



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

WRIT PETITION (L) NO. 15544 OF 2024

V. H. Property Solution LLP

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Naresh Jain a/w. Ms. Neha Anchlia, Advocate, for the Petitioner.
Ms. Prachi Tatake, Addl. GP, for the Respondents – State.

CORAM: MADHAV J. JAMDAR, J.

DATE: 20.08.2024

JUDGMENT:

1. By the present Writ Petition preferred under Article 226 of the Constitution of India, the Petitioner is challenging the legality and validity of the Order dated 27.03.2024 passed by the Joint Sub Registrar, Class-1, Kurla-4, Mumbai (“**impugned Order**”). The impugned Order reads as under :-

“आपण आपले वरिल संदर्भीय पत्रासोबत दिनांक 6/10/2015 रोजी निष्पादित केलेली **DEED OF CONVEYANCE** ची झेरॉक्स प्रत नोंदणीसाठी या कार्यालयाकडे सादर केली आहे.

त्यानुसार आपले निदर्शनास आणून देण्यात येत आहे की, नोंदणी अधिनियम 1908 चे कलम 23 नुसार दस्तऐवज निष्पादित (**Execute**) केल्याचे दिनांकापासुन 4 महिन्याचे आत नोंदणीकरिता सादर करणे आवश्यक आहे. व हा कालावधी संपल्यानंतर पुढील 4 महिनेसाठी नोंदणी अधिनियम 1908 चे कलम 25 नुसार दंड वसूल करून मा. जिल्हा निबंधक, मुंबई उपनगर जिल्हा, यांचेकडुन दस्त नोंदणीस झालेला विलंब क्षमापित झाल्यानंतर नोंदणीसाठी सादर करणेची तरतुद आहे.

आपण नोंदणीसाठी सादर केलेला दस्ताचा कालावधी उक्त अधिनियमात नमुद तरतुदीनुसार कालबाह्य झाला असल्याने सदर दस्ताची नोंदणी करता येणार नाही याची नोंद घ्यावी.”

(Emphasis added)

English translation of the above as provided by the Petitioner is as follows :-

“In respect of the above subject under referred letter you enquired about the registration of the Deed of Conveyance Deed.

In that view it is inform that, after perused the said deed, the date of the execution of the deed is Dtd. 06/10/2015 as per Section 23 of the Registration Act, 1908 the registration of the said deed can be submitted for the registration within four months from the execution of deed and thereafter for month cane be produced with the stipulated penalty. Also in the deed of Conveyance produced by you in this office date of execution is 06/10/2015 the tenure of four months for the registration and the tenure thereafter of four months with penalty is barred the registration of the said cannot be done.”

2. Mr. Naresh Jain, learned Counsel for the Petitioner submitted that the agreement dated 06.10.2015 is presented to the Stamp Duty Authorities on 10.12.2015, the document was adjudicated on 05.01.2024 and the said Order of adjudication was served on the Petitioner on 05.02.2024. He submitted that there was Amnesty Scheme. The Petitioner participated in the same and paid the entire stamp duty as per the Amnesty Scheme on 04.03.2024. He submitted that thereafter, the Petitioner submitted a letter seeking registration on

20.03.2024, however the same was refused by the communication dated 27.03.2024 on the ground that the document is required to be presented for registration within 4 months and at the most additional 4 months period can be grnted on payment of penalty charges and therefore, registration was refused. He relied on the Division Bench Judgment of this Court in *Nestor Builders & Developers (P) Ltd. v. State of Maharashtra*¹. He submits that time taken by the Collector of Stamps for adjudication of the stamp duty is required to be excluded by the Respondents in accepting the said document for registration.

3. On the other hand, Ms. Tatake, learned Additional GP vehemently opposes the prayers made in the Writ Petition. She relied on the Affidavit-in-Reply of Ms. Ashwini Patil, the Collector of Stamps, Enc-2, Mumbai, dated 02.08.2024 as well as Affidavit-in-Reply of Mr. Mangesh P. Chaudhari, Joint Sub-Registrar, Class-II, Kurla-4, Mumbai, dated 16.08.2024. She submitted that the document could be registered only after compliance with the provisions under Sections 23 and 25 of the *Registration Act, 1908* (“**the Registration Act**”) and failing which the same cannot be registered. She submits that the Petitioner has merely sent a copy of the Deed of Conveyance dated 06.10.2015 along with letter dated 28.03.2024 addressed to the Office of the Joint Sub-Registrar, Taluka-3, Taluka-4, Kurla, and requested that

¹ 2015 SCC OnLine Bom 3480

the time taken by the Respondent No.5 for adjudication be excluded from the same. She relied on Sections 23 and 25 of the Registration Act.

