IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2312 OF 2016

M/s. Segment Developers Pvt. Ltd. …… **PETITIONER**

:V/S :

1. The State of Maharashtra,
through The Principal Secretary,
Revenue & Forest Department.
2. The Collector of Stamps, Borivali
3. The Chief Controlling Revenue Authority,
Maharashtra State.
4. Slum Rehabilitation Authority,
through Its Chief Executive Officer. **.....RESPONDENTS**

Mr. Subhash A. Abhyankar, *for the Petitioner.*
Mrs. Jyoti Chavan, *Additional Government Pleader for the State-Respondent Nos.1 to 3.*
Ms. Dhruti M. Kapadia, *for SRA-Respondent No.4.*

CORAM : SANDEEP V. MARNE, J.

Judg.Resd. on : 9 February 2024.

Judg. Pron. On : 20 February 2024.

JUDGMENT :

1. Petitioner has filed this petition challenging the Orders dated 14 May 2008 and 30 September 2015 and Demand Notice dated 22 April 2016. The dispute pertains to levy of

deficit amount of Stamp duty of Rs. 41,80,365/- alongwith penalty of Rs.78,59,086/- in respect of the Agreement dated 15 May 2008 executed between the Slum Rehabilitation Authority and Petitioner relating to grant of Transferable Development Rights (**TDR**) by way of Development Right Certificate (**DRC**) to it.

2. Briefly stated, facts of the case are that Petitioner is a Developer and owned a plot of land at Malad in Mumbai. It submitted a proposal for creation of additional housing stock and rehabilitation tenements on the plot for rehabilitating Project Affected Persons of various projects. The proposal envisaged construction of 732 residential tenements, 8 Balwadis, 8 Welfare Centres and 8 Society Offices for Slum Redevelopment Authority **(SRA)**. In lieu of Petitioner constructing rehabilitation tenements, SRA agreed to grant TDR in the form of DRC to the Petitioner. Accordingly, Agreement dated 15 May 2008 came to be executed between SRA and Petitioner, under which SRA agreed to grant TDR in the form of DRC as per various clauses, more particularly described in the Agreement. Petitioner submits that Notifications dated 19 December 1997 and 4 March 2008 were issued under the provisions of Section 9 (a) of the Maharashtra Stamp Act, 1958 (**Stamp Act**), by which, the Government of Maharashtra has reduced the Stamp duty payable in respect of instruments executed for the purpose of rehabilitation of slum dwellers to Rs.100/-. Petitioner states that despite those Notifications, when the Agreement dated 15 May 2008 was submitted for

adjudication under Section 31 of the Stamp Act, the Collector of Stamps, Borivali erroneously determined the market value of the property involved in the Agreement at Rs.27,83,41,000/- and called upon Petitioner to pay stamp duty of Rs.27,83,415/- @ 1% under Article 5(g-a) of Schedule-I of the Stamp Act. It is Petitioner's case that by mistake, Petitioner paid the Stamp duty of Rs.27,83,415/- on 15 May 2008 and the Agreement came to be executed and registered in the office of the Sub-Registrar of Assurances, Bandra-10 on 15 May 2008.

3. It appears that the Audit Team of the Accountant General (II), Nagpur took an objection with regard to the valuation in the Agreement. The Audit Team determined the market value of TDR granted to Petitioner at Rs. 63,67,31,272/- and opined that the stamp duty @ 3% under Article 25(a) amounting to Rs.1,91,01,938/- was leviable. Based on the objection so raised by the Audit Team, the Chief Controlling Revenue Authority (**CCRA**), initiated proceedings under Section 53A of the Stamp Act. Petitioner was heard by the CCRA. By Order dated 30 September 2015, CCRA accepted Petitioner's contention that the instrument is not that of 'Exchange' but of 'Sale'. By accepting some of the calculations submitted by Petitioner, CCRA held that the correct market value was Rs.23,21,26,000/- and that the stamp duty leviable at the rate of 3% under Article 25(a) would be Rs. 69,63,780/-. CCRA therefore held that there was deficit stamp duty of Rs.41,80,365/-. CCRA accordingly directed Petitioner to pay deficit stamp duty of Rs.41,80,365/- within 30 days, failing which

penalty was to be levied. Petitioner is aggrieved by the Order dated 30 September 2015 passed by the CCRA which is challenged in the present petition.

