IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4839 OF 2023

(Vilas Kepal Kamble Vs. Municipal Council, Hinganghat, through Chief Officer)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr. A.S. Shukla, Counsel for the petitioner.
Mr. D.M. Kale, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
APRIL 28, 2025

The learned Counsel for the respondent has tendered across the bar reply. Taken on record.

2] The issue involved is whether under Section 33 of the Maharashtra Stamp Act, 1958 (for short "Act of 1958"), the Court below could have impounded a document to ascertain whether it is properly stamped ? The answer would be certainly in the negative.

3] The petitioner has filed a suit for permanent injunction on the ground that the notice issued to him for removal of encroachment, is illegal. The respondent has issued notice on the ground that the petitioner has erected structure on open space.

4] The petitioner intended to rely on the license given to him by the President of Society to look after the property. Accordingly, the petitioner entered witness box and relied on the license (Exh. 52). The trial Court impounded the document firstly to ascertain whether it is properly stamped, and if not, to conduct enquiry in terms of Section 33 of the Act of 1958.

5] The learned Counsel for the petitioner has rightly argued that sub-section (1) of Section 33 of the Act of 1958 provides that the authority concerned, before whom any instrument chargeable, is tendered, if is of the opinion that the instrument is not properly stamped, shall impound the same.

6] Thus, the authority/Court below will have to first render a finding whether the instrument under question is chargeable to stamp duty and that there are reasons to believe that it is not properly stamped.

7] In the present case, the Court below has impounded the document to ascertain whether stamp duty is payable. The order impugned appears to be contrary to the provisions of law and, therefore, is unsustainable.

8] As such, the learned Counsel for the respondent made an attempt to support the order, however, he failed to show that under Section 33 of the Act of 1958, a document could be impounded to ascertain whether the instrument is properly stamped.

9] The petition is accordingly allowed. The action taken by the trial Court while recording evidence below Exh. 46 in R.C.S. No. 179/2017 on 5/6/2023, whereby license issued in favour of the petitioner has been impounded, is quashed and set aside. The trial Court shall first decide whether the instrument under question is chargeable to stamp duty and whether the instrument is properly stamped and thereafter proceed to pass further order.

10] The petition is disposed of in aforesaid terms. No costs.

(ANIL L. PANSARE, J.)

Sumit