4. Before considering the rival contentions, it is necessary to set out a chart of the computation of period for the purpose of Section 23 of the Act, as provided by the Petitioner. The said chart is as follows :-

Sr. No.	Particular	Date	Days
1.	Date of Conveyance Deed	06.10.2015	
2.	Date of Presentation to stamp duty authority	10.12.2015	2 months 4 days
3.	Date of adjudication	05.01.2024 served on 05.02.2024	
4.	Amnesty Participation	29.02.2024	29.02.2024
5.	Payment of Amnesty Duty	04.03.2024	
6.	Release of impound document	04.03.2024 (tentative)	
7.	Letter for seeking registration	20.03.2024	16 days
8.	Refusal	27.03.2024	
9.	Writ Petition	13/04/2023	
	Total Time of registration if adjudication period is extended		2 months 20 days

5. In the above factual background, it is necessary to examine the contentions raised by the Respondents. In the Affidavit-in-Reply dated 16.08.2024 of Mangesh P. Chaudhari, Joint Sub-Registrar, Class-II, Kurla-4 in the Paragraph Nos.9 to 12 following contentions are raised:-

*“9. In the aforesaid background, it would be pertinent to point out that a **specific time period of 4 months is stipulated***

*for registration of a document from the date of its execution.
The said Section reads as follows :*

“23. Time for presenting documents:-

Subject to the provisions contained in section 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution: Provided that a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is applicable within four months from the day on which it becomes final.”

10. As per Section 25 of the said Act, a further provision is incorporated keeping in mind a probable delay that may occur in the Registration of Document the said section reads as under:

“25. Provision where delay in presentation is unavoidable:-

(1) If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration - fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.”

11. It is in the aforesaid background that this Respondent

by its letter dated 23.03.2024 conveyed the said Conveyance Deed cannot be registered. It is pertinent to point out that even as per the circular dated 22.12.2011 it is mandated that a Deed is required to be registered within the stipulated time. However, it is not submitted for registration within the prescribed period the same can be done, by executing Confirmation Deed or Declaration Deed annexing the Original Deed which was sought to be registered.

12. *It is further submitted that **the purpose and intention of Registration Act, 1908 and the Maharashtra Stamp Act, is completely different and independent of each other.** It is further submitted that, the Petitioner was informed that the said Deed of Conveyance can be registered once a Confirmation Deed or Deed of Declaration is executed by and between the same parties confirming the execution of the said subject Deed and submitting the same before this Office annexing to it the Original Deed.”*

(Emphasis added)

Thus, what is sought to be contended is that the document is required to be presented for registration within 4 month from the date of the registration and at the most said period can be extended by further period of 4 months as provided under Section 23 r/w Section 25 of the Registration Act and therefore the subject deed cannot be registered.

6. In the background of the rival contentions, the factual position on record clearly shows that the date of agreement is 06.10.2015, the same was presented to the Stamp Authorities on 10.12.2015. Thus, same was submitted within a period of 2 months and 4 days to the

Stamp Duty Authorities well within time, as provided under Section 23 of the Act where time provided for presentation of the document to the Registration Authorities is 4 months from its execution. The document was submitted to the Stamp Authority for adjudication. The position on record shows that the document was pending for adjudication from 10.12.2015 to 05.01.2024. The Stamp Duty Authorities adjudicated proper stamp duty only on 05.01.2024 and the same was served on the Petitioner on 05.02.2024. It is an admitted position that the entire stamp duty as per the adjudication Order dated 05.01.2024 had been paid as per the Amnesty Scheme by the Petitioner on 04.03.2024. Thereafter, immediately, by letter dated 20.03.2024 the Petitioner sought registration of the document. Thus, by excluding the period required for adjudication, the deed is presented for registration within a period of 3 months and 10 days.

7. By the impugned Order dated 27.03.2024, registration of the said Deed dated 06.10.2015 has been refused on the ground that any deed can be submitted for registration within 4 months from the date of execution of the deed and at the most within additional 4 months by paying penalty. Thus, it is stated in the impugned Order that the document dated 06.10.2015 has been presented for registration after a period of 4 months and even after taking into consideration the

additional 4 months, the same is presented even beyond said period and therefore cannot be registered.

