IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5718 OF 2024

Jamiyatray Isardas Lalwani ***...Petitioner***

V/s.

The Joint Sub-Registrar, Class -2
and Ors. ***...Respondents***

Mr. Umesh Mankapure *with Ms. Rati S. Sinhasane for the Petitioner.*

Mr. R.S. Pawar, *AGP for Respondent -State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 4 March 2025.

P.C.:

1) Petition challenges order dated 21 June 2022 passed by the Collector of Stamps, Sangli, directing the Petitioner to pay deficit stamp duty of Rs.2,40,100/- together with penalty. Petitioner preferred appeal against order dated 21 June 2022 before the Deputy Inspector General of Registration, Pune, who has not only dismissed the appeal, but has increased the valuation of the flat for the purpose of levying of stamp duty from Rs.60,00,000/- to Rs.66,97,000/- with further direction to the Collector to levy stamp duty, accordingly.

2) I have heard Mr. Mankapure, the learned counsel appearing for the Petitioner and Mr. Pawar, the learned AGP for the Respondent-State.

3) It appears that an Agreement for Sale was executed between the developer M/s. K.K. Builders, Sangli and Ravindra Anand Patil, by which purchaser agreed to purchase residential flat Nos.1 and 2 on the second floor of the building- Golden Icon. Out of agreed amount of consideration of Rs.55,00,000/-, it appears that Mr. Patil made part payment and sale deed was to be executed on completion of the entire payment agreed in the Agreement. On the said Agreement for Sale, stamp duty on total consideration of Rs.55,00,000/- was paid. However, the transaction could not go further and disputes arose between Developer and Mr. Ravindra Anand Patil, which led to filing of Special Civil Suit No.37 of 2009 for specific performance of the Agreement. In that suit, a compromise took place under which Plaintiff and Defendant agreed that the Developer shall execute direct sale deed in favour of the Petitioner-Jamiyatray Isardas Lalwani, in his capacity as a nominee of Ravindra Patil. Under the consent terms, Mr. Patil agreed to pay Rs. 9,98,573/- to the Developer, who was to execute Sale Deed in Petitioner's favour. It appears that at the time of registration of the Sale Deed, the amount of stamp duty paid on the Agreement dated 30 November 2007 was adjusted.

4) In the audit objection, such adjustment was held to be impermissible and accordingly, the Collector of Stamp initiated proceedings under Section 32A of the Maharashtra Stamp Act, 1958 (**Stamp Act)** for levy of deficit stamp duty. The Collector of Stamps treated the Sale Deed executed in favour of the Petitioner to be an independent and distant transaction and accordingly directed payment of stamp duty on the entire amount of consideration of Rs.60,00,000/-.

5) The Appellate Authority in an appeal preferred by the Petitioner, far from granting any solace to the Petitioner, has in fact increased the valuation from Rs.60,00,000/- to Rs.66,97,0000.

6) According to Mr. Mankapure, the Sale Deed executed in favour of the Petitioner conveys the title in respect of the flat not from Patil but from the Developer to the Petitioner. That therefore the transaction does not involve resale of the flat by Mr. Patil and that therefore the Collector of Stamp has erred in relying on provisions of Article 2(g-a)(ii) of the Stamps Act.

7) It must be observed that the entire transaction involved in the present case is rather strange. Initially an Agreement for Sale dated 30 November 2007 was executed between Developer and M/s. K.K. Builders and Ravindra Patil, under which Ravindra Patil agreed to purchase flat Nos.1 and 2 from the Developer for agreed consideration of Rs.55,00,000/-. The

