

Bombay High Court

M/S. Sandeep Dwellers Private ... vs The State Of Maharashtra, Through ... on 5 May, 2022

Bench: S.B. Shukre, Mukulika Shrikant Jawalkar

1

wp3622.2021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3622/2021

M/s. Sandeep Dwellers Private Limited,
through its Director, Mr. Gaurav Agrawal,
having office at 3-C, "Gulmohar", Temple
Road, Civil Lines, Nagpur - 440 001. ... Petitioner
- Versus -

1. The State of Maharashtra,
through Hon'ble Principal Secretary,
the Ministry of Revenue and Forest
Department, Mantralaya,
Mumbai - 400 032.
2. The Inspector General of Registration and
Collector of Stamps, Ground Floor, Opposite
Vidhan Bhavan (Council Hall),
New Administrative Building Pune,
Maharashtra.
3. The Joint District Registrar (Class-1)
Cum Collector of Stamps, New
Administrative Building No.2,
A-Wing, Third Floor, Civil Lines,
Nagpur, Nagpur 440 001. ... Respondents

Mr. Kartik N. Shukul, Advocate for the petitioner.
Mr. N.R. Patil, Assistant Government Pleader for
respondent Nos.1 to 3.

2

wp3622.2021

CORAM : SUNIL B. SHUKRE AND
SMT. M.S. JAWALKAR, JJ.

DATE OF RESERVING JUDGMENT : 27 APRIL 2022
DATE OF PRONOUNCING JUDGMENT : 05 MAY 2022

JUDGMENT (Per Sunil B. Shukre, J.)

Heard. Rule. Rule made returnable forthwith. Heard finally by consent.

2. The petitioner is a company carrying on business of construction of buildings in and around Nagpur. The petitioner had entered into three development agreements on 28.12.2020, 31.12.2020 and 31.12.2020, which were registered on 10.02.2021, 16.01.2021 and 29.06.2021 respectively. Before execution of the development agreements, the petitioner made an application under Section 31 of the Maharashtra Stamp Act, 1958 (for short "Stamp Act") for adjudicating upon the stamp duty chargeable on the development agreements. It was the contention 3 wp3622.2021 of the petitioner that since the development agreements were covered by government notification dated 28.8.2020 issued by Revenue and Forest Department which reduced stamp duty chargeable on conveyance as per Article 25(b) of Schedule I of the Stamp Act, the development agreements were liable to be charged with lesser stamp duty. The notification dated 28.8.2020 had reduced the stamp duty chargeable on conveyance under Article 25(b) by two per cent for the period between 1st September 2020 to 31st December 2020 and by one and half per cent for the period from 1st January 2021 to 31st March 2021. This contention of the petitioner, however, was not accepted by respondent No.3 and by his order passed on 18.12.2020, respondent No.3 held that full stamp duty as is prescribed under Article 5(g-a) read with Article 25(b)(i), Schedule I of the Stamp Act would have to be paid by the petitioner. The petitioner abided by the adjudication and went ahead to execute the agreements on the dates mentioned earlier. They were also eventually registered as stated earlier.

4 wp3622.2021

3. By this petition, the petitioner is questioning the legality and correctness of the impugned order dated 18.12.2020 passed by respondent No.3 and is also claiming refund of the amount of Rs.23,03,810/- which the petitioner maintains to have been paid by it in excess of the requirement of law. The petitioner is also claiming interest at the rate of 18% per annum on the said amount.

4. Learned counsel for the petitioner submits that case of the petitioner is squarely covered by the notification dated 28.08.2020 and, therefore, respondent No.3 had no right to levy more stamp duty than three per cent of the market value of the property. He submits that as defined under Section 2(g), the development agreement is a conveyance and the stamp duty payable in respect of a development agreement is same as is leviable on a conveyance under clause (b) or (c) as the case may be of Article 25 read with under Article 5(g-a)(i) of Schedule I of the Stamp Act. In order to offer justification to such submission, he 5 wp3622.2021 has taken us through the notification dated 28.08.2020 and provisions made in Section 2(g), Article 5(g-a)(i) and Article 25, Schedule I of the Stamp Act.

5. Learned Assistant Government Pleader for the respondents submits that though the provisions made in law, as pointed out by learned counsel for the petitioner and the concession given vide notification dated 28.8.2020 are a matter of record, it is also a matter of record that the petitioner has paid the stamp duty which was adjudicated upon by respondent No.3 as per his order dated 18.12.2020 and, therefore, now petitioner cannot ask for the refund of stamp duty, which it states it has paid in excess.

6. In order to understand the rival arguments, it would be necessary for us to first deal with the provisions made in the notification dated 28.8.2020 and also in law, which have been relied upon by learned counsel for the petitioner.

6 wp3622.2021

7. Notification dated 28.8.2020 reads as follows:-

"NOTIFICATION MAHARASHTRA STAMP ACT.

