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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2035 OF 2024

SRK Buildspace Pvt. Ltd.
Through its Director – Mr. Govind Petha Patel .. Petitioner
Versus
The State of Maharashtra and Ors. .. Respondents

…………………

- Mr. S.R. Nargolkar a/w Ms. Neeta Patil & Mr. Arjun Kadam, Advocates for Petitioner.
- Ms. Mamta Srivastava, AGP for Respondent Nos. 1 to 3.

…………………

CORAM : MILIND N. JADHAV, J.
DATE : JULY 02, 2025.

P.C.:

1. Heard Mr. Nargolkar, learned Advocate for Petitioner and Ms. Srivastava, learned AGP for Respondent - State.

2. The present Writ Petition impugns twin orders dated 31.08.2015 passed by the Office of Collector of Stamps, Mumbai, rejecting the Application for refund of Stamp Duty filed under Section 48(1) of the Maharashtra Stamp Act, 1958 (for short '**the said Act**'). Petitioner preferred an Appeal No.57 of 2016 alongwith an Application for Condonation Of Delay under Section 53(1A) of the said Act, which came to be rejected by order dated 27.04.2017 passed by Inspector General of Registration, Pune. Both the impugned orders are appended at page Nos.44 and 66 of the Petition.

2.1. Briefly stated, in the year 2011, Petitioner entered into a Deed of Conveyance with one Aziz Abdul Lateef and others for purchase of a 50% undivided share in land admeasuring 1654.69 sq. meters situated at in Zia Mansion, Mumbai. Pursuant to adjudication under Section 31 of the said Act a Stamp Duty of Rs.40,02,450/- was paid on 01.08.2011. However, the said deal did not materialsize for some reason and the said Deed of Conveyance had to be cancelled.

2.2. On 20.10.2011, Petitioner filed an Application for refund of Stamp Duty. However, due to non-compliance with three queries raised under Rule 22 of the Maharashtra Stamp Rules, 1939, and despite multiple reminders Petitioner failed to be present for the said hearing and the Application for refund of Stamp Duty was rejected by order dated 31.08.2015.

2.3. Being aggrieved, on 14.07.2016, Petitioner preferred an Appeal No. 57 of 2016 under Section 53(1A) of the said Act alongwith an Application for Condonation of Delay of 9 months 10 days. By order dated 27.04.2017, the Appeal was rejected solely on the ground of delay, holding that the Appeal was not filed within the prescribed 60 day period and no sufficient cause for delay was made out.

2.4. Hence, the present Writ Petition.

2.5. Mr. Nargolkar, learned Advocate for Petitioner would submit that Appellate Authority erred in affirming the order passed by the

Respondent No.2 – Inspector General of Registration and Controller of Stamp. He would draw my attention to the impugned orders to contend that the reasons given therein for rejecting Petitioner's Application for refund, Delay Condonation and Appeal are incongruous and unsustainable in law. According to Petitioner the impugned orders are passed without following the principles of natural justice and denying Petitioner's right to be heard.

2.6. He would submit that the sole ground for rejection of the refund Application was due to non-compliance with the queries raised by the Collector under Rule 22 of the Maharashtra Stamp Rules, 1939. He would submit that no reasonable opportunity was granted to Petitioner to comply with the said requirements or to be heard. Hence he would submit that the order dated 31.08.2015 was passed in breach of the principles of natural justice.

2.7. He would submit that under Rules 21 and 22 of the Maharashtra Stamp Rules, 1939, the Collector is vested with the power to receive evidence either orally or by way of Affidavit and if deemed fit can call for witnesses in support of the claim for refund. He would submit that despite Petitioner having submitted an Affidavit in support of the Application the Collector failed to exercise his discretion and mechanically reject the claim solely on technical grounds.

2.8. He would submit that Petitioner had in fact filed an Affidavit dated 08.10.2013 in support of his refund Application. However, neither the Collector nor the Appellate Authority made any reference to the said Affidavit in the impugned orders thereby indicating non-application of mind and a failure to consider the material on record.

2.9. He would submit that Appeal No. 57 of 2016 preferred under Section 53(1A) of the said Act was rejected solely on the ground of delay of 9 months and 10 days without considering the merits of the refund Application. He would submit that the said delay occurred due to non-receipt of reminder letters issued by the Collector, delay on the part of the Advocate, and Petitioner being occupied with attending his ailing grandmother.

2.10. He would submit that the order dated 27.04.2017 rejecting the said Appeal was never served or communicated to Petitioner as a result of which he preferred another Appeal bearing No. 83 of 2021 before the Inspector General of Registration seeking the same reliefs. He would submit that Petitioner during a personal visit on 30.03.2022, was shocked to learn that Appeal No. 57 of 2016 was existent and the same had been adjudicated and dismissed.

