



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10602 OF 2016

Uma Niwas Co-Operative Housing
Society Ltd. A society registered
under Maharashtra Co-operative
Societies Act, 1960 bearing
Registration No.TNA-HSG 1007,
Through its Ex-Chairman
Mr. S.M. Kale, having address at
Flat No.14, Ground Floor, Uma Niwas
CHS Ltd., Ram Maruti Cross Road No.1,
Naupada, Thane (W) – 400 602

...Petitioner

Versus

1. The Collector of Stamps,
Thane (City), having address
at 4th Floor, Room No.406,
Thane District Collector Office
Building, Thane (W)
 2. Deputy Inspector General of Registration
and Deputy Stamp Controller, Konkan
Division, Thane having address 7th
Floor, Charai Telephone Exchange,
Mavali Mandal Road, Dhobi Ali,
Thane (W) – 400 601
 3. Sharli Jayvant Vaishampayan,
Age: 65 years old, Occ: Retired,
Add: 601, 6th Floor, Girivihar Society,
Ram Maruti Cross Road No.1,
Near Rajmata Vadapav, Naupada,
Thane (West) – 400 602
 4. Uday Kale,
Age: Adult, Occ: Retired,
Uma Niwas CHS Ltd., Ram
Maruti Cross Road No.1,
Naupada, Thane (West) – 400 602.
- ...Respondents

Mr. K. S. Dewal and Mr. Sham Thakur for Petitioner.

Ms. Kavita N. Solunke, AGP for Respondent Nos.1 and 2.
Ms. Sulajja Patil for Respondent Nos.3 and 4.
Mr. Anil Mane, Officer of Respondent Nos.1 and 2 present.

CORAM : JITENDRA JAIN, J.

DATED : 3rd OCTOBER 2024

ORAL JUDGMENT:

1. This petition under Article 226 of the Constitution of India seeks to challenge orders dated 2nd May 2016 and 16th July 2016 passed by Respondent Nos.1 and 2, whereby demand of deficit stamp duty with respect to Flat Nos.320 and 218 in the Petitioner's Society has been raised. The effect of this demand is on the right of the Petitioner to obtain deemed conveyance in their favour and, therefore, present petition is filed by Petitioner-Society.

2. The Petitioner is a Tenant Co-Partnership Housing Society Limited registered under the Maharashtra Co-operative Societies Act, 1960 vide certificate of registration dated 14th June 1978. On 11th February 2014, the Competent Authority allowed the application of Petitioner for grant of deemed conveyance in favour of the Petitioner. Pursuant to the said order, Petitioner was required to comply with certain formalities with the Registrar of the Co-operative Societies. The said Registrar requested Petitioner to seek the opinion of Respondent No.1-Collector of Stamps on the stamp duty payable on the deemed conveyance deed which have to be registered in favour of Petitioner.

Petitioner accordingly approached Respondent No.1 alongwith draft Conveyance Deed and produced all the documents required for determination of stamp duty payable on the deemed conveyance.

3. On 28th September 2015, Respondent No.1 passed an interim order arriving at deficit stamp duty with respect to Flat Nos.218 and 320 amounting to Rs.1,61,940/- and Rs.1,86,080/- respectively. The said interim order merged with the final order dated 2nd May 2016 and the deficit stamp duty with respect to document relating to Flat No.218 was calculated at Rs.25,150/- and with regard to Flat No.320 was calculated at Rs.1,90,040/-.

4. Against the interim order dated 28th September 2015, an appeal was filed by the Petitioner with Respondent No.2 who dismissed the appeal on the ground that the issue raised by the Petitioner is not within the scope of Section 32B of the Bombay Stamp Act, 1958 (now Maharashtra Stamp Act) and further observed that the Petitioner ought to have approached the Chief Controlling Revenue Authority in respect of his grievance.

5. It is on this backdrop that the Petitioner is before this Court challenging the orders dated 2nd May 2016 and 16th July 2016.

