



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.2236 OF 2016**

Digitally signed  
by PRACHI  
PRANESH  
NANDIWADEKAR  
Date: 2024.10.05  
15:10:53 +0530

NANDIWADEKAR

1. Sukhraj B. Nahar Charitable Trust )  
515, Commerce House, 140 )  
Nagindas Master Road, Fort, )  
Mumbai 400 032. )

2. Mr. Sukhraj B. Nahar )  
B-1, Mahalaxmi Chambers, )  
22, Bhulabhai Desai Road, Mahalaxmi, )  
Mumbai – 400 026. )

....Petitioners

V/s.

1. Chief Controlling Revenue Authority )  
Opp. Vidhan Bhavan, )  
(Council Hall), Pune 411 001. )

2. Additional Controller of Stamps )  
Nagpur Bhavan, Fort, )  
Mumbai - 400 023. )

3. Collector of Stamps, Kurla, )  
New Administrative Building, )  
Ground Floor, )  
R. C. Chemburkar Marg, )  
Chembur, Mumbai - 400 007. )

...Respondents

----

Ms. Sonal a/w Mr. Filji Fredrick and Ms. Alisha Mohte i/by FF & Associates  
for the petitioner.

Ms. Pooja Patil, AGP for the respondents-State.

----

**CORAM : JITENDRA JAIN, J.**

**DATE : 4<sup>th</sup> OCTOBER 2024**

**ORAL JUDGMENT :-**

1 By this petition under Article 226 of the Constitution of India, petitioners have challenged an order dated 11<sup>th</sup> August 2015 passed by respondent no.3-Collector and appeal order dated 5<sup>th</sup> January 2016 passed by respondent no.2-Appellate Authority, whereby demand of Rs.53,63,050/- on account of stamp duty on deed of rectification has been raised and confirmed.

**Brief Facts :-**

2 In July 2009, Lease Deed was executed between Mr. & Mrs. Sheth as “lessors” and petitioner no.1 as “lessee” for lease of land admeasuring 3872.53 sq.mtrs. bearing CTS Plot No.53A/1-B (Part) and 53A/1-C (Part) on the terms and conditions specified therein for a period of 99 years. Both the plots were adjacent to each other but there was no demarcation. The schedule to the said lease deed reads as under :-

*“ALL THAT piece and parcel of land bearing C.T. S. No.53-A/1-B (Part) and C.T. S. No.53-A/1-C (Part) admeasuring 3872.53 sq. mtrs. Bearing S. No.17 of Village Chandivali, Taluka Kurla, Mumbai Suburban District, Mumbai.”*

3 The property card on the date of execution of the aforesaid lease deed for CTS Plot No.53A/1-B states area as 3125.50 sq.mtrs. and the

said plot is reserved for “playground.” The property card for CTS Plot No.53A/1-C states the area as 3872.53 sq.mtrs. and same is reserved for “Municipal Primary School.”

4           Based on the above, the Stamp Authorities adjudicated the stamp duty payable on the lease deed by arriving at market value of Rs.16,99,08,000/- for area 3872.53 sq.mtrs. and a certificate to that effect was issued. Petitioner paid stamp duty, determined on the said document, of Rs.76,45,860/- on 4<sup>th</sup> December 2009. The adjudication was done by respondent no.3-Collector of Stamp, Kurla.

5           On 15<sup>th</sup> October 2005, an order was passed by Collector for sub-division/ amalgamation in respect of the aforesaid properties being CTS Plot Nos.53A/1-B and 53A/1-C. As per the said order, area of 3872.53 sq.mtrs. was divided into 3125.50 sq.mtrs. being CTS No.53A/1-B and 747.03 sq. mtrs. being CTS No.53A/1-C. Petitioner has averred that the said sub-division/amalgamation was required to carve out a separate area reserved for “primary school.” The sub-division/amalgamation order was given effect to after measurement in the year 2010 which resulted into plot bearing CTS Plot No.53A/1-C being divided into two plots namely; 53A/1-C/1 admeasuring 2947.23 sq.mtrs. and 53A/1-C/2 admeasuring 925.30 sq.mtrs. being physically demarcated. The newly created plot bearing CTS Plot No.53A/1-C/2 admeasuring 925.30 sq.mtrs. was merged with CTS

Plot No.53A/1-B which originally admeasured 3125.50 sq.mtrs. Post the amalgamation, the total area of CTS Plot No.53A/1-B worked out to 4050.80 sq.mtrs. (3125.50 sq.mtrs. + 925.30 sq.mtrs.). Thereafter, a separate property card was prepared by City Survey Office wherein plot bearing CTS Plot No.53A/1-B was shown at 4050.80 sq.mtrs. and new plot CTS Plot No.53A/1-C/1 was shown as reduced to 2947.23 sq.mtrs. since area of 747.03 sq. mtrs. was amalgamated into 53A/1-B.