2.11. Mr. Nalgorkar would submit that Petitioner has paid an amount of Rs.40,02,450/- towards Stamp Duty on Conveyance Deed which was subsequently cancelled. He would submit that denial of refund would amount to unjust enrichment by State. He would submit that though Petitioner was ill-advised and failed to prefer an Appeal within the prescribed period of 60 days, this lapse cannot defeat a legitimate claim of Petitioner.

2.12. He would submit that both impugned orders suffer from procedural irregularity, violation of principles of natural justice, and non-application of mind, thereby rendering them legally unsustainable. Hence, both impugned orders be quashed and set aside and the present Petition be allowed.

3. ***PER CONTRA***, Ms. Srivastava, learned AGP for Respondent – State would support the twin impugned orders. She would submit that impugned orders have been passed after following due process and giving Petitioner ample opportunity to comply with the statutory requirements. She would submit that despite repeated reminders, Petitioner failed to furnish the necessary documents as required under Rule 22 of the Maharashtra Stamp Rules, 1939.

3.1. She would submit that the Appeal was filed after a considerable delay of over 9 months which is beyond the prescribed 60 day period, without sufficient explanation. Hence she would submit that both impugned orders are well-reasoned orders and would urge the Court to dismiss the present Writ Petition.

4. I have heard Mr. Nargolkar, learned Advocate for Petitioner and Ms. Srivastava, learned AGP for Respondent – State and perused the record of the case. Submissions made by them have received due consideration of the Court.

5. On perusal of the twin impugned orders it is seen that Petitioner has paid a substantial amount of Rs. 40,02,450/- as Stamp Duty on an unexecuted Conveyance Deed, however the said transaction did not fructify hence the Petitioner filed an Application for Refund of Stamp Duty within the prescribed period of 6 months as mandated under Section 48(1) of the said Act. However the said Application was rejected on the ground of non-compliance with three queries raised by the Collector under Rule 22 of the Maharashtra Stamp Rules, 1939. It is seen that the Appeal filed under Section 53(1A) of the said Act was solely rejected on the ground of delay without entering into the merits of the refund claim.

6. It is necessary to consider the scope of Section 53(1A) of the said Act which contemplates that the order in Appeal shall be passed after giving parties a reasonable opportunity of being heard, which reads as under:

> *"**53** ....*
>
> ***(1)** ....*
>
> ***(1A)** Any person aggrieved by an order of the Collector under Chapter III, Chapter IV, Chapter V and under clause (a) of the second proviso to section 27 may, within sixty days from the date of receipt of such order, by an application in writing, accompanied by a fee of three hundred rupees, file an appeal against such order to the Chief Controlling Revenue Authority; who shall, after giving the parties a reasonable opportunity of being head, consider the case and pass such order thereon as he thinks just and proper and the order so passed*

shall be final."

7. In view of the powers conferred under Section 53(1A) of the said Act, the Appellate Authority was duty-bound to consider the grounds raised in the Appeal and pass an appropriate order. The expression "thereon" in the provision requires the authority to examine the subject matter of the appeal and not limit itself to procedural aspects. However, the impugned order reflects no consideration of merits nor any exercise of discretion under the said provision. Be that as it may, adjudication in the present case is required to be done after hearing the Petitioner and giving a reasonable opportunity of being heard.

8. The Supreme Court in the case of ***Mool Chandra vs. Union of India & Anr[1],*** it is held that it is not the length of delay that would be required to be considered while examining the plea for condonation of delay, it is cause for delay which has been propounded will have to be examined. If the cause for delay would fall within the four corners of "sufficient cause", irrespective of length of delay same deserves to be condoned.

9. Attention is drawn to the decision of the Supreme Court in the case of ***Bano Saiyed Parwad vs. Chief Controlling Revenue Authority and Inspector General of Registration and Controller of***

1 2024 SCC OnLine SC 1878

Stamps & Ors. [2] wherein the Court has held that when State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of citizen is a just one, even though legal defences may be open to it, it must act, as an honest person. Furthermore, it is held that the period of limitation prescribed under any law should not come in the way because it may bar remedy, but not the right.

10. On analysis of the Stamp Act, I find that there is no provision which excludes applicability of Section 5 of the Limitation Act, 1963 to the Stamp Act. Admittedly, there is no dispute that Petitioner is entitled to apply for the refund, but the only ground of the denial of the refund is non-compliance of the 3 conditions and subsequently delay on the part of Petitioner. In the present case Petitioner has averred in the petition that delay was due to non-receipt of reminder letters issued by the Collector, delay on the part of the Advocate, and Petitioner being occupied with attending his ailing grandmother. However, that would *prima facie* not result into Respondent – State to retain the amount.

