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

Writ Petition No. 4759 of 2023
[Bajrangilal S/o Bachairam Gupta ..vs.. The Collector of Stamps, Nagpur]

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S. S. Sitani, Advocate for the petitioner
Mr. A. A. Madiwale, AGP for respondent
Mr. S. V. Purohit, Advocate for applicants in CAW No. 2813/2023

CORAM : ANIL L. PANSARE J.

DATED : 22-10-2024

Civil Application (CAW) No. 2813 of 2023

Heard.

2. For the reasons set out in the application, the application is allowed.

3. Since, applicant nos. 1 and 2 have expired, the petitioner shall add applicant nos. 3 to 5 as party respondent nos. 2 to 4. Amendment be carried out forthwith.

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4. Having heard at length, the question is whether the provisionsof the Maharashtra Stamp Act, 1958 (for short 'the Act of 1958') existing in the year 2010, when the document under question was impounded, will apply or whether the amended provisions from time to time will apply.

5. Heard Shri S. S. Sitani, learned counsel for the petitioner, Mr. S. V. Purohit, learned counsel for newly added respondent nos. 2 to 4 and Mr. A. A. Madiwale,

learned Assistant Government Pleader for respondent no. 1. Perused record. It appears that the document under question i.e. agreement to sale dated 29-5-2003 entered into by and between the petitioner and respondent nos. 2 to 4 has been impounded in the year 2010, under the order of the Court. The document was referred for further action to the respondent no. 1 – Collector of Stamps. The respondent no. 1 found that the agreement to sell was chargeable with duty and was not duly stamped and, accordingly, calculated the payment of deficit stamp duty and penalty at 2%, total amounting to Rs. 18,31,650/- in terms of clause (b) of sub-section (1) of Section 39 of the Act of 1958. This amount was not paid by the petitioner.

6. When enquired, learned Assistant Government Pleader (AGP) submits that respondent no. 1 has not taken any steps to recover the amount of stamp duty and penalty in terms of Section 46 of the Act of 1958. Learned AGP submits that since suit or certain proceedings were pending, the steps to recover the amount might not have been taken. The AGP, however, could not inform as to which proceedings is he referring to. When further enquired as to how would pendency of suit or other proceedings would prevent respondent no. 1 from initiating recovery under Section 46, the AGP has assigned no good reason. Admittedly, no proceedings restraining respondent no. 1 to recover amount were pending, nor was such order passed in any proceedings.

7. Thus, the respondent no. 1 failed to perform his duties and on top of it, taking aid of amended

provisions of Section 39 of the Act of 1958, the respondent no. 1 has called upon the petitioner to pay Rs. 31,36,216/-. The initial deficit in stamp duty with penalty which was accordingly enhanced from Rs. 18,31,650/- to Rs. 31,36,216/-.

8. The justification put forth is that this reassessment has been done in terms of order dated 7-7-2023 passed by this Court in Civil Revision Application (CRA) No. 128/2022. I need not go into the issue involved in the CRA, suffice it to say that the respondent no. 1 was directed to calculate the penalty, which naturally will have to be calculated in terms of provisions of the Act of 1958.

9. The deficient portion of stamp duty as calculated by respondent no. 1 was Rs. 10,31,650/-. The penalty then imposed was 2% of the deficient portion of the stamp duty for every month. The amount of penalty in terms of provision then prevailing, could not have exceeded two times the deficient portion of stamp duty, which works out to Rs. 20,63,300/-. In fact, the respondent no. 1 had earlier assessed the deficient stamp duty with penalty at Rs. 18,31,650/-. The respondent no. 1, however, under the pretext of order dated 7-7-2023, has, invoked amended provisions of the Act of 1958, which provides that the amount of penalty shall not exceed four times the deficient portion of stamp duty and accordingly, calculated deficient stamp duty with penalty to Rs. 31,36,216/-.

10. Thus, the respondent no. 1 who failed to take recourse to Section 46 of the Act of 1958 is now attempting to justify the calculation in terms of amendment to Section 39 of the Act. In this regard, a specific query was made to learned AGP as to whether the respondent no. 1 intends to stand by his submission that failure of petitioner to pay the deficit stamp duty and penalty in the year 2010 would attract additional penalty in terms of amendment made to Section 39(1)(b) of the Act of 1958 in the year 2015.

11. Time was granted to examine the issue and make submissions at 2.30 p.m. Learned AGP submits that the respondent no. 1 is present in the Court and he states that the delay in paying the amount of deficit stamp duty and penalty will attract additional penalty in terms of amended provisions. Thus, the AGP has made submission on law point by taking instructions from respondent no. 1.

12. The learned AGP was then made aware of his duty towards the Court and that he should not act as mouthpiece of a client and should assist the Court on the specific queries made as regards applicability of the provisions in a given case. It was thus expected from the AGP to examine the provisions and to address the Court on this point. He, however, continued to make submissions by taking instructions from respondent no. 1 and attempted to justify respondent no. 1's stand.

13. While assisting the Court, one would expect the Office of Government Pleader which includes Assistant Government Pleaders to be truthful, neutral, open and

courageous in opposing the Government's decision, if found to be contrary to the provisions of law. Unfortunately, that has not happened in the present case despite giving repeated opportunities to revisit the stand taken by respondent no. 1. The learned AGP continued to be mere mouthpiece of the client.

14. As quoted earlier, if upon calculating the amount of deficient portion of stamp duty and the penalty, the amount is not paid, the respondent no. 1 is duty bound to recover the same in terms of Section 46 of the Act of 1958. His failure to recover the impounding charges, by no stretch of imagination, can be said to be a ground to impose additional penalty. In other words, had the Collector acted in time and recovered the amount, the question of taking recourse to amended portion would not have arisen at all. It is only because respondent no. 1 failed to discharge his duties, the present controversy arose. Unfortunately, respondent no. 1 maintained the stand that his failure to discharge duty will attract the amended provisions. More unfortunate is that AGP continued to support the stand by saying that respondent no. 1 is making such statement.

15. The end result is, the petition that could have been disposed of upon a fair statement made by the AGP, the Court is required to pass such a lengthy order to hold that the act of respondent no. 1 is contrary to the provisions of law and the impugned order is unsustainable.

16. Writ petition is accordingly allowed. Order dated 25-7-2023 passed by the respondent no. 1 – Collector of Stamps, Nagpur is quashed and set aside.

17. The Respondent no. 1 - Collector of Stamps, Nagpur shall reassess the deficient portion of the stamp duty together with penalty in terms of Section 39 of the Maharashtra Land Revenue Code then prevailing. The calculations be made within four weeks from today and the copy of order be served on the petitioner, who shall deposit the amount within 15 days from the date of receipt of order.

18. At this stage, learned counsel for the petitioner submits that the petitioner has already deposited Rs. 20,63,300/- with respondent no. 1. If that be so, the amount deposited shall be adjusted against the reassessed amount and surplus amount, if any, shall be refunded to the petitioner.

19. Writ petition is disposed of in above terms with no order as to costs.

(Anil L. Pansare, J.)

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