



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2145 OF 2019

(M/s. Arka Eduserve Pvt. Ltd., Bangalore through its Managing Director Mr. R. Chenraj Jain
Vs. The Chief Controlling Revenue Authority, Maharashtra State & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S. Zia Qazi, Counsel for the petitioner.
Mr. H.D. Futane, A.G.P. for the respondents/State.

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CORAM : ANIL L. PANSARE, J.
NOVEMBER 26, 2024

The petitioner has assailed the judgment dated 9/4/2018 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune, thereby directing the petitioner to pay an amount of Rs.6,95,250/- as penalty.

2] The petitioner claims that it had purchased an immovable property belonging to one Kumbhe family through power of attorney holder – Mr. Rakesh Babulal Patni. The District Sub-Registrar, Nagpur, has, while auditing the document, found that the stamp paper has been purchased in the name of Rakesh Patni and not in the name of the parties to the contract and accordingly held that document as invalid in terms of Section 34 of the Maharashtra Stamp Act, 1958, and called upon the petitioner to pay penalty.

3] The petitioner contested the action of the District Sub-Registrar and accordingly the matter reached the Chief Controlling Revenue Authority, Maharashtra State, Pune, who, vide the impugned judgment, found

substance in the action taken by the District Sub-Registrar and, thus, directed the petitioner to pay penalty as above.

4] The learned Counsel for the petitioner has invited my attention to Section 2 of the Powers-of-Attorney Act, 1882, to contend that stamp could be purchased in the name of donee of the power of attorney. Section 2 reads as under :

“2. Execution under power-of-attorney. — The donee of a power-of-attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.”

5] As could be seen, the donee of a power-of-attorney may execute any instrument in his own name and signature but by the authority of the donor of the power.

6] In the present case, the petitioner has been authorized to execute/perform various acts including to appear before the revenue authorities and submit necessary documents and to execute agreement to sell, to accept consideration amount and to execute sale deed. In my view, the aforesaid authority which authorizes petitioner to execute sale deed should include in itself the incidental acts including purchasing stamp paper either in

the name of executant or the donee himself. In the present case, the stamp paper has been purchased in the name of donee, which to my mind, can be said to be a document purchased in the name of one of the parties entering into transaction and, therefore, Section 34 of the Maharashtra Stamp Act will be not attracted.

7] The respondent no. 1 failed to consider the recitals in the power of attorney and thus held that stamp paper was not purchased in the name of either of the parties to the document. The order having been passed contrary to the scope of Section 2 of the Powers-of-Attorney Act, is unsustainable.

8] Writ petition is accordingly allowed. Judgment and order dated 9-4-2018 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune in Revision Case No. 20/2013 is quashed and set aside.

9] The amount deposited by the petitioner in terms of order dated 18-3-2019 shall be paid to the petitioner along with interest accrued thereon, if any, upon submitting appropriate application.

(ANIL L. PANSARE, J.)

Sumit/wasnik