4. Petitioner has paid the deficit stamp duty of Rs.41,80,365/-, vide Challans dated 30 November 2015 (Rs.21,80,365/-) and 29 February 2016 (Rs.20,00,000/-) and an intimation to that effect was given by it to the Collector of Stamps by letter dated 9 March 2016. The Collector of Stamps, however issued a Demand Notice dated 22 April 2016 calling upon Petitioner to pay penalty at the rate of 2% of Rs.78,59,086/- on the ground that deposit of deficit stamp duty was not made within a period of 30 days. Petitioner is aggrieved by the Demand Notice dated 22 April 2016 which is also subject matter of challenge in the present petition. By Order dated 28 August 2017, this Court, while granting interim relief has issued *Rule* in the present petition. The Order passed by this Court on 28 August 2017 came to be challenged by the Petitioner before the Supreme Court by filing Special Leave Petition (Diary) No(s).41521 of 2017 which came to be disposed by Order dated 25 January 2018 observing that the Petitioner had paid not only the original stamp duty as demanded by the Collector but also the revised stamp duty. The Supreme Court accordingly has directed that the petition be heard without any further deposit by the Petitioner.

5. I have heard Mr. Abhyankar, the learned counsel appearing for Petitioner. He would submit that as per the

Notifications issued by the State Government on 19 December 1997 and 4 March 2008, the concerned instrument was required to be executed on Stamp paper of Rs.100/- and that due to sheer mistake, Petitioner erroneously paid Stamp duty of Rs.27,83,415/-. He would rely upon the provisions of Section 3 of the Stamp Act under which an instrument executed by or on behalf of or in favour of Government is exempted from payment of any Stamp duty. He would submit that the Notifications dated 19 December 1997 and 4 March 2008 have been issued under the provisions of Section 9 of the Stamp Act, under which the State Government has power to reduce, remit or compound duties. That since the State Government has reduced the Stamp duty payable in respect of the instrument relating to Slum Rehabilitation to Rs.100/-, no Stamp Duty above Rs.100/- was payable on the Agreement and therefore the action initiated by the CCRA under Section 53A of the Stamp Act is completely misplaced. That the Petitioner is infact entitled to refund of the stamp duty earlier paid at the time of execution of the document (Rs.27,83,415/-), as well as Rs.41,80,365/- subsequently paid in respect of CCRA's order (total Rs.69,63,780/-).

6. Mr. Abhyankar would submit that CCRA has not taken into consideration the Notifications dated 19 December 1997 and 4 March 2008 while passing the impugned order. That the Notifications have been issued specially for the purpose of encouraging construction of rehabilitation tenements for rehabilitation of Project Affected Persons. That to further the

said objective, Petitioner has constructed as many as 732 rehab tenements and handed them over to SRA for rehabilitating Project Affected Persons. The Notifications have reduced the Stamp duty with a view to encourage the land owners and developers to construct rehab tenements on their plots. So long as the Notifications are in force, they must be given full effect. In support of his contentions, Mr. Abhyankar would rely upon the judgments of this Court in **The State of Maharashtra V/s. Mahadeo Pandharinath Dhole**[1], **The Chief Controlling Revenue Authority V.s. M/s. G. AND J. Concerns (Hotel Samrat), Kolhapur**[2] and **M/s. Sandeep Dwellers Private Ltd. V/s. The State of Maharashtra & Ors.**[3] Mr. Abhyankar would submit that para-29 of the Agreement itself refers to the Notification dated 19 December 1997 and payment of stamp duty of Rs.100/- and that therefore the Respondents are now estopped from charging stamp duty on market value of the property.