6           The above exercise resulted into original area under lease deed dated July 2009 being increased from 3872.53 sq.mtrs. to 4050.80 sq.mtrs., the excess being 178.27 sq.mtrs. Petitioner, thereafter, on 29<sup>th</sup> July 2011 executed a Rectification Deed wherein the abovereferred events were narrated and it was stated that new area of plot bearing CTS Plot No.53A/1-B measured at 4050.80 sq.mtrs. compared to old area of plot bearing CTS Plot No.53A/1-B (Part) and CTS Plot No.53A/1-C (Part) admeasuring 3872.53 sq.mtrs. Petitioner, thereafter, made an application under Section 31 of the Bombay Stamp Act (now The Maharashtra Stamp Act, 1958) to respondent no.3 for adjudicating the stamp duty payable on the rectification deed whereby the original area of 3872.53 sq.mtrs. was increased to 4050.80 sq.mtrs. thereby resulting into increase of 178.27 sq.mtrs.

7           On 13<sup>th</sup> July 2015, a letter was addressed by the

representatives of petitioner to respondent no.3 giving history which is narrated above. In the said letter, it was submitted that on account of rectification deed, there has been an increase of 178.72 sq.mtrs. and since petitioner has already made payment of stamp duty on 3872.53 sq.mtrs., a request was made to respondent no.3 to determine the stamp duty only on the increased area of 178.27 sq.mtrs. Copy of property card of CTS Plot No.53A/1-B post division/amalgamation was also enclosed. The said property card refers to order dated 15<sup>th</sup> October 2005 of division and amalgamation.

8           On 11<sup>th</sup> August 2015, respondent no.3 passed an order on application made by petitioner for determination of stamp duty payable on rectification deed and arrived at a stamp duty payable at Rs.53,63,050/-. The said figure was arrived at by taking the land cost at Rs.92,000/- per sq.mtrs. and the said value was applied to area 925.30 sq.mtrs. on the ground that the original lease deed dated July 2009 did not give break up of the area which was carved out from CTS Plot No.53A/1-B and 53A/1-C. Relying upon the latest property card where the reference was to CTS No.53A/1-B, respondent no.3 observed that the original area of 53A/1-B was 3125.50 sq.mtrs. and new area of CTS No.53A/1-B was 4050.80 sq.mtrs. and therefore, difference of 925.30 sq.mtrs. for arriving at the stamp duty payable under Section 31 of the Stamp Act. The plea of

petitioner that the area on which the stamp duty payable is only 178.27 sq.mtrs. was rejected.

9           Petitioner carried the aforesaid order passed under Section 31 of the Stamp Act before the Appellate Authority. Respondent no.2-Appellate Authority passed an order dated 5<sup>th</sup> January 2016 dismissing the appeal filed by petitioner and agreed with the order passed by respondent no.3-Collector.

10           It is on the aforesaid backdrop that the petitioner is before this Court challenging the orders passed by respondent no.3 and respondent no.2 dated 11<sup>th</sup> August 2015 and 5<sup>th</sup> January 2016 respectively.

**Submissions of Petitioners :-**

11           Ms. Sonal, learned counsel for petitioner, after referring to various documents which are mentioned above, submitted that admittedly the original area which was leased in July 2009 was 3872.53 sq.mtrs. and in the said lease deed, it is specifically stated that the same is out of land bearing CTS Plot No.53A/1-B (Part) and 53A/1-C (Part). The area of 53A/1-B was 3125.50 sq.mtrs. and area of 53A/1-C was 3872.53 sq.mtrs. as per the old property card prior to giving effect to sub-division/amalgamation order dated 15<sup>th</sup> October 2005. Post the order of sub-division/amalgamation, the revised area of CTS Plot No.53A/1-B was

4050.80 sq.mtrs. (3125.50 sq.mtrs. + 925.30 sq.mtrs.). The plot CTS No.53A/1-C was divided into two parts. The area of 925.30 sq.mtrs. being from 53A/1-C/2 and the revised area of 53A/1-C/1 was reduced to 2947.23 sq.mtrs. The revised area of 53A/1-B post amalgamation order and post new property card was 4050.80 sq.mtrs. It is, therefore, her submission that since petitioner has already made payment of stamp duty on 3872.53 sq.mtrs. consisting partly 53A/1-B and 53A/1-C, therefore increase in area is only 178.27 sq.mtrs. which admittedly has come from 53A/1-C which was part of the original lease deed and, therefore, respondent nos.2 and 3 were not justified in arriving at 925.30 sq.mtrs. only on the basis that the original lease deed did not specify the area which was carved out from both the CTS numbers.

