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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.164 OF 2025

Bhakta Batsal Patnaik … Petitioner

V/s.

Chief Controlling Revenue Authority, Pune & Anr. … Respondents

Mr. Sharad Bansal with Mr. Krishkumar A. Jain, Mr. Kalpesh Bendre i/by Mr. Ritesh K. Jain for the petitioner.

Ms. Dhruti Kapadia, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 26, 2025

P.C.:

1. **Rule**. Rule is made returnable forthwith.

2. The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to challenge the legality and propriety of an order passed by the Chief Controlling Revenue Authority on *20 June 2024*. The impugned order rejects the petitioner's application for refund of stamp duty on the premise that the instrument cancelling the agreement to sell was executed beyond a period of five years from the date of the original instrument.

3. The relevant facts, which are largely undisputed, are that the petitioner had executed an agreement to sell with the promoter on 20 January 2017 and paid stamp duty amounting to Rs.42,09,000/- and registration charges of Rs.30,000/-. The agreement stipulated that possession of the subject property would be handed over by August 2019. However, the promoter defaulted in handing over possession by the agreed timeline. Correspondences, including an email dated 12 March 2020 and a legal notice dated 16 April 2021, failed to secure either possession or refund of the earnest money. Compelled by the inaction on part of the promoter, the petitioner filed a complaint before MahaRERA on 18 May 2021. By its order dated 8 July 2022, MahaRERA upheld the petitioner's grievance, directed the promoter to refund the amounts, and further directed the cancellation of the original agreement. Consequently, the deed of cancellation was executed on 20 October 2022. It is the petitioner's specific submission that the right to refund of stamp duty flows from the lawful cancellation of the agreement, which in this case was necessitated by the promoter's default.

4. Notwithstanding these submissions, the Chief Controlling Revenue Authority, by its impugned order dated 20 June 2024, summarily rejected the petitioner's claim for refund on the ground that the instrument of cancellation was executed beyond five years from the date of the original agreement to sell dated 20 January 2017. Aggrieved by this decision, the petitioner has preferred the present writ petition.

5. Learned Advocate for the petitioner has assiduously relied upon the judgment of the Co-ordinate Bench of this Court in *Satish*

Babu Shetty vs. Inspector General of Registration and Collector of Stamps and Others, 2024 SCC OnLine Bom 108 to contend that a refund application filed within six months from the date of cancellation of the agreement entitles the petitioner to a return of the stamp duty. It is urged that in *Satish Babu Shetty (supra)*, this Court was faced with a comparable factual matrix wherein the deed of cancellation was executed pursuant to a default by the promoter, and the refund was sought within the statutory period from the date of cancellation. The petitioner, therefore, asserts that the principle laid down in *Satish Babu Shetty (supra)* is squarely applicable, particularly in light of the petitioner's prompt action in seeking refund upon execution of the deed of cancellation on 20 October 2022.

6. Per contra, learned Assistant Government Pleader appearing for the State-respondent would submit that the Chief Controlling Revenue Authority was legally justified in refusing the refund inasmuch as the deed of cancellation itself was executed beyond the stipulated period of five years from the date of the original agreement to sell dated 20 January 2017. She, however, submitted with fairness that if this Court were to hold that the petitioner has made out a sustainable case for grant of relief, the matter may be remanded to the Chief Controlling Revenue Authority for issuance of a fresh order in accordance with law.

7. The rival contentions, as urged on behalf of the petitioner and the State-respondent, now fall for determination.

8. At the outset, the salient factual backdrop recounted in the preceding paragraphs reveals that the agreement to sell dated 20 January 2017 contained an express stipulation requiring the promoter to hand over possession of the subject property in August 2019. Such an obligation was not performed by the promoter. As a consequence, and upon due adjudication by the MahaRERA, the promoter was directed by order dated 8 July 2022 to refund the earnest money already received from the petitioner and to execute a deed of cancellation in respect of the agreement to sell. In furtherance of the MahaRERA directive, the promoter and the petitioner executed the deed of cancellation on 20 October 2022. The factual matrix bears out that the petitioner applied for refund of stamp duty within six months from 20 October 2022, thus fulfilling the procedural mandate embodied in Section 47(c) of the Maharashtra Stamp Act, 1958 (hereinafter, “the Stamp Act”).

9. Given these indisputable facts, the petitioner’s predicament arises solely from the promoter’s failure to discharge its contractual and statutory obligations under the Maharashtra Ownership Flats Act, 1963 (“MOFA”), read with the Real Estate (Regulation and Development) Act, 2016, as enforced by MahaRERA. The petitioner’s right to cancellation was not only recognized but in fact cemented by a judicial determination dated 8 July 2022. Therefore, it would be incongruent with the tenets of justice if the petitioner were denied a remedy merely because the defaulting promoter failed to comply earlier, thereby forcing a belated execution of the cancellation deed.

10. This Court finds strength for such a view in the ratio of *Satish Babu Shetty (supra)*, wherein the Co-ordinate Bench, faced with similar facts, upheld the right of a purchaser to claim refund of stamp duty when the cancellation deed was executed as a consequence of the seller's default. The present petitioner's case stands on a comparable footing: the delay in obtaining the cancellation deed flowed from the promoter's default. No blame can be ascribed to the petitioner, who has been diligent in issuing notices, corresponding with the promoter, and ultimately pursuing the statutory mechanism of redress under MahaRERA. To hold otherwise would frustrate the protective purpose behind Section 47(c) of the Stamp Act and create a scenario wherein a bona fide claimant is deprived of rightful relief by the recalcitrance of the defaulting party.

11. In light of the clear factual matrix, the ratio in *Satish Babu Shetty (supra)*, and the underlying principle that fiscal legislation must not be construed to defeat legitimate entitlements, this Court is of the considered view that the impugned order dated *20 June 2024* cannot be sustained in law. The petitioner's application was made within six months from the date of cancellation. The argument that the deed of cancellation occurred beyond five years from the date of the original agreement cannot override the plain legislative scheme nor obliterate the equitable considerations recognized by the Co-ordinate Bench in a closely analogous setting.

12. Hence, I pass following order:

(i) The Rule is made absolute in terms of prayer clause (a).

(ii) The impugned order dated *20 June 2024* passed by the Chief Controlling Revenue Authority is hereby quashed and set aside.

(iii) The petitioner shall be refunded the amount as claimed in the refund application within four weeks from the date of production of an authenticated copy of this order.

(iv) No order as to costs.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 3 March 2025. The corrections in paragraphs 2, 11 and 12(ii) are shown in italicize.