11. Rejection of Petitioner's Application by the Collector seeking refund by order dated 31.08.2015 is on three grounds viz (i) Petitioner not having filed Affidavit on notary alongwith serial number and date;

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(ii) Petitioner not having submitted photocopy of document; and (iii) non-production of identity card at the time of appearance before the Collector of Stamps. Then it is seen that Petitioner was unaware about order dated 31.08.2015 however when he became aware there was delay of 9 months and 10 days he filed Appeal before the Inspector General of Registration and Stamps alongwith Application for condonation of delay, then by impugned order dated 27.04.2017 Appeal was rejected not on merits, but on delay with no sufficient cause shown by Petitioner.

12. *Prima facie* three queries which have been raised by Collector in order dated 31.08.2015 are innocuous and preposterous. Undoubtedly when the Application seeking refund is filed by Petitioner, he is bound to produce copy of document rather copy of document which was adjudicated under Section 31 of the said Act on the basis of which stamp duty was paid by Petitioner. Hence there is no requirement of the said document having serial number and date. The second query pertains to Petitioner not having submitted photo copy of document. In view thereof, Petitioner undertakes to submit the same to Collector which Collector is directed to accept. Third query raised by Collector is that Petitioner did not produce his identity card. The same should not be insisted by Collector if Petitioner is represented by authorized Pleader / Advocate. However it is seen that as per the requirement of the statutory provisions of the said Act Petitioner is required to file affidavit or in the alternative remain present personally. If the Petitioner satisfies any of the aforesaid conditions, the Collector should not hold it as a ground to reject the Application for refund of Petitioner.

13. Reliance is placed on the decision of the Supreme Court in the case of ***Bano Saiyed Parwad*** *(2nd supra)* in this regard. Paragraph No. 14 thereof reads as under:-

> *"**14.** In Committee-GFIL v. Libra Buildtech (P) Ltd. [Committee-GFIL v. Libra Buildtech (P) Ltd., (2015) 16 SCC 31 : (2016) 3 SCC (Civ) 596] , wherein the issue of refund of stamp duty under the same Act was in question, this Court has observed and held inter alia as under : (SCC pp. 44-45, paras 29 & 32)*
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> > *"**29**. This case reminds us of the observations made by M.C. Chagla, C.J. in Kaluram Sitaram (Firm) v. Dominion of India [Kaluram Sitaram (Firm) v. Dominion of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] . The learned Chief Justice in his distinctive style of writing observed as under in para 19 : [Kaluram (Firm) case [Kaluram Sitaram (Firm) v. Dominion of India, 1953 SCC OnLine Bom 39 : AIR 1954 Bom 50] , SCC OnLine Bom]*
> >
> > > *'**19.** … we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person.'*
>
> *We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.*
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> ***
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> > > ***32.** In our considered opinion, even if we find that applications for claiming refund of stamp duty amount were rightly dismissed by the SDM on the ground of limitation prescribed under Section 50 of the Act yet keeping in view the settled principle of law that the expiry of period of limitation prescribed under any law may bar the remedy but*

> *not the right, the applicants are still held entitled to claim the refund of stamp duty amount on the basis of the grounds mentioned above. In other words, notwithstanding dismissal of the applications on the ground of limitation, we are of the view that the applicants are entitled to claim the refund of stamp duty amount from the State in the light of the grounds mentioned above."*

14. In view of the above, Collector shall decide the Application Petitioner for refund of stamp duty strictly in accordance with law as directed by Court.

15. In view of my above observations and citations, Petitioner's Appeal deserve to be heard on merits after condoning the delay. I am satisfied with the grounds for delay and therefore the impugned order dated 27.04.2017 is quashed and set aside. Application seeking condonation of delay and Appeal No.57 of 2016 stands allowed. Resultantly, the order dated 31.08.2015 is set aside with the following directions:-

- **(i)** Collector shall hear the Petitioner for refund of Stamp Duty and permit the Petitioner to comply with the aforementioned 3 queries reflected in the order dated 31.08.2015 which is set aside herein;
- **(ii)** After determining the refund Application of Petitioner, Collector shall dispose of the said Application as expeditiously as possible and in any event within a period of 4 weeks from today strictly in accordance

with law; and

(iii) Petitioner shall place a server copy of this order downloaded from the High Court website before Respondent No.3 – Collector of Stamps on Monday i.e. 7th July 2025 at 12:00 noon to enable the Collector to fix the date for hearing.

16. Accordingly, Writ Petition is disposed of in the above terms.

[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR

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