12           Alternatively, she submits that if it is held that the original area of 53A/1-B has been increased from 3125.50 sq.mtrs. to 4050.80 sq.mtrs., the difference being 925 sq.mtrs. by virtue of rectification deed, then the original proportionate stamp duty paid on area of 747 sq.mtrs. (3872 sq.mtrs. - 3125 sq.mtrs.) should be adjusted and petitioner should be called upon to pay the stamp duty only on balance 178.27 sq.mtrs. She submits that looked from any angle, demand cannot be for more than 178.27 sq.mtrs.

13           Ms. Sonal, on instructions, submits that petitioners are not

disputing the calculations made in the impugned order dated 11<sup>th</sup> August 2015 except to the extent of area 925.30 sq.mtrs. being taken as the basis for raising demand as contrast to area of 178.27 sq.mtrs. as contended by petitioner.

14 Post the conclusion of the hearing and on the directions of the Court, petitioner has produced division-cum-amalgamation order dated 15<sup>th</sup> October 2005 by Collector wherein break up of 3872.53 sq. mtrs. was shown as 3125.50 sq.mtrs. from CTS Plot No.53A/1-B and balance 747.03 sq.mtrs. from CTS Plot No.53A/1-C. This order is referred to in new property card at page 54 of the petition. Ms. Patil was given an opportunity to make her submissions on this order.

**Submissions of Respondents :-**

15 Ms. Patil appearing for respondents submits that the only document which was before the Collector was the Deed of Rectification and the new property card post sub-division/amalgamation. The new property card reflected the area of CTS Plot No.53A/1-B admeasuring 4050.80 sq.mtrs. and the original area under the old property card prior to sub-division/amalgamation stated the area of CTS Plot No.53A/1-B as 3125.50 sq. mtrs. Therefore, her contention that since area of CTS Plot No.53A/1-B has increased to 925.30 sq.mtrs. (4050.80 sq.mtrs. - 3125.50 sq.mtrs.), pursuant to the rectification deed, the orders passed by both the authorities



are justified. It is her submission that even if petitioner has paid more stamp duty on original lease deed of July 2009, the remedy of petitioner lies somewhere else and not to seek adjustment/set off against the present demand. With regard to order dated 15<sup>th</sup> October 2005, she stated that same was not produced before the authorities. However, she does not dispute that reference to the said order is to be found in new property card which was produced before the authorities. It is, therefore, her submission that the demand of Rs.53,63,050/- raised by respondent no.3 and confirmed by respondent no.2 is correctly calculated in accordance with law.

#### **Analysis and Conclusions :-**

16 I have heard learned counsel for petitioners and respondents.

17 The only issue which requires to be adjudicated is the transfer of area under rectification deed and from which CTS number.

18 Admittedly, the lease deed of July 2009 is for area admeasuring 3872.53 sq.mtrs. In the said lease deed, it is specifically agreed by the parties to lease deed that the area of 3872.53 sq.mtrs. would be from the plot bearing CTS Plot No.53A/1-B (Part) and CTS Plot No.53A/1-C (Part). However, there is no bifurcation in the lease deed as to from which CTS number how much has gone into making of 3872.53 sq.mtrs. but at the same time, there cannot be a dispute that atleast part of CTS Plot

No.53A/1-C has gone in total area agreed to be leased of 3872.53 sq.mtrs. This is so because the total area of CTS Plot No.53A/1-B is 3125.50 sq.mtrs. whereas the total area leased under the said document of July 2009 is 3872.53 sq.mtrs. Therefore, atleast 747 sq.mtrs. (3872 sq.mtrs. - 3125 sq.mtrs.) area has certainly gone from CTS Plot No.53A/1-C under the lease deed of July 2009. This is also fortified by an order dated 15<sup>th</sup> October 2005 passed by respondent no.3-Collector which was given effect to in 2010 and referred to in new property card prepared by City Survey Officer. There is no dispute that petitioner has paid requisite stamp duty on 3872.53 sq.mtrs. as per the adjudication order which is ascribed at page 40 of the petition.

