LAND AND PROPERTY JUDGEMENTS

2024(2)MLPJ451

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before Dipankar Datta; Prashant Kumar Mishra]

Civil Appeal No. 8343 of 2024 **dated 27/09/2024**

Cooperative Bank Ltd

Versus

State of Maharashtra and Ors

AUCTION SALE CHALLENGE

Constitution of India Art. 142 - Maharashtra Co-Operative Societies Act, 1960 Sec. 102, Sec. 91, Sec. 105 - Auction Sale Challenge - Appellant Cooperative Bank Ltd. challenged an auction sale of immovable property of a cooperative society under liquidation - Main contentions included undervaluation of the property and improper auction procedure - High Court dismissed the writ petition, finding no mala fides or violation of legal procedures, affirming that three bidders had participated in the auction process - Supreme Court noted that while procedural irregularities may exist, appellant's delay in challenging the auction and lack of timely objections weakened its case - Invoking powers under Article 142 of the Constitution, Supreme Court directed respondent No.6 to pay appellant a sum towards full settlement, while upholding the auction sale - Appeal Dismissed

Law Point: Delay in challenging auction process, combined with lack of timely objections, diminishes the possibility of relief in court despite potential procedural irregularities.

Acts Referred:

Constitution of India Art. 142

Maharashtra Co-Operative Societies Act, 1960 Sec. 102, Sec. 91, Sec. 105

JUDGEMENT

Dipankar Datta, J.- [1] The CHALLENGE

1. Ahmednagar District Central Cooperative Bank Limited [appellant, hereafter] is in appeal, challenging the judgment and order dated 23rd November, 2017 [impugned judgment, hereafter] of the High Court of Judicature at Bombay, Bench at Aurangabad [High Court, hereafter] dismissing its writ petition [Writ Petition No. 10866 of 2016]. Under challenge in the writ petition was an auction sale pertaining to the immovable property of Mula Sahakari Soot Girni Ltd., Rahuri [society, hereafter]. The challenge

was primarily based on twin grounds: (i) that valuation of the property of the society (under liquidation) and the upset price were fixed on the lower side; and (ii) that three bidders had not participated in the auction sale. The High Court did not find substance in any of these two grounds. Incidentally, the High Court recorded that no mala fide could be attributed in respect of the questioned auction sale and that the auction purchaser was not a private individual but a body established under the statute, i.e., the Agricultural Produce Market Committee, Rahuri [respondent no. 6, hereafter].

THE FACTS

[2] The basic facts leading to the questioned auction sale before the High Court are not in dispute.

[3] The appellant sanctioned cash credit loan of Rs 95 lakh to the society. Default in liquidating the debt having occurred, the appellant lodged a dispute case [Dispute Case No.389 of 2001] on 7th March, 2001 before the Registrar of Cooperative Societies, Maharashtra under section 91 of the Maharashtra Cooperative Societies Act, 1960 [the 1960 Act, hereafter] for recovery of Rs 1,05,98,710/-. The dispute case stood allowed and vide an award dated 24th June, 2011, the appellant was held entitled to recover Rs 1,05,98,710/- with interest @ 17.5% per annum with effect from 1st October, 2000 from the society.

[4] In liquidation proceedings which had started in the meanwhile, initially an interim order dated 3rd April, 2002 was passed calling upon the society to submit its say/explanation within the period stipulated as to why an order of dissolution should not be made. Thereafter, a final order dated 31st August, 2005 was passed by the Additional Registrar in terms of section 102 of the 1960 Act read with certain Government notifications referred to therein directing winding up of the society. The District Collector, Ahmednagar was appointed as the Liquidator of the society and he was directed to take action under section 105 of the 1960 Act and the rules framed thereunder. The final report was directed to be filed within a year to the Directorate of Textile Industry for acceptance.

[5] The appellant had attached the immovable property of the society and obtained a valuation of a Government approved valuer on 21st January, 2012. The property of the society was valued at Rs 4.10 crore as on 21st January, 2012.

[6] Auction sale notice dated 24th August, 2013 was issued by the appellant for sale of the property with upset price of Rs 4.10 crore. The respondent no.6 expressed interest and submitted its bid together with earnest money of Rs 25 lakh. The sale process, however, could not materialize since no other bid was received. This resulted in the respondent no.6 backing out from the auction process and requesting the appellant to return the earnest money of Rs 25 lakh.

[7] Because of the failure of the appellant to sell the property by an auction, it submitted a claim before the Liquidator by letters dated 30th June, 2015, 5 th September, 2015 and 2 nd March, 2016. By July, 2016, the amount recoverable by the

appellant from the debtor had swelled to Rs 3,95,08,840/-. However, allegedly, no response was received.

[8] While the events as aforesaid were unfolding, a pending writ petition [Writ Petition No. 610 of 2001] before the High Court in respect of the liquidation process of the society and for directions to pay the employees thereof their legitimate dues had come up for consideration. On such writ petition, an order was made by the High Court on 9th June, 2015 directing the Liquidator and the Registrar of Cooperative Societies to take effective steps for sale of the property of the society within 6 (six) months. It was also observed by the High Court that the amount received from the sale of the property of the society would be distributed amongst the creditors as per law.

[9] Consequent upon the order dated 9th June, 2015, fresh valuation of the property was undertaken through the Sub-Registrar, Rahuri, Dist. Ahmednagar. He valued the property to the tune of Rs 87,33,200/- [paragraph 12 of the counter affidavit before the High Court]. From the same paragraph, it appears that the Liquidator also "obtained the valuation of the property from the open market, which was come to the tune of Rs 2,47,48,000/-". The Director of Handlooms and Textile [respondent No. 2] granted permission on 1st December, 2015 to the Liquidator to proceed with the e-tender process.

[10] On 12th February, 2016, the Liquidator issued e-auction notice in a daily newspaper and invited offers stipulating 14th March, 2016 as the date for holding of auction.

[11] On 2nd March, 2016, the appellant informed the District Sub Registrar, Cooperative Societies, Ahmednagar specifying the liability of the society in a sum of Rs 3,78,82,837/- as on 31st January, 2016 with interest @ 17.5%. A request was made by the appellant that the sale price received through e-auction be credited in its account. It is of great significance to note that the appellant even in this letter dated 2 nd March, 2016 did not object to the property, put up for auction sale, being valued at Rs 2,47,48,000/-, though it is presumed to have notice of the e-auction notice 12th February, 2016 by that date.

[12] Although, 14th March, 2016 was the date fixed for holding of auction as per the e-auction notice dated 12th February, 2016, holding of the auction was postponed first to 7th April, 2016, secondly to 19th May, 2016 and thirdly to 25th May, 2016. It was on 25th May, 2016, finally, that auction was held and in such process the respondent no.6 emerged as the highest bidder having offered a bid of Rs 2,51,48,000/. Ultimately, by following further processes, the property of the society was sold and transfer effected in favour of the respondent no.6.

[13] Even after the auction sale was conducted on 25th May, 2016, the appellant did not immediately question the sale before the High Court. Till the writ petition was ultimately filed on 19th August, 2016, the appellant was engaged in obtaining information. Only when it derived firm and specific information that the name of the

respondent no.6 had not been entered in the revenue records (7/12 extract) and that possession not taken over by the respondent no.6, the appellant invoked the writ jurisdiction of the High Court seeking inter alia the following relief:

A. to declare the e-auction notice dated 12th February, 2016 as well as the auction sale in favour of the respondent no. 6 as illegal and arbitrary, and to quash the same.

B. to sell the property of the society by mentioning upset price of Rs 4.28 crore by taking further steps in that regard. The outcome of the appellant's writ petition has been noted at the beginning of this judgment and is, thus, not repeated.

APPELLANT'S CONTENTIONS

[14] Mr. Hansaria, learned senior counsel for the appellant, contended that the Government approved valuer appointed by the appellant having valued the property at Rs 4.10 crore in 2013, the subsequent valuations of the same property by the office of the Sub-Registrar, Rahuri at Rs 87,33,200/- followed by valuation obtained by the Liquidator from the open market to the tune of Rs 2,47,48,000/- are incomprehensible and unacceptable. According to him, in present times, price of an immovable property with passage of time is bound to increase and it was in defiance of all logic and reasons that the property of the society could be valued at Rs 2,47,48,000/- and put up for auction sale. Even in 2016, the valuation of the property of the society undertaken by the appellant showed an accretion. It is in such circumstances, he contended, that the appellant has a genuine grievance of the property put up for auction sale not being appropriately valued and that, in fact, there was gross undervaluation.

[15] It was next contended by Mr. Hansaria that the procedure prescribed by the 1960 Act was not substantially followed by the Liquidator while inviting offers from interested buyers so as to ensure that the best price could be fetched. Our attention was drawn to several corrigenda that were issued postponing the dates of auction from time to time. It was contended that all such corrigenda, including corrigendum 5 specifying 25th May, 2016 as the date of auction, were not published in any newspaper. Consequent thereto, there was no adequate publication of the date for holding auction and only two bidders participated whereas the requirement of law is for participation by a minimum of three bidders.

[16] Mr. Hansaria further contended that the High Court erred in returning a finding that the entire process of auction sale of the property of the society culminating in purchase thereof by the respondent no. 6 did not suffer from the taint of mala fide. None of the several corrigenda was published in the newspapers; what the Liquidator did was to display the notice on the website. This resulted in a large cross-section of interested buyers being kept away from the auction process. Since the respondent no. 6 was aware of the auction process right from 2013 and had expressed interest to participate pursuant to the sale notice dated 24 th August, 2013, where the valuation of the property was mentioned as Rs 4.10 crore, it stands to reason that the respondent no. 6 even in 2013 was willing to offer a bid nearabout Rs 4 crore; or else, it would not

have deposited Rs 25 lakh as earnest money deposit. The officers in the relevant department of the Government of Maharashtra devised a plan to ensure that the property of the society is ultimately sold to the respondent no. 6 and that seems to be the clear reason why the procedure prescribed in the 1960 Act was given a complete go-bye. Malice in law was writ large which, according to him, the High Court failed to notice.

[17] Finally, Mr. Hansaria submitted that though the property of the society was sold for a paltry amount of Rs 2,51,48,000/-, the appellant has not received a single penny towards liquidation of the debt and its dues quantified, as on 23rd July, 2024, are in excess of Rs 5 crore.

[18] Mr. Hansaria, while relying on certain decisions of this Court (which have emphasised the need for strict compliance of the procedures for auction sale) prayed that the sale in favour of the respondent no. 6 be declared null and void and a direction be issued for fresh auction of the property of the society by open sale.

CONTENTIONS OF THE RESPONDENTS

[19] Mr. Varma, learned counsel represented the State of Maharashtra and its officers being the official respondents. He contended that there was no irregularity, far less any illegality, in the process of sale undertaken pursuant to the order of the High Court dated 9th June, 2015 as well as the prior order permitting the property to be put up for auction sale.

[20] It was contended by Mr. Varma that it is incorrect to suggest that only two bidders participated in the auction sale. Pursuant to the auction sale notice, 3 (three) bidders had expressed interest to participate and had made deposits towards earnest money. However, finally, two of the said three bidders turned up at the auction. In all fairness, the officers of the Government cannot be blamed if any particular buyer, despite showing an early interest, does not turn up at the auction to compete with the other interested buyers.

[21] Mr. Varma concluded by submitting that the appeal is without merit and, therefore, liable to be dismissed.

[22] Appearing on behalf of the respondent no.6, Mr. Deshmukh, learned counsel contended that allegations levelled by the appellant of mala fide having vitiated the process of auction are absolutely unfounded. None of the officers of the Government or the Chairman of the respondent no.6 were parties to the writ petition of the appellant eo nomine. Law is well settled that the Courts should be loath to examine allegations of mala fide in the absence of the persons, against whom such an allegation has been made, being arrayed as a respondent by name. According to him, the appellant has become wiser and filed an application for impleadment belatedly to cover up the omission; hence, such application ought to be dismissed in limine.

[23] On merits, Mr. Deshmukh submitted that the respondent no.6 is a creature of a statute and a bona fide purchaser of the property for value. Though the respondent

no.6 was interested to purchase the property and had evoked interest even in 2013 when the appellant had initiated an auction process, the submission advanced on behalf of the appellant that the respondent no.6 was unduly favoured, is absolutely without substance. Respondent no.6 was a willing participant along with others in an open bid process and emerged successful having offered the highest bid. There has been no illegality in selection of the respondent no.6 as the highest bidder and finalising the sale in its favour. That apart, after purchase of the property in 2016, the same has been developed by the respondent no.6 by expending substantial amount of money. It would, therefore, not be fair if the auction sale is upset at this distance of time.

[24] Mr. Deshmukh, thus, joined Mr. Varma in urging that the appeal must be dismissed.

PROCEEDINGS BEFORE THIS COURT

[25] The special leave petition, out of which this appeal arises, was heard by us on 23rd July, 2024. The order passed on that date records, inter alia, that the impleadment application stands disposed of as not pressed. While granting leave and reserving judgment, the State was required to submit within the period indicated in the order break-up of the amounts disbursed in favour of the creditors out of Rs 2,51,48,000/- received as the price of sale. Also, the appellant was required to file details of its outstanding dues.

[26] In deference to the said order dated 23rd July, 2024, the official respondents have filed an application (IA Diary No. 169446 of 2024). Through such application is brought on record a chart (Annexure R1) depicting the amounts disbursed in favour of the creditors and true copies of the bank statement (Annexure R2) of the Liquidator.

[27] Perusal of the application reveals amounts disbursed towards outstanding taxes and Government dues of the society, payments to employees/labours, payment towards remuneration of the Liquidator and cost of liquidation, etc. It is stated therein that Rs 2,34,80,141/- has already been paid to the creditors out of the priority list approved by the Commissioner of Textiles, Nagpur. As on 29th July, 2024, it is only an amount of Rs 29,78,499/- that remains as the balance amount after all the exercises were undertaken for securing payments to various creditors indicated in such chart.

[28] The appellant has also placed on record certain statements of accounts in support of its stand that a sum of Rs 5,28,32,307/- is outstanding from the society towards principal, interest and other costs/charges.

ANALYSIS AND REASONS

[29] Having noted the facts that triggered the writ petition before the High Court at the instance of the appellant as well as the steps taken, post the auction sale, we are tasked to decide whether the justice of the case demands grant of any relief to the appellant and, if so, to what extent.

[30] It could be true that the procedural formalities ordained by the 1960 Act and the rules framed thereunder might not have been followed to the 'T', as contended by

Mr. Hansaria. Nonetheless, it is the appellant which, by its negligence, seems to have allowed the auction process to progress to the extent of finalisation of sale in favour of the respondent no. 6. If indeed valuation of the property of the society suffered from any infirmity, so much so that any reasonable person could form an opinion of the property being undervalued, what has surprised us is the conduct of the appellant in invoking the jurisdiction of the writ court late. Much before the auction took place, the appellant was fairly and squarely aware of the upset price for the auction sale. The appellant, so to say, was sitting on the fence and watching which direction the auction process proceeds. The appellant was seized of the report of a Government approved valuer who valued the property of the society in excess of Rs 4 crore in the year 2013. Since prices of immovable properties seldom decline with passage of time, what was expected of the appellant was to seek interference of the High Court as soon as the auction sale notice dated 12th February, 2016 was published. In its letter dated 2nd March, 2016, the appellant did not object to the valuation. The auction sale notice dated 12th February, 2016 was duly published in the newspapers and did bear reflection of the valuation of the property put up for sale with the upset price, yet, the appellant remained in slumber. It has never been the case of the appellant that it had no notice/knowledge of such notice. We have, thus, failed to comprehend as to what prevented the appellant, if at all it was aggrieved by the undervaluation of the property as shown in the notice, to take immediate recourse to available legal remedies to stall the process. The explanation that the appellant was busy in obtaining information after the auction sale was conducted for launching an attack on the process of sale could be correct on facts but by that, precious time was lost. Law is well-settled that a writ court does not encourage petitions from indolent, tardy and lethargic litigants; the writ court comes to the aid of a litigant who approaches it with promptitude and before accrual of third-party rights. Not having approached the High Court before accrual of a right in favour of the respondent no.6, we hold that on facts and in the circumstances, it was not open to the appellant to question the auction sale process in question after finalisation of the sale in favour of the respondent no.6. That possession of the property had not been taken by the appellant or that its name was not entered in the revenue records are of no significance having regard to the discernible conduct of the appellant in allowing things to drift to its detriment. We are, thus, of the considered opinion that matters which have settled for long ought not to be unsettled.

[31] Be that as it may, it is a fact that the society (as on date the dispute case was allowed) was held liable in a sum of Rs 1,05,98,710/- payable to the appellant with interest @ 17.5% per annum with effect from 1st October, 2000.

[32] In this context, one cannot overlook that the respondent no.6 had expressed interest to purchase the property of the society pursuant to the sale notice dated 24th August, 2013. It clearly suggests that notwithstanding Rs 4.10 crore being shown as the upset price in the advertisement, the respondent no.6 was ready and willing to compete with other interested buyers. Therefore, at least at that stage, the respondent

no.6 was willing to shell out Rs 4.10 crore for purchase of the property. That the bid process did not materialize for lack of adequate number of bidders fortuitously worked to the advantage of the respondent no.6. In the subsequent auction sale process, the respondent no.6 practically purchased the property for a song; and, that too, after a lapse of 3 (three) years. The appellant had placed facts and figures in its rejoinder affidavit filed before the High Court to demonstrate at what price the adjacent and neighbouring properties were disposed of by sale, post 2013. The escalation of price, demonstrated by the appellant, has not surprised us. The respondent no. 6 did not contest such facts and figures, probably because the High Court was not inclined to interfere and did not call for a sur-rejoinder. But merely because the respondent no.6 is a creature of a statute, that would not clothe it with any immunity and to have a property transferred to it at a throw away price. After all, the appellant's status has also to be borne in mind. It is not a private bank but a Co-operative Bank, which has been brought into existence with specific objects and purposes in mind. The interest of the appellant, when its outstanding dues recoverable from the society runs into crores of rupees, cannot be brushed aside and deserves due consideration in order to keep the appellant survive in the banking sector.

CONCLUSION

[33] For a reason different from the one assigned by the High Court, we do not propose to interfere with the sale effected in favour of the respondent no.6 by the Liquidator. To that extent, the impugned judgment of the High Court is upheld.

[34] However, having regard to what we have observed above, we are also of the opinion that it would only be just and fair for us to invoke powers conferred by Article 142 of the Constitution of India. Invoking such power and with a view to do complete justice between the parties, we direct the respondent no.6 to pay to the appellant a sum of Rs 1,05,98,710/- (without interest) towards full and final settlement of the dues of the appellant from the society. Let such sum be paid by the respondent no.6 to the appellant within three months from date, failing which the said sum shall carry simple interest @ 6% per annum till such time the payment is actually made.

[35] As on 29th July, 2024, after clearing the dues of the creditors, an amount of Rs 29,78,499/- is reportedly the balance amount. The Liquidator may disburse such amount to the other creditors, excluding the appellant, as per priority. However, if all other creditors have been paid their dues and none else remains to be paid, the said sum of Rs 29,78,499/- or any part of it may be disbursed in favour of the appellant.

[36] The civil appeal stands disposed of on the aforesaid terms. Parties shall bear their own costs throughout.

[37] Pending applications, if any, shall also stand disposed of

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2024(2)MLPJ459

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before Dipankar Datta; Prashant Kumar Mishra]

Civil Appeal No 8343 of 2024 **dated 27/09/2024**

Ahmednagar District Central Cooperative Bank Ltd

Versus

State of Maharashtra and Ors

AUCTION SALE CHALLENGE

Constitution of India Art. 142 - Maharashtra Co-Operative Societies Act, 1960 Sec. 102, Sec. 91, Sec. 105 - Auction Sale Challenge - Appellant challenged auction sale of society's immovable property - Claimed property was undervalued and auction procedure not properly followed - Respondents argued process was conducted lawfully with three bidders - Court found appellant delayed legal action despite being aware of auction and valuation - Appellant's failure to act promptly allowed auction to proceed and finalization of sale in favor of highest bidder - Although procedural irregularities might exist, Court upheld sale but directed respondent to pay Rs 1,05,98,710 to appellant without interest within three months - Failure to pay would attract 6% interest. - Appeal Partly Allowed

Law Point: Auction processes must be challenged promptly - Delays in raising objections may forfeit rights to contest finalization of sale.

Acts Referred:

Constitution of India Art. 142

Maharashtra Co-Operative Societies Act, 1960 Sec. 102, Sec. 91, Sec. 105

JUDGEMENT

Dipankar Datta, J.- [1] The CHALLENGE

1. Ahmednagar District Central Cooperative Bank Limited [appellant, hereafter] is in appeal, challenging the judgment and order dated 23rd November, 2017 [impugned judgment, hereafter] of the High Court of Judicature at Bombay, Bench at Aurangabad [High Court, hereafter] dismissing its writ petition [Writ Petition No. 10866 of 2016]. Under challenge in the writ petition was an auction sale pertaining to the immovable property of Mula Sahakari Soot Girni Ltd., Rahuri [society, hereafter]. The challenge was primarily based on twin grounds: (i) that valuation of the property of the society (under liquidation) and the upset price were fixed on the lower side; and (ii) that three bidders had not participated in the auction sale. The High Court did not find substance in any of these two grounds. Incidentally, the High Court recorded that no mala fide could be attributed in respect of the questioned auction sale and that the auction

purchaser was not a private individual but a body established under the statute, i.e., the Agricultural Produce Market Committee, Rahuri [respondent no. 6, hereafter].

THE FACTS

[2] The basic facts leading to the questioned auction sale before the High Court are not in dispute.

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A. to declare the e-auction notice dated 12th February, 2016 as well as the auction sale in favour of the respondent no. 6 as illegal and arbitrary, and to quash the same.

B. to sell the property of the society by mentioning upset price of Rs 4.28 crore by taking further steps in that regard. The outcome of the appellant's writ petition has been noted at the beginning of this judgment and is, thus, not repeated.

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[16] Mr. Hansaria further contended that the High Court erred in returning a finding that the entire process of auction sale of the property of the society culminating in purchase thereof by the respondent no. 6 did not suffer from the taint of mala fide. None of the several corrigenda was published in the newspapers; what the Liquidator did was to display the notice on the website. This resulted in a large cross-section of interested buyers being kept away from the auction process. Since the respondent no. 6 was aware of the auction process right from 2013 and had expressed interest to participate pursuant to the sale notice dated 24 th August, 2013, where the valuation of the property was mentioned as Rs 4.10 crore, it stands to reason that the respondent no. 6 even in 2013 was willing to offer a bid nearabout Rs 4 crore; or else, it would not have deposited Rs 25 lakh as earnest money deposit. The officers in the relevant department of the Government of Maharashtra devised a plan to ensure that the property of the society is ultimately sold to the respondent no. 6 and that seems to be the clear reason why the procedure prescribed in the 1960 Act was given a complete go-bye. Malice in law was writ large which, according to him, the High Court failed to notice.