6. Mr. Dewal, learned counsel for the Petitioner submitted that the effect of the impugned communication and order is that the

Petitioner would be deprived of the deemed conveyance and furthermore Respondent Nos.3 and 4 are also members of Petitioner and, therefore, they are entitled to challenge the impugned orders in the present petition. Mr. Dewal further submitted that the owners of Flat Nos.218 and 320 would make the payment to the Petitioner's Society and who in turn would make the payment to Respondent Nos.1 and 2 if the petition is dismissed.

7. At the outset, Mr. Dewal submitted that insofar as demand in relation to Flat No.218 is concerned, the amount involved is only Rs.25,150/- which Respondent No.4 has already paid and he has instruction not to press for the same on account of smallness of the amount. However, with respect to the demand in relation to Flat No.320 is concerned, he submitted that the document, in relation to the said flat, of 1989 was subject matter of Amnesty Scheme and full stamp duty of Rs.7,060/- was paid in 1995. The acknowledgement of the payment and the certificate issued by Collector of Stamps, Thane is annexed at page 45 of the petition and the relevant extracts are reproduced herein under :-

“Certified u/s. 41 of the Bombay Stamp Act, 1958 that the full stamp duty of Rs.7,060/- (Seven thousand sixty) only has been paid in respect of this Instrument.

Subject to the provision of Sec. 53A of Bombay Stamp Act, 1958.”

8. Mr. Dewal submitted that this certificate was issued on 2nd March 1995 and was subject to Section 53A of the Bombay Stamp Act. Section 53A provides for time limit of 6 years for raising the demand on account of deficit stamp duty. He submits that the impugned order raising demand is passed in the year 2015 (interim) and 2016 (final) which beyond the period of 6 years from the date of this certificate and, therefore, the demand is barred by limitation.

9. Ms. Solunke, learned AGP for Respondent Nos.1 and 2 justified the impugned orders on the ground that since the 1989 agreement was not registered, the authorities were justified in taking the value of the flat prevailing during the year 2015/2016 and arrived at a deficit stamp duty. Ms. Solunke, therefore submitted that the present petition is required to be dismissed on this count itself. Ms. Solunke further supported the impugned orders on the ground that Petitioner came for determination of stamp duty on the deemed conveyance and the demand has been raised by the authorities on the documents which are incidental to the grant of deemed conveyance. Ms. Solunke also relied upon proviso to Article 25(1)(b) of the Maharashtra Stamp Act which reads as under in support of her submission :-

‘Article 25(1)(b) of the Maharashtra Stamp Act-

[Provided also that where proper stamp duty is paid on a registered agreement to sell an immovable property, treating it as a deemed conveyance and subsequently a conveyance deed is executed

without any modification then such a conveyance shall be treated as other instrument under Section 4 and the duty of one hundred rupees shall be charged.]”

10. I have learned counsel for the Petitioner and the Respondents.

11. The only issue which arises for my consideration is with respect to deficit stamp duty payable with respect to 1989 agreement of Flat No.320. Admittedly, 1989 document of Flat No.320 was subject matter of Amnesty Scheme and Respondent No.3 had paid duty of Rs.7,060/-. The certificate issued at page 45 states that the full stamp duty has been paid under Section 41 of the Stamp Act in respect of this 1989 Instrument. However, the said certificate is subject to the provisions of Section 53A of Bombay Stamp Act, 1958.

12. Section 53A(1) of the Bombay Stamp Act, 1958 reads as under:-

“53A(1). Revision of Collector’s decision under Sections 32, 39 and 41

(1) Notwithstanding anything contained in sub-section (3) of section 32, sub-section (2) of section 39 and sub-section (2) of section 41, when through mistake or otherwise any instruments is charged with less duty than leviable thereon, or is held not chargeable with duty, as the case may be, by the Collector, the Chief Controlling Revenue Authority may, within a period of six years from the date of certificate of the Collector under sections 32, 39 or 41, as the case may be, require the concerned party to produce before him the instrument and, after giving reasonable opportunity of being heard to the party, examine such instrument whether any duty is chargeable or any duty is less levied, thereon and order the recovery of the deficit duty, if any, from the concerned party. An endorsement shall be made on the instrument after payment of such deficit duty.”