19           Post the execution of the said lease deed and payment of stamp duty, an exercise of physical sub-division/amalgamation took place and thereafter, the total area increased to 4050.80 sq.mtrs compared to original 3872.53 sq.mtrs. resulting into excess lease of land admeasuring 178.27 sq.mtrs.

20           Pursuant to the sub-division/amalgamation order, the City Survey Office has prepared new property card wherein the area of CTS Plot No.53A/1-C was reduced from 3872.53 sq.mtrs. to 2947.23 sq.mtrs. resulting into the difference of 925.30 sq. mtrs. Out of 925.30 sq.mtrs. of this plot, 747 sq.mtrs. already formed part of the original lease deed of July

2009 as observed by me above. Therefore, the excess land which got transferred to petitioner pursuant to the physical sub-division/amalgamation as per new property card was 178.27 sq.mtrs. (4050.80 sq.mtrs. - 3872.53 sq.mtrs.). It cannot be a case that not a single sq.mtr. of plot bearing CTS Plot No.53A/1-C got transferred under the old lease deed because as observed above, the original lease deed was for 3872.53 sq.mtrs. and there were two plots involved as per the lease deed and the area of one of plots bearing CTS Plot No.53A/1-B was only 3125.50 sq.mtrs. and therefore, balance had to come from CTS No.53A/1-C which is also fortified by division/amalgamation order of 15<sup>th</sup> October 2005 passed by respondent no.3-Collector. If the contention of respondents is accepted, then it would amount to respondents seeking to recover stamp duty on 747 sq.mtrs. twice, once under the original lease deed of July 2009 and again under the impugned order. It is also not the case of respondents that petitioners have acquired lease of more than 4050.80 sq.mtrs.

21           The contention of respondents that the only document before the Collector for adjudication was the Rectification Deed and the latest property card, post sub-division/amalgamation which mentioned the area of CTS No.53A/1-B as 4050.80 sq.mtrs. and, therefore, the authorities were justified in calculating the stamp duty on 925.30 sq.mtrs. (4050.80 sq.mtrs. - 3125.50 sq.mtrs.) cannot be accepted. The Collector had before

him a letter of July 2015 wherein the history of transactions was narrated. In the new property card which was produced before Collector, there is a reference to order dated 15<sup>th</sup> October 2005 of division/amalgamation supporting the case of the petitioners. Respondent no.3-Collector also accepts that as per the original lease deed of July 2009, part of land has gone from CTS Plot Nos.53A/1-C and 53A/1-B but merely because how much pertaining to which CTS number was not mentioned, he appears to have rejected the contention of petitioner. In my view, this may not be the correct approach because the original lease deed is a document on which not only the stamp duty was paid on 3872.53 sq.mtrs. but the same was also registered and was brought to the notice of Collector vide letter dated 13<sup>th</sup> July 2015. The Collector also accepts the said lease deed by observing that part of the land from both the CTS numbers has gone into the execution of lease deed of July 2009 and same is also fortified by order of respondent no.3 dated 15<sup>th</sup> October 2005 wherein he has accepted break up of 3872.53 sq.mtrs. Based on the above calculation of the area, it cannot be accepted that 925 sq.mtrs. of the land has been leased from CTS Plot No.53A/1-C under the rectification deed for raising the demand.

22           The contention of respondents that if petitioners have by mistake paid more stamp duty under the July 2009 agreement, then they should seek the remedy somewhere else and not seek adjustment in the

present proceedings is also to be rejected. This submission cannot be accepted for the reason that admittedly the original area to be leased was 3872.53 sq.mtrs. and the total area of CTS Plot No.53A/1-B was 3125.50 sq.mtrs. Therefore, balance 747 sq.mtrs. had to come from CTS Plot No.53A/1-C and on which stamp duty has been admittedly paid. The excess area pursuant to the order passed on sub-division/amalgamation and the new property card prepared by City Survey Office pursuant to the said order clearly shows that the original area of CTS Plot No.53A/1-C got transferred to the extent of 925 sq.mtrs. which consisted of 747 sq.mtrs. transferred under the original 2009 lease document and balance 178.27 sq.mtrs. got transferred pursuant to the rectification deed which was executed after sub-division/amalgamation order and preparation of new property card. This is also in conformity with order dated 15<sup>th</sup> October 2005. The result of the above exercise is that the new area of CTS Plot No.53A/1-B now stands at 4050.80 sq.mtrs. but that does not mean that the only 3125.50 sq.mtrs. being the area of CTS Plot No.53A/1-B prior to sub-division/amalgamation got transferred under July 2009 agreement and balance of 747 sq.mtrs. was not transferred at all under the original lease deed of 2009.

