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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1849 OF 2024

Mohite and Associates Through Its Partner Shri. Sharad Ananda Mohite & Anr. … Petitioners

V/s.

Subhash Dhanpal Khot … Respondent

Mr. Ashutosh M. Kulkarni for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 21, 2025

P.C.:

1. The petitioners contend that the Memorandum of Understanding (MoU) dated 10 December 2016 falls within the ambit of 'instrument' under Section 2(l) of the Maharashtra Stamp Act, 1958 and is chargeable to stamp duty under Article 25 of the Schedule to the Act. For the purpose of determining stamp duty, the petitioners contend that Clause 2 of the MoU creates an interest in immovable property akin to a development agreement, while Clause 6 provides for execution of a sale deed upon the fulfillment or breach of specified obligations. The petitioners emphasize that such clauses collectively impart the characteristics of a conveyance to the MoU, as contemplated under Article 25 of the Maharashtra Stamp Act, 1958.

2. Reliance has been placed on the judgment of the Single Judge of this Court in ***Ashok Gangasahai Singhal and Others vs. Ramdhar Nankulal Yadav and Others, 2013 (4) Mh.L.J. 202***, wherein it was held that development agreements, when possession is transferred or an interest in property is created, are chargeable under Article 25. The petitioners urge the applicability of this principle to the present instrument.

3. The Supreme Court in ***Veena Hasmukh Jain and Another vs. State of Maharashtra and Others, (1999) 5 SCC 725***, has laid down the test for determining whether an instrument qualifies as a 'conveyance' under Article 25 of the Maharashtra Stamp Act, 1958. The core requirement is the creation of an interest in immovable property or the delivery of possession in furtherance of the obligations under the instrument. The promise to transfer possession must be clear, unequivocal, and on a specified date for the instrument to attract stamp duty as a conveyance.

4. In the present case, the MoU lacks clarity on the date of delivery of possession and does not explicitly create an immediate interest in the immovable property. The reference in Clause 2 to a constructed portion consisting of four flats does not stipulate a definitive schedule for delivery, and Clause 3 suggests that possession of the flats had already been handed over under a prior agreement executed in 2014. The MoU appears to operate more as a framework agreement rather than a conveyance creating immediate rights or obligations.

5. A conjoint reading of Clauses 2 to 6 of the MoU indicates that the instrument predominantly sets out reciprocal obligations contingent on future events. Clause 6, being a residual clause, underscores that the execution of a sale deed is conditional upon the fulfillment or breach of obligations under Clauses 2 to 5. Such contingency negates the characterization of the MoU as a conveyance under Article 25.

6. As per the principles of statutory interpretation, the mere presence of a clause for future execution of a sale deed or possession receipt does not suffice to bring the instrument within the scope of Article 25. The intention of the parties, as discernible from the recitals and substantive clauses, does not support the argument of the MoU being a conveyance.

7. The reliance placed by the petitioners on ***Ashok Gangasahai Singhal and Others (supra)*** is misplaced. In that case, the Court was dealing with a development agreement that expressly conferred rights to develop property and mandated the transfer of possession. In contrast, the MoU in the present case lacks an express clause transferring possession or creating a definitive interest in immovable property. The facts and legal context in the cited judgment are clearly distinguishable, rendering it inapplicable to the present matter.

8. The Trial Court has correctly interpreted the provisions of the Maharashtra Stamp Act, 1958, and its conclusion does not suffer from any jurisdictional or legal error. The petitioners have failed to demonstrate that the MoU is chargeable under Article 25.

Accordingly, the writ petition is devoid of merit and stands dismissed.

(AMIT BORKAR, J.)