[17] Finally, Mr. Hansaria submitted that though the property of the society was sold for a paltry amount of Rs 2,51,48,000/-, the appellant has not received a single penny towards liquidation of the debt and its dues quantified, as on 23rd July, 2024, are in excess of Rs 5 crore.

[18] Mr. Hansaria, while relying on certain decisions of this Court (which have emphasised the need for strict compliance of the procedures for auction sale) prayed that the sale in favour of the respondent no. 6 be declared null and void and a direction be issued for fresh auction of the property of the society by open sale.

CONTENTIONS OF THE RESPONDENTS

[19] Mr. Varma, learned counsel represented the State of Maharashtra and its officers being the official respondents. He contended that there was no irregularity, far less any illegality, in the process of sale undertaken pursuant to the order of the High Court dated 9th June, 2015 as well as the prior order permitting the property to be put up for auction sale.

[20] It was contended by Mr. Varma that it is incorrect to suggest that only two bidders participated in the auction sale. Pursuant to the auction sale notice, 3 (three) bidders had expressed interest to participate and had made deposits towards earnest money. However, finally, two of the said three bidders turned up at the auction. In all fairness, the officers of the Government cannot be blamed if any particular buyer, despite showing an early interest, does not turn up at the auction to compete with the other interested buyers.

[21] Mr. Varma concluded by submitting that the appeal is without merit and, therefore, liable to be dismissed.

[22] Appearing on behalf of the respondent no.6, Mr. Deshmukh, learned counsel contended that allegations levelled by the appellant of mala fide having vitiated the process of auction are absolutely unfounded. None of the officers of the Government or the Chairman of the respondent no.6 were parties to the writ petition of the appellant eo nomine. Law is well settled that the Courts should be loath to examine allegations of mala fide in the absence of the persons, against whom such an allegation has been made, being arrayed as a respondent by name. According to him, the appellant has become wiser and filed an application for impleadment belatedly to cover up the omission; hence, such application ought to be dismissed in limine.

[23] On merits, Mr. Deshmukh submitted that the respondent no.6 is a creature of a statute and a bona fide purchaser of the property for value. Though the respondent no.6 was interested to purchase the property and had evoked interest even in 2013 when the appellant had initiated an auction process, the submission advanced on behalf of the appellant that the respondent no.6 was unduly favoured, is absolutely without substance. Respondent no.6 was a willing participant along with others in an open bid process and emerged successful having offered the highest bid. There has been no illegality in selection of the respondent no.6 as the highest bidder and finalising the

sale in its favour. That apart, after purchase of the property in 2016, the same has been developed by the respondent no.6 by expending substantial amount of money. It would, therefore, not be fair if the auction sale is upset at this distance of time.

[24] Mr. Deshmukh, thus, joined Mr. Varma in urging that the appeal must be dismissed.

PROCEEDINGS BEFORE THIS COURT

[25] The special leave petition, out of which this appeal arises, was heard by us on 23rd July, 2024. The order passed on that date records, inter alia, that the impleadment application stands disposed of as not pressed. While granting leave and reserving judgment, the State was required to submit within the period indicated in the order break-up of the amounts disbursed in favour of the creditors out of Rs 2,51,48,000/- received as the price of sale. Also, the appellant was required to file details of its outstanding dues.

[26] In deference to the said order dated 23rd July, 2024, the official respondents have filed an application (IA Diary No. 169446 of 2024). Through such application is brought on record a chart (Annexure R1) depicting the amounts disbursed in favour of the creditors and true copies of the bank statement (Annexure R2) of the Liquidator.

[27] Perusal of the application reveals amounts disbursed towards outstanding taxes and Government dues of the society, payments to employees/labours, payment towards remuneration of the Liquidator and cost of liquidation, etc. It is stated therein that Rs 2,34,80,141/- has already been paid to the creditors out of the priority list approved by the Commissioner of Textiles, Nagpur. As on 29th July, 2024, it is only an amount of Rs 29,78,499/- that remains as the balance amount after all the exercises were undertaken for securing payments to various creditors indicated in such chart.

[28] The appellant has also placed on record certain statements of accounts in support of its stand that a sum of Rs 5,28,32,307/- is outstanding from the society towards principal, interest and other costs/charges.

ANALYSIS AND REASONS

[29] Having noted the facts that triggered the writ petition before the High Court at the instance of the appellant as well as the steps taken, post the auction sale, we are tasked to decide whether the justice of the case demands grant of any relief to the appellant and, if so, to what extent.

[30] It could be true that the procedural formalities ordained by the 1960 Act and the rules framed thereunder might not have been followed to the 'T', as contended by Mr. Hansaria. Nonetheless, it is the appellant which, by its negligence, seems to have allowed the auction process to progress to the extent of finalisation of sale in favour of the respondent no. 6. If indeed valuation of the property of the society suffered from any infirmity, so much so that any reasonable person could form an opinion of the property being undervalued, what has surprised us is the conduct of the appellant in invoking the jurisdiction of the writ court late. Much before the auction took place, the appellant was fairly and squarely aware of the upset price for the auction sale. The appellant, so to say, was sitting on the fence and watching which direction the auction

process proceeds. The appellant was seized of the report of a Government approved valuer who valued the property of the society in excess of Rs 4 crore in the year 2013. Since prices of immovable properties seldom decline with passage of time, what was expected of the appellant was to seek interference of the High Court as soon as the auction sale notice dated 12th February, 2016 was published. In its letter dated 2nd March, 2016, the appellant did not object to the valuation. The auction sale notice dated 12th February, 2016 was duly published in the newspapers and did bear reflection of the valuation of the property put up for sale with the upset price, yet, the appellant remained in slumber. It has never been the case of the appellant that it had no notice/knowledge of such notice. We have, thus, failed to comprehend as to what prevented the appellant, if at all it was aggrieved by the undervaluation of the property as shown in the notice, to take immediate recourse to available legal remedies to stall the process. The explanation that the appellant was busy in obtaining information after the auction sale was conducted for launching an attack on the process of sale could be correct on facts but by that, precious time was lost. Law is well-settled that a writ court does not encourage petitions from indolent, tardy and lethargic litigants; the writ court comes to the aid of a litigant who approaches it with promptitude and before accrual of third-party rights. Not having approached the High Court before accrual of a right in favour of the respondent no.6, we hold that on facts and in the circumstances, it was not open to the appellant to question the auction sale process in question after finalisation of the sale in favour of the respondent no.6. That possession of the property had not been taken by the appellant or that its name was not entered in the revenue records are of no significance having regard to the discernible conduct of the appellant in allowing things to drift to its detriment. We are, thus, of the considered opinion that matters which have settled for long ought not to be unsettled.

[31] Be that as it may, it is a fact that the society (as on date the dispute case was allowed) was held liable in a sum of Rs 1,05,98,710/- payable to the appellant with interest @ 17.5% per annum with effect from 1st October, 2000.

[32] In this context, one cannot overlook that the respondent no.6 had expressed interest to purchase the property of the society pursuant to the sale notice dated 24th August, 2013. It clearly suggests that notwithstanding Rs 4.10 crore being shown as the upset price in the advertisement, the respondent no.6 was ready and willing to compete with other interested buyers. Therefore, at least at that stage, the respondent no.6 was willing to shell out Rs 4.10 crore for purchase of the property. That the bid process did not materialize for lack of adequate number of bidders fortuitously worked to the advantage of the respondent no.6. In the subsequent auction sale process, the respondent no.6 practically purchased the property for a song; and, that too, after a lapse of 3 (three) years. The appellant had placed facts and figures in its rejoinder affidavit filed before the High Court to demonstrate at what price the adjacent and neighbouring properties were disposed of by sale, post 2013. The escalation of price, demonstrated by the appellant, has not surprised us. The respondent no. 6 did not

contest such facts and figures, probably because the High Court was not inclined to interfere and did not call for a sur-rejoinder. But merely because the respondent no.6 is a creature of a statute, that would not clothe it with any immunity and to have a property transferred to it at a throw away price. After all, the appellant's status has also to be borne in mind. It is not a private bank but a Co-operative Bank, which has been brought into existence with specific objects and purposes in mind. The interest of the appellant, when its outstanding dues recoverable from the society runs into crores of rupees, cannot be brushed aside and deserves due consideration in order to keep the appellant survive in the banking sector.

CONCLUSION

[33] For a reason different from the one assigned by the High Court, we do not propose to interfere with the sale effected in favour of the respondent no.6 by the Liquidator. To that extent, the impugned judgment of the High Court is upheld.

[34] However, having regard to what we have observed above, we are also of the opinion that it would only be just and fair for us to invoke powers conferred by Article 142 of the Constitution of India. Invoking such power and with a view to do complete justice between the parties, we direct the respondent no.6 to pay to the appellant a sum of Rs 1,05,98,710/- (without interest) towards full and final settlement of the dues of the appellant from the society. Let such sum be paid by the respondent no.6 to the appellant within three months from date, failing which the said sum shall carry simple interest @ 6% per annum till such time the payment is actually made.

[35] As on 29th July, 2024, after clearing the dues of the creditors, an amount of Rs 29,78,499/- is reportedly the balance amount. The Liquidator may disburse such amount to the other creditors, excluding the appellant, as per priority. However, if all other creditors have been paid their dues and none else remains to be paid, the said sum of Rs 29,78,499/- or any part of it may be disbursed in favour of the appellant.

[36] The civil appeal stands disposed of on the aforesaid terms. Parties shall bear their own costs throughout.

[37] Pending applications, if any, shall also stand disposed of.

2024(2)MLPJ466

IN THE SUPREME COURT OF INDIA

[From KARNATAKA HIGH COURT]

[Before Sanjiv Khanna; Sanjay Kumar]

Civil Appeal No of 2024 **dated 24/09/2024**

Hmt Ltd

Versus

Rukmini and Others

SUPPRESSION OF FACTS

Requisitioning and Acquisition of Immovable Property Act, 1952 Sec. 7 - Suppression of Facts - Respondents/writ petitioners sought return of land or rental compensation after a portion of it was requisitioned by Defence Ministry in 1941 - Petitioners failed to disclose that part of the land had been sold by their predecessor, Putta Narasamma, and acquired for HMT Ltd.'s expansion - Supreme Court found deliberate suppression of facts by petitioners to claim benefits - Petition was filed decades after the alleged cause of action arose - Supreme Court ruled that delay and laches, coupled with suppression, rendered the claim unsustainable - Petition dismissed - Appeals Allowed

Law Point: Deliberate suppression of material facts, coupled with delay and laches, disqualifies a writ petition from being entertained under extraordinary jurisdiction

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 Sec. 7

JUDGEMENT

Sanjay Kumar, J.- [1] Leave granted.

[2] By judgment dated 05.09.2019, a Division Bench of the High Court of Karnataka, Bengaluru, allowed Writ Appeal No. 17584 of 2011 and reversed the order dated 24.05.2010 passed by a learned Judge dismissing Writ Petition No. 16553 of 2006. The Division Bench directed HMT Ltd., respondent No. 4 in the writ appeal, to vacate and handover the identified land, admeasuring Ac. 4-211/2 Guntas in Survey Nos. 21 and 22 of Jarakabande Kaval Village, Bangalore North Taluk, to the appellants/writ petitioners or, in the alternative, the Union of India and officials of its Defence department, along with HMT Ltd., respondent Nos. 1 to 4 in the writ appeal, were held jointly and severally liable to pay the current guidance value of the land, as fixed by the State Government for non-agricultural land in square feet. In addition thereto, they were also held liable to pay rental compensation, calculated from 02.03.1973 till the date of payment along with simple interest thereon @ 6% per annum from the date the writ petition was filed. The Division Bench ordered that in the event its directions were not complied with, respondent Nos. 1 to 4 in the appeal would be jointly and severally liable to pay rental compensation from 02.03.1973 with simple interest thereon @ 6% per annum till the land was redelivered to the appellants/writ petitioners. The Division Bench concluded by stating that this would be an equitable remedy given the facts and circumstances of the case. Thereafter, by order dated 13.09.2019, passed upon an application filed by the appellants/writ petitioners, the Division Bench corrected certain errors in its judgment dated 05.09.2019.

[3] These two orders are subjected to challenge by HMT Ltd., on the one hand, and by the Union of India and its officials in its Defence department, on the other. By interim order dated 10.01.2020 passed in the SLPs filed by HMT Ltd., this Court stayed the operation of the impugned judgment and order passed by the High Court.

An order to the same effect was passed on 29.10.2020 in the first SLP filed by the Union of India and its officials in the Defence department.

[4] The prayer of the respondents herein, viz., the petitioners in Writ Petition No. 16553 of 2006, was to direct the respondents therein to pay rental compensation from 1973 till date and to continue to pay the same till the unacquired portion of their land was delivered to them; to direct delivery of the unacquired portion of their land, being an extent of Ac. 2-11 Guntas in Survey No. 21 and Ac. 2-26 Guntas in Survey No. 22 of Jarakabande Kaval Village, Yelahanka Hobli, Bangalore North Taluk. By the order dated 24.05.2010, a learned Judge of the Karnataka High Court noted that the writ petition was filed forty-six years after the acquisition and held that the disputed questions of fact that were raised could not be gone into in a writ petition after that length of time. The learned Judge accordingly held that no interference was called for and dismissed the writ petition on the ground of delay and laches. Aggrieved by this order, the unsuccessful writ petitioners filed Writ Appeal No. 17584 of 2011, resulting in the impugned judgment and order in their favour which, in turn, led to filing of the present appeals.

[5] The case of the respondents/writ petitioners, as set out in W.P No. 16553 of 2006, was as follows: -

They were the heirs and successors-in-interest of Putta Narasamma, w/o of late Papaiah Naidu. Putta Narasamma was the owner and possessor of Ac. 4-01 Guntas in Survey No. 21 and Ac. 6-34 Guntas in Survey No. 22 of Jarakabande Kaval, Yelahanka Hobli, Bangalore North Taluk. This land was requisitioned by the Ministry of Defence under the provisions of the Requisition and Acquisition of Immovable Property Act, 1952 (for brevity, 'the Act of 1952'), and Putta Narasamma was paid crop compensation of 650 per year. In the year 1973, the Union of India ? acquired Ac. 5-38 Guntas out of the total extent of Ac. 10-35 Guntas. The acquisition was initiated in 1971 and the final Notification was issued on 02.03.1973 under Section 7(1) of the Act of 1952. The acquired land was Ac. 1-30 Guntas out of Ac. 4-01 Guntas in Survey No. 21 and Ac. 4-08 Guntas in Survey No. 22, leaving Ac. 2-26 Guntas therein. The balance land, being Ac. 2-11 Guntas in Survey No. 21 and Ac. 2-26 Guntas in Survey No. 22 of the village continued to be covered by the Act of 1952. Putta Narasamma died on 08.10.1992 and they, as heirs, were her successors-in-interest. They were entitled to receive rental compensation from the year 1973 and also to the possession of the land, if the Defence department did not require it. According to them, the land was lying fallow and was not being used for any purpose and, therefore, the respondents were under an obligation to redeliver it to them and also pay the rental compensation up to the date of handing over possession. They claimed to have made several requests to the respondents to hand over vacant possession of the land or, in the alternative, pay rental compensation according to present market rate of the produce that they would get on reasonable assessment but the respondents turned a deaf ear.

Notice dated 01.08.2006 was issued to the respondents but no reply was received thereto. They accordingly prayed for the reliefs referred to hereinabove.

[6] It is relevant to note that this writ petition was initially filed only against the Union of India and its officials in the Defence department but other parties, including HMT Ltd., thereafter came to be impleaded therein. Perusal of the order dated 24.05.2010 passed by the learned Judge, dismissing this writ petition, manifests that the following points were taken note of: The land in question, admeasuring Ac. 10-35 Guntas in Survey Nos. 21 and 22 of Jarakabande Kaval Village was requisitioned way back in the year 1941. The proposal to acquire part of this land was initiated in 1971 and, ultimately, by Notification dated 02.03.1973, Ac. 1-30 Guntas in Survey No. 21 and Ac. 4-08 Guntas in Survey No. 22 came to be acquired under the Act of 1952. The learned Judge also noted that, as per the objections filed by HMT Ltd., the acquisition in its favour was made in the year 1958. This acquisition was in respect of Ac. 3-16 Guntas in Survey No. 21 and Ac. 1-06 Guntas in Survey No. 22, and HMT Ltd. took possession thereof and constructed a compound wall. The learned Judge, therefore, opined that the Union of India and HMT Ltd. were in possession of the respective portions of land acquired in their favour, and were in possession thereof since then, but the writ petitioners did not raise their little finger till the year 2006 when they filed the writ petition. It is in these circumstances that the learned Judge dismissed the writ petition on the ground of delay and laches.

[7] Significantly, the complete picture, in so far as the facts of the matter are concerned, was not presented before the High Court. It would be appropriate, at this stage, to note the full facts, as they have emerged now: An extent of Ac. 14-391/2 Guntas of land was originally purchased by late Papaiah Naidu. Under registered Sale Deed dated 11.07.1932, he had purchased an extent of Ac. 7-17 Guntas in Survey No. 21 and Ac. 7-221/2 Guntas in Survey No. 22 of Jarakabande Kaval Village. The Ministry of Defence requisitioned Ac. 10-35 Guntas out of the land belonging to Papaiah Naidu on 30.01.1941. The Ministry of Defence is then stated to have released Ac. 4-22 Guntas out of the requisitioned area of Ac. 10-35 Guntas in favour of the landowner in 1953. No document has been produced in proof of such release but this fact stood admitted by Putta Narasamma herself. By registered Sale Deed bearing Document No. 5932/54-55 dated 12.03.1955, Putta Narasamma sold this extent of Ac. 4-22 Guntas in Survey Nos. 21 and 22 of Jarakabande Kaval Village to Mohd. Ghouse. In this Sale Deed, Putta Narasamma categorically stated that their lands in Survey Nos. 21 and 22 were acquired earlier by the Military but out of the same, Ac. 4-22 Guntas of land was released in their favour on 14.10.1953, under Reg. 56/53-54, and that the same was being sold to Mohd. Ghouse. It appears that Ac. 0-27 Guntas was then acquired by the Ministry of Defence on 24.02.1954. Thereafter, by Notification dated 30.06.1958, the Government of Mysore acquired the land sold by Putta Narasamma to Mohd. Ghouse, in exercise of powers under the Mysore Land Acquisition Act, 1894. This acquisition was for the expansion of HMT Ltd.'s existing infrastructure at

Jalahalli. This Notification specifically referred to the fact that the acquired land was in the possession of Mohd Ghouse and was an extent of Ac. 3-16 Guntas in Survey No. 21 (part) and Ac. 1-06 Guntas in Survey No. 22 (part) of Jarakabande Kaval Village, Yelahanka Hobli, Bangalore North Taluk, Bangalore District. Possession of this acquired land was stated to have been delivered to HMT Ltd. on 11.08.1961. Then, on 02.03.1973, the Ministry of Defence acquired Ac. 5-38 Guntas, out of the land that was originally requisitioned in 1941 which still remained with them. This acquisition was in exercise of power under the Act of 1952. Thereafter, HMT Ltd. sold about Ac. 3-39 Guntas out of the Ac. 4-22 Guntas acquired for its benefit in favour of Dollars Construction and Engineering Pvt. Ltd. under registered Sale Deed dated 16.09.2004. The balance land left in the possession of HMT Ltd. out of the acquired extent was, therefore. about Ac. 0-23 Guntas.

[8] Pertinent to note, by letter dated 14.08.1957, the Deputy Commissioner, Bangalore District, informed the Secretary to the Government of Mysore, Commerce and Industry Department, Bangalore, that HMT Ltd. had applied for acquisition of land in Survey Nos. 21 and 22 of Jarakabande Kaval Village for its expansion; that Survey Nos. 21 and 22 were under Military occupation but out of the same, Ac. 4-22 Guntas had been released and one Mohd. Ghouse had purchased the same from the owner of the land. This letter, therefore, confirmed the recital by Putta Narasamma in her Sale Deed executed in favour of Mohd. Ghouse. In effect, the land acquired for HMT Ltd. was the land sold to Mohd. Ghouse.

[9] It appears that Writ Appeal No. 17584 of 2011 was allowed in the first instance by order dated 28.06.2012. The Ministry of Defence sought review thereof but failed. Aggrieved thereby, it approached this Court and was given liberty to file another review petition before the High Court. Thereupon, the Ministry of Defence filed Review Petition No. 4 of 2014 before the High Court. By order dated 30.03.2016, the review petition was allowed and the High Court framed three issues for consideration. The first issue related to the actual area in the occupation of the respondents, keeping in view the land originally requisitioned for defence purposes. The second issue was as to lawful occupation by the respondents and the extent of land in their possession. The third issue was as to the exact extent of land which was required to be released by the Union of India to the writ petitioners. It may be noted that, at this stage, the Union of India was supporting the respondents/writ petitioners, being under the impression that HMT Ltd. was in possession of area in excess of what had been acquired for its benefit. It was only thereafter that the Union of India and its officials of the Defence department changed their stance, in the light of the facts that came to light vis- -vis the sale of land by Putta Narasamma in favour of Mohd. Ghouse; the acquisition thereof by the Government of Mysore for the benefit of HMT Ltd.; and the fact that the land so acquired for HMT Ltd.'s benefit was not out of the balance land in the possession of the Putta Narasamma.

[10] Most noteworthy is the glaring fact that the respondents/writ petitioners did not disclose any of these very relevant facts in their writ petition. No mention was made in the writ petition of the sale by Putta Narasamma in favour of Mohd. Ghouse or the fact that the land sold was the extent of land released by the Ministry of Defence out of the requisitioned original extent of Ac. 10-35 Guntas. It is also pertinent to note that the respondents/writ petitioners themselves had filed Arbitration Case No. 120/2015 (new)/179/2008 (old) before the Arbitral Tribunal in Bangalore. This arbitration pertained to enhancement of compensation for the extent of Ac. 5-38 Guntas acquired by the Ministry of Defence. Smt. Rukmini, respondent No. 1/writ petitioner No. 1, appeared as PW1 before the Arbitral Tribunal and stated that the lands in Survey Nos. 21 and 22 of Jarakabande Kaval Village were requisitioned by the Defence of India in the year 1941 and were subsequently acquired to the extent of Ac. 5-38 Guntas. She further stated that the remaining land was sold by the claimants' grandmother to one Mohd. Ghouse. Therefore, it is clear that the respondents/writ petitioners were well aware of the sale by Putta Narasamma in favour of Mohd. Ghouse but deliberately chose to suppress not only the sale but also the crucial fact that the land so sold was that returned by the Ministry of Defence in 1953. Though the Division Bench was apprised of the sale in favour of Mohd. Ghouse, the fact that this sale pertained to the returned land was not within its knowledge, as is clear from the impugned judgment. The reason for the willful suppression of this most relevant fact is not far to gather. Once the Ministry of Defence returned an extent of Ac. 4-22 Guntas in the year 1953; acquired Ac. 0-27 Guntas in 1954; and then acquired the extent of Ac. 5-38 Guntas under the provisions of the Act of 1952, adding up to Ac. 11.07 Guntas, in excess of the total extent of the requisitioned land, the question of Ac. 4-22 Guntas still being with the Union of India and its Defence department did not arise.

