

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19216 OF 2024

Madha Bar Association

...Petitioner

Vs.

The State of Maharashtra & Ors.

...Respondents

Mr. Mahadeo Choudhari with Mr. Ranveer Choudhari for the Petitioner.
Mr. Y. D. Patil, AGP for State.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATE: 06 MARCH 2025.

P.C.

1. On 05 March 2025 (yesterday) we have passed the following order:-

“1. We require the Collector, Solapur to clarify by instructions in writing to the learned AGP before the adjourned date of hearing, as to whether, the Collector would considers the Judgment of this Court in Public Interest Litigation No. 88 of 2021 **The Barshi Bar Association v.s The State of Maharashtra and Ors** (Annexure-A) to the petition to be applicable only in respect of the Barshi Bar Association, Dist. Solapur and not the petitioner Mhada Bar Association, District Solapur. This more particularly as the Court in such decision held that the Circular dated 16November 2016, issued by the Collector cum District Registrar, Solapur be read in a manner, that the compromise decree of the Court and/or the Lok Adalat in respect of the agriculture land i.e., subject matter of the suit, is not compulsorily registerable and would not attract stamp duty on the market value of the property but in in accordance with proviso (b) and (c)of Section 46 of the Maharashtra Stamp Act, 1958.

2. The instruction as may be received by the learned AGP be placed on record, so that we can pass further appropriate orders including to consider the contention of the petitioner that the Collector is not honoring the orders passed by this Court.

3. The parties to act on authenticated copy of this order.

4. Stand over to 6 March 2025.”

2. Accordingly the Collector, Solapur has issued a letter dated 06 March 2025 to the Assistant Government Pleader *inter alia* stating that the decision of the Division Bench in Public Interest Litigation No.88 of 2021 as referred by us in our aforesaid order, is applicable throughout Solapur district and all the registering authorities will be bound by such decision and the Collector had to pass a formal order in that regard, however, he is unable to pass the same for two days i.e. on 4th and 5th March, 2025 as he was not available at Solapur. The said letter dated 06 March 2025 is marked “X” for identification.

3. Although in paragraph 2 of the said letter a clear stand is taken, Mr. Choudhari, learned counsel for the petitioner has drawn our attention to the brazen breach of the orders at page nos.53, 54 and 55 being orders dated 29 July 2024, 31 May 2024 and 22 March 2024 at the hands of the Assistant Registrar being the orders calling upon the parties to pay stamp duty and penalty, despite the clear orders of this Court. It is his contention that thus what has been stated by the Collector is completely oblivious to what is happening at the ground level. His contention is that these orders annexed to the petition and several such orders would be required to be undone, as they would be the orders in breach of the orders passed by this Court and amounting to contempt.

4. Having perused the said orders passed by the Assistant Registrar, we do not agree with what has been said by the Collector and as set out in paragraph 2 of his communication addressed to the learned AGP and taken on record by us today. As the situation at the hands of the Assistant Registrar appears to be completely different and the said decision of this Court which is binding, is not to be followed and implemented. Thus, in our *prima facie* opinion, what the Collector has written in paragraph 2 is oblivious of the ground realities overlooking the breach of the orders. Be that as it may, as the Collector is not available, we expect the Collector to pass appropriate orders and to undo the breach in whichever orders we have pointed out earlier.

5. We accordingly place the matter first on board on **12 March 2025** when we expect the Collector to place on record an affidavit, including the apology for the orders of this Court not being complied and appropriate directions in pursuance of the orders not being issued to the concerned stamp officers who are registering the documents.

6. The Collector would also explain the position that when the orders passed by the Court are being implemented by the Collector, Beed as seen from page 42 of his communication addressed to all the sub-ordinate officers as to why the Collector, Solapur could not issue such orders. This despite the fact that the PIL filed by the Barshi Bar Association (*supra*) was

for Barshi which is in Solapur District itself. We may note the contents of the letter dated 30 December 2021 issued by the Collector, Beed to the different revenue officers in the Beed District, the contents of which read thus:-

“[Official Translation of a xerox copy of a Letter typewritten in Marathi.

Office of the Collector, Beed.
Phone No. 02442-222604 Fax: 02442-222011
E-Mail: rdc.beed2@gmail.com (Revenue Branch: Settlement-2)

No. 2021/R.B.O./Settlement-2/ 'Li.'-1/WS Date – 30.12.2021

To,

1. Sub-Divisional Officer, Beed/ Ambajogai/ Majalgaon/ Patoda/ Parli Vajinath, District – Beed.
2. Tahasildar Beed/ Gevrai/ Shirur 'Ka.'/ Ambajogai/ Kaij/ Majalgaon/ Wadwani/ Dharur/ Patoda/ Ashti/ Parli Vajinath, District – Beed.

Subject: Regarding levying the stamp duty in the Decree passed in the matter among the family members.

- Reference:1. Notification dated – 14th June 2021 of Revenue and Forest Department, Mantralaya, Mumbai.
2. Order dated – 05th July 2021, in Civil Appeal No.2336/2021, passed by the Hon'ble Supreme Court of India.
 3. Letter bearing No. Adm/1003, dated 27.11.2021, of the Hon'ble Principal District and Sessions Judge, Beed.