23            If the contentions of respondents are accepted that under the original lease deed of July 2009, only area of 3125.50 sq.mtrs. being CTS

Plot No.53A/1-B is transferred and the balance area of 925.30 sq.mtrs. under the rectification deed is accepted, then in my view, that would be contrary to what was agreed to by the parties to the original lease deed and it would also amount to rewriting the original lease agreement of July 2009 which certainly the authorities cannot do in the present facts of the case. The Authorities, on the contrary, acted upon the original lease deed of July 2009 by collecting the stamp duty on 3872.53 sq.mtrs. which was the area to be leased and admittedly the area of CTS Plot No.53A/1-B was 3125.50 sq.mtrs. and therefore, the balance area of 747 sq.mtrs. had to come from CTS Plot No.53A/1-C. After having collected the stamp duty based on the above exercise and the document before them which specifically referred to both the CTS numbers, today the respondents cannot turnaround and argue contrary merely on the ground that when the application for adjudication of rectification deed was made, the only document which was produced was the new property card and the rectification deed. In my view, respondent no.3-Collector had knowledge of history of transactions which was brought to his notice vide letter dated 13<sup>th</sup> July 2015 wherein the details of the original documents executed and registered were referred. If the Collector wanted to see those documents, they were available with the office of respondents and in any case, the Collector could have called for the same from the petitioner under Section

31 of the Stamp Act. The Collector by observing in the impugned order that the bifurcation of the area has not been mentioned has accepted the contents of the documents and, therefore merely on the ground that the said document was not produced, the respondents today cannot argue to justify the order. The impugned action is also contrary to respondent no.3-Collector's own order dated 15<sup>th</sup> October 2005. It is also important to note that proceedings under the Stamp Act are not adversarial proceedings.

24 To conclude, there is no dispute that the aggregate area leased to petitioners under the lease deed read with rectification deed is 4050.80 sq. mtrs. only and not more. There is also no dispute that land admeasuring 3872.53 was agreed to be leased under the lease deed of July 2009 out of Plot Bearing CTS Plot Nos.53A/1-B (Part) and 53A/1-B (Part) and on said area stamp duty is paid. The total area of CTS Plot No.53A/1-B as per old property card was 3125.50 sq. mtrs. Therefore, the balance 747 sq. mtrs. has to come out of CTS Plot No.53A/1-C. Therefore, the excess area transferred, after physical demarcation pursuant to 15<sup>th</sup> October 2005 order, under the rectification deed is 178.27 sq. mtrs. (4050 sq.mtrs. – 3872.53 sq.mtrs). Assuming that total area 3872.53 sq.mtrs. under the lease deed of July 2009 has come exclusively out of CTS Plot No.53A/1-C and after subdivision/amalgamation, the total area leased to petitioner is 4050.80 sq.mtrs. then also the excess area attributable to CTS Plot No.53A/1-B

would be 178.27 sq.mtrs. (4050 sq.mtrs. – 3872.53 sq.mtrs.). Therefore, even if the original lease deed did not specify how much area from each CTS plot number is transferred, the net effect would be the same, i.e., only 178.27 sq. mtrs. excess land came to be leased under the rectification deed on account of giving effect to sub-division/amalgamation order and therefore, the stamp duty is payable only on said area of 178.27 sq. mtrs. Therefore, looked from any angle, the impugned action of respondent nos.2 and 3 to arrive at excess area of 925 sq. mtrs. cannot be upheld.

25           The order was dictated in the open Court and Counsel for both the parties have agreed that all their arguments have been recorded, considered and dealt with.

26           In view of above, Rule is made absolute in terms of prayer clause (a) which reads as under :

*(a) that this Hon'ble Court be pleased to issue a writ of certiorari or a writ, order or direction in the nature of certiorari calling for the records and proceedings in respect of passing of orders dated 11<sup>th</sup> August 2015 and 5<sup>th</sup> January 2016 passed by Respondent No.3 and 2 respectively (Exhibit "F"&"H" hereto) and after going through the legality, validity and propriety thereof the same be quashed and set aside;*

27           Petition disposed.

**(JITENDRA JAIN, J.)**