[11] The respondents/writ petitioners cleverly withheld the aforestated details so as to maintain their claim against the Union of India and its Defence department, the original respondents in the writ petition. The litigation however took a different turn with the impleadment of HMT Ltd., but it appears that no steps were taken to amend the prayer in the writ petition which remained focused only on the original respondents therein. The case then proceeded on the erroneous assumption that the land acquired for HMT Ltd.'s benefit was from the balance area of land left with Putta Narasamma, after the requisitioning of Ac. 10-35 Guntas. In any event, once that mistaken assumption falls to the ground in the light of the fact that Putta Narasamma sold the returned extent of Ac. 4-22 Guntas to Mohd. Ghouse and it was that extent of land which was acquired by the Government of Mysore for the benefit of HMT Ltd.'s expansion in Jalahalli, the case of the respondents/writ petitioners also falls to the ground.

[12] In **K.D. Sharma vs. Steel Authority of India Limited and others**, 2008 12 SCC 481. this Court observed that the jurisdiction of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and the prerogative Writs mentioned therein are issued for doing substantial justice. This Court, therefore,

held that it would be of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek appropriate relief. It was further held that if there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition should be dismissed at the threshold without considering the merits of the claim. The aforestated principle would apply on all fours to the case on hand, given the clear lack of bonafides on the part of the respondents/writ petitioners, as is demonstrable from their deliberate suppression of relevant particulars, which were adverse to the claim that they sought to project in their writ petition. The filing of the writ petition was, therefore, nothing short of an abuse of process and did not warrant examination on merits. They were liable to be non-suited on this short ground.

[13] That apart, even as per the respondents/writ petitioners' own reckoning and as per their writ averments, their cause of action arose in the year 1973, when the Union of India and the Defence department allegedly stopped paying rental compensation. However, it was only in the year 2006 that they chose to file a writ petition. A writ petition should be preferred within reasonable time, the reasonableness of which would depend on the facts and circumstances of the case and the relief prayed for. Notably, delay by the authorities, at times, may constitute a cause of action in itself. This would be especially true in a case of a live and continuing cause of action or in the event of failure to perform a mandatory statutory duty. It is, however, equally true that there can be cases where delay and laches would be fatal and can result in the dismissal of the writ petition. For example, when there is an implied acceptance or the issue/dispute becomes stale/dead or there is a change/alteration in position or if third-party rights have been created. The above instances are illustrative and are, by no means, exhaustive. A plea of delay and laches would not be merely technical when facts are in dispute as, over time, evidence may dissipate and materials, including Government files, may become increasingly difficult to trace. Further, individuals with knowledge of the case may move on or become unavailable. The situation is exacerbated for Government servants, as they face transfers and superannuation. Further, such deserving dismissals on delay and laches serve a larger purpose, as time would not be spent unnecessarily on stale and nebulous disputes, enabling Courts/Tribunals to deal with and decide active pressing cases.

[14] Presently, as noted above, the respondents/writ petitioners repeatedly changed their stands and manoeuvred their position to suit their advantage. HMT Ltd. and the Union of India were initially handicapped and were unable to ascertain the facts and locate files, evidence and material. The Union of India was unable to produce the record relating to the release of Ac. 4-22 Guntas in the year 1953. At one point, the Union of India even supported the respondents/writ petitioners and changed its stance only after relevant facts came to light. HMT Ltd. was, however, able to cull out material to dent the oscillating and innovative stands of the respondents/ writ

petitioners. The irrefutable fact remains that the respondents/writ petitioners slept over the matter for decades together which, in itself, indicates lack of merit. They should have, therefore, been prevented from raising issues that were stale and forgotten.

[15] It is in this context that this Court, in **Syed Maqbool Ali vs. State of Uttar Pradesh and another**, 2011 15 SCC 383. observed that an aggrieved person should approach the High Court diligently. Delay in filing a writ petition can result in prejudice, as parties' position and status may change. Courts do, in cases of such delay, insist that the party concerned should have a good and satisfactory explanation for it. It is only on being satisfied that other factors would not outweigh grant of relief, can the weighty objection of delay and laches be rejected. In other words, a Constitutional Court should be convinced that the case warrants exercise of jurisdiction under Article 226 of the Constitution. In **State of Maharashtra vs. Digambar**, 1995 4 SCC 683. a 3-Judge Bench of this Court had observed that the grant of relief by a Constitutional Court under Article 226 of the Constitution, without considering blameworthy conduct, such as delay and laches, would be unsustainable even if such relief was granted for the alleged deprivation of a legal right. Discretionary relief, in such circumstances, can only be obtained upon fully satisfying the Court that the delay was justified and explainable.

[16] Though the respondents/writ petitioners would now seek to place reliance on some internal correspondence of the Ministry of Defence, Union of India, and the survey maps drawn up pursuant to the orders of the High Court, we are of the opinion that these documents do not merit consideration. Such orders were passed in ignorance of the full facts of the case and the patent lack of bonafides on the part of the respondents/writ petitioners. Further, the correspondence now produced would necessarily have to be examined in the context of its genesis and foundation and cannot be relied upon, at this stage, without proper proof.

[17] In any event, the issues that arose in the context of what has emerged in this case clearly demonstrate that several disputed questions of fact would come up, which could not have been adjudicated by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. Thus, viewed in any light, W.P. No. 16553 of 2006 filed by the respondents/writ petitioners ought not to have been entertained. The judgment dated 05.09.2019 and the order dated 13.09.2019 passed by the Division Bench of the High Court of Karnataka, Bengaluru, allowing the said writ petition, therefore, cannot be sustained on grounds more than one.

[18] The appeals are accordingly allowed and, in consequence, Writ Petition No. 16553 of 2006 filed by the respondents/writ petitioners shall stand dismissed in its entirety.

Pending IAs, if any, shall stand closed.

Though eminently deserving, we refrain from mulcting the respondents/writ petitioners with punitive and exemplary costs

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2024(2)MLPJ474

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

[Before Pankaj Mithal; R Mahadevan]

Civil Appeal No 10804 of 2024 **dated 24/09/2024**

Shyamsundar Radheshyam Agrawal & Anr

Versus

Pushpabai Nilkanth Patil & Ors

STAMP DUTY LIABILITY

Transfer of Property Act, 1882 Sec. 53A - Registration Act, 1908 Sec. 17 - Maharashtra Stamp Act, 1958 Sec. 4, Art. 25, Sec. 34, Sec. 32A, Sec. 37, Sec. 33 - Stamp Duty Liability - Appeal challenging the High Court order affirming impounding of six sale agreements under Maharashtra Stamp Act due to improper stamping - Appellants argued that since sale deed was executed and stamp duty paid, prior agreements were exempt from duty - Court noted that the agreements included transfer of possession, requiring stamp duty as they constituted conveyances under Explanation I to Article 25 of Maharashtra Stamp Act - Held that the sale deed did not negate the duty on the agreements, which were principal - Appeal Dismissed

Law Point: Agreements for sale transferring possession are deemed conveyances under Maharashtra Stamp Act, requiring payment of stamp duty even if subsequent sale deed is executed.

Acts Referred:

Transfer of Property Act, 1882 Sec. 53A

Registration Act, 1908 Sec. 17

Maharashtra Stamp Act, 1958 Sec. 4, Art. 25, Sec. 34, Sec. 32A, Sec. 37, Sec. 33

JUDGEMENT

R.Mahadevan, J.- [1] Leave granted.

[2] This appeal is filed assailing the final order dated 03.03.2021 passed by the High Court of Judicature at Bombay (hereinafter shortly referred to as "the High Court") in Writ Petition No.4695 of 2017, by which, the High Court has dismissed the said writ petition, thereby affirming the order dated 26.10.2016 passed by the Court of 4th Joint Civil Judge (Senior Division), Thane, (hereinafter shortly referred to as "the trial Court") in allowing the application filed by the Defendant No.46 for impounding the six documents produced by the appellants herein.

[3] Originally, the appellants instituted a suit in Special Civil Suit No.200 of 2008 seeking declaration and injunction. Denying the plaint averments, the defendants filed their written statements. Thereafter, the Defendant No.46 took out an application under

Sections 33, 34 & 37 of the Maharashtra Stamp Act, 1958 r/w Section 17 of the Registration Act, to impound the six original agreements for sale viz., Exh.145/3 dated 20.07.1994, Exh.145/9 dated 20.07.1994, Exh.145/15 dated 12.10.1994, Exh.145/19 dated 12.10.1994, Exh.145/23 dated 27.04.2006 and Exh.145/25 dated 19.09.2004 produced by the appellants, so as to get them registered, on the premise that the said documents include a clause that the physical possession of the properties mentioned therein, was transferred to the purchasers; however, they were not duly stamped; and hence, the documents require the payment of stamp duty of the conveyance. By order dated 26.10.2016, the trial Court allowed the said application, thereby impounding the documents and directing to send the same to the Collector of Stamp, Thane, for adjudication of stamp duty and penalty, if any, payable by the appellants. Aggrieved by the same, the appellants herein filed the aforesaid writ petition, which was dismissed by the High Court, by the order impugned in this appeal.

[4] Referring to Section 4 of the Maharashtra Stamp Act, 1958 (hereinafter shortly referred to as "the Act"), the learned counsel appearing on behalf of the appellants contended that the agreements to sell in relation to the same immovable properties ultimately resulted into a sale deed in favour of the appellants and the said sale deed was also duly registered, upon payment of the required stamp duty and therefore, the prior agreements to sell are not required to be registered and stamped. Further, one of the agreements in respect of 2.550 sq. meters of land was executed in favour of Mira Bhayandar Municipal Corporation and hence, no separate stamp duty is required to be paid by the appellants. However, misinterpreting the said provision, the trial Court allowed the application filed for impounding the documents and directed to send the same to the Collector for adjudication of stamp duty and penalty, which was also erroneously affirmed by the High Court.

[5] Per contra, the learned counsel appearing on behalf of the respondents submitted that on a detailed analysis of the agreements to sell, wherein, there was a specific clause about the transfer of physical possession to the purchasers therein, the courts below have rightly allowed the application filed for impounding these documents and, therefore, the same need not be interfered with by this Court.

[6] We have heard the learned counsel appearing for the respective parties and perused the material on record, more particularly, the documents in question.

[7] The issue involved herein is, whether the appellants are liable to pay stamp duty and penalty on the agreements to sell executed prior to the sale deed executed in their favour, in respect of two properties viz., (i) S.No.165/4 admeasuring 2,550 sq. mtrs. and (ii) S.No.208/3 admeasuring 860 sq. mtrs. and S.No.208/4 admeasuring ,5650 sq. mtrs.

[8] In order to determine the stamp duty that is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be determined by ascertaining the intention of the parties from the contents and the language employed

in the whole instrument and the description or the nomenclature given to the instrument by the parties is immaterial.

[9] According to the appellants, the sale deed having been executed in relation to the same immovable properties and stamp duty having been paid, the earlier agreements to sell which are part and parcel of the same transaction, got merged with the said sale deed and hence, separate stamp duty is not required to be paid on the earlier agreements to sell. To buttress the same, reliance was placed on Section 4 of the Act, which is quoted below for ready reference:

"4. Several Instruments used in single transaction of development agreement, sale, mortgage or settlement:

1) Where, in the case of any development agreement, sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule -I for the conveyance, development agreement, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that Schedule.

2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument.

3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purpose of this section, determine the principal instrument: Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed."

[10] The aforesaid provision, especially, Section 4(1), makes it clear that where several instruments are executed for completing a transaction, the principal instrument alone shall be chargeable with duty prescribed in Schedule I. The proviso makes it clear that the duty chargeable on the instrument so determined shall be the highest duty which could be chargeable in respect of any of the said instruments forming part of the same transaction. Each of the other instruments is chargeable with a fixed duty. That apart, sub-section (2) also gives an opportunity to the parties to determine for themselves, which of the instruments shall be deemed to be the principal instrument. We shall therefore look into the documents in question and determine whether they are required to be stamped and registered.

[11] The documents sought to be impounded at the instance of one of the defendants are:

(i) Exh.145/3 dated 20.07.1994 - agreement for sale-cum-development executed by Vinayak Kashinath Gharat and others in favour of Naresh N.Jain, Sunita P.Jain and Kalawati N. Jain, which is on the stamp paper of Rs.20/-;

(ii) Exh.145/9 dated 20.07.1994 - agreement for sale-cum- development executed by Vinayak Kashinath Gharat and others in favour of Naresh N. Jain, Sunita P. Jain and Kalawati N. Jain, which is on the stamp paper of Rs.20/-;

(iii) Exh.145/15 dated 12.10.1994 executed by Naresh N. Jain and others in favour of M/s.Chedda Enterprises, which is on the stamp paper of Rs.20/-;

(iv) Exh.145/19 dated 12.10.1994 - agreement for sale-cumdevelopment executed by Naresh N. Jain and others in favour of M/s.Chedda Enterprises, which is on the stamp paper of Rs.20/-;

(v) Exh.145/23 dated 27.04.2006 - agreement for sale executed by M/s.Sunshine Builders and Developers in favour of the appellants, which is on the stamp paper of Rs.100/-; and

(vi) Exh.145/25 dated 19.09.2004 - agreement for development -cumsale executed by M/s.Sunshine Builders and Developers in favour of the appellants, which is on the stamp paper of Rs.100/-.

[12] On a reading of all these six documents, it could be seen that the instruments /documents were not forming part of a single transaction between the same parties and they were different transactions between different vendors and purchasers. Further, for several documents to form part of a single transaction, there must be a transaction in furtherance of which several other documents are executed to complete that transaction and then it becomes imperative to charge stamp duty on the principal instrument/document. The language used in the provision is very clear, whereby the stamp duty is on the instrument and not on the transaction. It will be useful to refer to Explanation 1 to Article 25 of Schedule I of the Maharashtra Stamp Act, which would read as under:

"Explanation I.-For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred or agreed to be transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly: Provided that, the provisions of Section 32-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that Section: Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance."

[13] It will be apropos to mention here that the agreements were not only between different parties but also were executed during different periods, by which time the Explanation I to Article 25 of Schedule I underwent a change. The words "without executing the conveyance in respect thereof" was deleted with effect from 17.08.1994

by Maharashtra Act 38 of 1994. The above Explanation I makes it lucid that an agreement for sale is to be treated as a "conveyance" if either possession is handed over immediately or if it is agreed to be handed over within a particular time. A reading of the above Explanation I along with Section 4 makes it clear that the duty is levied only on the instrument and not on the transaction. This court, in **Veena Hasmukh Jain v. State of Maharashtra**, 1999 5 SCC 725: 1999 SCC Online SC 78 while dealing with the question as to whether the agreement to sell can be treated as document of conveyance, liable to stamp duty held as follows:

"**4.** On examination of these terms, the High Court took the view that the agreement in question could be construed to be a conveyance falling under Section 2(g) of the Bombay Stamp Act inasmuch as the right, title and interest in the flat stands transferred in favour of the purchaser on payment of instalments as provided therein.

5. The High Court also examined the scope of Explanation I to Article 25 of Schedule I of the Bombay Stamp Act and held that the same was attracted to the case. Under the agreement, there is an obligation to hand over the possession even before execution of a conveyance and, therefore, it was a "conveyance" for the purpose of duty payable under the Bombay Stamp Act and there was no obligation in the agreement to enter into a conveyance at a later stage and clearly it was a case which attracted the said Explanation. Handing over of the possession on the very date of execution was not relevant for determining the nature of the document. On that basis, the High Court upheld the stand taken by the State in the matter of levy of duty. Other questions raised in the writ petition are not the subject-matter of these appeals and, therefore, we do not advert to those questions. On the conclusion reached by the High Court, the writ petition stood dismissed.

6. The learned counsel appearing for the appellants urged before us that the conclusion reached by the High Court either on the question of construction of the agreement amounting to a "conveyance" or on the applicability of Explanation I to Article 25 of Schedule I to the Bombay Stamp Act is incorrect. It was submitted that the agreement in question had been executed only in terms of Section 4 of the MOF Act and that under the scheme of the Act, a deed of conveyance had to be drawn in terms of Section 11 thereof. Therefore, it was submitted that the document executed in terms of Section 4 of the MOF Act cannot be construed to be a "conveyance". He also submitted that under the same Act, duty can be levied only on the "instrument" and not on any "transaction". Here, in the present case, by Explanation I to Article 25 of Schedule I, what has been done is to provide for levy of duty on a "transaction", namely, handing over possession and not on the "instrument" as such and hence the provision is ultra vires the Constitution.

7. Under Entry 44 of List III-Concurrent List of the Seventh Schedule to the Constitution, any State as well as the Central Government can levy stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty and in respect of such instruments mentioned in Entry 91 of List I-Union

List of the Seventh Schedule to the Constitution. A duty is leviable under Section 3 of the Bombay Stamp Act which indicates the instruments executed in the State or those outside the State but brought into the State for the first time relating to any property situate or to any matter or thing done or to be done in the State shall be chargeable to stamp duty prescribed under the Bombay Stamp Act. Article 25 of Schedule I refers to conveyance and the amount of conveyance as sought to be explained by the Explanation. Explanation I to Article 25 of Schedule I to the Bombay Stamp Act reads as follows:

"Explanation I.-For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that, the provisions of Section 32-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that Section:

Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance."

8. The duty in respect of an agreement covered by the Explanation is leviable as if it is a conveyance. The conditions to be fulfilled are that if there is an agreement to sell immovable property and possession of such property is transferred to the purchaser before the execution or at the time of execution or subsequently without executing any conveyance in respect thereof, such an agreement to sell is deemed to be a "conveyance". In the event a conveyance is executed in pursuance of such agreement subsequently, the stamp duty already paid and recovered on the agreement of sale which is deemed to be a conveyance shall be adjusted towards the total duty leviable on the conveyance. Now, in the present case, the agreement entered into clearly provides for sale of an immovable property and there is also a specific time within which possession has to be delivered. Therefore, the document in question clearly falls within the scope of Explanation I. It is open to the legislature to levy duty on different kinds of agreements at different rates. If the legislature thought that it would be appropriate to collect duty at the stage of the agreement itself if it fulfils certain conditions instead of postponing the collection of such duty till the completion of the transaction by execution of a conveyance deed inasmuch as all substantial conditions of a conveyance have already been fulfilled such as by passing of a consideration and delivery of possession of the property and what remained to be done is a mere formality of execution of a sale deed, it would be necessary to collect duty at a later (sic agreement) stage itself though right, title and interest may not have passed as such.

Still, by reason of the fact that under the terms of the agreement, there is an intention of sale and possession of the property has also been delivered, it is certainly open to the State to charge such instruments at a particular rate which is akin to a conveyance and that is exactly what has been done in the present case. Therefore, it cannot be said that levy of duty is not upon the instrument but on the transaction. Therefore, we reject the contention raised on behalf of the appellants in that regard.

9. The learned counsel for the appellants urged that the character of an instrument cannot be determined by reason of a subsequent event to take place such as handing over of possession. But a close examination of the provisions of the Explanation will make it clear that in the case of an agreement to sell immovable property possession is transferred at any time without executing the conveyance in respect thereof and such an instrument is deemed to be a "conveyance". The object of the Explanation is clear that if an agreement is entered into and that agreement itself contemplates the delivery of possession of the property within the stipulated time, then such an agreement should be deemed to be a conveyance for the purpose of duty leviable under the Bombay Stamp Act.

10. It is clear that the object of the Stamp Act is to levy stamp duty on different kinds of instruments. The legislature, in the present case, has chosen to levy a rate of duty equivalent to conveyance in respect of an agreement though the transaction may not have been completed because of certain instruments arising out of such agreement being executed and possession thereof being taken prior to or simultaneous with the document or subsequently. But in the Explanation, it is not clear that if the document provides that possession has to be taken without execution of the conveyance, certainly it would attract the appropriate duty. If the agreement provides that possession will be handed over on the execution of a conveyance as contemplated under Section 11 of the MOF Act, then the Explanation shall not be attracted at all. In the present case, it is clear that in the terms of the agreement, there is no provision made at all for execution of the conveyance. On the other hand, what is submitted is that the provisions of the MOF Act could be applied to the agreement and, therefore, a conveyance could be executed subsequently when it is not clear as to when the conveyance is to be executed and the stipulated time within which the possession has to be handed over. If that is so, it is clear that the document would attract duty as if it is a conveyance as provided in the Explanation. Thus we find no error in the view taken by the High Court. It is not necessary to examine in these appeals as to whether the instrument in question itself conveys a title or not. Therefore, we uphold the decision of the High Court made in this regard. The appeals are dismissed."

[14] In the instant case, in the documents, though there was a clause for conveyance between the vendors and purchasers in relation to the respective properties, the value of the properties were above Rs.100/- and there was also a clause by which possession was admittedly handed over on the date of the agreement, implying acquisition of possessory rights protected under Section 53A of the Transfer

of Property Act, which requires payment of proper stamp duty and registration as mandated under Section 17 of the Registration Act. Further, as per Section 4(2) of the Maharashtra Stamp Act, the parties are at liberty to parties to determine as to which of the document shall be principal document. As noted above, the agreement for sale consists of a clause whereby the possession was handed over to the purchaser satisfying the requirement to treat the instrument as conveyance and what remained was only the formality of execution of the sale deed. Therefore, it can be safely concluded that the agreement for sale was the principal document on which stamp duty was to be paid as per Article 25. Even considering the contention of the appellant, that the sale agreements ultimately concluded in the sale deed on which stamp duty was paid, would not by ipso facto absolve the primary liability of paying the appropriate stamp duty at the time of execution of the sale agreement as it was the principal document. Therefore, we are of the opinion that Section 4 of the Act cannot come to the aid of the appellants. Therefore, all these six documents ought to have been necessarily stamped and registered.

[15] Taking note of the facts and circumstances of the case and legal position, the trial Court rightly observed that the subsequent sale deed cannot be construed as a principal transaction and the agreements to sell would be treated as the principal conveyance as per Explanation I of Article 25 of Schedule-I of the Act and impounded all these documents and directed to send the same to the Collector for adjudication of stamp duty and penalty. After, a detailed analysis, the High Court held that no case for interference was made out by the appellants, which, we affirm, to be correct.

[16] In addition, we wish to further record that the second proviso to Article 25 only states that if the stamp duty is already paid or recovered on the agreement to sale, then the same shall be deducted while computing the stamp duty payable when the sale deed is executed; the proviso does not contemplate a situation similar to this case, where the document ought to have been registered with payment of stamp duty on the agreement for sale initially and only the balance, on the deed of sale after deduction of the duty already paid ought to have been collected. Since, the state cannot recover by way of stamp duty in excess of what it is entitled to, the recovery shall be restricted only to the extent of difference in stamp duty and the entire penalty from the date of execution of the agreement for sale till the date of payment of stamp duty. Needless to say, that until the defect is cured by satisfying the requirements under Section 34, the documents impounded cannot also be used in evidence.