7. *Per-contra* Ms. Chavan, the learned Additional Government Pleader appearing for Respondent Nos. 1 to 3 would oppose the petition submitting that the Notifications dated 19 December 1997 and 4 March 2008 are not applicable to the instrument involved in the present petition. That the said Circulars are issued only in respect of agreements executed with the slum dwellers. That the same has no application in respect of the instruments of transfer of TDR which is the case in

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1 AIR 1980 Bom 348
2 AIR 2000 Bom 403
3 2022 (4) ALL MR 54

the present petition. That by Agreement dated 15 May 2008, the SRA has granted TDR in the form of DRC to the Petitioner which can be monetised by it by sale in the open market or utilisation on another plot. That therefore the said Agreement cannot be treated as the one executed for allotment of tenements to slum dwellers. That the stamp duty has been reduced with a view to ensure that the slum dwellers do not have to spend money on payment of stamp duty for receiving rehabilitation tenements. That CCRA has passed the order after applying its mind. That CCRA has upheld Petitioner's objection that the instrument cannot be treated as the one for Exchange. That after considering Petitioner's objection, the CCRA has considered the agreement as the one for 'Sale of TDR' and not as a 'Deed of Exchange'. That such well reasoned order passed by the CCRA does not warrant any interference in exercise of jurisdiction by this Court under Article 227 of the Constitution of India. He would pray for dismissal of the petition.

8. I have also heard Ms. Kapadia, the learned counsel appearing for Respondent No.4-SRA.

9. Rival contentions of the parties now fall for my consideration.

10. The short issue that arises for my consideration in the present petition is about applicability of Circulars dated 19 December 1997 and 4 March 2008 to the Agreement dated 15 May 2008. If the said Circulars are held applicable to the

Agreement in question, stamp duty of only Rs.100/- would be payable on the Agreement. No doubt, para-29 of the Agreement makes a reference to the Circular dated 19 December 1997 and payment of stamp duty of Rs.100/-. However, despite reference to the Circular dated 19 December 1997, Petitioner has paid stamp duty on market value of the property, which was adjudicated at Rs.27,83,41,000/- on which Petitioner paid stamp duty at the rate of 1% under Article 5(g-a) of Rs.27,83,415/-. Petitioner attributes such payment to mistake on its part and claims that the said amount paid by it towards stamp duty deserves to be refunded.

11. It would be necessary to refer to some of the provisions of the Stamp Act. Petitioner has relied upon Section 3 of the Stamp Act in support of the contention that no stamp duty is payable in respect of any instrument executed by it on behalf of the Government. Section 3 reads thus :

> **3. Instrument chargeable with duty-** Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in Schedule I as the proper duty therefor respectively, that is to say-
> (a) every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed in the State on or after the dated of commencement of this Act.
> (b)every instrument mentioned in Schedule I, which not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State.

Provided that a copy or extract, whether certified to be a true copy or not and whether a facsimile image or otherwise of the original instrument on which stamp duty is chargeable under the provisions of this section, shall be chargeable with full stamp duty indicated in the Schedule I of the proper duty payable on such original instrument is not paid]

Providing further that] no duty shall be chargeable in respect of –

(1) Any instrument executed by or on behalf of, or in favour of, the Government in cases, where, but for tis exemption, the Government would be liable to pay the duty chargeable in respect of such instrument [or where the Government has undertaken to bear the expenses towards the payment of the duty];

(2) Any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship on vessel registered under the Bombay Coasting Vessels Act, 1838, or [Merchant Shipping Act, 1958].

12. In my view, the second Proviso to Section 3 has no application to the present case. Clause-1 of the second Proviso is applicable only in respect of an instrument under which the Government becomes liable to pay stamp duty. In the present case for grant of TDR to Petitioner, the SRA did not become liable to pay stamp duty. The stamp duty levied on the instrument was payable by the Petitioner and not by SRA. Clause-29 of the Agreement clearly put the responsibility of payment of stamp duty on the Petitioner. Clause-29 of the Agreement reads thus :

29. It is agreed that in view of maximum stamp duty of Rs.100/- being prescribed by the Government of

> Maharashtra vide GR/Notification No. STP-1096/4565/CR-915/M-I dated 19/12/1997 in respect of the conveyance of the property in slum rehabilitation scheme or whatever rate the Government charge, the developers have agreed to bear and pay the stamp duty payable on conveyance in respect of the said premises and also the registration fee. Each party shall bear and pay the costs or their respective Advocates.

Therefore, Clause-1 of the second Proviso of Section 3 has no application to the present case.

