IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2691 OF 2024
WITH
WRIT PETITION NO.2692 OF 2024

M/s Synergy Spaces LLP ....Petitioner

Versus

The State Of Maharashtra & Ors. ....Respondents

Mr. Suresh M. Sabrad *a/w. Amey C. Sawant, Nehat R. Parte & Pratik S. Sabrad, for Petitioner.*

Smt. Vaishali Nimbalkar, *AGP for State.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : DECEMBER 01, 2025

ORDER :

1. Rule. By consent, made returnable forthwith, and the Petition is heard finally.

2. This Petition is filed impugning an Order dated October 9, 2023 passed by Respondent No.2, Inspector General and Controller of Stamps, dismissing an application seeking allowance for stamp duty paid, invoking Section 47(c)(5) read with Section 48(1) of the Maharashtra Stamp Act, 1958 (***"Stamp Act"***).

3. In a nutshell, the Petitioner had executed a Development Agreement March 31, 2016 with the owners of the land and the

instrument was stamped as an Agreement for Sale, by a conjoint reading of Article 5(g-a) read with Article 25 of the Schedule to the Stamp Act. Stamp Duty was paid @4% of the consideration amount at Rs.32,53,500/-. After the parties failed to agree on the performance of the contract and owing to possession not being handed over, the parties were persuaded to execute a Deed of Cancellation on April 12, 2019.

4. The Impugned Order essentially turns on two points;

A] That the agreement in question is not an Agreement for Sale, but is a Development Agreement which does not fall within the ambit of Section 48(1) and therefore, proviso to Section 48(1) would not be available to the Petitioner for the six-month deadline to commence from the date of the Deed of Cancellation; and

B] That the application for allowance for the stamp duty has been filed after six months from the date of execution of the original Development Agreement and therefore cannot qualify for relief in terms of Section 48(3) of the Stamp Act, which is the applicable provision since Section 48(1), as claimed, is not applicable to the Petitioner.

5. Multiple Judgements of Learned Judges of this Court as indeed Judgements of the Supreme Court in ***Committee-GFIL***[1] read with

1 *Committee-Gfil v. Libra Buildtech Pvt. Ltd. & Ors. – (2015) 16 SCC 31*

Rajeev Nohwar[2] read with ***Harshit Jain***[3] have dealt with the issue of stamp duty refund and allowance under Section 48 of the Stamp Act.

6. It is clear from a perusal of the record that while the agreement in question indeed provided for possession being handed over, Clause 5 of the Deed of Cancellation also indeed records that possession was never handed over. With the transaction being cancelled there is no question of possession being handed over. That apart, since the stamping of an instrument is always dependent on the content and nature of the instrument as discernible from the provisions of the instrument rather than the nomenclature assigned by the parties, the fact that the stamp duty applicable to a development agreement under Article 5(g-a) is at the same rate as applicable to an agreement for sale or a conveyance under Article 25, it is clear that the policy intent for purposes of quantification of stamp duty is no different between the two.

7. However, this being a fiscal statute, the provisions must be construed literally. Learned AGP points to a judgment of a Learned Single Judge of this Court in ***D.B.R. Constructions***[4] in particular Paragraph 8 thereof, which reads as under:-

2 *Rajeev Nohwar v. Chief Controlling Revenue Authority, Maharashtra State, Pune & Ors. – (2021) 13 SCC 754*

3 *Harshit Harish Jain & Anr. v. State of Maharashtra & Ors. – 2022 SCC OnLine Bom 12004*

4 *D.B.R. Constructions Pvt. Ltd. v. The Inspector General of Revenue & The Chief Controller of Stamps & Ors. – WP/10547/2017*

*I have given my anxious consideration to the rival circumstances and the submission made. **The question is whether the limitation in this case would be governed by proviso to Sub-Section 1 of Section 48 as claimed on behalf of the petitioner which is six months, from the date of the registration of the cancellation deed or whether it would be governed by Sub-Section 3 of Section 48 where the period of limitation is six months from the date of purchase of the stamps**. In the present case it is not in dispute that the stamps were purchased on 22nd July 2009 and the agreement which is styled as a 'development agreement', was executed on 23rd July 2009 and it has been cancelled on 24th December 2009. It is further a matter of record that the application for refund was made on 29th March 2010. Thus the relevant dates are not in dispute. **The matter essentially turns upon the construction and interpretation of the document which is styled as a development agreement. It is now well settled that for the purpose of the construction/interpretation of a document, the document has to be read as a whole, in order to gather the intention of the parties. For this purpose, with the assistance of the learned counsel for the parties, I have gone through the development agreement and it is not possible to accept that it is an agreement for sale as claimed on behalf of the petitioner**."*

[Emphasis Supplied]

8. She would submit that although the agreement in question is only stamped as an agreement for sale, in substance and content, it is a development agreement, and the benefit of Section 48(1) ought not be available to the Petitioner. However, Learned Advocate for the Petitioner points to a judgement by a Learned Division Bench of this Court in the case of ***Sandeep Dwellers***[5], which was rendered much after

5 *Sandeep Dwellers Pvt. Ltd. Vs. State of Maharashtra & Ors.* – 2022 SCC OnLine Bom 993

the Learned Single Judge's decision in ***D.B.R. Constructions***, has *inter alia*, declared the law as follows:-