[17] In view thereof, we find no reason to interfere with the orders passed by the Courts below. Accordingly, this appeal fails and is dismissed. Pending application(s), if any, shall stand closed

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2024(2)MLPJ482

IN THE SUPREME COURT OF INDIA

[From MADRAS HIGH COURT]

[Before Abhay S Oka; Augustine George Masih]

Civil Appeal No 8374 of 2024 **dated 13/09/2024**

Siddaraja Manicka Prabhu Temple

Versus

Idol of Arulmighu Kamakala Kameshwarar Temple

TRUST PROPERTY DISPUTE

Code of Civil Procedure, 1908 Sec. 92 - Transfer of Property Act, 1882 Sec. 10, Sec. 11 - Trust Property Dispute - Appellant challenged the ownership of a property claimed by Respondent-Temple - Property was part of a compromise decree from 1929 where it was vested in the head of Guru Manicka Prabhu Temple for temple maintenance - Appellant claimed absolute ownership - Court held that as per the decree, the property was intended for trust purposes, with income to be used for temple maintenance - Rejected argument that ownership was absolute and dismissed appeal - Court affirmed that the property remained trust property under the control of Respondent-Temple - Appeal Dismissed

Law Point: Properties vested for specific purposes under a trust cannot be claimed as personal property, and the terms of trust agreements are binding on successors.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 92

Transfer of Property Act, 1882 Sec. 10, Sec. 11

JUDGEMENT

Augustine George Masih, J.- [1] The challenge in this Appeal pertains to the Judgment dated 26.10.2017 passed by the Division Bench of the High Court of Judicature at Madras (hereinafter referred to as the "Madras High Court") in Original Side Appeal No. 272 of 2011, whereby the appeal preferred by the Appellant-Defendant was dismissed.

[2] The relevant facts for the purpose of adjudication of the present challenge are succinctly enumerated as follows. The subject matter in question comprises of an immovable property located adjacent to the Respondent-Plaintiff-Temple, namely, Kamakala Kameshwarar Temple (hereinafter referred to as the "suit property" or "Schedule 'A' property"). The suit property and the Respondent-Plaintiff-Temple were owned by one late Rai Raja Eswardoss Diawanth Bahadur. On his death, the properties dwelled upon his son Mr. T. Lakshmidoss and his grandson Mr. T. Venkataprasad. They were declared as insolvents vide Order dated 27.04.1914 passed by the Madras

High Court. In pursuance thereto, the Official Assignee became the possessor of the properties in the said authority.

[3] Thereupon, Mr. T. Lakshmidoss and Mr. T. Venkataprasad arrived at an arrangement with the creditors and with the intent of annulling the declaration of their insolvency obtained a Decree dated 31.12.1915. According to the said decree, the Official Assignee was required to divide the estate between the said two insolvents in the proportion of three-fourth and one-fourth respectively, subject to clearance of the amounts due to the creditors. For the purposes of making payments of such outstanding dues, Mr. T. Lakshmidoss and Mr. T. Venkataprasad agreed to sell some of their properties, including the suit property. The said sale was made in favour of one Mr. W. Ramakrishna Lala for an amount of INR 1,10,000/- (Rupees One Lakh Ten Thousand only). Consequently, two Conveyance-cum-Sale Deeds dated 23.03.1917 were executed in favour of Mr. W. Ramakrishna Lala, who executed a Trust Deed dated 12.12.1917 appointing three trustees by name, Mr. M.S. Anantha Ram Lala, Mr. A.S. Subba Rao and Mr. C. Ranganadhan Nayudu (proprietor of creditorcompany, namely, M/s Dowden and Company). As stipulated under the said Trust Deed, these trustees were empowered to sell all the properties except for the family house which is the suit property. Also, the income derived from the properties was required to be distributed between Mr. T. Lakshmidoss and Mr. T. Venkataprasad in a ratio of 3:1.

[4] On 07.02.1924, Mr. T. Lakshmidoss and Mr. T. Venkataprasad were adjudged as insolvents for the second time resulting in vesting of the possession of the properties again in the Official Assignee. An Agreement dated 15.09.1925 came to be entered into with the creditors where the three trustees were also associated. The suit seeking specific performance of the said Agreement dated 15.09.1925 was preferred by the creditors namely, M/s Devakinandan Dubey and Sons where apart from the debtors, the aforementioned three trustees were impleaded as defendants. The said suit was decreed in favour of the creditors vide Compromise Decree dated 26.11.1929. To the said decree were appended three separate schedules which were marked as Schedule 'A' which comprised of the suit property, Schedule 'B' encompassed the properties which stood excluded from the Trust dated 12.12.1917, and Schedule 'C' relating to the Respondent-Plaintiff-Temple. It is this Decree dated 26.11.1929 which holds the key with regard to the nature of the property which is a subject matter of the present lis.

[5] Pursuant to the terms of the said decree, the Official Assignee along with the two insolvents, and Mr. W. Ramakrishna Lala executed a Conveyance Deed bearing No. 1113 of 1931 for the transfer of the suit property enumerated in Schedule 'A' subject to certain cogent conditions and another Conveyance Deed bearing No. 1114 of 1931 comprising of the Respondent-Plaintiff-Temple stipulated in the Schedule 'C', in favour of the then spiritual head of the Guru Manicka Prabhu Temple and his successors in office.

[6] Subsequently, a set of proceedings was initiated by the Appellant-Defendant in 1954 whereby an application being O.A. No. 76 of 1954 was moved before the Deputy

Commissioner of Hindu Religious and Charitable Endowments (hereinafter referred to as the "HR & CE") seeking hereditary trusteeship in the Respondent-Plaintiff-Temple. The said application was initially allowed, however, in an appeal the same was reversed vide Order dated 31.12.1954. A suit bearing Original Suit No. 557 of 1955 assailing the said decision of the appellate authority preferred by the Appellant-Defendant also met the same fate of dismissal and so was the appeal, being A.S. No. 14 of 1960, moved thereafter.

After the decision of the appeal, an application being C.M.P. No. 5404 of 1962 for withdrawal of suit was filed with a plea that the claim of the hereditary trusteeship was made by mistake and that the Respondent-Plaintiff-Temple was his private property.

[7] It is thereafter that in April 1962 another application being O.A. No. 38 of 1962 was preferred before the Deputy Commissioner of HR & CE putting forth a claim that the Respondent-Plaintiff-Temple was a private temple. The said application was dismissed vide Order dated 04.10.1963 and an appeal assailing the said order was also dismissed. Subsequently, the Appellant-Defendant preferred a civil suit being Original Suit No. 547 of 1965 to overturn these orders. The said suit was decreed, and a declaration as prayed for that Kamakala Kameshwarar Temple being the Respondent-Plaintiff-Temple herein was a private temple was granted vide Judgment dated 10.02.1965. The decree was affirmed in an appeal. Thereupon, an Appeal being L.P.A. No. 119 of 1983, preferred before a Division Bench of the Madras High Court by the Respondent-Plaintiff was allowed vide Judgment dated 04.04.1990, thereby setting aside the decree of declaration in favour of the AppellantDefendant and consequently declaring the Respondent-Plaintiff-Temple as a public temple. Further, a challenge to the said decision before this Court by way of Special Leave Petition (Civil) No. 326 of 1991 was dismissed vide Order dated 07.10.1991. Consequently, the Judgment dated 04.04.1990 of the Division Bench of the Madras High Court attained finality and the Respondent-Plaintiff Kamakala Kameshwarar Temple became a public temple.

[8] With this the claim as regards the AppellantDefendant in the present proceedings came to an end with the opening up of a new chapter which emerged with the filing of a suit being Original Suit No. 921 of 1999 by the Respondent-Plaintiff in the Madras High Court, wherein the Respondent-Plaintiff herein sought a declaration of being the absolute owner of the plaint schedule property with a direction for the delivery of possession thereof. The learned Single Judge of the Madras High Court proceeded to hold vide its Judgment dated 26.04.2011 that the suit property is a trust property whilst relying on the contents of the Compromise Decree dated 26.11.1926 and the conveyance deeds executed in pursuance thereof. The High Court, upon perusal of the conditions encapsulated in the said compromise decree and the admissions made by the AppellantDefendant in his cross-examination, concluded that the suit property along with other properties contained in Schedule 'C' of the said decree was conveyed to the Appellant-Defendant for the purposes of utilisation of

income thereof for a limited object of maintenance and upkeep of the Respondent-PlaintiffTemple as well as the Guru Manicka Prabhu Temple. Moreover, the High Court noted that the AppellantDefendant forfeited his position as a trustee over the suit property, as well as the Respondent-PlaintiffTemple upon failure to utilise the income for the aforesaid restricted purpose and rather misappropriating such funds for personal use. Consequently, the Court required the AppellantDefendant to handover the possession of the suit property to the Respondent-Plaintiff. Accordingly, the suit was decreed as sought for by the RespondentPlaintiff.

[9] The Appellant-Defendant being aggrieved by the aforesaid decision of learned Single Judge preferred an appeal being Original Appeal No. 272 of 2011 before the Division Bench of the Madras High Court, which was dismissed vide Impugned Judgment dated 26.10.2017 holding therein that the suit property is a trust property and if the Appellant-Defendant was in its possession, it was only as a trustee and not as an absolute owner. The reasons for arriving at such conclusion was a comprehensive analysis of the terms of transfer of the suit property stipulated in the Compromise Decree dated 26.11.1929 conspicuously paragraph numbers 01 to 04, 11, and 13, as also the subsequent conduct of the Appellant-Defendant in pursuing multiple proceedings whilst maintaining the claim for hereditary trusteeship till 1962 and the absence of any sale consideration backing the claim of absolute vesting in favour of the AppellantDefendant. Such perusal of the documents incentivised the Division Bench to adjudge the suit property as one belonging to the trust. Moreover, the Division Bench unequivocally rejected the argument that the proceedings were barred by the principle of res judicata considering the previous proceedings which declared an adjacent property, namely, the Respondent-Plaintiff-Temple to be a public temple, as relating to an issue distinct from the present proceedings, which do not impact the nature of the suit property herein.

[10] Assailing the judgment of the Division Bench of the Madras High Court, the Appellant-Defendant has approached this Court in the present Appeal. It is the case of the Appellant-Defendant that the RespondentPlaintiff had neither presented any pleadings or evidence, nor raised any issue claiming the suit property as a trust property. Bereft of such pleadings, it is the submission that the High Court ought not to have decided on the issue as to the nature of the suit property. In addition, it was contended that the suit filed by the Respondent-Plaintiff before the learned Single Judge of the Madras High Court did not adhere to the requirements contemplated under Section 92 of Code of Civil Procedure 1908, which specially deals with suits against trusts, hence, bolstering the contention that the suit property was never intended to be conceived by the Respondent-Plaintiff to be a trust property.

[11] Furthermore, drawing reference from the contents of the Compromise Decree dated 26.11.1929, the Appellant-Defendant asserted that the suit property is not a trust property rather under his absolute ownership as the said decree required modifications to the Trust Deed dated 12.12.1917 in case the property were to be a trust property, but

no such modifications were made, nor was any trust deed executed and the Conveyance Deed made pursuant thereto explicitly identifies the Appellant-Defendant as the transferee with absolute ownership, not as a trustee. Additionally, it was contended that the responsibility for maintaining the temples would not tantamount to limiting the vesting of the suit property, rather such conditions are inconsistent and void by virtue of Sections 10 and 11 of the Transfer of Property Act 1882, and the property does not revert after a set period. To buttress this contention, the Appellant-Defendant submitted that the Trust Deed of 1917 and the Conveyance Deed thereto did not confer the status of a trustee to the spiritual head of Guru Manicka Prabhu Temple.

[12] Per contra, it is the case of the Respondent-Plaintiff that the Appellant-Defendant initially claimed title over the suit property as a hereditary trustee but later asserted that the Respondent-Plaintiff-Temple is a private entity. The issue of whether the RespondentPlaintiff-Temple is public or private has been previously addressed in the proceedings bearing LPA No. 119 of 1983, and the same issue is being relitigated now. It was, therefore, asserted by the Respondent-Plaintiff that the suit property and Respondent-Plaintiff-Temple being identical properties to the properties enumerated in the Compromise Decree dated 26.11.1929, the present proceedings, being subsequent proceedings, is barred by the principle of res judicata.

[13] Furthermore, it is the case of the Respondent-Plaintiff that post taking over of the possession of the temple by the HR & CE from the Appellant-Defendant, it has maintained the suit property and managed it as a public temple since 1946, consequently, asserting that the Respondent-Plaintiff-Temple being a declared public institution under HR & CE's stewardship, the property should remain under Respondent-Plaintff's management to protect public worship and ensure proper maintenance.

[14] Having heard the learned Senior Advocate for the Appellant-Defendant and the Counsel for the Civil Appeal No. 8374 of 2024 Page 13 of 22 Respondent-Plaintiff, it is pertinent to adjudge the present challenge in light of the aforementioned chronology of facts and proceedings.

[15] Considering the submissions made by the parties herein and the factual backdrop as has been delineated in the earlier part of the judgment which is not being repeated for brevity, it is evident that the present challenge relating to the title over the suit property rests on the interpretation of terms and conditions enumerated under the Compromise Decree dated 26.11.1929. The Appellant-Defendant posits absolute ownership over the suit property obverse to the claim of the Respondent-Plaintiff being the persistent nature of suit property as trust property. Therefore, it is apposite to delve into a comprehensive analysis of the relevant paragraph numbers 01 to 04, 11, and 13 of the Compromise Decree dated 26.11.1929, as has been reproduced by the Division Bench of the Madras High Court in paragraph number 12 (vii) of the Impugned Judgment which reads as follows:

(1) "That the provisions of the Trust deed dated the 12th day of December 1917 shall attach only to the property described in Schedule "A" hereto and even in so far as those properties shall immediately be incested (sic: Vested) in Sri Guru Marthanda Manicka Guru as Head of the Guru Manicka Prabhu Temple and his successors in office as Head of the said Temple, subject to the condition that the net worth (sic: monthly) income from the said properties ascertained after payment of repairs and taxes, as and when the same accrues be applied and utilised by the said Sri Guru Marthanda Manicka Prabhu for the maintenance of the defendants Nos. 7 and 8 and of the survivor of them, during their lifetime.

(2) That after the death of the survivor of the 7th and 8th defendants the head of the said Guru Manicka Prabhu Temple for the time being do pay to Ponbati Bai (sic: Parvati Bai) the sister of the 8th defendant during the term of her natural life from and out of the said income the sum of Rupees Forty (Rs.40/-) per mensem and the balance of the said income shall be utilised by him for the purpose of the said temple.

(3) That after the death of the said Ponbati Bai (sic: Parvati Bai) the said premises and the income thereof shall absolutely vest in the Guru of the said temple for the time being and be utilised for the maintenance and upkeep of the said Manicka Prabhu Gadi and the Kamakala Kameswarar Temple founded by the late Rai Raja Eswaradas Daiwanth Bahadur, the father of the 7th defendant, and situated in Raja Hanumantha Lala Street, Triplicane, Madras.

(4) That the remaining properties includes (sic: included) in the said. trust deed dated the 12th day of December 1927 (sic - 1917) and (in) particular set out in schedule "B" here to be and are hereby exonerated from the said Trust and that the said properties are the absolute properties of the 7th and 8th defendants, and they have already vested in the 2nd defendant.

xxxx

(11) That for the purposes of giving effect to paragraph 1 of this decree, the 2nd and 3rd defendants shall execute in favour of the spiritual Head of the Guru Manicka Prabhu Temple a conveyance of the properties set out in schedule "A" hereto and the said spiritual Head of the said temple shall execute in favour of the 6th defendant a power of attorney empowering him to manage the properties set out in schedule "A" hereto during the life of the 7th and 8th defendants and the survivor of them and the said Parbati Bai (sic: Parvati Bai) and for the purpose of making the payment set out in paragraphs 1 and 2 above and during such time the said 6th defendant shall hold possession of the said premise.

xxxx

(13) That the 2nd, 7th and 8th defendants shall execute in favour of the spiritual Head of the said Kamakala Kameswarar Temple a Conveyance of the building comprising the said temple and the land on which the same is situate more particularly described in schedule "C" hereto that the application of the monthly income from the

properties set out in schedule "A" in the manner indicated above shall be in the nature of a provision for maintenance and the said income shall not be liable to be alienated or anticipated (sic: appropriated) by the 7th and 8th defendants or the said Parbati Bai (sic: Parvati Bai) to be attached or proceeded against by the creditors of the 7th and 8th defendants and the said Parbati Bai (sic: Parvati Bai)...."

[16] A perusal of the above would show that the provisions of the Trust Deed dated 12.12.1917 were restricted to property described in Schedule 'A', that is, the suit property herein. The said property would forthwith vest in Shri Guru Marthanda Manicka Prabhu as the head of the Guru Manicka Prabhu Temple and his successors in office. The monthly income as would be derived from the said property after payment of repairs and taxes in relation to the temple would be utilized for Mr. T. Lakshmidoss and Mr. T. Venkataprasad during their lifetime.

[17] As stipulated in paragraph number 02 of the decree, post the death of Mr. T. Lakshmidoss and Mr. T. Venkataprasad, the head of the Guru Manicka Prabhu Temple for the time being was to pay during the lifetime a sum of INR 40/- (Rupees Forty only) per month to Ms. Parvati Bai, being daughter of Mr. T. Lakshmidoss and sister of Mr. T. Venkataprasad and the remaining income had to be utilized for the purposes of the temple. After the death of Ms. Parvati Bai, the Schedule 'A' property which is the suit property as also the income derived therefrom would vest absolutely in Guru of the Manicka Prabhu Temple for the purpose of maintenance and upkeep of Guru Manicka Prabhu Temple and Kamakala Kameshwarar Temple, i.e. the Respondent-Plaintiff Temple herein.

[18] The remaining properties as mentioned in the Trust Deed dated 12.12.1917 as provided for in Schedule 'B' were excluded from the trust as contemplated by paragraph number 04 of the said decree. This can be said with regard to the properties and their utilization which are found in paragraph numbers 01 to 04.

[19] Paragraph numbers 11 and 13 enumerate the steps to be undertaken to give effect to the process of rescheduling of the suit property out of properties which formed part of the Trust Deed dated 12.12.1917, in other words, to materialize what was contemplated by virtue of paragraph number 01 of the decree. Paragraph number 11 specifically required the Official Assignee and Mr. W. Ramakrishna Lala to execute in favour of the spiritual head of the Guru Manicka Prabhu Temple a conveyance of properties as spelt out in Schedule 'A'. On this part, the spiritual head of the Manika Prabhu Temple shall execute a Power of Attorney in favour of Mr. C. Ranganathan Nayudu, the proprietor of M/s Dowden and Company, that is, the creditor's company, to manage the properties set out in Schedule 'A' during the lifetime of Mr. T. Lakshmidoss and Mr. T. Venkataprasad as also Ms. Parvati Bai for the purpose of executing the terms of payment set out as mentioned in paragraph numbers 01 and 02. It is during this period that the creditor shall hold possession of the suit property.

[20] Further, paragraph number 13 required the Official Assignee, Mr. T. Lakshmidoss, and Mr. T. Venkataprasad to execute a conveyance deed of the building

comprising of Kamakala Kameshwarar Temple, i.e. the Respondent-Plaintiff-Temple herein through its spiritual head qua the building comprising the said temple including the land situated thereon more particularly as described in Schedule 'C' of the decree.

[21] It is pertinent to emphasise herein that the income derived from the properties set out in Schedule 'A' as also in Schedule 'B' were not to be alienated or appropriated by Mr. T. Lakshmidoss, Mr. T. Venkataprasad, and Ms. Parvati Bai nor could the creditors proceed against the said schedule properties.

In the above perspective, it is apparent that the said properties as provided in Schedules 'A' and 'C' could neither be alienated by any of the parties nor proceeded against by the creditors. What in effect it means is that they continue to be a part of the trust property.

[22] It would not be out of the way to mention here that the parties to this decree acted upon the same as is apparent from the two transfer deeds dated 28.08.1931 executed by the Official Assignee, Mr. T. Lakshmidoss and Mr. T. Venkataprasad and Mr. W. Ramakrishan Lala. Document bearing no. 1113 of 1931 (Exhibit D-1) was executed by Official Assignee along with Mr. W. Ramkrishna Lala and Document bearing No. 1114 of 1931 (Exhibit P-8) was executed by the Official Assignee in favour of the spiritual head of Guru Manicka Prabhu Temple.

[23] From the aforementioned analysis, it is apposite to conclude that except for Schedule 'B' properties, properties in Schedule 'A' and 'C' existed and continued to be a part of the trust. This leads us to a logical corollary that the head of the Guru Manicka Prabhu Temple (Appellant-Defendant herein) could hold the property in Schedule 'A' which is the suit property as a trustee only, and not in any other capacity.

[24] Another plea raised by the Counsel with reference to application of principle of res judicata for averring a bar on the present proceedings was rightly rejected by the learned Single Judge and the Division Bench of the Madras High Court on account of distinct nature of claims in both proceedings, that is, previous proceedings dealt with the issue of nature of Respondent-Plaintiff-Temple as being public or private temple, whereas the present proceedings relate to a suit for declaration of title over the suit scheduled property. It was rightly pointed out by the learned Single Judge of the High Court that the nature of the Respondent-Plaintiff-Temple would not affect the obligations envisaged by the Compromise Decree dated 26.11.1926 in relation to the suit scheduled property herein. Hence the challenge raised in the earlier proceedings cannot be said to impact the present litigation.

[25] In light of the above, we are in agreement with the judgment passed by the Division Bench of the Madras High Court which is impugned herein. Consequently, the present Appeal being devoid of merit is hereby dismissed.

[26] There shall be no order as to costs.

[27] Pending applications, if any, stand disposed of

2024(2)MLPJ490

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Jitendra Jain]

Writ Petition No 2236 of 2016 **dated 04/10/2024**

Sukhraj B Nahar Charitable Trust; Sukhraj B Nahar

Versus

Chief Controlling Revenue Authority; Additional Controller of Stamps; Collector of Stamps, Kurla

STAMP DUTY ON RECTIFICATION DEED

Bombay Stamp Act, 1958 Sec. 31 - Stamp Duty on Rectification Deed - Petitioner executed a lease for 3872.53 sq.mtrs. in 2009 on land partially from two CTS plots - Later, sub-division increased the area to 4050.80 sq.mtrs. - Petitioner filed a rectification deed reflecting the additional 178.27 sq.mtrs. - Authorities calculated stamp duty based on an excess area of 925.30 sq.mtrs. and raised a demand of Rs.53,63,050/- - Petitioner argued stamp duty was already paid on 3872.53 sq.mtrs. and only 178.27 sq.mtrs. should attract additional duty - High Court ruled in favor of petitioner, quashing the excess stamp duty demand and directing calculation based on 178.27 sq.mtrs. - Petition Allowed

Law Point: Stamp duty should be calculated only on the excess area specified in the rectification deed; pre-paid duty on the original area must be considered

Acts Referred:

Bombay Stamp Act, 1958 Sec. 31

Counsel:

Sonal, Filji Fredrick, Alisha Mohte, F F & Associates, Pooja Patil

JUDGEMENT

Jitendra Jain, J.- [1] By this petition under Article 226 of the Constitution of India, petitioners have challenged an order dated 11th August 2015 passed by respondent no.3-Collector and appeal order dated 5th 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 4th December 2009. The adjudication was done by respondent no.3-Collector of Stamp, Kurla.