No.Mudrank-2020/C.R.136/M-1(Policy) - In exercise of the powers conferred by clause (a) of section 9 of the Maharashtra Stamp Act (LX of 1958) (hereinafter referred to as "the said Act"), the Government of Maharashtra, being satisfied that it is necessary to do so in the public interest, hereby reduces the stamp duty by Two per cent. for the period starting from 1st September 2020 and ending on 31st December 2020 and by One and Half per cent. for the period starting from 1st January 2021 and ending on 31st March 2021, as otherwise chargeable under clause (b) of Article 25 of Schedule-I appended to the said Act, on the instrument of Conveyance or Agreement to Sell of any immovable property."

8. It would be clear from the above notification that for the period from 1st September 2020 and the period ending on 31st December 2020, there is a reduction of stamp duty payable on the instrument of conveyance or agreement to sell in respect of any immovable property, which is chargeable under clause (b) of Article 25 by two percent. It would also be clear that for the period starting from 1st January 2021 and the period ending on 7 wp3622.2021 31st March 2021, the stamp duty chargeable on these very instruments as per Article 25(b), Schedule I of the Stamp Act, is reduced by one and half percent.

9. Now, in order to understand as to how much stamp duty is originally chargeable on conveyance or agreement to sell under Article 25(b) of Schedule I of the Stamp Act, let us consider the provisions made thereunder. The relevant portion of Article 25 is extracted as below:-

Description of Instrument Proper Stamp Duty

25. CONVEYANCE (Not being a transfer charged or exempted under Article 59)-

On the 1[true market value] of the property which is the subject matter of the Conveyance, -

[(a) if relating to movable property 3 per cent. of the market value of the property;] 1 These words were substituted by the words "market value" by Mah. 9 of 1988, s.38(c), (w.e.f. 17-3-1988).

2 Clause (a) was substituted by Mah. Act No.20 of 2015, s.20(16), (w.e.f. 24-4-2015).

(b) If relating to immovable property situated, -	
(i) Within the limits of any Municipal Corporation or any Cantonment area annexed to it or any urban area not mentioned in sub-clause (ii).	5 per cent. of the market value of the property

10. So, the stamp duty chargeable on conveyance which includes an agreement to sell in respect of any immovable property is originally chargeable at the rate of five per cent of the market value of the property in terms of Article 25(b).

According to the notification dated 28.8.2020, this stamp duty has been reduced to three per cent in respect of instrument of conveyance or agreement to sell executed between the period from 1st September 2020 to 31st December 2020. This stamp duty has been reduced to three and half per cent in respect of instrument of conveyance or agreement to sell in respect of any immovable property which are executed between 1st January 2021 to 31st March 2021.

3 Sub-clause (b) substituted by Mah. Tax Laws (Levy, Amendment and Validation) Act, 2012, Mah. 8 of 2012, s.2(c)(i) (w.e.f. 25-4-2012).

9 wp3622.2021

11. Now, the question is whether the development agreements executed by the petitioner on 28.12.2020, 31.12.2020 and 31.12.2020 would fall within the definition of conveyance which is chargeable with stamp duty as per Article 25(b) or not. To answer the question, we would first consider the development agreements in question and then relevant provisions of law, which are contained in Section 2(g) and Article 5(g-a)(i) of Schedule I of the Stamp Act.

12. The development agreements have been filed on record of the case. On going through the development agreements, one can see that they have been entered into between owners of the immovable property in question and the petitioner and that they create various rights in respect of immovable property which is the subject matter of each of these development agreements. By these agreements, the owners and developer i.e. petitioner have agreed for development jointly of immovable property mentioned in each of the agreements. They further show that parties thereto 10 wp3622.2021 have agreed to share the built up area with 25% of built up area going to the owners jointly and remaining 75% of the built up area being owned by developer i.e. the petitioner. There are also other rights and liabilities created in favour of and against the petitioner which are akin to transfer of immovable property to the petitioner by the owners and, therefore, in our considered opinion, the development agreements are conveyances within the meaning of definition of

conveyance as given in Section 2(g) of the Stamp Act. For the sake of convenience Section 2(g) is reproduced below:-

" Section 2 Definitions.

.....

[(g) "Conveyance" includes, -
(i) a conveyance on sale,
(ii) every instrument, 5(x)

(iii) every decree or final order of any Civil Court,

(iv) every order made by the High Court under section 394 of the Companies Act, 1956 or every order made by the National Company Law Tribunal under sections 230 to 234 of the Companies Act, 2013 or every confirmation issued by the Central Government under sub-section (3) of section 233 of the Companies Act, 2013, in respect of the amalgamation, merger, demerger, arrangement or reconstruction of companies (including subsidiaries of 4 Clause (g) was substituted for the original by Mah. 27 of 1985, s.2(c), (w.e.f. 10-12-1985) 5 Word 'and' was deleted by Mah. 17 of 1993, s.(a)(i) (w.e.f. 1-5-1993).

