

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1194 OF 2024

S.D. Corporation Pvt. Ltd. } **..Petitioner**

: Versus :

State of Maharashtra and Ors. } **..Respondents**

Mr. Virag Tuljapurkar, Senior Advocate with Mr. Pramod Patil, Mr. Ajit Hon, Ms. Sakshi Thombre, Ms. Kunjan Jogdand and Mr. Dhairyasheel Kale i/by. PNP & Associates, for the Petitioner.

Mr. Himanshu B. Takke, AGP for State-Respondent Nos. 1 to 3.

CORAM : SANDEEP V. MARNE, J.

Dated : 25 April 2024.

ORAL JUDGMENT :

1) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for rival parties, petition is taken up for hearing and final disposal.

2) Petitioner has challenged Order dated 5 January 2022 passed by the Collector of Stamps, Borivali demanding stamp duty of Rs.46,00,30,600/- and penalty of Rs.153,65,02,204/- from Petitioner under Article 5(g-a) of the Maharashtra Stamp Act, 1958 (**Stamp Act**).

The demand towards stamp duty and penalty is made on General Power of Attorney (**POA**) dated 21 February 2007 executed in favour of Petitioner.

3) It appears that Samata Nagar Co-operative Housing Society Union Ltd. (**Society**) has granted development rights in Petitioner's favour for carrying out development of its buildings. A Development Agreement dated 19 February 2007 was executed by the Society in Petitioner's favour, on which stamp duty of Rs.100/- was initially paid. The said Development Agreement was subsequently adjudicated and stamp duty of Rs. 95,69,169/- under Article 5(g-a) of the Stamp Act, in addition penalty of Rs.82,29,500/- was demanded. There is no dispute to the position that Petitioner paid both the amount of stamp duty as well as penalty (*total amount of Rs.1,77,98,669/-*), upon payment of which, an endorsement was made on the Development Agreement under Section 41 of the Stamp Act. A separate General Power of Attorney was also executed in Petitioner's favour by the Society on 21 February 2007.

4) It appears that on the basis of some complaint lodged on 'Aple Sarkar portal' alleging non-payment of stamp duty on General Power of Attorney executed in favour of Petitioner, the Collector of Stamps called it for hearing vide letter dated 28 September 2021. Though Petitioner pointed out that full stamp duty has already been paid on the Development Agreement, the Collector of Stamps

proceeded to issue a Show Cause Notice dated 10 November 2021 to Petitioner fixing the market value of the property covered by POA at Rs. 9,20,06,12,000/- and demanded stamp duty of Rs. 46,00,30,600/- under Article 5(g-a) of the Act in addition to penalty of Rs.1,53,65,02,204/-. Petitioner replied the show cause notice and once again brought to the notice of the Collector that the adjudicated stamp duty has already been paid on the Development Agreement and that under Second Proviso to Article 48(g) of the Stamp Act, the POA can be stamped with Rs.100/-.

5) However, by the impugned order dated 5 January 2022, the Collector of Stamps, Borivali has virtually copied the show cause notice *ad-verbatim* and has maintained the demand in the show cause notice.

6) I have heard Mr. Tulzapurkar, the learned senior advocate appearing for Petitioner. He would rely upon provisions of Second Proviso to Article 48(g) of the Act, under which if stamp duty is paid under Clause (g-a) of Article 5 on Development Agreement, the duty chargeable on a POA is only Rs.100/-. He would submit that in the present case, the Development Agreement dated 19 February 2007 has already been stamped with duty chargeable under Article 5(g-a) and that therefore no fresh stamp duty is payable on the POA. He would submit that the Development Agreement and the POA are between the same parties and in respect of the same property. He would also invite my attention to the Second Proviso to Article 5(g-a), under which if proper

stamp duty is paid under Article 48(g) on POA, then the stamp duty payable on Development Agreement is only Rs.100/-. Mr. Tulzapurkar would therefore submit that the provisions of Stamp Act do not contemplate payment of stamp duty twice on Development Agreement and Power of Attorney which are executed between the same parties in respect of the same properties. That the Act contemplates payment of stamp duty only once. He would further submit that if there was any error in the stamp duty adjudicated on the Development Agreement, only the Chief Controlling Revenue Authority (CCRA) is entitled to exercise powers under Section 53A to take corrective action and that the Collector of Stamps is not clothed with jurisdiction to decide correctness of the duty adjudicated on the Development Agreement.

7) *Per-contra*, Mr. Takke the learned AGP would submit that there is an alternate remedy of filing Appeal before the CCRA under the provisions of Section 53(1-A) of the Act and that Clause-5 of the operative portion of the Order, specifically refers to the said alternate remedy. Without prejudice, Mr. Takke would submit that the Collector of Stamps has rightly passed the Order dated 5 January 2022 after noticing that the Development Agreement and the General Power of Attorney are not in respect of identical properties. He would submit that the Development Agreement is shown to have been executed in respect of lesser area of 84,714.38/- sq.mtrs, whereas, the POA is in respect of larger portion of land admeasuring 2,13,867.50 sq.mtrs. He would therefore submit that Proviso to Article 48(g) would have no application

to the present case, since the properties covered by the Development Agreement and PoA cannot be considered as same or identical. He would submit that the Collector of Stamps has rightly determined the market value of land admeasuring 2,13,867.50 sq.mtrs at Rs.9,20,06,12,000/-.