8. Ms. Prachi Tatake, learned Additional GP very heavily relied on Sections 23 and 25 of the Registration Act and submitted that the document should have been presented for registration within a period of 4 months and at the most within additional period of 4 months by paying penalty and as the said Deed dated 06.10.2015 has not been presented for registration within a period of 4 months or additional 4 months, the same cannot be registered.

9. In view of said contentions raised by learned Additional GP, it is important to note the provisions of the *Maharashtra Stamp Act, 1958* (“**Stamp Act**”).

(i) Section 17 of the Stamp Act *inter alia* provides that all instruments chargeable with duty and executed by any person in this State shall be stamped before or at the time of execution or immediately thereafter on the next working day following the day of execution.

(ii) Section 31 of the Stamp Act *inter alia* provides when any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, by one of the parties to the instrument and such person applies to have the opinion of

that officer as to the duty (if any) with which or the Article of Schedule I under which it is chargeable and pay a fee of one hundred rupees the Collector shall determine the duty (if any) with which or the Article of Schedule I under which in his judgment, the instrument is chargeable.

(iii) Sub-Section 2 of Section 32A provides that any registering officer receiving such instrument for registration has reason to believe, on the basis of the information available with him in this behalf, that the market value of immovable property which is the subject matter of such instrument has not been truly set forth therein, he shall, immediately after receiving of such instrument, refer it to the Collector for determination of the true market value of such property.

(iv) Section 33 of the Stamp Act *inter alia* provides that subject to the provisions of Section 32A, every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police or any other officer, empowered by law to investigate offences under any law for the time being in force, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such

instrument is not duly stamped, impound the same irrespective whether the instrument is or is not valid in law.

(v) Section 33A of the Stamp Act reads as under :

“33A. Impounding of Instruments after registration - When through mistake or otherwise any instrument which is not duly stamped is registered under the Registration Act, 1908, the registering officer may call for the original instrument from the party and, after giving the party an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it. On failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be original of such instrument.”

(vi) Section 34 of the Stamp Act provides that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped.

(vii) As per Section 59 of the Stamp Act any person who, with the intention to evade the duty, executes or signs any instrument chargeable with duty without the same being duly stamped commits an offence and is liable for prescribed punishment.

10. Thus, a cumulative effect of all these provisions of the

Stamp Act, clearly demonstrates that only a document, which is duly stamped is required to be presented for registration. In fact, duty has been caste even on the registering officer to ensure that the document to be registered is duly stamped.

11. Thus, various provisions of the Stamp Act as well as the Registration Act clearly shows that an instrument which is duly stamped is to be registered under the Registration Act. Thus, it is absolutely essential that proper stamp duty is required to be ascertained before the document is presented for registration or in any case the same is registered.

12. In this particular case, the Deed dated 06.10.2015 was presented to the stamp duty authorities on 18.12.2015 and the stamp duty was adjudicated and determined on 05.01.2024 and the same was communicated to the Petitioner on 05.02.2024. Thus, by no stretch of imagination the said Deed dated 06.10.2015 could have been presented for registration within a period of 4 months or 8 months from 06.10.2015.

13. It is settled legal position that the law does not compel a person to do what he cannot possibly perform. The Supreme Court in the case of ***State of Madhya Pradesh Vs. Narmada Bachav Andolan***², in Paragraph No.39 it has held as follows:

² (2011) 7 SCC 639

“ DOCTRINE OF IMPOSSIBILITY:

*38. The Court has to consider and understand the scope of application of the doctrines of **lex non cogit ad impossibilia** (the law does not compel a man to do what he cannot possibly perform); **impossibilium nulla obligatio est** (the law does not expect a party to do the impossible); and **impotentia excusat legem** in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law **nemo tenetur ad impossibilia** (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide: **Chandra Kishore Jha v. Mahavir Hira Tikkoo v. UT, Chandigarh & HUDA V. Dr. Babeswar Kanhar.**)*

(Emphasis supplied)

14. A Division Bench of this Court in the decision of *Nestor Builders* (supra) while considering similar issue after considering various provisions of the Registration Act held in Paragraph Nos.10 and 12 as under :-

*“10. A legal right accrued to the petitioners to get the document registered as per the provisions of the Registration Act cannot stand defeated when such reasons exist which are beyond the control of the party presenting the document for registration. The legal position in this regard has been succinctly enunciated in the decision of the Supreme Court in the case “**Raj Kumar Dey v. Tarapada Dey, ((1987) 4 SCC***