> *11. **Now, the question is whether the development agreements executed by the petitioner** on 28-12-2020, 31-12-2020 and 31-12-2020 **would fall within the definition of conveyance which is chargeable with stamp duty as per Article 25(b) or not**. To answer the question, we would first consider the development agreements in question and then relevant provisions of law, which are contained in Section 2(g) and Article 5(g-a) (i) of Schedule I of the Stamp Act.*
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> *12. The development agreements have been filed on record of the case. **On going through the development agreements, one can see that they have been entered into between owners of the immovable property in question and the petitioner and that they create various rights in respect of immovable property which is the subject-matter of each of these development agreements.** By these agreements, the owners and developer i.e. petitioner have agreed for development jointly of immovable property mentioned in each of the agreements. They further show that parties thereto have agreed to share the built up area with 25% of built up area going to the owners jointly and remaining 75% of the built up area being owned by developer i.e. the petitioner. There are also other rights and liabilities created in favour of and against the petitioner which are akin to transfer of immovable property to the petitioner by the owners and, therefore, **in our considered opinion, the development agreements are conveyances within the meaning of definition of conveyance as given in section 2(g) of the Stamp Act. …….***
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> *13. It would be seen that even an instrument by which any property whether movable or immovable, or any interest or interest in any property is transferred, inter vivos, to, or vested in any other person and which is not otherwise specifically provided for by Schedule I,*

*would be a conveyance. **Development agreement is provided for in Article 5(g-a)(i) of Schedule I of the Stamp Act. But, the duty on the development agreement is the same as is chargeable under Article 25 of Schedule I of the Stamp Act**. …….*

*14. **So, even though a development agreement has been provided for specifically under. Article 5(g-a)(i) of Schedule I, ultimately the stamp duty payable on the development agreement is as per the duty payable on a conveyance under Article 25 and, therefore, development agreement would have to be treated at par with an instrument of conveyance and hence it is an instrument which is squarely covered by the notification dated 28-8-2020**. It then follows that all the three development agreements having been executed between 1st September, 2020 and 31st December, 2020, would be covered by first part of concession given in the notification dated 28-8-2020 and so would be eligible for reduced stamp duty to the extent of two per cent. These agreements may have been registered later but it is the date of their execution and not the registration, which is relevant for calculation of stamp duty and, therefore, these agreements would fall under the first part of the concession given in the notification dated 28-8-2020.*

15. In view of the above, we find that the impugned order dated 18-12-2020 is illegal and would have to be quashed and set aside. Of course, the petitioner has complied with the order dated 18-12-2020 but, that would not defeat something which is given to the petitioner as a matter of right. The notification dated 28-8-2020 creates a right in those parties who have executed instrument of conveyance or agreement of sale in respect of any immovable property between the periods mentioned in the notification. In fact, there is also a letter issued to all the Collectors of Stamps by Inspector General of Registration and Controller of Stamps, State of Maharashtra, Pune instructing them to abide by the notification dated 28-8-2020. This communication further confirms the *fact that the notification dated 28-8-2020 is mandatory in law and that means, it creates indefeasible right in parties to claim the benefits flowing from it.* ***Therefore, the argument that after having complied with the impugned order, the petitioner has waived it's right to claim any refund of the amount of the excess stamp duty paid by the petitioner canvassed on behalf of the respondents holds no water and it is rejected.*** *The petitioner has claimed, apart from refund of the stamp duty paid in excess, interest at the rate of 18% per annum on the excess payment of stamp duty. However, no interest can be granted to the petitioner as the application of notification dated 28-8-2020 depends upon interpretation of provisions of law and position of law has become clear only now.*

[Emphasis Supplied]

9. This decision of the Learned Division Bench in ***Sandeep Dwellers*** has been followed by the multiple Learned Single Judges of this Court in the context of Section 48(1) of the Stamp Act to hold that the right to allowance under Section 47(c)(5) would fall within the scope of Section 48(1) of the Stamp Act as an agreement for sale. These include, ***Shweta Infrastructure***[6] and ***Freedom City Ventures***[7] to name just two decisions. Judicial discipline would require that these decisions be followed.

10. The Stamp Authorities have conducted the inquiry necessary and the only ground for rejection is that the agreement in question is a Development Agreement and not an agreement for sale. This is the basis of expecting a different deadline for filing of an application for

6 *Shweta Infrastructure and Housing (I) Pvt. Ltd. Versus The State of Maharashtra and ors. – 2022 SCC Online Bom 1735*

7 *Freedom City Ventures, Thane versus State of Maharashtra and ors. – 2023 (3) Mh.L.J.*

allowance for the stamp duty despite cancellation. Since this is squarely covered already, this Petition deserves to be allowed in the same terms.

11. In the aforesaid circumstances, in my opinion, a case has been made out to qualify for a refund of the stamp duty. The fact that the original agreement entailed possession being handed over should not result in the benefit of the refund of stamp duty being denied since the cancellation deed also records that the possession has never been taken or given.

12. In these circumstances, the Petition is allowed. The Respondents shall process the allowance for Stamp Duty in accordance with the Rules and complete this process within a period of eight weeks from the date of upload of this Order on this Court's website. Interest claimed by the Petitioner on the refund amoount shall be considered in accordance with applicable law.

13. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]