Kamath has sought to contend that the unamended Proviso to Section 48(1) uses the words *"from the date of such registered cancellation deed"*. According to Mr. Kamath, the unamended Proviso did not use the words *"from the date of registration of cancellation deed"*. On this count, he has contended that the date of execution of Cancellation Deed becomes relevant for the purpose of computation of period of limitation as per unamended proviso to Section 48(1). He has relied upon provisions of Section 47 of Registration Act which reads thus:

47. Time from which registered document operates.-

A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

19) He has also relied upon Judgment of the Apex Court in ***Kanwar Raj Singh*** (supra) in para 7 of which, the Apex Court as held as under:

"7. On plain reading of Section 47, it provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof was required. Thus, when a compulsorily registerable document is registered according to the Registration Act, it can operate from a date before the date of its registration. The date of the operation will depend on the nature of the transaction. If, in a given case, a sale deed is executed and the entire agreed consideration is paid on or before execution of the sale deed, after it is registered, it will operate from the date of its execution. The reason is that if its registration was not required, it would have operated from the date of its execution.}"

20) While there cannot be any dispute about the proposition that even if date of registration of document is subsequent, the document takes effect from the date of its execution under Section 47 of the Registration Act. Accordingly, the deed of cancellation in the present case would take effect for all other purposes from 17 March 2015.

21) However, the issue here is slightly different. The issue is not about date of coming into effect of the Deed of Cancellation. The issue is about date of accrual of right to Petitioners to seek refund of stamp duty under Section 47. Under unamended as well as amended Proviso to Section 48(1), what is needed is registration or registered Deed of Cancellation. Thus, registration of Deed of Cancellation is a *sine-qua-non* for seeking refund of stamp duty. Without registration, application for seeking refund of stamp duty cannot be made.

22) Thus, right to seek refund of stamp duty takes birth only after registration of the deed of cancellation. Therefore, date of registration would ultimately decide applicability of amended or unamended Proviso to Section 48(1). Undisputably, upto 23 April 2015, till which time unamended Proviso to Section 48(1) operated, Petitioners did not have right to seek

refund of stamp duty as the Deed of Cancellation, though executed on 17 March 2015, was yet to be registered. By the time same was registered on 28 April 2015, amended Proviso to Section 48(1) had already taken effect. Thus, the day on which right got created in favour of Petitioners to seek refund of stamp duty, amended Proviso to Section 48(1) had already come into effect.

23) In my view therefore, what would be applicable in the present case is the amended Proviso to Section 48(1), which prescribes period of limitation of six months for making an application for refund of stamp duty.

24) After considering the overall conspectus of the case no serious error can be traced in the Order dated 16 December 2022 passed by CCRA. The Order, to my mind, appears to be unexceptionable. Writ Petition is devoid of merits. It is dismissed without any order as to costs.

[SANDEEP V. MARNE J.]