8) In rejoinder, Mr. Tuljapurkar would submit that neither POA or the Development Agreement are in respect of larger portion of land admeasuring 2,13,867.50 mtrs, which is described in the First Schedule to the Development Agreement and the PoA. That as per the Second Schedule to the Development Agreement, the development rights are granted only in respect of area admeasuring 84,714.38 sq.mtrs. Inviting my attention to recital 'O' to the POA, he would submit that the authority under the POA is granted solely for the purpose of carrying out the development in accordance with the Development Agreement dated 19 February 2007. That therefore POA cannot and does not exceed what is contemplated under the Development Agreement. According to Mr. Tulzapurkar, the POA thus has direct connection with the Development Agreement and that therefore both the documents pertain to the same property.

9) I have considered the submissions canvassed by the learned counsel appearing for the parties.

10) Perusal of the impugned order dated 5 January 2022 passed by the Collector of Stamps, Borivali indicates complete non-application

of mind. The order of the Collector of Stamps indicates that she has not even taken into consideration the factum of payment of stamp duty on the Development Agreement. The order does not hold that that lesser amount of stamp duty is paid on the Development Agreement and that therefore the demand is raised for correct amount of stamp duty. What the Collector has undertaken is the exercise to determining market value of rights in respect of larger portion of land admeasuring 2,13,867.50 sq.mtrs and has accordingly determined the market value at Rs.9,20,06,12,000/-. The Collector has not paid any heed to the Development Agreement executed between the parties. It is Petitioner's contention that both the Development Agreement and the Power of Attorney are in respect of the same property and that therefore second Proviso to Article 48(g) is attracted in the present case. There is no consideration by the Collector to this aspect in the impugned order.

11) Perusal of the second Schedule described in the Development Agreement and PoA indicate some difference in respect of the land taken up for development. In the Development Agreement, the property described is as under :

SECOND SCHEDULE HEREINABOVE REFERRED TO

ALL THAT F.S.I. buildable, arising from the piece and parcel of land bearing City Survey Nos.837 to 840 of Village Poisar, Taluka-Borivali, in Mumbai Suburban District, admeasuring 2,13,867.50 sq.mtrs., as per policy of MHADA i.e. 84714.30 sq.mtrs situated lying and being at village Poisar, Taluka Borivali, Mumbai Suburban District, now known as Samta Nagar, Kandivali (East), Mumbai-400 101 and bounded as follows :-

On or about the East by :

C.T.S. Nos. 791, 763 and 863.

On or about the West by :

MAHINDRA & MAHINDRA factory

<u>On or about the North by :</u>	(Akurli Village Boundary)
<u>On or about the South by</u>	C.T.S. Nos.848, 835 and 842 Western Express Highway.

12) As against this, the second Schedule to the POA is as under :

SECOND SCHEDULE HEREINABOVE REFERRED TO

ALL THAT F.S.I. buildable, arising from the piece and parcel of land bearing City Survey Nos.837 to 840 of Village Poisar, Taluka-Borivali, in Mumbai Suburban District, ***admeasuring 2,13,867.50 sq.mtrs.***, situated lying and being at village Poisar, Taluka- Borivali, Mumbai Suburban District, now known as Samta Nagar, Kandivali (East), Mumbai-400 101 and bounded as follows :-

<u>On or about the East by :</u>	C.T.S. Nos. 7891, 763 and 863.
<u>On or about the West by :</u>	MAHINDRA & MAHINDRA factory (Akurli Village Boundary)
<u>On or about the North by :</u>	C.T.S. Nos.848, 835 and 842
<u>On or about the South by</u>	Western Express Highway.

13) It appears that the words '*as per policy of MHADA i.e. 84,714.30 sq.mtrs*' are added in the handwriting in the Second Schedule to the Development Agreement at the time of its registration, whereas those words are missing in the Second Schedule to the PoA. It is Mr. Tulzapurkar's contention that Petitioner has not been granted development rights in respect of the larger land admeasuring 2,13,867.50 sq. mtrs belonging to MHADA and that the development rights are restricted only in respect of area admeasuring 84,714.38 sq.mtrs. This fact appears to be borne out from recital 'O' to the PoA, under which the power is granted only in respect of development as undertaken by the Development Agreement,

14) In my view, the Collector will have to consider this aspect while taking a decision in the present case. If the Collector comes to a conclusion that the property taken up for development under the Development Agreement and the PoA is the same, the Second Proviso to Article-48(g) of the Act would apply and no further stamp duty would be payable on the General Power of Attorney.

15) Accordingly, the Order dated 5 January 2022 passed by the Collector of Stamps, Borivali is set aside and the proceedings are remanded before the Collector for being decided afresh after grant of opportunity of hearing to Petitioner. The Collector shall decide the dispute as to whether the property included in the Second Schedule to the Development Agreement of the General Power of Attorney is same for the purpose of application of Second Proviso to Article 48(g) of the Act and thereafter take a decision in the proceedings. All consequential actions taken for implementation of the Order dated 5 January 2022 are also set aside. The Collector shall issue two weeks' advance notice of hearing to Petitioner and thereafter proceed to decide the proceedings afresh. All contentions of the parties on merits are left open.

16) With the above directions, the Writ Petition is **partly allowed**. Rule is partly made absolute.

[SANDEEP V. MARNE, J.]