[5] On 15th 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 29th 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 13th 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 15th October 2005 of division and amalgamation.

[8] On 11th 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 5th 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 11th August 2015 and 5th 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 15th 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 11th 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 15th 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 15th 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 15th 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 15th 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 15th 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 13th 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 15th 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 15th 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 13th 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 15th 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 15th 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 sub-division/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 11th August 2015 and 5th 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

2024(2)MLPJ497

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Jitendra Jain]

Writ Petition No. 2361 of 2014 **dated 03/10/2024**

Purnima Bhanuprasad Gohil

Versus

State of Maharashtra; Collector of Stamps; Honble Registrar/administrative Officer (Ao) Mumbai Suburban District; Inspector General of Registration and Controller of Stamps; Sub-registrar, Andheri

DOCUMENT REGISTRATION DELAY

Registration Act, 1908 Sec. 23, Sec. 72 - Bombay Stamp Act, 1958 Sec. 34 - Document Registration Delay - Appellant challenged refusal to register Family Partition of Assets Settlement Deed lodged beyond 4 months from execution, as per Sec. 23 of the Registration Act - Petitioner contended that the period during which the Stamp Authorities adjudicated stamp duty should be excluded - Court accepted this argument, holding the delay was due to adjudication and obligations under the Settlement Deed - Registration directed within 12 weeks. - Petition Allowed

Law Point: Time taken by stamp adjudication authorities and fulfillment of obligations under a settlement may be excluded from the 4-month registration period under Sec. 23 of the Registration Act, 1908.

Acts Referred:

Registration Act, 1908 Sec. 23, Sec. 72

Bombay Stamp Act, 1958 Sec. 34

Counsel:

Arun H Mehta, A I Patel, P G Sawant

JUDGEMENT

Jitendra Jain, J.- [1] This petition under Article 227 of the Constitution of India is filed challenging an order passed by the Appellate Authority dated 6th December 2013 and order passed by Collector of Stamps dated 28th August 2012 refusing to register the document titled as "Family Partition of Assets Settlement Deed" ("Settlement Deed") on the ground that the said Settlement Deed was executed on 20th December 2011 and the document has been lodged for registration on 16th November 2012, which is beyond the period of 4 months provided under Section 23 of the Registration Act, 1908 ("the Act").

Brief Facts:-

[2] The genesis of the present petition arises out of a matrimonial dispute, between Petitioner and her husband, which landed before the Family Court. Petitioner and her husband decided to settle the dispute between themselves and, therefore, executed a Family Partition Of Assets Settlement Deed on 20th December 2011. As per the Settlement Deed, husband of the Petitioner was to transfer to Petitioner and their son two flats. A joint application was made before the Family Court on 22nd December 2011 to keep the original Settlement Deed in its custody till in the parties comply with the duties and obligation under the consent terms.

[3] On 27th January 2012, Petitioner and her husband informed the Family Court that both the parties have complied with their respective obligations under the Settlement Deed and the Family Court may pass the decree in terms of said Settlement Deed. Pursuant to the said request, on 17th February 2012, decree of divorce came to be passed by the Family Court.

[4] Since the decree in terms of the Settlement Deed involved immovable properties of two flats, Petitioner on 6th June 2012 lodged the copy of said decree and Settlement Deed with the Superintendent of Stamps for determination of stamp duty payable on the said document. The Stamp Authority processed the said application and on 28th August 2012 determined the stamp duty payable on the Settlement Deed by arriving at a figure Rs.2,29,450/- and penalty of Rs.27,534/-. The said two amounts were duly paid by Petitioner on 30th August 2012. On 12th September 2012, Petitioner made an application to the Family Court for return of original Settlement Deed dated 20th December 2011 for affixing the requisite stamps under the Bombay Stamp Act. The original document duly stamped were delivered on 13th September 2012 and Petitioner on 16th November 2012 lodged the Settlement Deed for registration.

[5] On 17th December 2012, the authorities refused to register the document on the ground that the Settlement Deed is dated 20th December 2011 which has been lodged for registration on 16th November 2012 and, therefore, same is lodged beyond

period of 4 months provided under Section 23 of the Act. The said order was challenged by filing a writ petition before this Court. However, this Court relegated the Petitioner to alternative remedy of appeal. Pursuant thereto, Petitioner filed an appeal under Section 72 of the Act. The Appellate Authority on 6th December 2013 dismissed the appeal by relying upon reasoning giving by the lower authority on limitation.

[6] It is on the aforesaid backdrop that the Petitioner has challenged original order and appellate order before this Court in the present petition.

[7] Mr. Mehta, learned counsel for the Petitioner submits that the time taken by the stamp authorities for adjudication of the stamp duty from 6th June 2012 to 13th September 2012 should be excluded for the purpose of calculation of 4 months under Section 23 of the Act and if that is excluded then the Petitioner has lodged the document within 4 months and, therefore, there is no delay in lodging the document for registration. Learned counsel has relied upon a decision of this Court in **Kirti Jagdish Mulani Vs. The State of Maharashtra & Ors.** [Writ Petition No.2662 of 2012 dated 17th January 2013] in support of this submission and brought to the attention of this Court more particularly paragraph 9 to contend that the Co-ordinate Bench of this Court has taken identical view.

[8] Per contra, Mr. Sawant, learned AGP vehemently opposed the petition on the ground the document is dated 20th December 2011, whereas the same has been lodged for registration on 16th November 2012 and since it is beyond the period of 4 months provided under Section 23 of the Act, the authorities were justified in rejecting the registration of the Settlement Deed.

[9] I have heard learned counsel for the Petitioner and learned counsel for the Respondent.

[10] It is important to note that the Appellate Order dated 6th December 2013 has been passed without giving any opportunity of hearing to the Petitioner. Normally this Court would have remanded back to the Appellate Authority, but in the light of the fact that 10 years have passed and the petition is pending before this Court and further the issue involved is also squarely covered by the decision of the Co-ordinate Bench of this Court, this Court deems fit to adjudicate the issue in the present petition rather than remanding the matter back to the Appellate Authority.

[11] Section 23 of the Registration Act reads as under:-

"23. Time for presenting documents.

- Subject to the provisions contained in sections 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 appealable, within four months from the day on which it becomes final."

[12] Section 34 of the Bombay Stamp Act, 1958 (now the Maharashtra Stamp Act) reads as under:-

"34. Instruments not duly stamped in admissible in evidence etc.

- 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 [or if the instrument is written on sheet of paper with impressed stamp [such stamp paper is purchased in the name of one of the parties to the instrument].

[emphasis supplied]

[13] The period from 20th December 2011 to 17th February 2012 is required to be excluded on account of first proviso to Section 23 of the Act. Also insofar as the period from 20th December 2011 to 6th June 2012 is concerned, the Settlement Deed was conditional upon Petitioner and her husband complying with certain obligation of fulfillment of their respective obligations. Petitioner and her husband informed the Family Court about the same and requested for decree to be passed in terms of the Settlement Deed after due compliance of their obligations. It is also important to note that the original Settlement Deed was in the custody of the Family Court from 20th December 2011. On the request being made by Petitioner and her husband, Family Court passed a decree of divorce in terms of the Settlement Deed on 17th February 2012. Therefore, in my view, time taken from 20th December 2011 to 17th February 2012 has to be excluded for determining the time provided under Section 23 of the Act. Now the issue arises of period post decree.

[14] On a conjoint reading of Section 23 of the Registration Act and Section 34 of the Bombay Stamp Act, 1958, it is evident that until document is duly stamped, Registering Authority cannot register the said document. It is not disputed that since the Settlement Deed dealt with immovable property it was required to be compulsorily registered under the Registration Act read with Transfer of Property Act, 1882. In my view, on a conjoint reading of the aforesaid two provisions, the time taken by the stamp authority from 6th June 2012 till 13th September 2012 has to be excluded for calculating the 4 months period provided under Section 23 of the Act. This is so because, the said period cannot be attributed to the Petitioner and unless the stamp authorities adjudicate the stamp duty payable and Petitioner pays the stamp duty, the document cannot be registered as per Section 34 of the Stamp Act. Therefore, in my view, submission made by Petitioner is required to be accepted for excluding the period from 6th June 2012 to 13th September 2012 when the original document was delivered back. It is also important to note that in terms of the divorce decree certain payments had to be made between the parties and, therefore, on the same being paid during period 17th February 2012 to 6th June 2012, the application for adjudication of the document came to be lodged on 6th June 2012.

[15] In my view, on account of above reasoning, the period from 20th December 2011 till 30th September 2012 is required to be excluded for the purposes of Section 23 of the Act and, therefore, the Settlement Deed has been lodged within the period provided under Section 23 of the said Act.

[16] Mr. Sawant, learned AGP could not distinguish the decision of the Co-ordinate Bench of this Court in the case of **Kirti Jagdish Mulani (supra)** nor anything has been brought to my notice that the said order has been reversed or is not a good law as of today. The decision of this Court in **Kirti Jagdish Mulani (supra)** also supports the case of Petitioner and the view which I have expressed above.

[17] To conclude period from 20th December 2011 to 17 February 2012 is to be excluded under proviso to Section 23 and also on account of time taken for obtaining decree in terms of Settlement Deed. Time taken thereafter upto 16th November 2012 is required to be excluded on account of adjudication by Stamp Authority and affixing of stamps on the original Deed.

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

O R D E R

(i) The impugned orders dated 6th December 2013 and 28th August 2012 is hereby quashed and set aside.

(ii) "Family Partition of Assets Settlement Deed" dated 20th December 2011 being Exhibit-G to the present petition has been lodged for registration within the time provided under Section 23 of the Act.

(iii) Respondents are directed to register Exhibit-G within 12 weeks from the date of uploading of the present order.

(iv) Petitioner is directed to take necessary steps by giving notice or public notice for presence of her husband for registration of document or produce a death certificate to show that he has passed away or any other undertaking to the satisfaction of the Registration Authority for dispensing the presence of husband for registration of document.

[19] Rule is made absolute in above terms. Petition disposed

2024(2)MLPJ501

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Jitendra Jain]

Writ Petition No. 10602 of 2016 **dated 03/10/2024**

Uma Niwas Co-operative Housing Society Ltd

Versus

Collector of Stamps; Deputy Inspector General of Registration and Deputy Stamp Controller; Sharli Jayvant Vaishampayan; Uday Kale

DEFICIT STAMP DUTY DISPUTE

Bombay Stamp Act, 1958 Sec. 53A, Sec. 41, Sec. 32B, Art. 25 - Deficit Stamp Duty Dispute - Appellant challenged orders raising demand for deficit stamp duty on Flat in the society - Appellant argued that Flat No. 320 was subject to an Amnesty Scheme and duty was fully paid in 1995 - Respondents contended that demand was raised after 20 years, which violated the six-year limitation under Sec. 53A of the Stamp Act - Court quashed the demand as it was beyond the limitation period - Petition partly allowed with refund of deposited amount related to Flat No. 320

Law Point: Demands for deficit stamp duty must be raised within the statutory limitation period - Demands made after the expiry of six years under Sec. 53A of the Stamp Act are invalid.

Acts Referred:

Bombay Stamp Act, 1958 Sec. 53A, Sec. 41, Sec. 32B, Art. 25

Counsel:

K S Dewal, Sham Thakur, Kavita N Solunke, Sulajja Patil, Anil Mane

JUDGEMENT

Jitendra Jain, J.- [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 re-produced 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 2 nd 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:-

O R D E R

(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. 2 nd May 2016 and 16 th 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

2024(2)MLPJ506

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Arif S Doctor]

Commercial Arbitration Petition (L) No 34078 of 2023 **dated 30/09/2024**

Gulshan Townplanners Llp

Versus

Gulshan Co-operative Housing Society Limited; Baiju Mahendra Doshi

REDEVELOPMENT DISPUTE

Transfer of Property Act, 1882 Sec. 55 - Arbitration and Conciliation Act, 1996 Sec. 9 - Maharashtra Ownership Flats (Regulation of The Promotion of Construction, Sale, Management and Transfer) Act, 1963 Sec. 11 - Redevelopment Dispute - Petitioner sought relief under Section 9 of Arbitration and Conciliation Act for redevelopment of a property, claiming deemed conveyance in favor of the society - Respondent No. 2, an occupant, opposed redevelopment, claiming ownership of three flats in B-Wing, not a part of the society - Court held that there was no arbitration agreement between petitioner and Respondent No. 2 - Found petition to be misuse of Section 9, as redevelopment disputes did not involve arbitration - Petition dismissed with costs imposed on petitioner. - Petition Dismissed

Law Point: Section 9 of the Arbitration Act cannot be misused to resolve disputes involving parties without an arbitration agreement.

Acts Referred:

Transfer of Property Act, 1882 Sec. 55

Arbitration and Conciliation Act, 1996 Sec. 9

Maharashtra Ownership Flats (Regulation of The Promotion of Construction, Sale, Management and Transfer) Act, 1963 Sec. 11

Counsel:

Shanay Shah, K Nagda, Mayur Khandeparkar, Pankaj S Pandey, Simil Purohit (Senior Advocate), Arshil Shah, Parisha Shah, Smita Durve, Rasesh Shah, Tanmay Gujarathi, Vishal Pattabiraman, Rutwij Bapat

JUDGEMENT

Arif S Doctor, J.- [1] While at first blush the captioned Petition would appear to be the usual Petition filed under Section 9 of the Arbitration & Conciliation Act, 1996 ("Arbitration Act") in matters of redevelopment agreements entered into between a Developer, (the Petitioner in the present case) and a Cooperative Housing Society, (Respondent No. 1 "the Society" in the present case), the facts of the present case would make plain that it is infact anything but so. Infact, in my view, as the facts of the

present case would make clear, the present Petition is nothing but a sheer attempt to misuse of the provisions of Section 9 of the Arbitration Act.

[2] The 'disputes' that are stated to have arisen are under a Redevelopment Agreement ("RDA") and a Supplementary Agreement ("SA"), both dated 20th July 2022 entered into between the Petitioner i.e., the Developer, on the one hand and the Society which comprises of eleven members on the other hand. The RDA has also been individually signed/executed by each of the eleven members of the Society. Admittedly, Respondent No. 2 is neither a member of the Society nor has Respondent No. 2 signed the RDA. Infact, the Petition itself describes Respondent No. 2 as "Occupant on Respondent No. 1's property".

[3] Before adverting to the rival contentions, it is essential to set out the following facts, viz.

i. The Petition concerns a plot of land measuring about 461.52 sq. meters, bearing CTS No. 1163, Final Plot No. 282, T.P.S. II (1st variation final) of Village: Vile Parle (East), Dist. Mumbai Suburban ("the said land"), and a structure/building comprising of 'A' and 'B' Wings ("the said structure/building") standing on the said land.

ii. On 13th January 1986, M/s. Gulshan Construction, through a Deed of Assignment, was granted development rights in respect of the said land by its owner, stated to be one Pyaremal Sagormal. Subsequently, M/s. Gulshan Construction built the said structure/building. The A-Wing initially comprised of a ground floor and three upper floors, and B-Wing comprising a ground floor and two upper floors. Later, a fourth floor was added to the A-Wing.

iii. M/s. Gulshan Construction then sold all the flats in the A-Wing to individual purchasers, i.e., the eleven members of the Society. The B-Wing, which has one flat per floor, was initially kept unsold and reserved by a partner of M/s. Gulshan Construction for his personal use. However, in 1993, the partner of M/s. Gulshan Construction sold all three flats in B-Wing to Respondent No. 2. In the year 2006 the individual flat purchasers of A-Wing registered and formed the Society on 22nd August 2006. It is not in dispute that (a) Respondent No. 2 is not a member of the Society, (b) the B-Wing has been independently assessed for property tax since 2001, which had at all times been paid by Respondent No. 2, (c) B-Wing has independent water and electricity connections for which separate bills are raised on and are paid by Respondent No. 2 (d) there is a compound wall between A-wing and B-wing and separate entrances to both the wings and (e) the open space around each wing was separately demarcated.

iv. In 2018, the Society, during a Special General Body Meeting (SGM) held on 8th September 2018, resolved to undergo redevelopment. However, the Petition asserts that due to the non-cooperation of Respondent No. 2, the redevelopment did not proceed. The Society thereafter in the year 2019 applied for a unilateral deemed conveyance in respect of the said land and structure/building. Respondent No. 2

contested the application for deemed conveyance. The Competent Authority, however, by an order dated 7th September 2020, allowed the application for deemed conveyance. This order was challenged by Respondent No. 2 by filing Writ Petition (St) No. 1253 of 2021 which Petition is presently pending.

v. On 3rd November 2020, the Petitioner submitted an offer to the Society for the redevelopment of the said land and said structure/building. Respondent No. 2 refused to consent to the redevelopment, claiming exclusive possession of B-Wing and a greater entitlement than what was being offered to the members of the Society. The Society however proceeded to execute and subsequently register the RDA and SA. As I have already noted above, (a) the RDA and SA were executed between Petitioner and the Society only (b) each member of the Society also signed/executed the RDA and SA and (c) Respondent No. 2 has admittedly not signed either the RDA and/or the SA and is also admittedly not a member of the Society.

vi. The Society, thereafter through letters dated 29th September 2022, 4th February 2023, and 14th March 2023, informed Respondent No. 2 about the execution and registration of the RDA and SA and called upon Respondent No. 2 to consent to the redevelopment. Respondent No. 2 however did not consent. The Petitioner thereafter obtained an Intimation of Disapproval (IOD) on 1st August 2023, as also the approval of the MCGM to the plans for redevelopment.

vii. On 22nd August 2023, the Society informed Respondent No. 2 about the IOD and also called upon Respondent No. 2 to execute and register the Permanent Alternate Accommodation Agreement (PAAA) and handover possession of the three flats. In response, Respondent No. 2, by a letter dated 31st August 2023, expressed surprise at the redevelopment and denied receiving any prior communication. Respondent No. 2 vide a letter dated 12th September 2023 stated that he was not a member of the Society and that B-Wing and the land beneath it did not form part of the Society's property.

viii. On 14th October 2023, the Petitioner addressed a letter to Respondent No. 2, stating that Respondent No. 2 had never applied for membership of the Society and had opposed the grant of the deemed conveyance by suppressing the purchase agreements. The letter emphasized the urgency of redevelopment and informed Respondent No. 2 that they were entitled to the same benefits as members of the Society. Despite this, Respondent No. 2 did not respond or comply. It is thus that the present Petition came to be filed.

[4] Mr. Shah, learned counsel for the Petitioner, submitted that with the grant of deemed conveyance in favour of the Society, there could be no dispute that the Society was the rightful owner of both the said land as also both the 'A' and 'B' Wings. He thus submitted that there was no legal barrier preventing the Society from redeveloping the property provided that the redevelopment had been approved by the majority of the member of the society and was otherwise in accordance with the law. He pointed out that in the present case, all members of the Society had not only approved the redevelopment, but they had also individually executed the RDA and SA.

[5] Mr. Shah then submitted that although Respondent No. 2 had challenged the deemed conveyance by filing a Writ Petition, no steps had been taken by Respondent No. 2 to expedite the hearing of the Petition. Nor had any interim order been passed to stay the order of 7th September 2020, by which the Competent Authority had granted a deemed conveyance in favour of the Society. Mr. Shah also submitted that although Respondent No. 2 claimed ownership of three flats in the 'B' Wing, along with rights to the land beneath those flats, no legal steps had been taken by Respondent No. 2 in furtherance thereof.

[6] Mr. Shah submitted that it made no difference that Respondent No. 2 was not a member of the Society, since it was well settled that in a Petition filed under Section 9 of the Arbitration & Conciliation Act, 1996, reliefs could be granted against third parties. He submitted that under Section 9, the Court could pass orders to protect the subject matter of the arbitration agreement, which, in this case, was the redevelopment of the Society's property. He placed reliance upon the judgment in of this Court in the case of Choice Developers vs. Pantnagar Pearl CHS Ltd. & Ors.,2022 SCCOnLineBom 786 and pointed out that this Court had in that case, exercising jurisdiction under Section 9 of the Arbitration Act directed a non-member of a cooperative housing society to vacate their respective flats in society therein.

[7] Mr. Shah also placed reliance on the Division Bench judgment in **Girish Mulchand Mehta & Anr. vs. Mahesh S. Mehta & Anr**, 2010 2 MhLJ 657 and **M/s Dem Homes LLP vs. Taruvel C.H.S.L. & Ors** [Order of this court dated 1st July 2024 in Commercial Arbitration Petition (L) No. 13474 of 2024]., to submit that minority members or occupants of a cooperative housing society could not obstruct redevelopment that had been approved by the majority, based on any independent right or dispute they may have with the society. He pointed out that Respondent No. 2 had not challenged any of the resolutions passed by the Society nor had Respondent No. 2 challenged the RDA and SA. Therefore, Mr. Shah submitted that Respondent No. 2 could not, under the guise of asserting independent rights, delay the redevelopment, which was prejudicing the majority of the society members.

[8] Mr. Shah then from the Additional Affidavit in Reply filed by Respondent No. 2, pointed out that the agreements for sale, upon which Respondent No. 2 had placed reliance were infact unregistered, and in any event did not create rights in respect of the said land. He pointed out that these agreements made reference to one structure comprising two wings, A-Wing and B-Wing, and recorded that Respondent No. 2 had inspected the documents under the Maharashtra Ownership Flats Act (MOFA). The agreements also provided that the purchasers in the B-Wing would be admitted as members of one cooperative housing society and that Respondent No. 2 could not demand partition of the property as the building was indivisible. Moreover, it was expressly stated that Respondent No. 2 would have no claim except for each flat. Mr. Shah, therefore, submitted that once the Society was formed and conveyance was

registered in its favour under Section 11 of MOFA, there was no question of Respondent No. 2 asserting a title adverse to that of the Society.

[9] Finally, Mr. Shah submitted that Respondent No. 2 was not being deprived of any right or entitlement as a result of the redevelopment. In fact, Respondent No. 2 was being treated equally with the eleven members of the Society and was being allotted an additional area of 22% over and above the existing space occupied by Respondent No. 2. He pointed out that the RDA, when crystallizing the entitlements of the members of the Society, did not use the term 'occupant', the SA later amended Clause 5(c) of the RDA to incorporate the term 'occupant' to ensure that Respondent No. 2 would receive equal benefits under the redevelopment plan.