13. Section 53A empowers revision of Collector's decision under Section 41 within a period of 6 years from the date of certificate of the Collector under Section 41 for raising the demand on account of deficit stamp. In the instant case, the certificate issued under Section 41 is dated 2nd March 1995 and the period of 6 years had expired on 1st March 2001. The impugned order raising the demand (interim) is dated 2nd July 2015 and (final) is dated 2nd May 2016. Both these communications of 2015 and 2016 would be beyond the year 2001 and, therefore, on this count itself the orders passed on 28th September 2015 and 2nd May 2016 raising demand of deficit stamp duty payable with respect to Flat No.320 is required to be quashed and set aside.

14. Petitioner has also raised the ground that the Appellate Authority was not justified in holding that the appeal is not maintainable. However, he did not press for the same, at the time of hearing and in any case the petition is of the year 2016 and has remained in this Court for a period of 8 years. Therefore, even on this count, I am not adjudicating the issue of maintainability of the appeal before the Appellate Authority.

15. In my view, reliance placed by Respondent Nos.1 and 2 on the proviso to Article 25(1)(b) of Schedule-I to the Stamp Act is not applicable to the facts of the present case. The said proviso was added in the year 2013 and it states that where proper stamp duty is paid on a

registered agreement to sell an immovable property, treating it as a deemed conveyance and subsequently a conveyance deed is executed without any modification then the duty chargeable on subsequent instrument is of Rs.100/-. This Court fails to understand as to how this proviso would be applicable to the facts of the present case where only dispute is with respect to the time limit within which the demand for deficit stamp duty could have been raised. Therefore, reliance placed by Ms. Solunke on the said proviso is misconceived.

16. The submission of Respondent Nos.1 and 2 that basis of impugned action challenged is non-payment of deficit stamp duty with respect to Flat No.218 and Flat No.320 and, therefore, the same is incidental document and not on main deemed conveyance is to be rejected. The submissions of Ms. Solunke that provisions of Section 53A are not applicable is contrary to the certificate issued Amnesty Scheme which states that stamp duty paid is subject to Section 53A of the Stamp Act. In any case, even if provisions of Section 53A is held to be not applicable then also raising demand of deficit stamp duty after period of 20 years (2015-1995) cannot be said to be reasonable period for raising demand looking at the scheme of the Stamp Act.

17. I make it clear that only issue which has been adjudicated upon in this petition is the demand of stamp duty and nothing has been said on registration issue.

18. In view of above, I pass the following order :-

ORDER

(i) Petition is made absolute in terms of prayer clause (a)

which reads as under :-

(a) This Hon'ble Court be pleased to issue a Writ of Certiorari and/or any other writ/order/direction in the nature of Certiorari, thereby quashing and setting aside the impugned orders dtd. 2nd May 2016 and 16th July 2016 passed by the Respondent Nos.1 and 2 respectively.

(ii) Petitioner, pursuant to order dated 3rd October 2016 has deposited a sum of Rs.2,24,090/- with this Court. Registry is directed to refund of Rs.1,90,040/- to Petitioner alongwith interest, if any, accruing thereon if the amounts were deposited in fixed deposit by the Registry. Balance amount being Rs.25,150+Rs.8,550=Rs.33,950/-, if any, would be paid to Respondent Nos.1 and 2 being in regard to Flat No.218, alongwith interest, if any, accrued on same, if any, fixed deposit has been made by the Registry.

19. Petition disposed.

[JITENDRA JAIN, J.]