11 wp3622.2021 parent company); and every order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949, in respect of amalgamation or reconstruction of Banking Companies and every order made by the Board or Industrial and Financial Reconstruction under section 18 or 19 of the Sick Industrial Companies (Special Provisions) Act, 1985, in respect of sanction of Scheme specified therein or every order made by the National Company Law Tribunal under section 31 of the Insolvency and Bankruptcy Code, 2016, in respect of approval of resolution plan.

by which property, whether movable or immovable, or any estate or interest in any property is transferred to, or vested in, any other person, inter vivos, and which is not otherwise specifically provided for by Schedule I;

Explanation. - An instrument whereby a co-owner of any property transfers his interest to another co-owner of the property and which is not an instrument of partition, shall, for the purposes of this clause, be deemed to be an instrument by which property is transferred inter vivos;]"

13. It would be seen that even an instrument by which any property whether movable or immovable, or any interest or interest in any property is transferred, inter vivos, to, or vested in any other person and which is not otherwise specifically provided for by Schedule I, would be a conveyance. Development agreement is provided for in Article 5(g-a)(i) of Schedule I of the 12 wp3622.2021 Stamp Act. But, the duty on the development agreement is the same as is chargeable under Article 25 of Schedule I of the Stamp Act. In order to have clarity on this issue, Article 5(g-a)(i) of Schedule I is reproduced thus:-

Description of Instrument Proper Stamp Duty [(g-a) 2[(i) if relating to 3 [The same duty as is leviable on a giving authority of power Conveyance under clauses (b) 4[or to a promoter or a (c)], as the case may be, of Article developer, by whatever 25, on the market value of the name called, for property;] construction on, development of or, sale or transfer (in any manner whatsoever) of, any immovable property. Provided that, the provisions of section 32A shall, mutatis mutandis, apply to such agreement, records thereof or memorandum, as they apply to an instrument under that section;

Provided further that, if the proper stamp duty is paid under clause (g) of article 48 on a power of attorney executed between the same parties in respect of the same property then, the stamp duty under this article shall be one hundred rupees].

1 Clause (g-a) was inserted Mah. 9 of 1997, and deemed to have been inserted s.14(2) (w.e.f. 7-2-1990) 2 Re-numbered by Mah.32 of 2005, S.5 (w.e.f.7-5-2005) 3 This portion was substituted "Five rupees for every five hundred rupees or part thereof of the market value of the property", by Mah.16 of 2008, s. 2(a)(i) (w.e.f.5-6-2008) 4 These brackets, letters and word substituted for the brackets, letters and words "(c) or (d)" by Mah. Tax Laws (Levy, Amendment and Validation) Act, 2012, Mah. 8 of 2012, s.2(a) (w.e.f.

25-4-2012)

13

wp3622.2021

14 So, even though a development agreement has been

provided for specifically under Article 5(g-a)(i) of Schedule I, ultimately the stamp duty payable on the development agreement is as per the duty payable on a conveyance under Article 25 and, therefore, development agreement would have to be treated at par with an instrument of conveyance and hence it is an instrument which is squarely covered by the notification dated 28.8.2020. It then follows that all the three development agreements having been executed between 1st September 2020 and 31st December 2020, would be covered by first part of concession given in the notification dated 28.8.2020 and so would be eligible for reduced stamp duty to the extent of two per cent. These agreements may have been registered later but it is the date of their execution and not the registration, which is relevant for calculation of stamp duty and, therefore, these agreements would fall under the first part of the concession given in the notification dated 28.8.2020.

15. In view of the above, we find that the impugned order dated 18.12.2020 is illegal and would have to be quashed and set aside.

14 wp3622.2021 Of course, the petitioner has complied with the order dated 18.12.2020 but, that would not defeat something which is given to the petitioner as a matter of right. The notification dated 28.8.2020 creates a right in those parties who have executed instrument of conveyance or agreement of sale in respect of any immovable property between the periods mentioned in the notification. In fact, there is also a letter issued to all the Collectors of Stamps by Inspector General of Registration and Controller of Stamps, State of Maharashtra, Pune instructing them to abide by

the notification dated 28.8.2020. This communication further confirms the fact that the notification dated 28.8.2020 is mandatory in law and that means, it creates indefeasible right in parties to claim the benefits flowing from it. Therefore, the argument that after having complied with the impugned order, the petitioner has waived it's right to claim any refund of the amount of the excess stamp duty paid by the petitioner canvassed on behalf of the respondents holds no water and it is rejected. The petitioner has claimed, apart from refund of 15 wp3622.2021 the stamp duty paid in excess, interest at the rate of 18% per annum on the excess payment of stamp duty. However, no interest can be granted to the petitioner as the application of notification dated 28.8.2020 depends upon interpretation of provisions of law and position of law has become clear only now.

16. In the result, the petition is partly allowed. The impugned order is quashed and set aside. The respondent No.3 is directed to refund the stamp duty to the petitioner, paid in excess of the duty which was required to be paid in respect of each of the three development agreements dated 28.12.2020, 31.12.2020 and 31.12.2020 at the rate stated in the notification dated 28.8.2020, bearing in mind the findings recorded hereinabove, within a period of eight weeks from the date of the judgment. The prayer for grant of interest is rejected.

17. Rule is made absolute in the above terms. No costs.

(SMT. M.S. JAWALKAR, J.) (SUNIL B. SHUKRE, J.) Tambaskar.

Signed By:NILESH VILASRAO TAMBASKAR Private Secretary Signing Date:05.05.2022 15:10