[10] Mr. Khandeparkar, Learned Counsel appearing on behalf of the Society, at the outset, adopted the submissions made by Mr. Shah on behalf of the Petitioner. He further submitted that the Writ Petition filed by Respondent No. 2 had become infructuous due to the fact that pursuant to the order dated 7 th September 2020 the Society had executed a unilateral Deed of Assignment and Transfer dated 8th April 2021. He thus submitted that therefore there could be no dispute that the Society was the owner of the land and both 'A' and 'B' Wing of the said structure/building standing thereon. Mr. Khandeparkar then from the Deed of Assignment and Transfer, pointed out that (i) recital (q) explicitly clarified that the Society held the leasehold rights in respect of the land and structures/building (ii) the covenant at internal page No. 11 specifically conveyed the land and structures standing thereon to the Society (iii) the property schedule confirmed that all rights in the land and structures had devolved upon the Society and (iv) the list of members included the name of Respondent No. 2.

[11] Basis the above, Mr. Khandeparkar submitted that with the execution of Deed of Assignment and Transfer, the rights of the developer or any assignee of the developer, including Respondent No. 2 in the said land and/or the said structures/building, had been fully subsumed in favour of the Society. He then pointed out that Respondent No. 2 had only challenged the order dated 7th September 2020 passed by the Competent Authority but had admittedly not challenged the Deed of Assignment and Transfer itself. Therefore, he submitted that the Writ Petition filed by Respondent No. 2 had now become infructuous.

[12] Mr. Khandeparkar also placed reliance on the proviso to Section 55(2) of the Transfer of Property Act, to submit that any independent claim and/or right of that Respondent No. 2 might have, whether through the erstwhile developer or under the purchase agreements as a flat purchaser, ceased to exist upon the execution of the Unilateral Deemed Conveyance. He submitted that Respondent No. 2, regardless of whether their claim was derived through the erstwhile developer or as a flat purchaser, no longer had an independent right to oppose the redevelopment after the deemed conveyance was executed in favour of the Society.

[13] Mr. Khandeparkar then also submitted that the fact that Wing 'A' and Wing 'B' were part of a single conjoined structure was also beyond the pale of dispute. In

support of his contention, he placed reliance upon (i) the approved sanction plan of the Society (ii) the architect's certificate dated 18th July 2024 (iii) recitals (E) and (K) of the Redevelopment Agreement (RDA), and (iv) the full occupation certificate dated 7th January 2004. He submitted that all this unequivocally established that Wings 'A' and 'B' were part of a single, conjoined structure.

[14] He also pointed out that merely because Wing 'B' was being assessed independently by the Municipal Corporation, or because Respondent No. 2 had been paying property taxes, this would not by itself confer ownership of Wing 'B' upon Respondent No. 2. He also submitted that Respondent No. 2, being in exclusive occupation of Wing 'B', was required to pay the municipal taxes either directly or through the Society. Paying municipal taxes, he contended, did not establish ownership of Wing 'B' in favour of Respondent No. 2.

[15] Mr. Khandeparkar emphasized that the aim of the present Petition was to facilitate the redevelopment of both Wings, which was the subject matter of the RDA. He pointed out that Respondent No. 2 was treated on par with the members of the Society in the RDA and SA. He also placed reliance on the judgment of this Court in **Choice Developers** (supra) to submit that the Court had the authority to pass orders to evict non-cooperating, non-members/occupants of the Society. He submitted that even if a third party was not accepted as a member of the Society or was not a signatory to the arbitration agreement, the Court still had the jurisdiction to pass orders directing such third parties to vacate the premises in question, which were subject to redevelopment.

[16] Mr. Khandeparkar submitted that Respondent No. 2, having full knowledge of the RDA and the resolutions passed by the Society, and not having challenged them, could not now oppose the redevelopment. He reiterated that Respondent No. 2 had opposed the application for deemed conveyance before the Competent Authority using identical defences as in the present Petition, all of which had been negated. He further pointed out that the Writ Petition filed by Respondent No. 2 challenged the deemed conveyance order and not the resolution dated 28th February 2021, which appointed the Petitioner as developer, or the RDA executed by the Society after the deemed conveyance order. He thus submitted that since Respondent No. 2 had not challenged the Indenture of Conveyance, they could not now make an adverse claim against the Society. Basis this Mr. Khandeparkar submitted that this Petition may be allowed.

[17] Mr. Purohit, Learned Senior Counsel appearing on behalf of Respondent No. 2, at the very outset challenged the maintainability of this Petition. He submitted that there was no Arbitration Agreement between the Petitioner and Respondent No. 2. He pointed out that the RDA and SA were both between only the Petitioner and the Society. He also pointed out that the RDA bore the signatures of all the eleven members of the Society and the Petitioner had not signed the same nor the SA. Mr. Purohit then pointed out that the RDA itself stated that the 'A' Wing was occupied by the members of the Society and the 'B' Wing was occupied by 'Occupant'. He thus

pointed out that there was no association or contractual obligation linking Respondent No. 2 with the Society, nor was Respondent No. 2 claiming any rights through or under any party to the Arbitration Agreement.

[18] Mr. Purohit further submitted that Respondent No. 2 was not a member of the Society, nor was Respondent No. 2 called upon to sign the RDA or participate in its execution Mr. Purohit then placed reliance upon an order of this Court in the case of **Nissa Hoosain Nensey vs. Pali Hill Neptune CHSL & Ors.** to submit that this Court had, in similar facts, held that where redevelopment agreements were also executed by individual members such agreements would not however bind non signatory members of the Society. He pointed out from the facts in the case of **Nissa Hoosain** (supra) that while the Society and certain members had infact executed the redevelopment agreement, certain other members who had not executed the redevelopment agreement were sought to be included by mentioning their names in redevelopment agreement as "existing members". He pointed out that this Court had then specifically held that it cannot be said that there was a contract between non signatory member and the developer, by merely adding definition of 'existing members' and purporting them to be included in such a contract without signatures and names, while other members are named and signed the same contract. He then pointed out that in the facts of the present case, not only was Respondent No. 2 not a member of the Society but also that the SA described Respondent No. 2 as Occupant on Respondent No. 1's property. It was thus he submitted that there was no question of Respondent No. 2 being bound by the RDA or the SA.

[19] Mr. Purohit then from the Agreement dated 22nd July, 1993, entered into between Respondent No. 2 and M/s. Gulshan Constructions, pointed out that the same specifically granted Respondent No. 2 exclusive possession of certain common areas, the terrace, and the land surrounding B-Wing. He pointed out that the Society had for the last thirty years always acknowledged and acted upon this basis i.e., that 'B' Wing was independent. He also pointed out that for the last thirty years, 'B' Wing was independently assessed for property tax as also separate bills in the name of Respondent No. 2 were issued in respect of Respondent No.2. In support of his contention, he placed reliance upon electricity and water charges bills which were at all times paid by Respondent No. 2.

[20] Mr. Purohit also placed reliance upon a circular dated 30th July 2004 issued by the Government of Maharashtra and pointed out that same set out the requirements of registration of the Co-operative Housing Society which inter alia were that a society should have separate entrance, electricity meter, water tank & water meter and tax assessment. He pointed out that in the present case, that Respondent No. 2 clearly conformed to all of the requirements as enumerated in the said circular and therefore was clearly independent of the Society.

[21] Mr. Purohit additionally pointed out that Respondent No. 2 had challenged the order granting the Deemed Conveyance which challenge was pending before this

Court. He submitted that even if the Deemed Conveyance and Unilateral Deed of Assignment were valid, they pertained only to the land beneath B-Wing, while Respondent No. 2 continued to be the owner of the structure of 'B' Wing itself. Therefore, the Petitioner, would have no legal right to in any manner disposes Respondent No. 2 from 'B' Wing.

[22] Mr. Purohit then submitted that the Judgements of this Court in **Girish Mulchand Mehta** (supra) and **M/s. Dem Holmes** (supra) would not be applicable in this case, since in both those cases the dispute was between the non-cooperative members of the Society and not non member occupant/s. He pointed out that it was well settled that the will of the majority would bind even such non cooperative members and therefore such non cooperative member's wish was the issue in hand in both these cases. Insofar as the Judgement of this Court in the case of **M/s. Choice Developers** (supra), he pointed out that the same was also distinguishable on facts, since the opposition to the redevelopment in that case was by a person though not a member of the Society in question but who was claiming membership of the Society. Hence in the said judgment, the order of eviction followed only after the issue of membership was resolved.

[23] Basis the above, Mr. Purohit submitted that this Petition was not maintainable and ought to be dismissed.

[24] I had at the outset noted that though the reliefs sought for in the present petition were seemingly the usual reliefs in Petition filed under Section 9 of the Arbitration Act, arising out of a of redevelopment agreement, the Petition infact is an attempt to completely misuse the provisions of Section 9 of the Arbitration Act. I say so for the following reasons, viz.

A. First, it is well settled that before granting relief under Section 9 of the Arbitration Act, the Court must be satisfied about the existence of an arbitration agreement. In the present case, **admittedly** there is no arbitration agreement between the Petitioner and Respondent No. 2. Also, **admittedly**, the RDA which contains the arbitration clause (i) is entered into only between the Petitioner and the Society; (ii) is signed by each member of the Society; (iii) Respondent No. 2 is not a member of the Society; (iv) Respondent No. 2 had never applied for membership of the Society and (v) Respondent No. 2 had never signed the RDA. Therefore, not only is there no arbitration agreement between the Petitioner and Respondent No. 2 but also, Respondent No. 2 could never be said to be bound by the RDA/Arbitration Agreement through the Society.

B. Second, it is well settled that when a Petition is filed under Section 9 of the Arbitration Act, (pre award) there must be manifest intention on the part of the party applying for reliefs under Section 9 to take recourse to arbitral proceedings. In the present case, clearly no such arbitration proceedings are intended and/or even contemplated, since there is no dispute between the Petitioner and any member of the Society. It is also well settled that a party who has no intention to ultimately refer the

disputes to arbitration and seek final relief cannot be permitted to seek interim relief, since interim reliefs are only in aid of the final relief. In the facts of the present case, given that there is no dispute between the Petitioner and the Society and/or any member of the Society, clearly no arbitration is infact intended and hence there is no question of arbitration being invoked by the Petitioner.

C. Third, the Petitioner's entire case to support the grant of interim relief against Respondent No. 2 is predicated upon the judgements of this Court in the case of **Girish Mulchand Mehta** (supra), **Choice Developers** (supra), and **Dem Homes** (supra). However, in my view, the said judgements would be of no assistance to the Petitioner as the same are ex facie distinguishable on facts. In all the aforesaid cases the individuals against whom reliefs were sought for were either members of the Societies in question and/or had sought membership of the Society which had entered into the development agreement basis which the Petition under Section 9 had been filed. It was thus that the identity of the members had merged with that of the Society, and it is thus that they were held to be bound by the will of the majority members of the Society.

D. Fourth, in the present case, the record bears out that (i) Respondent No. 2 is an occupant on Society's property; (ii) the Society has itself recognised Wing - B as a "Bungalow"; (iii) 'B' Wing is admittedly separately assessed for property tax and has an independent water and electricity connections, and (iv) all taxes and charges in respect B-Wing have at all times been paid/discharged only by Respondent No. 2. Thus, the record as also the conduct of the Parties makes clear that the Society has at all times treated 'B' Wing as separate and distinct from the Society.

E. Fifth, and crucially in the aforesaid circumstances, since there is no arbitration agreement between the Society and Respondent No. 2, had the Society sought to either evict and/or take any legal steps/action against Respondent No. 2 it would only be by way of an appropriate legal proceeding and not by way of a Petition under Section 9 of the Arbitration Act. Therefore, there is no question of the Petitioner, who is a developer and has absolutely no privity with Respondent No. 2 from using the machinery of Section 9 of the Arbitration Act to obtain reliefs against Respondent No. 2, which reliefs even the Society could not have obtained under Section 9.

F. Sixth, also, merely because the Society has obtained a deemed conveyance in its favour would also not ipso facto entitle to evict and/or bind Respondent No. 2 to the RDA. The same would also not conclusively determine questions of title that Respondent No. 2 might raise. It is infact well settled that an order granting deemed conveyance does not conclusively determine issues of title. In the present case, it is not in dispute that Respondent No. 2 has challenged the order, by which the deemed conveyance was granted in favour of Respondent No. 2, well before the present Petition was even filed. Admittedly, the Petition is still pending. Thus, by no stretch of imagination can the facts of the present case be equated with the facts of the

judgements of this Court in the case of **Girish Mulchand Mehta** (supra), **Choice Developers** (supra) and **Dem Homes** (supra).

[25] Therefore, what emerges from the above is that the Petitioner who is a developer and has absolutely no privity of contract and/or locus against Respondent No. 2 has sought to, by way of a purely private agreement entered into between the Society and its members, ride rough shod over Respondent No. 2. It is this which is in my view a complete and utter misuse of the provisions of Section 9 of the Arbitration Act. I have no hesitation in holding that the Petitioner has indeed made a frivolous claim and has instituted a vexatious proceeding wasting the time of the Court. Thus, this being a Commercial Arbitration Petition, the provisions of the Commercial Courts Act would require the imposition of costs.

[26] Hence, the following order, viz.

i. Petition is dismissed.

ii. Petitioner to pay Respondent No. 2 cost of Rs. 5,00,000/- within a period of four weeks from the date of this order.

iii. In the event the costs are not paid, Respondent No. 2 shall be entitled to recover the same as arrears of land revenue

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2024(2)MLPJ515

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before M S Sonak; Kamal Khata]

Writ Petition No. 12316 of 2015 **dated 27/09/2024**

Lekha Ali Shaikh W/o Ali M Shaikh

Versus

Chief Executive Officer

UNAUTHORIZED CONSTRUCTION

Cantonments Act, 2006 Sec. 248, Sec. 340, Sec. 238 - Unauthorized Construction - Appellant constructed a 750 sq. ft structure in 2009 without permission on private land in a Red Zone - Later applied for repairs and additional construction - Respondent rejected the request and ordered demolition of the structure, citing the area's Red Zone status - Appellant claimed deemed sanction under Cantonments Act, 2006, Sec. 238(6) due to the Respondent's delayed response - High Court held the construction was illegal from inception and dismissed the Petition - Respondent directed to file compliance report after demolition - Petition Dismissed

Law Point: Construction without proper authorization, even on private land, is illegal when situated in restricted areas like Red Zones, and no deemed sanction can override such restrictions.

Acts Referred:

Cantonments Act, 2006 Sec. 248, Sec. 340, Sec. 238

Counsel:

Jyoti Chavan, Namrata Pangam, Atharva Jagtap, Ashok B Tajane

JUDGEMENT

Kamal Khata, J.- [1] Rule. Rule returnable forthwith. With the consent of the parties, the matter is taken up for a final hearing.

[2] This Petition illustrates one amongst numerous instances of unauthorised constructions on private land, notably erected by the owners themselves without any prior application or approval of the Concerned Authority. It also illustrates how the owner, in this case, initially innocently constructed a small structure and, after a couple of years, in the guise of repairs, reconstructed a significantly larger structure and sought to regularise it.

[3] Slumlords frequently employ this strategy to create illegal settlements systematically. The old proverb, 'A drop of poison can contaminate the whole well,' is increasingly becoming a stark reality. A law-abiding citizen wonders: if a lawbreaker like a 'slumlord' can construct illegal structures on public and private land without facing the consequences, why shouldn't a private landowner build without permission or approvals? This idea promotes a culture of lawlessness and corruption, undermining the very foundation of lawful governance.

[4] Filed nearly nine years ago in 2015, this case offers a glimpse of a much larger issue. It is unacceptable that the Courts remain inundated with thousands of such cases. Often, law-abiding citizens are forced to take action to either protect their property or to drive the attention of Courts with regard to such illegalities to uphold the rule of law. Whilst it is the Court's unequivocal duty to ensure that citizens comply with the law and that offenders, regardless of influence, are met with strict and decisive punishment, the Legislature, too, must urgently intervene and halt this disturbing trend.

BRIEF FACTS:

[5] This Petition seeks a writ of mandamus to quash and set aside the order dated 12th January 2015 issued by the Chief Executive Officer of the Cantonment Board, Pune **("the Board")**. The Board holds that the Petitioner's construction on the plot within the 'Red Zone' where no construction is permitted, cannot be sanctioned under any circumstances. As a result, the unauthorized construction must be demolished.

[6] The Petitioner claims to be the owner of land bearing survey No. 26/17B/2 at Village Mamurdi, Shitalanagar, Dehu Road, Taluka Haveli, District Pune. She asserts that she purchased this 1500 sq ft private land in her minor son's name from the previous owner, Mr Nardevkumar Ramlal Chibar through a registered sale deed dated 12th May 2009 bearing registration No. 1917 of 2009.

[7] The Petitioner has admittedly constructed three rooms totaling 750 sq.ft (30x 25 sq ft) with the tin roof, on the land in 2009. The Dehu Road Cantonment Board records this property as House Property No. 893. Property Taxes have been paid to date, and there is no dispute regarding this.

[8] Notably, the Petition is silent on whether permissions were sought or approvals obtained for the 750 sq.ft. structure and whether an occupancy certificate was obtained. There is no argument presented to suggest that such permissions or approvals were unnecessary. The Petition seems to assume that since the property taxes were paid, and water and electricity connections were granted, the structure is authorised, and no further permissions were required. Why no action was taken to remove the structure remains as an unanswered question.

[9] Subsequently, the Petitioner claims to have submitted the requisite Forms Nos. A and B to the Cantonment Board to seek approval for repairs and additional construction for House No. 893. Form B declares that the structure is intended to be used for commercial purpose. The Petition asserts that these applications were submitted to the Board, which acknowledged receipt on November 21, 2010.

[10] The Petitioner's assertion that she requested the Members and the CEO of the Board to consider her application for approval of building plans appears to be merely a bald statement. The Petitioner claims that there was no response, oral or written. On 4th May 2011, six months after applying, the Petitioner was instructed to deposit Rs. 8,420/- towards building application processing fees and security charges.

[11] The Petitioner thus contends that the Respondent's failure to communicate any refusal or rejection of the application means that she has obtained deemed sanction. She claims to have waited one and a half years after submitting her application to begin constructing a 1500-square-foot building.

[12] The Petition further contends that the building was completed in January 2013. In June 2013, the Respondent addressed two letters dated 19 June 2013 intimating the Petitioner about rejecting their application for approval of the building plan and demolition of her structure. The Petition asserts that no reasons were provided for the two-year delay in rejection and claims the letters were issued under political pressure to harass her.

[13] The Petitioner attempts to justify the deemed sanction Section 238 (6) of the Cantonments Act 2006, which allows for such approval if the Board fails to respond to a valid notice within the stipulated time frame. Sub-Section 6 of Section 238 of the Cantonments Act 2006 reads as under:

"Section 238 (6): Where the Board neglects or omits, for one month after the receipt of a valid notice, to make and to deliver to the person who has given the notice any order of any nature specified in this section, and such person thereafter by a written communication sent by registered post to the Board calls the attention of the Board to the neglect or omission, then, if such neglect or omission continues for a

further period of fifteen days from the date of such communication the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be:"

[14] The Petitioner, through her Advocate, responded to the notice dated 19 June 2013. Subsequently, on 7 January 2014, she received a notice under Section 248 (1) of the Cantonments Act 2006. An appeal was preferred under Section 340 of the Cantonments Act 2006, but it was dismissed by an order dated 12 January 2015. This order is annexed to the Petition as Exhibit 'H' at Page 41. Ms Chavan, for the Petitioner, submits that the Petition was filed in these circumstances.

[15] Mr Ashok B Tajane was called upon to appear on behalf of the Board. He had no instructions on the matter. After hearing the Petitioner's Advocate, we found no reason to call upon Mr Tajane to file a reply. Upon reviewing the order, we felt that the Petition was meritless and required no reply from the Board. Evidently, the Petitioner constructed a 750 sq. ft structure without permission, and the subsequent additional construction was also illegal.

[16] The 12 January 2015 order is well-reasoned and has considered the arguments of both parties and provides clear justification for ruling against the petitioner. The Petitioner failed to establish that her original structure was legal. Apart from that, the circumstances to establish any deemed permission were also not made out. The permission was sought for repairs, but in reality, the original illegal structure was massively enhanced. All this was done in a Red Zone that permits no construction. The two authorities correctly rejected the argument about the Zone not being Red when the original illegal structure was built. Accordingly, no case is made out to interfere with the concurrent findings of the two authorities.

[17] Ms Chavan, for the Petitioner, could not produce any document to show that the structure constructed in 2009 by the Petitioner itself was legal. In our view, a subsequent application for repair and additional reconstruction would, therefore, be illegal as well. The Petitioner could not have legalised the structure, which was illegal since its inception, by applying for sanctions for repairs and some additional reconstruction. Payment for processing and security charges by itself would not give any credence or authenticity to the so-called application, thereby providing the Petitioner with the right to construct without permission on the plot, though privately owned.

[18] Having reviewed the order of the Appellate Tribunal, it can be evinced that the Petitioner has suppressed material facts. Paragraph 30 of the order indicates that the Board required the Petitioner to show a drainage line on the plan. Once this was done, the Board passed Resolution No. 2 on 8 February 2011, confirming the minutes of the Civil Area Committee. The Petitioner was then asked to pay the required processing fee by the Respondent Board letter No. 10/46 /233 dated 4th May 2011. The Petitioner has completely suppressed this critical fact. As such, this fact is pertinent and significant. It shows that failing to pay the processing charges resulted in the sanction not being granted.

[19] As stated earlier, the initial construction was illegal. The petition apparently does not make any averment or even mention this letter dated 4th May 2011. The petitioner clearly suppressed the communication. On this ground alone, the Petition deserves to be dismissed.

[20] The only defence that the Petitioner has is that the construction that was initially carried out was before 18 February 2013, when the said area was not declared a Red Zone. Thus, the Cantonment Board could not have ordered its demolition. As the matter now stands, the earlier construction has been admittedly demolished. The area is under the Red Zone, and no construction can be permitted. The entire construction is thus unauthorised and liable to be demolished.

[21] The building is located within the Red Zone under the Works of Defence Act 1903, as declared by the Collector of Pune. Ms Chavan's contention that the property is now likely to be declared beyond the Red Zone cannot be accepted inasmuch as presently, and the Petitioner cannot be allowed to continue an unauthorised construction with the hope that in the future, the said property will be declared beyond the Red Zone.

[22] We find no merit in the Petition. The Petition is dismissed with costs of Rs 100,000/-.

[23] The Board is directed to file an affidavit explaining why no action was taken under the notice and order dated 12 January 2015 to demolish the construction for nine years. The CEO of the Cantonment Board is to file such an affidavit of compliance with photographs after completing the necessary demolition work. Such an affidavit must be filed by 22 November 2024.