398 : AIR 1987 SC 2195)". This decision concerned registration of an Award dated 28 November 1977. In the proceedings adopted by the parties under the Arbitration Act, 1940, the Award had remained in the custody of the Court. An application was made by the Arbitrators before the learned Sub-Judge to return back the Award to enable them to present the same before the Sub Registrar of registration. An order came to be passed in January, 1980 on the said application whereby the learned Sub-Judge ordered return of the Award to the Arbitrators to enable them to present it for registration. This order of the learned Sub-Judge was set aside by the High of Calcutta by order dated on 6 March 1981 and it was held that during the subsistence of the interim injunction, the Arbitrators could not have taken back the Award for presenting the same for registration. In further proceedings on 24 November 1983 the Arbitrators got back the Award from the Court and on the next day i.e. on 25 November 1983 the Arbitrators presented the Award before the Sub-Registrar who registered the Award on 25 November 1983. By order dated 19 June 1986 the High Court quashed the registration under Article 227 of the Constitution holding that the Award has been presented for registration beyond time. In considering the challenge to this order of the High Court, the Supreme Court while holding that the delay from the period 20 November 1977 to 25 November 1983 (about 6 years) was rightly excluded by the Sub-Registrar. **In Paragraphs 6 and 7 the Supreme Court has observed thus:—**

"6. We have to bear in mind two maxims of equity which are well settled, namely, "ACTUS CURIAE NEMINEM GRAVABIT"- An act of the Court shall prejudice no man. In Broom's Legal Maxims, 10th edition, 1939 at page 73 this maxim is explained that **this maxim was founded upon justice and good sense**; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution. **The other maxim is "LEX NON COGIT AD IMPOSSIBILIA" (Broom's Legal**

Maxims-P. 162)- The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.

7. *In this case indisputably during the period from 26th of July, 1978 to 20th December, 1982 there was subsisting injunction preventing the arbitrators from taking any steps. Furthermore, as noted before the award was in the custody of the court, that is to say, 28th of January, 1978 till the return of the award to the arbitrators on 24th of 124 November, 1983, the arbitrators or the parties could not have presented the award for its registration during that time.”*

12. *Having examined the relevant provisions of the Registration Act and applying the above principles of law as laid down by the Supreme Court, we are of the considered opinion that the time taken by the Collector of Stamps for adjudication is required to be excluded by the respondents in accepting the said document for registration. It would thus be appropriate that in the facts of the present case the respondents are directed not to take into consideration the period from 11 May 2012 to 18 February 2013 which was spent in the adjudication of the said document and excluding the said period, register the petitioners’ deed of conveyance.”*

(Emphasis added)

Thus, the Division Bench has held that as per the provisions of the

Registration Act and applying the principles of law laid down by the Supreme Court, the time taken by the Collector of Stamps for adjudication is required to be excluded by the Respondents in accepting the said document for registration.

15. In this particular case, the Conveyance Deed is dated 06.10.2015, the same was presented to the Stamp Duty Authorities on 10.12.2015. The period from 10.12.2015 to 05.01.2024 is required for adjudication. Thereafter, as per the adjudication, the entire stamp duty was paid on 29.02.2024. Thereafter, the letter was sent seeking registration on 20.03.2024. Thus, it is clear that period between presentation of the document to the Stamp Authorities and date of adjudication and service of the adjudication Order on the Petitioner is required to be excluded. The various dates set out in the Chart presented by the Petitioner as noted in earlier part of this Judgment, clearly shows that within a period of 3 months 10 days the document is presented for registration. As per Section 23 of the Act, same has to be done within a period of 4 months from the date of its execution. However, for the reasons set out above, for arriving at 4 months period, time required for adjudication of the document is required to be excluded.

16. Although, learned Additional GP has relied on Section 25 of the

Act, however, same will not apply to the facts of the present case as the document is presented for registration or registration is sought well within said prescribed period of 4 months as per Section 23 of the Act.

17. Accordingly, the impugned Order dated 27.03.2024 passed by the Joint Sub Registrar, Class-1, Kurla-4, Mumbai is hereby quashed and set aside.

18. The Petitioner to remain present on **02.09.2024** at **11:00 a.m.** before the Sub Registrar's Office, Kurla-4, Mumbai, for registration of the document along with the Original Deed of conveyance. The Registration Authority to complete exercise of registration of the document within a period of 8 weeks from today.

19. The Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]