

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13438 OF 2024

Ashish N Mhatre

.. Petitioner

Versus

The Joint District Registrar And
Stamp Collector And Ors

.. Respondents

...

Mr. Amogh K. Karandikar for Petitioner.

Mrs.Neha S Bhide, GP with Smt. Tejas J. Kapre, AGP for
Respondent No.1, 2 and 4.

CORAM : ALOK ARADHE, CJ &
BHARATI DANGRE, J
DATED : 6th FEBRUARY, 2025

JUDGMENT:- (PER BHARATI DANGRE J)

1. The present Writ Petition seek to challenge the non-compliance of the order dated 4/01/2024 passed by this Court in Writ Petition No.8797 of 2021 and the accusation levelled against the respondent no.1, is that it has failed to exercise the powers under the Bombay Stamp Act, 1958 and other applicable laws to recover the stamp duty from the defaulter members of respondent no.3.

2. Heard, the learned counsel for the petitioner and the learned Government Pleader Mrs. Neha Bhide for respondent nos.1, 2 and 4. The petitioner, a member of respondent no.3

society filed a complaint to the Joint District Registrar and Stamp Collector, Thane on 25/09/2017, complaining about illegal transfer of property /flats/units of the respondent no.3 society without payment of necessary stamp duty at the instance of the occupiers/ possessors of the flat. In the complaint, he supplied the necessary details of the occupiers/possessors and prayed for a detailed enquiry to be conducted in the issue of non-payment of stamp duty.

The petitioner also filed another complaint on 5/10/2017, in continuation of his earlier complaint seeking a similar relief.

3. The respondent no.1 on taking cognizance of the complaint, issued notice to the respondent no.3 society, and directed to secure its presence after furnishing the reply. The respondent no.3 society marked its presence before the respondent no.1, and also furnished the written submissions and the petitioner filed his counter written submissions and continued with his stand that the respondent no.3 society did not pay the requisite stamp duty and still the letters of allotments were issued in favour of the defaulters, by the society.

4. Pursuant to the above, on 3/02/2018 a notice was issued to the respondent no.3 society, when it transpired that certain flat purchasers had not paid the stamp duty as per the Maharashtra Stamp Act, 1958 and though the petitioner waited for the response and final outcome of his complaint and

addressed repeated communications to the Society to furnish the documents, there was no compliance.

5. This constrained the petitioner to approach this Court by filing a Writ Petition No.8797 of 2021, seeking direction to the respondent no.1 to complete the enquiry/the notice reference No. 1185-59 of 2017, and the Writ Petition was disposed of by order dated 13/12/2021, by directing the respondent no.1 to complete the enquiry within a period of eight weeks.

In the disposed of petition, the petitioner moved an Interim Application No.2458 of 2022, once again praying for a relief that the enquiry be concluded in a time bound manner, without further delay and report to that effect be submitted to the Court.

Another Interim Application No. 49 of 2024, was filed praying for imposition of restrain on the respondent no.3 society from carrying out further steps in respect of redevelopment and for restraining the flat holders, who are defaulters and/or having no title of their respective flats from participating/casting votes in the General Body Meeting of respondent no.3 society.

Interim Application No.2681 of 2022, was filed by the State Government, which sought extension of time to implement the order dated 13/12/2021.

6. By order dated 4/01/2024, the Division Bench, noted that once the Writ Petition was disposed of, the Court has become

functus officio and therefore, the applications filed by the petitioner do not deserve any consideration, as any further directions would not be within the scope of the orders which are already passed, which left it to the State Government/Stamp Authority to take appropriate view of the matter in relation to the complaint of the petitioner. The Division Bench thus passed the following order:-

“9. We make it clear that the State Government would examine all the documents which are submitted, and in the event the documents are not submitted, the authority and powers of the State Government are clearly defined under the Bombay Stamp Act and in exercise of such powers, appropriate action can be resorted, in the event some of the members are not co-operating in submitting their documents. Moreover, it would be in the interest of members of the society to co-operate and get their documents corrected, in the event there is any deficiency on the stamp duty payable on the documents. 10. Needless to observe that the State Government would take all appropriate steps in accordance with law, in the interest of the State revenue.”

7. By the present Writ Petition, the petitioner seek the implementation of the aforesaid direction and when we repeatedly enquired with the learned counsel for the petitioner, as to how this relief would lie against the respondent no.3, the Society, he has responded by stating that there is no compliance of the direction issued by this Court and infact the direction, which he is seeking in this petition is against respondent no.1, who has failed to comply with the directions issued by this Court in its order dated 4/01/2024.

8. Reading of the order dated 4/01/2024, would reveal that the directions are issued to the State to examine all the documents and as it would be in interest of the members of the

Society to cooperate and get their documents corrected, in the event there is any deficiency of the stamp duty payable on the documents, the State would take all appropriate steps in accordance with law.

9. Once the direction is issued to the State Government, it is expected to act, and we do not think that at the instance of the petitioner, we would be justified in granting the relief restraining the society from proceeding with its re-development or taking steps in that regard. We also do not find any justification in restraining the flat holders, who are alleged to be defaulters from participation in the meetings of the general body pending the enquiry.

10. Learned counsel for the petitioner during the course of hearing has circulated a draft amendment which seek to replace his existing prayers with prayer clause (a) and (b). We have considered the proposed amended prayers, which seek writ of mandamus against the respondent no.1 to submit a report of the enquiry and also to submit details of the stamp duty recovered till date and the list of defaulter members of the respondent no.3, society.

11. Even on consideration of the proposed amended prayers, we are not inclined to grant the said relief, as once the respondent no.1 is directed to conduct an enquiry by this Court, it shall be taken to its logical end and upon the report being made available, the course of action in law shall follow. At this stage, we

do not think it is within our powers to direct the respondent no.1 to take action against the defaulters in specific or restrain them from participating in the business of respondent no.3, society. Even by considering the draft amendment to the Writ Petition, the Petition do not deserve to be entertained.

12. The Writ Petition with the relief sought therein, therefore, do not deserve to be entertained but we must only record that the State Government and the Respondent Authority shall take the order of this Court of 4/01/2024, to its logical conclusion.

With the above observations, Writ Petition is dismissed.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)