[24] List the matter on 25 November 2024 to consider the compliance report

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2024(2)MLPJ519

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before R M Joshi]

Writ Petition No. 7443 of 2016 **dated 25/09/2024**

J P Morgan Securities India Pvt Ltd

Versus

Chief Controlling Revenue Authority; Superintendent of Stamps; Collector of Stamps

STAMP DUTY ON MERGER

Companies Act, 1956 Sec. 100, Sec. 101 - Bombay Stamp Act, 1958 Art. 25, Sec. 31, Sec. 53 - Stamp Duty on Merger - Petitioner challenged demand of Rs.1,57,81,892/- towards stamp duty under Article 25 of the Bombay Stamp Act 1958 - Petitioner argued that stamp duty should be based on reduced share capital following the merger approved by the High Court - Respondents contended that stamp duty should be

calculated on the original share capital before reduction - Issue centered on whether stamp duty should be imposed based on reduced or original share capital - Court noted amendment to Article 25 which mandated considering shares issued on the appointed date - Court held that stamp duty was correctly assessed on original share capital as per the exchange ratio - Petition dismissed.

Law Point: Stamp duty on mergers should be calculated on the original share capital of the transferor company as per the exchange ratio on the appointed date, not on the reduced capital post-merger approval.

Acts Referred:

Companies Act, 1956 Sec. 100, Sec. 101

Bombay Stamp Act, 1958 Art. 25, Sec. 31, Sec. 53

Counsel:

Ashutosh Kumbhkoni (Senior Advocate), Faisal Sayyed, Sneha Bhange, Rashid Boatwalla, Lipsa Unadkat, Siddharth Yewale, Manilal Kher Ambalal And Co, Vineet Naik, Sukand Kulkarni, P Kakade, V S Nimbalkar

JUDGEMENT

R M Joshi, J.- [1] The petitioner being aggrieved by rejection of appeal under Section 53 (1A) of the Maharashtra Stamp Act 1958 (for short "the Stamps Act") by order dated 6th May 2016 passed by Chief Controlling Revenue Authority, Maharashtra State, Pune, has filed this petition.

[2] The facts which led to filing of the petition can be narrated in brief as under:

2.1. Petitioner is a private limited company registered under the Companies Act, 1956. It is the case of the petitioner that J. P. Morgan Group in the United States of America (USA) announced its intent to acquire Bear Stearns Company INC which was also situated in the USA. J. P. Morgan Group acquired the said company in the USA. This has resulted in entire group being owned and controlled by J.P.Morgan Group. Bear Stearns Financial Services (India) Private Limited (for short "BSFS") was a company incorporated under the Companies Act 1956 whose entire share holding was held by BS Group. Pursuant to the acquisition of BSFS in the USA and the resultant acquisition of the BS Group globally, the entire shareholding of said group came to be held by J.P.Morgan Group. It was decided to effect merger of BSFS with petitioner. A scheme of amalgamation was prepared, which provided for reduction of share capital of BSFS to Rs.1,00,000/- comprising of 10,000 equity shares of the face value of Rs.10/- each. The scheme specifically provided that the reduction of share capital was to take place prior to BSFS merging with the petitioner. In view thereof, the petitioner filed proceedings in this Court seeking sanction of scheme of amalgamation. By order dated 18th December 2009, this Court sanctioned the scheme. Pursuant thereto, the petitioner lodged the said order for adjudication under Section 31 of then prevailing Bombay Stamp Act 1958 with respondent No.3. Respondent No.2 issued demand

notice dated 2nd June 2010 thereby demanding an amount of Rs.1,57,81,892/- towards stamp duty under Article 25(da) of the Stamp Act. The petitioner objected to the said demand on 24th June 2010 by filing written submissions. Respondent No.2 granted hearing to the petitioner on 29th July 2010 on demand notice and by passing order dated 16th October 2010 rejected the application for cancellation of the said demand notice. An appeal was preferred before Respondent No.1, which came to be rejected by passing an impugned order, hence, this petition.

[3] Learned senior advocate appearing on behalf of the petitioner submits that in view of the scheme of merger approved by the High Court, the share capital of the transferor - Company was reduced to the extent of Rs.1,00,000/- i.e. 10,000/- shares of Rs.10 each. This according to him has occurred on appointed date. By referring to the provisions of the Stamp Act, more particularly, Article 25 thereof, it is submitted that the stamp duty applicable on the instrument of merger would be on the shares which were exchanged with transferee company. It is submitted that the stamp authorities committed an error in taking into consideration the valuation of the shares before appointed date. It is his submission that since the entire scheme was sanctioned by this Court and there was exemption granted from compliance of Section 100 of the Act before reduction of the share capital, now it does not stand to any justification as to why the document is stamped not on the reduced value of the share capital but on the valuation prior to the date of appointment. To support his submission, he placed reliance on the judgment of the Division Bench of this Court in the case of Li Taka Pharmaceuticals Ltd. And anr. Versus The State of Maharashtra and ors.,1996 SCCOnLineBom 67. He also drew attention of the Court to the order passed by this Court in respect of the merger scheme, to contend that there cannot be any interpretation of the clauses thereto, which would run contrary to the order of this Court sanctioning scheme of amalgamation.

[4] Learned senior advocate, special counsel for the respondents opposed the said contention by referring to the amendment caused to the Article 25 of Stamp Act in the year 2001. It is his submission that prior to the amendment and incorporation of sub-clause (ii), the face value of the shares of transferor company was required to be taken into consideration. It is his submission that post-amendment, the shares issued or allotted in exchange or otherwise has been defined i.e. number of shares of transferor company accounted as per exchange ratio as on appointed date. It is his submission that the statute which permits Government to collect revenue is required to be interpreted in favour of collection of revenue. It is his submission that it is immaterial as to the notional value determined by transferor and transferee company in respect of their equity shares and any such understanding between parties would have no bearing on the State's right to stamp the document of amalgamation on the value of shares accounted. According to him, the valuation report submitted by the petitioner itself is sufficient to indicate that there is no error committed by authority in considering the valuation for the purpose of imposing stamp duty.

[5] There is no dispute about the fact that there was a scheme submitted for the amalgamation of BSFS with the petitioner company such scheme was presented before this Court for sanction. This Court by passing order dated 18th December 2009 has sanctioned the scheme. Undeniably the reduction of share capital of transferor company was permitted by dispensing procedure laid down under Section 100 of the Act. As per the approved scheme, the appointed date was 1st April 2009, whereas effective date was the last day of the dates on which the conditions and matters referred into clause d(6) of the scheme occurs or have been fulfilled or waived. The transfer and vesting of the undertaking was subject to the reduction of capital upon coming into effect of this scheme and w.e.f. the appointed date. It is thus clear that as on the appointed date, the share capital of the transferor company was reduced to Rs.1,00,000/- i.e. 10,000/- shares of Rs.10/- each. Now question arises as to whether the stamp duty would be applicable on the basis of this value, which has been notionally brought down or to consider actual value of shares which were accounted for.

[6] At this stage, it would be relevant to take note of Article 25 of the Stamp Act, the relevant part of which reads thus:

Description of Instrument	**Proper Stamp Duty**
***25.** CONVEYANCE (not being a transfer charged or exempted under Article 59)-	
....	
(da) If relating to the order of the High Court under section 394 of the Companies Act, 1956 or the order of the National Company Law Tribunal under sections 230 to 234 of the Companies Act, 2013 or 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 parent company) or 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 for Industrial Companies (Special Provisions)Act, 1985, in respect of sanction of Scheme specified therein or every order made by the National Company Law	10 per cent of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid for such amalgamation; Provided that, the amount of duty, chargeable under this clause shall not exceed- (I) an amount equal to 5 percent of the true market value of the immovable property located within the State of Maharashtra of the transferor company; or (ii) an amount equal to 0.7 per cent, of the aggregate of the market value of the shares issued or allotted in exchange or otherwise and the amount of consideration paid, for such

Tribunal under section 31 of the Insolvency Bankruptcy Code, 2016, in respect of approval of resolution plan.	amalgamation, whichever is higher;
	Provided further that, in case of reconstruction or demerger the duty chargeable shall not exceed,- (i) an amount equal to 45 per cent.] of the true market value of the immovable property located within the State of Maharashtra transferred by the Demerging Company to the Resulting Company; or (ii) an amount equal to 0.7 per centum of the aggregate of the market value of the shares issued or allotted to the Resulting Company and the amount of consideration paid for such demerger, whichever is higher.]
Exemption	
Assignment of copyright under the Copyright Act, 1957 (IXV of 1957).	
Explanation I -For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred or agreed to be transferred] to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:	
Provided that, the provisions of section 32A shall apply mutatis mutandis to such agreement shich is de mutato be a conveyance as aforesaid, as they apply to a conveyance under that section:	
Provided further that, where subsequenty a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any,	

already paid and recovered on the agreement of sale Which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.]	
'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.]	
[Explanation II * * *]	
Explanation III.-[(i)] For the purposes of clause (da) the market value of shares,-	
(a) in relation to the transferee company, whose shares are listed and quoted for trading on a stock exchange, means the market value of shares as on the appointed day mentioned in the Scheme of Amalgamation or when appointed day is not so fixed, the date of order of the High Court; and	
(b) in relation to the transferee company, whose shares are not listed/or listed but not quoted for trading on a stock exchange, means the market value of the shares issued or allotted with reference to the market value of the shares of the transferor company or as determined by the Collector after giving the transferee company an opportunity of being heard.	
(ii) For the purposes of clause (da), the number of shares issued or allotted in exchange or otherwise shall mean, the number of shares of the transferor company accounted as per exchange ratio as on appointed date.	

[7] Perusal of above provision indicates that prior to the amendment to the Act, 32 of 2005 w.e.f. 7.5.2005., the number of shares issued or allotted in exchange or otherwise was given literal meaning, i.e. actual allotted shares. Thus, prior to the amendment in relation to the transferee company, whose shares are listed and quoted for trading on stock exchange, means the market value of the shares as on the appointed day mentioned in the scheme of amalgamation or when appointed date is not so fixed, the date of order of the High Court. Clause (b) further provided that in case of a transferee company, whose shares are not listed/ or listed but not quoted for trading on a stock exchange, the market value of the same is shares issued or allotted with reference to the market value of the shares of the transferor company or as determined by the Collector.

[8] Pertinently, this position in respect of Article 25(da) has materially changed with introduction of clause (ii). For the purpose of clause (da), the number of shares issued or allotted in exchange or otherwise is defined to mean, the number of shares of the transferor company **accounted as per exchange ratio as on appointed date.** The basic difference, which has occurred in the said provision with inclusion of clause (ii), is that earlier in relation to the shares of the transferee company, the calculation of the market value and consequent stamp duty was considered. Whereas, after the amendment, the number of shares of the transferor company **accounted as per exchange ratio is required to be considered.** The amendment caused to Article 25(da) will have to be given due weightage and meaning intended by the Legislature.

[9] On behalf of petitioner, reliance is placed on judgment in case of **Li Taka Pharmaceuticals ltd. and anr. (supra)** and reference is made to paragraphs 32 to 34, which reads thus:

32. In our view, it would be a question of fact what stamp duty would be payable by the party on an amalgamation scheme. It is not to be forgotten that by amalgamation scheme, what is transferred is a going concern and not assets and liabilities separately. As a going concern, what is the value of the property is to be taken into consideration. Normally, that would be reflected in an amalgamation scheme by the shares allotted to the shareholders of the transferor company. It cannot be said that the assets are separately transferred and liabilities are separately transferred by the amalgamation scheme. As such, by amalgamation scheme, virtually, a transferee company in effect purchases the transferor company for a specified sum which is paid in terms of the shares of the transferee company to the share-holders of the transferor company. For this purpose, what is to be kept in mind is that by sanctioning the amalgamation scheme, the Court is sanctioning not transfer of the assets or liabilities separately but the going concern is transferred which is valued at a particular amount and that valuation would be on the basis of share exchange ratio. Therefore, it would be difficult for us to accept the contention of the learned Advocate General that while assessing the amalgamation document, the stamp authority is entitled to recover stamp duty on the following two components separately:-

(a) Market value of shares (predetermined as per Exchange Ratio or the one prevailing on the day the Scheme of Amalgamation comes into operation, as the case may be) of the transferee company allotted to the share-holders of the transferor company and any other form in which net amount of consideration is paid; and

(b) The liabilities of transferor company which are being transferred to and are going to become liabilities of the transferee company. (Liabilities are also certified).

33. This contention is devoid of any substance because by the scheme of amalgamation, what is transferred is assets minus liabilities and there is no question of any transfer of these two components of a going concern separately. Further, this submission would be contrary to the meaning of the word "conveyance" as provided under S. 2(g) (iv). Section 2(g)(iv) itself provides that every order made by the High Court in respect of amalgamation of a company by which property, whether movable or immovable, or any estate or interest in property is transferred to or vested in any other person. By the amalgamation scheme, the assets and liabilities are not separately transferred but the interest in a going concern is transferred. In this view of the matter, we hold that normally in a case of amalgamation of a scheme sanctioned by the High Court, its consideration under Art. 25(1) should be based on its valuation arrived at on the basis of shares allotted by the transferee company to the transferor company. In the case of **Hindustan Lever Ltd.**, 1994 Supp1 SCC 1: (AIR 1994 SC 834) (supra) at the time of making valuation of the share exchange ratio, the Court itself took into consideration the valuation report based on three well-known methods viz., (i)the net worth method, (ii) the market value methods, and (iii) the earning method. It is also established that quotation of shares in the share market provides larger reliable index of the assets of the company.

34. Hence, we accept the contention of the learned counsel for the petitioners that valuation under Art. 25(1) of the Stamp Act on the instrument of the amalgamation scheme sanctioned by the Court, after due verification, is to be determined by the stamp authority only on the basis of the price of the shares allotted to the transferor company or other consideration, if paid, but and not by separately valuing the assets and the liabilities."

With utmost respect, this judgment deals with the provision of Article 25(da) prior to Maharashtra Act 32 of 2005, whereby the amendment by clause (ii) came to be introduced. At the relevant time, what was relevant for consideration is market value of share allotted by transferee company as on appointed date. This position has changed considerably, as the meaning given to such number of shares issued or allotted is the number of shares of transferor company accounted as per exchange ratio. As such, this judgment has no bearing on present case and would not help petitioner to support its contention.

[10] The quantum of capital to be considered therefore is limited to the number of shares accounted as per exchange ratio on appointed date; as provided in Clause (ii). It is therefore necessary to see what is quantum / number of shares of transferor company

on appointed date. Record indicates that a petition was moved under Section 100 and 101 of Companies Act seeking dispensation of procedure to be followed for reduction of share capital. This petition is filed on 8th June 2016 and order came to be passed thereon thereafter. As per Section 100, the reduction of share capital is said to have been done on passing of resolution, which in this case would be treated as order of this Court, of dispensation of the said procedure. Thus it cannot be said that on appointed date pursuant to resolution of transferor company, the share capital of this company is reduced. Therefore, on the appointed date full share capital of the transferor company was accounted on per exchange ratio.

[11] At this stage, it would be relevant to take note of the valuation report submitted by Ernst and Young, which indicate as under:

"We have been informed by the Management of BSFSI that in the scheme of merger, there will also be a proposal (under section 100 of the Companies Act, 1956) for reduction of the share capital of the transferor company (BSFSI) immediately prior to it merging with the transferee company (JPMSI). As at the appointed date, before reduction of the share capital, based on unaudited provisional financial statements, the transferor company had Rs. 1960.48 million as equity share capital, Rs. 103.7 million as the accumulated profits and general reserve and Rs. 126.7 million as the special reserve. BSFSI proposes to reduce the share capital (by reducing the number of shares or BSFSI) and profits of the company pursuant to the capital reduction process to Rs. 0.1 million (with a corresponding reduction in cash/bank/liquid balance), As a result, at the time of the merger, BSFSI will have Rs.126./million of special reserve and (Rs.0.1 million) of equity share capital, which will be transferred to the transferee company. Also, at the time of the merger, both BSFSI and JPMSI are owned Ms. 100% by same ultimate parent company i.e.JP Morgan Chase & Co, USA, as informed to us by the Management of the Companies."

[12] The valuation report thus in no uncertain terms states that before merger of transferor company (BSFSI) with transferee company (JPMSI), as on appointed date, transferor company had 1960.48 million as equity share capital. In terms of valuation report, the shares of transferor company accounted are worth Rs.1960.48 million equity share i.e. Rs.11.5/-each.

[13] In the light of the aforestated facts as well as the provisions of the Stamp Act, if the notice issued by the Superintendent of Stamps and order passed by Collector of Stamps are considered, then, both the authorities have held that the number of shares allotted is 196048333 @ Rs. 11.5/- with market value of Rs.225,45,55,830/- and the stamp duty applicable thereon is @ 0.7% in view of Article 25(da)(ii) cannot be faulted with. Similarly, the observations made by the Superintendent of Stamps that the reduction of share capital need not be considered, will have to be read in the context of the amendment to Article 25(da) by incorporation of clause (ii). In the circumstances, this Court finds no perversity in the order passed by these authorities whereby, the petitioner was directed to pay stamp duty of Rs.1,57,81,892/- within 60

days from the date of receipt of the notice issued by the Superintendent of Stamps and in failure thereto, to attract the penalty of 2% per annum on deficit stamp duty as per provisions of Section 31 (2) of the Stamps Act.

[14] As a result of the above discussion, petition deserves to be dismissed as the same sans merit. Accordingly, the petition stands dismissed.

[15] After pronouncement of the judgment, learned counsel for the petitioner seeks stay of the order for a period of twelve weeks to approach the Hon'ble Supreme Court.

[16] Learned counsel for the respondents opposes the said request on the ground that the State is denied the revenue and this Court has on merit rejected the petition.

[17] The stay to the impugned order is in force since 2016. Even if the petitioner fails in a challenge to this order, the petitioner would liable to pay penalty/interest in accordance with law and as such no prejudice will cause to the respondents, if the order is stayed. Hence, there shall be stayed to this order for a period of eight weeks from today

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2024(2)MLPJ528

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sandeep V Marne]

Civil Revision Application; Interim Application No. 564 of 2019; 3684 of 2021, 340 of 2021 **dated 23/09/2024**

Shree Durga Trading Co

Versus

Ateeq Anwar Agboatwala and Anr

EVICTION SUIT DISMISSED

Code of Civil Procedure, 1908 Or. 41 R. 25, Sec. 115 - Limitation Act, 1963 Sec. 22, Art. 67, Art. 66 - Maharashtra Rent Control Act, 1999 Sec. 16 - Eviction Suit Dismissed - Appellant challenged an eviction decree on grounds of bona fide requirement and unauthorized subletting - Trial Court upheld subletting to Defendants and ruled in favor of Respondent landlords for recovery of possession of premises - Appellant claimed comparative hardship and limitation under Article 67 of Limitation Act - High Court rejected limitation defense, citing continuous cause of action under Section 22 - Also upheld subletting claims, noting the tenant's absence from premises and transfer of control to third parties - Eviction decree was upheld - Appeal Dismissed

Law Point: Unauthorized subletting constitutes a continuous breach under tenancy law, allowing landlords to file eviction suits beyond standard limitation periods when the wrongful act continues.

Acts Referred:

Code of Civil Procedure, 1908 Or. 41R. 25, Sec. 115

Limitation Act, 1963 Sec. 22, Art. 67, Art. 66

Maharashtra Rent Control Act, 1999 Sec. 16

Counsel:

Dr Ranjeet A Thorat (Senior Advocate), Himanshu Kode, Pratibha Shelke, Kevic Setalwad (Senior Advocate), Anupam Surve, Nimish Kothare, Nikhil Mutha, Nanu Hormasjee & Co

JUDGEMENT

Sandeep V Marne, J.- [1] Revisionary jurisdiction of this Court is invoked under the provisions of Section 115 of the Code of Civil Procedure, 1908 **(the Code)** for setting up a challenge to the decree of eviction passed by the Small Causes Court and upheld by its Appellate Bench directing Applicant-Defendant No.1 to handover possession of the suit premises to the Plaintiffs-landlords. R.A.E. Suit No.1043/1806 of 2001 was initially decreed by the Small Causes Court on 30 September 2014 on the grounds of **bonafide** requirement of the landlords and unauthorised subletting. The decree was upheld by the Appellate Bench of the Small Causes Court by the judgment and order dated 31 October 2017. The present Revision Application was filed challenging the said decrees passed by the Small Causes Court and its Appellate Bench. By Order dated 4 April 2018, this Court held that no finding was recorded with regard to the point of comparative hardship and by exercise of powers under Order 41 Rule 25 of the Code, this Court permitted parties to lead evidence on the point of **bonafide** requirement of landlords and on the question of comparative hardship by keeping the Revision Application pending and called for findings of the Trial Court and the Appellate Court on the said two issues. Accordingly, both the parties led evidence on the issues of **bonafide** requirement of Plaintiffs and comparative hardship. The Trial Court has rendered its findings on both the issues in favour of the Plaintiffs and against the Revision Applicant-Defendant No.1. vide order dated 22 February 2019. The Appellate Bench of the Small Causes Court has confirmed the said findings recorded by the Small Causes Court vide its judgment and order dated 2 March 2019. Accordingly, the orders dated 22 February 2019 passed by the learned Judge of the Small Causes Court as well as the order dated 2 March 2019 passed by the Appellate Bench of the Small Causes Court are also made subject matter of challenge by amending the Revision Application.

[2] On 23 March 2018, this Court recorded a statement made on behalf of the Revision Applicant that it is in possession of the suit premises and no other entity was in the possession. That the Revision Applicants had neither created third party interest nor had parted with possession. This Court accordingly had stayed the eviction decree on the condition of depositing the arrears of compensation and rent and subject to the

Revision Applicant not creating third party interest or parting with possession of the suit premises.

[3] During pendency of the Appeal before the Appellate Bench, the Appellate Court had stayed the execution of the eviction decree dated 30 September 2014 subject to the Revision Applicant depositing Rs.50,000/- per month towards interim compensation. The said order dated 21 April 2015 became subject matter of challenge by both the Revision Applicant, as well as by Plaintiffs by filing Writ Petition Nos. 5688 of 2015 and 7123 of 2015 respectively. By order dated 28 July 2015, this Court enhanced the amount of interim compensation to Rs. 1,20,000/- per month. Accordingly, the Revision Applicant deposited the amount of interim compensation of Rs.1,20,000/- till the year 2018. After dismissal of the Appeal on 31 October 2017, this Court continued the stay by order dated 3 March 2018 subject to the condition of deposit of arrears of interim compensation. After the reference was answered on the issues of **bonafide** requirement and comparative hardship, Revision Applicant was permitted to amend the present Revision Application and thereafter the Revision Applicant continued depositing the amount of interim compensation of Rs.1,20,000/- in this Court till March 2020. It appears that after April 2020, Revision Applicant was unable to deposit the interim compensation of Rs.1,20,000/- in this Court on account of Covid-19 pandemic and has accordingly filed Interim Application No. 340 of 2021 seeking extension of time to deposit the amount of interim compensation. However, the office reports indicate that the Revision Applicant has deposited interim compensation of Rs. 1,20,000/- in this Court till August 2024.