Agreement recorded that out of the agreed amount of consideration, Mr. Patil had paid to the Developer an amount of Rs.35,51,247/-. According to Mr. Patil, additional cash amount of Rs.14,50,000/- was also paid to the Developer, which the developer disputed. Since the dispute arose over transaction, Special Civil Suit No.37 of 2009 was filed in the Court of Civil Judge, Senior Division, Sangli, wherein Mr. Patil asserted that he has paid cash of Rs.14,50,000/- to the Developer. Suit was apparently compromised between Mr. Patil and the Developer and accordingly compromise pursis was filed before the Trial Court on 6 August 2011. Under the consent terms, a strange arrangement was made under which it was agreed that Petitioner would purchase the flats as nominee of Mr. Patil upon the Mr. Patil additionally paying an amount of Rs.9,98,573/- to the Developer. Accordingly Sale Deed came to be executed and registered on 6 August 2011, under which Petitioner purchased the flats under an tripartite arrangement where Petitioner himself did not part with any consideration, but Mr. Patil paid an additional amount of Rs.9,98,753/- to the Developer and the Developer admitted receipt of amount of Rs.35,51,247/- and Rs.14,50,000/- in the past towards pursuance of the Agreement for Sale. Thus, under the so-called Sale Deed, though the entire consideration is shown to have been paid by Mr. Patil, the sale has occurred in the name of Petitioner. Thus, initial transaction was for purchase of the flats in name of Mr. Patil whereas ultimately purchase has taken place in the name of the Petitioner with the consent of Mr. Patil. If Mr. Patil was to execute the Sale Deed in his own name, Stamp duty earlier paid on Agreement for Sale could have been adjusted in that sale deed. However, Mr. Patil introduced a foreigner to the transaction (Petitioner) and got the Sale Deed executed in Petitioner's name. This appears to be the reason why Respondents have treated it as a separate transaction, under which a third party has ultimately acquired ownership of the flats in question. Thus, instead of taking the transaction through the route of Mr. Patil first acquiring flats on executing Sale Deed in his favour and thereafter transferring them in Petitioner's favour, Petitioner has parachuted them directly possibly with a view to save the stamp duty. The Respondent-authorities have rightly construed this transaction to mean transfer of title in respect of third party for the purpose of levying additional round of stamp duty.

8) So far as provisions of Article 5(g-a)(ii) of the Stamp Act is concerned, if the back-to-back transactions from Developer to Mr. Patil and from Mr. Patil to Petitioner were to be completed within a period of three years, adjustment of stamp duty could have been permissible under Article 5(g-a)(ii). However, noticing the fact that period of three years had passed, and that the transaction actually involves passing of title in favour of a third party, fresh set of stamp duty is directed to be levied. The Authorities have noticed that the parties had deliberately couched the Sale Deed in such a manner to show as if the transaction in favour of Mr. Patil was never completed and that

Petitioner directly purchased the flats from developer. This is a case involving Mr. Patil first acquiring some rights in the flat and then agreeing for final sale to be executed in favour of a third party (Petitioner). Therefore the authorities have examined wither the benefit of Article 5(g-a)(ii) was admissible in the present case or not.

9) In the present case, first transaction was supposed to be completed between Developer and Mr. Patil for which the stamp duty was to be paid. There was absolutely no base for the Petitioner to claim benefit of the stamp duty as the earlier Agreement for Sale was not executed in his name. If the transaction between developer and Patil got cancelled, the cancellation deed ought to have been executed and Mr. Patil could have applied for refund of stamp duty. In such a case, there would have been payment of only one stamp duty i.e. by Petitioner on Sale Deed executed with the Developer. However, instead of execution of Cancellation Deed and applying for refund of stamp duty, parties have chosen to execute rather strange transaction of sale where entire consideration is paid by Mr. Patil, but title is shown to have vested in favour of Petitioner. Since the title has ultimately vested in favour of a third person, transaction is bound to be treated as separate and independent transaction. The arrangement appears to have been made to circumvent the procedure of execution of cancellation deed and applying for refund of stamp duty, possibly because of delay of more than 6 months as provided for in Section 48 of the Act. In

order to adjust the stamp duty paid by Mr. Patil on Agreement for Sale, Petitioner is deliberately shown as 'nominee' of Mr. Patil. However, it is the Petitioner who has ultimately secured title in respect of the flat and it is not Petitioner's contention that Mr. Patil is the real owner.

10) I therefore do not find any valid reason to interfere in the order passed by the Collector and Deputy Inspector General of Registration, Pune.

11) Petition is devoid of merits, and it is accordingly dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]