13. Section 9 of the Stamp Act confers power on the State Government to reduce, remit or compound duties and provides thus :-

> **9. Power to reduce, remit or compound duties**-The State Government if satisfied that it is necessary to do so in the public interest, may, by rule or order published in the Official Gazette,-
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> (a) reduce or remit, whether prospectively or retrospectively, in the while or any part of the State the [duties or penalty, if only, or both] with which any instruments or any particular class of instruments or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and
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> (b)provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of bonds or marketable securities other then debentures.

14. Thus under Section 9, the State Government, by publishing a Rule or Order in the Official Gazette, can reduce

prospectively or retrospectively the stamp-duty payable on any instrument. The Notifications dated 19 December 1997 and 4 March 2008 are issued in exercise of power of Clause (a) of Section 9 of the Stamp Act. The Notification dated 19 December 1997 reads thus :

> **No. STP. 1096/4565/CR-915/M-1, dated 19th December 1997-** In exercise of the powers conferred by clause (a) of section 9 of the Bombay Stamp Act, 1958 (Bom.LX of 1958), the Government of Maharashtra having satisfied that it is necessary to do so in public interest, hereby reduces the stamp duty chargeable under Article 5 (g-a), 25 and 36 in Schedule I appended to the said Act, on the instruments executed for the purpose of rehabilitation of slum dwellers as per the Slum Rehabilitation Scheme under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (XXVIII of 1971) in respect of properties situated within the city of Mumbai District and Mumbai Suburban District to Rs.100 (Rupees One Hundred only)

15. The Notification dated 19 December 1997 was superseded by issuance of Notification dated 4 March 2008 which reads thus :

> **No.Mudrank. 2002/941/CR-217/M-1, dated 4th March 2008.-** In exercise of the powers conferred by clause (a) of section 9 of the Bombay Stamp Act, 1958 (Bom.LX of 1958), and in supersession of the Government Order, Revenue and Forests, Department No.STP. 1096/4565/CR-915/M-1, dated the 19th December, 1997, the Government of Maharashtra, being satisfied that it is necessary so to do in the public interest, hereby reduces the stamp duty chargeable under articles 5(g-a), 25 and 36 in Schedule I appended to the said Act, on the instruments executed for the purpose of rehabilitation of slum dweller, as per the Slum Rehabilitation Scheme under the Maharashtra Slum Areas

> (Improvement, Clearance and Redevelopment) Act, 1971 (Mah.XXVII of 1971), in respect of the properties situated in the areas mentioned in column (2) of the Schedule appended hereto, to rupees one hundred.
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> **Explanation** – The reduction of stamp duty shall be permissible only in respect of instruments relating to the tenements allotted to the slum dwellers for residential purpose as per the Slum Rehabilitation Scheme and shall not be permissible to the instruments relating to the transfer of tenements to the persons other than slum dwellers or tenements used for commercial purpose or any other instrument of the developer.

16. The Agreement in the present case was executed and registered on 15 May 2008 and therefore what is relevant in the present case is the Notification dated 4 March 2008. The Explanation to the Notification dated 4 March 2008 clearly provides that the reduction of stamp duty is permissible only in respect of the instruments relating to the tenements allotted to slum dwellers for residential purposes as per the Slum Rehabilitation Scheme and that the same shall not be permissible in respect of the instruments relating to transfer of tenements to the persons other than slum dwellers or tenements used for commercial purposes or any other instrument of the Developer. Use of the words "*or any other instrument of the Developer"* in the Notification dated 4 March 2008 would indicate that the provision for reduction of stamp duty as per the Notification dated 4 March 2008 is not applicable in respect of the any instrument executed with the Developer, other than for allotment of rehab tenement to a slum dweller. The reduction of stamp duty is applicable only in respect of the tenements allotted to slum dwellers for

residential purposes. Thus, the Explanation to the Notification dated 4 March 2008 makes the objective behind issuing the Notification clear. The objective is only to relieve the slum dwellers of expenditure on stamp duty when he/she receives rehab tenement *in lieu* of the slum structure. The objective behind the Notification is not to grant any concession to the Developer, in any manner. In the present case, the Agreement does not allot or transfer rehab tenement to a slum dweller. The same merely grants TDR in the form of DRC in favour of the Petitioner. The Petitioner can monetise the same by either selling it in the market or by utilizing the same on another plot. The transaction is thus in the nature of transfer of a right in the land.