In connection with the above noted subject regarding levying stamp duty on the decree issued by a Court of Law in the matter among the family members, it is submitted as under: - In Note 68 of the Notification dated - 14th June 2021, issued by Revenue and Forest Department, Mantralaya, Mumbai, referred to hereinabove at Sr. No.1, published in the Maharashtra Government Gazette at Sr. No. 94, Part Four -A, Extra Ordinary, it is notified that “when the decree is received from the Hon'ble Court or the Officers specified in Section 89A of the aforesaid Act and when the copies of any Decrees or Orders passed by the

Hon'ble Court or any Instrument or Deed specified in Section 89 A of the aforesaid Act, are filed, then no fees shall be charged on the said Instruments."

Similarly, in the Order referred to at Sr. No. 2, it has been mentioned that no additional stamp duty or any other fees shall be charged for making entry in the Revenue Records in respect of the Decree for Partition passed and declared, in view of the settlement arrived at among the family members.

Accordingly, in view of the Notification referred to at Sr. No. 1 and the Order referred to at Sr. No. 2, as mentioned by the Hon'ble Principal District and Sessions Judge, Beed, it is hereby informed that no stamp duty shall be levied for making entry of the Partition Decree passed by the Hon'ble Court in view of the settlement arrived at among the members of the family, in the Mutation Register or in Revenue records or ..(Illegible) shall not be made for registration of the said Instrument and steps shall be taken immediately to make entry of such Instruments in the Revenue records.

Enclosure: As above.

Copy: -

- 1) Respectfully submitted to the Hon'ble Principal District and Sessions Judge, Beed, for information.
- 2) Joint Registrar and Collector of Stamps, Class-2, for information.

(Signature Illegible)
 ..(Illegible)
 (Radhavinod A. Sharma)
 Collector, Beed.

(Signature Illegible)
 (Radhavinod A. Sharma)
 Collector, Beed.

7. We may also observe that in the light of the categorical orders passed by this Court, the Principal District and Sessions Judge, Solapur addressed a letter dated 27 March 2023 to the Collector of Solapur and the Collector of Stamp, Solapur, the contents of which are required to be noted, however,

the same is completely overlooked and directions are not issued. The said letter reads thus:-

“From: Dr. S.A.A.R. Auti
Principal District & Sessions Judge,
Solapur

To,

1. The Hon’ble District Collector,
Solapur
2. The Hon’ble Collector of Stamps,
Solapur

Subject : Payment of stamp duty while mutating Revenue Record as per compromise decree of the court and/or the Lok Adalat effectuating partition of an agricultural land...

Reference : (i) The Judgment of the Hon’ble High Court of Judicature at Bombay in Public Interest Litigation No. 88 of 2021 dated 09/03/2023...

(ii) The letter No.01/2023 dated 04/01/2023 received from the Madha Bar Association, Madha, Dist.Solapur...

Sir,

Apropos the subject noted above, vide communique under reference No.(ii) the members of the Madha Bar Association, Madha, Dist.Solapur implores to issue directions for payment of stamp duty while mutating the Revenue Record as per compromise decree effectuating partition of an agricultural land.

In this context, the Hon’ble High Court of Judicature at Bombay held in paragraph No.19 and 21 of the Judgment passed in Public Interest Litigation No.88 of 2021 dated 09/03/2023 as follows:

“19 On reading section 46 of the Act of 1958 in its entirety along with its provisos, an irresistible conclusion can be drawn i.e. a compromise decree effectuating partition of an agricultural land does not require compulsory registration in view of section 17(2) (vi) of the Act of 1908 and it would also not require payment of the

stamp duty on valuation of the property, but would be governed by the proviso (b) and (c) of section 46 of the Act of 1958.

21 The impugned Circular shall be read in a manner that the compromise decree of the court and/or the Lok Adalat in respect of agricultural land that is the subject matter of the Suit is not compulsorily registerable and would not attract stamp duty on the market value of the property but in accordance with proviso (b) and (c) of section 46 of the Act of 1958.”.

You are therefore requested to follow these guidelines scrupulously while mutating the Revenue Record as per compromise decree of the court and/or the Lok Adalat effectuating partition of an agricultural land.

Kindly bring these guidelines to the notice of all revenue officials.

Yours faithfully,

Sd/-
(Dr. S.A.A.R. Auti)
Principal District Judge,
Solapur

Copy to:
The Presidents, District & All Taluka Bar Associations, Dist.
Solapur”

8. However, no action appears to have been taken on the said letter of the Principal District Judge, Solapur. All this amounts to non-compliance of the orders passed by this Court at the hands of the Collector and the concerned revenue officers in Solapur District. We are hence not at all satisfied with the tenor of the contents of the Collector’s communication addressed the learned AGP and the contents are completely contrary to the record.

9. At this stage, considering such chaos which has been created by the Collector, Solapur insofar as the implementation of the Court's order is concerned and the serious prejudice which is caused to the litigants, Mr. Choudhari has prayed for ad-interim reliefs. We are of the clear opinion that a strong prima-facie case has been made out for grant of ad-interim reliefs in terms of prayer clause (d). Ordered accordingly.

10. We wish to pass appropriate orders on prayer clauses (b) and (c) after receiving an appropriate affidavit from the Collector and more particularly in regard to the clear stand to be taken from other districts and in implementation of the Court orders. We may also observe that in regard to the petitioner's contention of the breach of the orders would also be examined on the adjourned date of hearing and the appropriate orders in that regard, which the law would mandate, the Court would pass.

11. Parties to act on the authenticated copy of this order.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)