17. It is permissible for a land owner to transfer one out of several rights in an immovable property in favour of another person. The ownership in land consists of bouquet of rights. Development right, which is transferable, is one such facet of right which can be exercised by the owner. Therefore, grant of TDR in favour of the Petitioner by SRA would tantamount to transfer of right in the land. There is no exemption provided under the Stamp Act or under the Notifications issued under that Act in respect of such instrument on transfer of development rights.

18. The present case can also be viewed from another angle which shows clear inapplicability of the Notification dated 4 March 2008. Petitioner as the owner of the Plot, first

gave it to SRA for construction of 732 rehab tenements. By doing so, it denuded itself of the ownership right in the plot without receiving any consideration. The consideration is later given to Petitioner in the form of Agreement dated 8 May 2008, under which the SRA granted him TDR in the form of DRC. Thus, the TDR granted by SRA is actually the consideration received for transfer of plot by Petitioner to SRA. Petitioner can sale such TDR in the market and earn money. The transaction is thus virtually in nature of a conveyance where the land is conveyed to SRA and consideration in the form of TDR, capable of monetisation, is gained.

19. Thus, by no stretch of imagination, the Agreement dated 15 May 2008 would be covered by the Notification dated 4 March 2008. In my view, therefore the CCRA has rightly not granted the benefit of Notification dated 4 March 2008 to the Petitioner.

20. Since the Notification dated 15 March 2008 itself is inapplicable, the reliance of Mr. Abhyankar on judgments of this Court in ***Mahadeo Pandharinath Dhole*** (supra) ***M/s. G. and J. Concerns (Hotel Samrat), Kolhapur*** (supra) and ***M/s. Sandeep Dwellers Private Ltd.*** (supra) is totally misplaced.

21. The CCRA has passed a well reasoned Order dated 30 September 2015 after grant of due opportunity to Petitioner of hearing. The Audit Team had treated the instrument as a Deed of Exchange and had suggested the market value at

Rs.63,67,31,272/- and stamp duty leviable at Rs.1,63,18,523/-. The CCRA accepted Petitioner's objection that the instrument is not a Deed of Exchange. The CCRA held the same to be an Agreement for Sale of TDR and accordingly proceeded to determine the market value of TDR at Rs. 23,21,26,000/- and applied the provisions of Article 25(a) of the Stamp Act for levy of stamp duty at the rate of 3% of Rs.69,63,780/-. This is how the Petitioner was called upon to pay deficit stamp duty of Rs.41,80,365/- as it had already paid the stamp duty of Rs.27,83,415/-.

22. As observed above, the Petitioner has already paid the deficit stamp duty of Rs.41,80,365/- *albeit* in two tranches; (i)Rs.21,80,365/- on 30 November 2015; and (ii) Rs.20,00,000/- on 29 February 2016.

23. The CCRA's Order directed the Petitioner to deposit the amount of Rs.41,80,365/- within thirty days of receipt of the Order. It appears that the CCRA's order was served on the Petitioner by letter of Collector of Stamps, Borivali dated 23 October 2015. The deficit stamp duty was required to be paid within 30 days from 23 October 2015. The Petitioner was slightly late in paying the first tranche of Rs.21,80,365/- which was paid on 30 November 2015. The second tranche of Rs.20,00,000/- was paid on 29 February 2016. On account of delay on the part of the Petitioner in paying the amounts as above, the Collector of Stamps has applied 2% penalty on deficit stamp duty of Rs.41,80,365/- and demanded exorbitant penalty of

Rs.78,59,086/- by applying the penalty of 2% from the date of registration of the instrument. In my view, since the Petitioner has paid the entire amount of deficit stamp duty albeit with some delay, the penalty levied on the Petitioner is clearly unjustifiable.

24. The Petition accordingly succeeds only partly to the limited extent of levy of penalty. The Order passed by the CCRA on 30 September 2015 is upheld. However, the Demand Notice issued by the Collector of Stamps, Borivali on 22 April 2016 demanding penalty of Rs.78,59,086/- is set aside. It is declared that Petitioner shall not be liable to pay any further amount to the Respondents in respect of the Agreement dated 15 May 2008.

25. With the above directions, the petition is partly **allowed**. Rule is made partly absolute. There shall be no order as to costs.

SANDEEP V. MARNE, J.

NEETA SHAILESH SAWANT

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