[4] On account of failure on the part of the Revision Applicant to deposit the amount of interim compensation after April 2020 and after noticing that some outsiders were occupying the suit premises on account of execution of partnership deed/deed of admission dated 6 October 2020, the Original Plaintiffs have filed Interim Application No. 3684 of 2021 not only for vacation of interim order but also for punishing newly impleaded Respondent Nos.9 to 12 to the Interim Application and for various other reliefs.

[5] I have heard Dr. Ranjeet Thorat, the learned Senior Advocate appearing for the Revision Applicant, who would submit that the suit was barred by limitation under Article 67 of the Limitation Act, 1963, but the Trial Court failed to frame issue relating to limitation. That there is no subletting as Defendant No. 2 was merely conducting business on behalf of Defendant No. 1 due to advanced ages of its partners. That **bonafide** requirement of Plaintiffs is not proved. That the findings recorded on the issue of comparative hardship are perverse as obtaining of possession by Plaintiffs of Shop Nos. 3 and 4 on the ground floor is established.

[6] Mr. Setalwad, the learned Senior Advocate would appear on behalf of Respondent Nos.1 to 5-Plaintiffs opposing the Revision Application submitting that no interference is warranted in concurrent findings recorded on issues of subletting, **bonafide** requirement and hardship. That this Court did not disturb the findings on

subletting while making reference order. That Defendant No. 1 has not been using the suit premises and has been continuously inducting outsiders in the suit premises. That even today outsiders are found to be in possession of suit premises who are now operating the business of pharmacy as opposed to the original business of jewellery of Defendant Nos. 1 and 2. That by way of subterfuge Defendant No. 1 is inducting new partners in the firm and thereby subletting the premises. That Defendant No. 1 has violated the statement made before this Court. He would pray for dismissal of the Revision Application.

[7] Plaintiffs-Respondent Nos. 1 to 5 are the Trustees of 'Noor Hospital', which is registered public charitable trust and owner and landlord in respect of the building named 'Noor Hospital' situated at 49, Mohammad Ali Road, Mumbai -400 033. Defendant No.1 was inducted as tenant in respect of the shop premises bearing Shop Nos.1 and 2 both admeasuring 800 sq. ft on the ground floor of the building-Noor Hospital on monthly rent of Rs.658/-. Plaintiffs-landlords instituted R.A.E. Suit No.1043/1806 of 2001 in the Court of Small Causes, Mumbai seeking recovery of possession of the suit premises from Defendants. There is no dispute to the position that the Revision Applicant-Defendant No.1 is the tenant in respect of the suit premises. In the original unamended plaint, it was alleged that Defendant No.1 sublet the suit premises in favour of Defendant No.2, who was conducting business in the suit premises. Plaintiffs also pleaded their **bonafide** need for recovering possession of the suit premises from Defendant No.1- tenant for expanding the activities of its hospital. The suit was resisted by Defendant No.1 by filing written statement denying the allegation of subletting in favour of Defendant No. 2 and claimed that Defendant No.1 was in use and possession of the suit premises and had not parted with possession thereof in favour of anyone else including Defendant No.2. The suit was amended by Plaintiffs alleging that Defendant Nos. 3 and 4 were found in possession of the suit shops. It appears that the suit was further amended to implead Defendant No. 5 when the Advocate appearing for Defendant No.3 informed Plaintiffs that Defendant No. 5 was actually conducting the business in the suit premises. Defendant No.1 filed additional written statement denying the contents of the amended plaint. Defendant Nos. 3 and 4 also filed their written statement after their impleadment copying the contents of additional written statement of Defendant No.1. Defendant No.1 filed further additional written statement denying the allegation of subletting in favour of Defendant No.5. Based on pleadings, the Trial Court framed issues about **bonafide** requirement of Plaintiff-Trust and unlawful subletting of suit premises in favour of Defendant No.2 and also in favour of Defendant Nos.3 and 4. It appears that no issue was framed with regard to comparative hardship. Parties led evidence in support of their respective claims. After considering the pleadings, oral and documentary evidence, the Trial Court proceeded to decree the suit upholding the grounds of **bonafide** requirement and unauthorised subletting to Defendant No.2 as well as to Defendant Nos. 3 and 4. The Appeal preferred by Defendant No.1-Revision

Applicant came to be dismissed by the Appellate Bench of the Small Causes Court vide judgment and order dated 31 October 2017.

[8] As observed above, in the present Revision Application, this Court called for findings of the Trial Court and the Appellate Bench on the issues of **bonafide** requirement and comparative hardship. Accordingly, the rival parties led additional evidence on those issues. However, both the Courts have rendered findings in Plaintiff's favour and against the Defendants on reference made by this Court on the issue of **bonafide** requirement and comparative hardship.

[9] Dr. Thorat has strenuously pressed the issue of suit being barred by limitation with reference to the ground of subletting. He would submit that the alleged act of subletting of suit premises by Defendant No. 1 in favour of Defendant No. 2 occurred in the year 1974 and as per Article 67 of the Limitation Act, 1963 the suit ought to have been brought within a period of 12 years from the alleged act of subletting. He has submitted that the Trial Court erroneously did not frame any issue of limitation.

[10] Articles 66 and 67 of the Limitation Act, 1963 **(Limitation Act)** provide thus:

	Description of suit	**Period of limitation**	**Time from which period begins to run**
66.	For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken.
67.	By landlord to recover possession from a tenant.	Twelve years	When the tenancy is determined.

[11] Though Dr. Thorat has submitted that Article 67 would be attracted in the present case and not Article 66, in my view, it is not necessary to enter into that debate. What needs to be considered is whether the cause of action for recovery of possession on account of act of subletting is continuous in nature. The concept of continuous wrong is traceable to Section 22 of the Limitation Act, reading as under:

22. Continuing breaches and torts.- In case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

[12] While considering a pari materia provision, i.e., Section 23 of the Limitation Act, 1908, the Supreme Court in **Balakirshna Savalram Pujari Waghmare Versus. Shree Dnyaneshwar Maharaj Sansthan**, 1959 AIR(SC) 798, laid down the law that the very essence of a continuing wrong is that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury; however, if wrongful act causes an injury which is

complete, there is no continuing wrong even though the damage resulting from the act may continue. The Court held thus:

31. It is then contended by Mr Rege that the suits cannot be held to be barred under Article 120 because Section 23 of the Limitation Act applies; and since, in the words of the said section, the conduct of the trustees amounted to a continuing wrong, a fresh period of limitation began to run at every moment of time during which the said wrong continued. Does the conduct of the trustees amount to a continuing wrong under Section 23? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants? In dealing with this argument it is necessary to bear in mind that Section 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. **If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that Section 23 can be invoked.** Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued. Can it be said that, after the appellants were evicted from the temple in execution of the said decree, the continuance of their dispossession was due to a recurring act of tort committed by the trustees from moment to moment? As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of 23 in such a case. That is the view which the High Court has taken and we see no reason to differ from it.

(emphasis added)

[13] Applying the above ratio to the facts of the present case, the wrong committed by Defendant No. 1 in subletting the premises continued and thereby the injury caused to Plaintiffs also continued. This is not a case where the wrongful act of Defendant No. 1 in subletting the premises resulted in injury which was complete and

only damages resulting out of such injury continued. Therefore in a case involving subletting, a continuous cause of action would arise so long as the act of subletting continues.

[14] Section 16(1)(e) of the Maharashtra Rent Control Act, 1999, which creates a right in favour of landlord to seek recovery of tenanted premises on the ground of unlawful subletting, provides thus:

(e) that the tenant has,-

(i) on or after the 1st day of February 1973, in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applied; or

(ii) on or after the commencement of this Act, in the Vidarbha and Marathwada, areas of the State, unlawfully sub-let or given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or

[15] Use of the words 'has sublet' in Section 16(1)(e) undoubtedly relates to past event of subletting and the act of subletting need not continue on the date of filing of the suit as against other grounds such as bonafide requirement, non use, etc which must continue on the date of filing of the suit. However, if the tenant, who had sublet the premises prior to 12 years and continues subletting the same, the act would constitute continuous breach of tenancy conditions and would give rise to continuous cause of action.

[16] Dr. Thorat has relied on judgment of Single Judge of this Court in **Shri. Taherbhai T. Poonawala & Ors. Versus. S. Hamid Hassan Patel (deceased by LRs) & Ors.**, 2007 AIR(Bom) 80 in which this Court has held in paras-9 to 12 as under:

9.Mr. Mandlik, the learned Counsel for Respondent Nos. 1A and 2, pointed out that the fact remains that this breach of tenancy was committed way back on 1st February, 1969 and cannot be ignored by the subsequent determination of tenancy on 9th June, 1981 by the said notice. Applying Art. 66 of the Limitation Act, 12 years would be the period of limitation prescribed for filing a suit for possession of immovable property by reason of breach of condition of tenancy starting from the date when the condition of tenancy was broken. Therefore, Mr. Mandlik contended that on computation of the said period of limitation from 1st February, 1969, when the condition of tenancy was broken, suit was clearly barred by law of limitation.

10.Mr. Mandlik, in this behalf relied upon the judgment of the Supreme Court in **Ganpat Ram Sharma v. Gayatri Devi**, 1987 AIR(SC) 2016, specifically paragraph Nos. 21 to 23, which read as under:-

21. Before we discuss the other aspect the result of the several decisions to which reference has been made above indicate that the position in law is that the landlord in order to be entitled to evict the tenant must establish one of the alternative facts positively, either that the tenant has built, or acquired vacant possession of or has been allotted a residence. It is essential that the ingredients must be pleaded by the landlord

who seeks eviction but after the landlord has proved or stated that the tenant has built, acquired vacant possession or has been allotted a residence, whether it is suitable or not, and whether the same can be really an alternative accommodation for the tenant or not, are within the special knowledge of the tenant and he must prove and establish those facts. The other aspect apart from the question of limitation to which we shall briefly refer is that the landlord must be quick in taking his action after the accrual of the cause of action, and if by his inaction the tenant allows the premises to go out of his hands then it is the landlord who is to be blamed and not the tenant. In the light of these, we have now to examine whether the suit in the instant case was barred by the lapse of time. But quite apart from the suit being barred by lapse of time, this is a beneficial legislation, beneficial to both the landlord and the tenant. It protects the tenant against unreasonable eviction and exorbitant rent. It also ensures certain limited rights to the landlord to recover possession on stated contingencies. (Emphasis supplied)

22. The next aspect of the matter is which Article of the Limitation Act would be applicable. Reference was made to Arts. 66 and 67 of the Limitation Act, 1963 (hereinafter called the Limitation Act) which stipulates that for possession of immovable property the cause of action arises or accrues when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition. Article 67 stipulates a period of twelve years when the tenancy is determined. Article 113 deals with suit for which no period of limitation is provided elsewhere in this Schedule. On the facts of this case it is clear that Article 66 would apply because no determination in this case is necessary and that is well settled now. Determination by notice under Sec. 106 of the Transfer of Property Act is no longer necessary. (Emphasis supplied)

23. It is well settled that time begins to run from the date of the knowledge. See in this connection the decision of **Harbans Singh v. Custodian of Evacuee Property P Block**, 1970 AIR(Del) 82, though that was a case under a different statute and dealt with a different Article. See also Ujagar Singh v. Likha Singh,1941 AIR(All) 48 at p. 30. The Division Bench of the Punjab and Haryana High Court in Somdas (deceased) v. Rikhu Dev Chela Bawa Har Jagdass Narokari,1983 85 PunLR 184 held that in a suit for possession under Art. 113 of the Limitation Act, material date is one on which the right to sue for possession arises. (Emphasis supplied)

11.Mr. Mandlik, the learned Counsel also relied upon another judgment of the Hon'ble Supreme Court in **Shakuntala v. Hemchand**, 1987 3 SCC 211: (AIR 1987 SC 1823), wherein, the Hon'ble Supreme Court in paragraph 12 (para 11 of AIR) has observed as under:-

12.If that is so then on the strict grammatical meaning Art. 67 of the Limitation Act would be applicable. This is indubitably a suit by the landlord against the tenant to recover possession from the tenant. Therefore the suit clearly comes within Art. 67 of the Limitation Act. The suit was filed because the tenancy was determined by the

combined effect of the operation of Sections 12 and 13 of the Bombay Rent Act. In this connection, the terms of Sections 12 and 13 of the Bombay Rent Act may be referred to. At the most it would be within Art. 66 of the Limitation Act if we hold that forfeiture has been incurred by the appellant in view of the breach of the conditions mentioned in Section 13 of the Bombay Rent Act and on lifting of the embargo against eviction of tenant in terms of the Section 12 of the said Act. That being so, either of the two, Article 6 or Article 67 would be applicable to the facts of this case; there is no scope of the application of Art. 113 of the Limitation Act in any view of the matter. Sections 12 and 13 of the Bombay Rent Act co-exist and must be harmonised to effect the purpose and intent of the legislature for the purpose of eviction of the tenant. In that view of the matter, Article 113 of the Limitation Act has no scope of application. Large number of authorities were cited. In the view we have taken on the construction of the provisions of Arts. 67 and 66 of the Limitation Act and the nature of the cause of action in this case in the light of Sections 12 and 13 of the Bombay Rent Act, we are of the opinion that the period of limitation in this case would be 12 years. There is no dispute that if the period of limitation be 12 years, the suit was not barred.

12. After hearing both the learned Counsel, and after perusal of the trial Court judgment and the lower Appellate Court judgment, it is clear that in the instant case, though the tenancy was created in favour of Respondent No. 1, the Respondent No. 1 never stayed in the suit premises, right from inception, i.e. 1st February, 1969. On the contrary, the Respondent No. 1 had illegally sub-let the same to Respondent Nos. 2 and 3 from 1st February, 1969. If that be so, the breach of tenancy conditions occurred on 1st February, 1969, and the suit ought to have been filed within 12 years, as per Art. 66 of the Limitation Act. Ex-facie the suit is barred by law of limitation. I respectfully do not agree with the judgment of the Gujarat High Court, that in case of illegal subletting, there would be a continuing cause of action. The said view is contrary to the provisions of Art. 66 of the Limitation Act.

[17] It appears that the learned Single Judge of this Court in **Shri. Taherbhai T. Poonawala** has differed with the view taken by the Gujarat High Court that in case of illegal subletting there would be continuous cause of action and has held that suit must be brought within 12 years of act of subletting under Article 66 of the Limitation Act. However, it appears that provisions of Section 22 of the Limitation Act were not brought to the notice of this Court. Also, the case involved peculiar facts where the Appellate Court therein had rendered a finding that though tenant had entered into the said tenancy agreement, he never stayed in the suit premises, right from inception. This Court has relied on two judgments of the Apex Court. The issue before the Apex Court in its judgment in **Ganpat Ram Sharma and others Versus. Smt. Gayatri Devi**, 1987 AIR(SC) 2016 was about application of Article 67 or Article 113 in respect of the suit for recovery of possession from the tenant. Similarly, was the case in the judgment of the Apex Court in **Smt. Shakuntala S. Tiwari Versus. Hem Chand Singhania**, 1987 3 SCC 211 . Thus, in both the judgments of the Apex Court relied

upon by the learned Single Judge in **Shri. Taherbhai T. Poonawala**, the issue was not about the act of subletting giving rise to continuous cause of action. In my view therefore, the judgment in **Shri. Taherbhai T. Poonawala**, rendered in peculiar facts of that case where the tenant had not occupied the premises even for a single day, cannot be read in support of an absolute proposition of law that in every case, the injury arising out of act of subletting would be complete on the day when the subletting first occurs and that such an act would not constitute continuous cause of action under Section 22 of the Limitation Act.

[18] In my view, the act of unauthorised subletting by a tenant constitutes a continuing breach of contract and therefore period of limitation would begin to run so long as the act of subletting continues. It is another case where the act of subletting comes to an end and Plaintiff fails to file the suit for recovery of possession within 12 years of reversal of act of subletting. In the present case, it is conclusively proved that Defendant No.1 had allowed Defendant No. 2 to conduct business in the suit premises till the year 2000. Therefore, the suit filed in the year 2001 cannot be treated to be barred by limitation.

[19] Also, in the present case, the act of subletting is also proved qua Defendant Nos. 3 and 4, who admittedly came in possession of suit premises after the year 2000, in fact during pendency of the suit and the act of subletting qua them came to be incorporated by amending the plaint. Therefore, even if the point of limitation in respect of subletting qua Defendant No. 1 was to be accepted, decree for eviction cannot be disturbed since subletting qua Defendant Nos. 3 and 4 is also established.

[20] So far as the act of unauthorised subletting by Defendant No.1 in favour of Defendant No.2 is concerned, it is the case of Defendant No.1 that he had permitted Defendant No.2 to conduct business in the suit premises on its behalf which act does not amounts to unauthorised subletting. Defendant No.1 took a stand that owing to ill-health of its partners, Defendant No.2 was allowed to conduct business on behalf of Defendant No.1. In my view, the said arrangement of inducting a third party for conducting business would clearly amount to unauthorised subletting. Since use of the suit premises by Defendant No.2 for conducting business is admitted by Defendant No.1, in my view, the ground of subletting is clearly established. The Trial Court, after appreciating the evidence on record, has held that partners of Defendant No.1 did not have any control on business of Defendant No.2. To make things worse for the Revision Applicant, a suit was filed by Defendant No.2 against Defendant No.1 bearing L.D. Suit (St.) No. 2465/2000, which suit was premised between Defendant Nos.1 and 2 and under the compromise arrangement, Defendant No.1 paid an amount of Rs.12,00,000/- to Defendant No.2, against which Defendant No.2 vacated possession of the suit premises. Thus, what has happened here is 'recovery of possession' by Defendant No.1 from Defendant No.2. This clearly indicates that Defendant No. 1 was not in possession of the suit premises and that recovery of possession was secured through L.D. Suit No.50/2001 by paying consideration of

Rs.12,00,000/- to Defendant No.2. In my view, therefore the act of subletting by Defendant No.1 in favour of Defendant No.2 is conclusively proved. It has further come on record that Defendant Nos.3 and 4 and possibly Defendant No.5 were also found using the suit premises. The Advocate appearing for Defendant No.3 wrote a specific letter to Plaintiffs' Advocate on 25 February 2013 contending that Defendant No.5 was conducting business alongwith Defendant Nos.3 and 4 in the suit premises. Thus, subletting by Defendant No.1 in favour of Defendant Nos.3 and 4 is also conclusively proved.

[21] Coming to the ground of bonafide requirement of Plaintiffs, it is a matter of fact that the Plaintiff Trust conducts hospital in Noor Building. It has given details of the intended use of the suit premises in extending the activities of the Hospital. It is settled position of law that Plaintiff is the best judge of his need. On four different occasions, the Trial and the Appellate Court have concurrently upheld the bonafide need of the Plaintiffs. Dr. Thorat has essentially joined issues with regard to comparative hardship and has repeatedly highlighted the position that possession of Shop Nos. 3 and 4 has been secured by Plaintiffs during pendency of the proceedings. However, perusal of the findings recorded by the Trial Court, after reference by this Court, would indicate that Shop No.3 is not in existence and that R.A.E. Suit No.2144/2263 of 2008 for recovery of possession of Shop No.3 was still pending. Thus, Defendant No.1 was not able to establish that Plaintiff has secured possession of any other premises. What is more important to note here is the fact that the Revision Applicant-Defendant No.1 itself did not use the suit premises and has let outsiders to conduct business therein. It is therefore highly ambitious on the part of the Revision Applicant-Defendant No.1 to expect recording of finding in its favour on the issue of comparative hardship. In my view, therefore the issue of comparative hardship has rightly been answered in favour of the Plaintiffs and against Defendant No.1 by both the Courts.

[22] Resultantly, I do not find any palpable error in the concurrent findings recorded by the Small Causes Court and its Appellate Bench. The Civil Revision Application must fail. The Civil Revision Application is accordingly dismissed.

[23] After the order is pronounced, Dr. Thorat would pray for time for vacation of the suit premises. The request is opposed by Mr. Setalwad submitting that Defendant No.1-Applicant has inducted further third parties into the suit premises. This Court therefore, raised the query with Mr. Throat as to whether the Applicant would be in a position to file an undertaking for vacating the premises not only by the Revision Applicant, but by every person/entity claiming through it. In his usual fairness, Dr. Thorat answers the query in the affirmative and submits that an undertaking to that effect shall be filed in this Court within a period of two weeks from today. Subject to filing of such undertaking in usual terms of (i) not creating third party rights (ii) not parting with possession, (iii) continuing to deposit the amount of compensation and (iv) incorporating a term that every person/entity/partner claiming through the

Revision Applicant shall vacate the suit premises, the Revision Applicant is permitted to occupy the suit premises till 30 November 2024.

[24] The amounts deposited by the Revision Applicant towards interim compensation both before this Court as well as before the Small Causes Court are permitted to be withdrawn by the Revision Applicant along with accrued interest after 30 November 2024.

[25] With dismissal of the Civil Revision Application, nothing would survive in Interim Application No.340 of 2021 seeking extension of time for deposit of interim compensation and Interim Application No.3684 of 2021 filed by Respondent Nos. 1 to 5-Plaintiffs for vacation of interim order and for punishing Respondent Nos. 9 to 12 being the current partners of Revision Applicant for violating the interim order passed by this Court. Both the Interim Applications are accordingly disposed of

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2024(2)MLPJ539

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Milind N Jadhav]

Civil Revision Application No 367 of 2023 **dated 19/09/2024**

Prasad Nandkumar Deshmukh

Versus

Dhaku Navlu Aukirkar and Ors

SUIT BARRED BY LIMITATION

Code of Civil Procedure, 1908 Or. 7R. 11 - Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 43A, Sec. 70 - Suit Barred by Limitation - Appellant sought rejection of the suit under Order VII Rule 11 of CPC, arguing that it was barred by limitation - Suit was filed in 2020 seeking specific performance of a 1989 agreement and cancellation of a 2011 registered sale deed - Appellant contended that the suit was time-barred and the agreement was undated, unstamped, and unregistered - The agreement suspiciously mentioned a mobile number, though mobile services were not available in 1989 - The plaintiff had remained silent for 31 years and did not object to any mutation entries - Trial Court held that the issue of limitation required evidence, but on review, it was found that the facts clearly showed the suit was barred by limitation - Application for rejection of the suit was allowed - suit dismissed - Application Allowed

Law Point: A suit seeking specific performance of an old, undated, and unregistered agreement, filed decades later, is barred by limitation, and such cases can be dismissed without requiring evidence.

Acts Referred:

Code of Civil Procedure, 1908 Or. 7R. 11

Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 43A, Sec. 70

Counsel:

Vinaykumar Khatu, Sneha Thakre, Dileep Satale

JUDGEMENT

Milind N Jadhav, J.- [1] The present Civil Revision Application (CRA) impugns order dated 10.04.2023 passed in Regular Civil Suit No.25 of 2020 by the Trial Court while rejecting Application filed below Exhibit-22. Application below Exhibit-22 is filed by Defendant No.9 in Suit proceedings under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short **"CPC"**) seeking dismissal of Suit and rejection of the Suit plaint. Parties shall be referred to as Plaintiff, Defendant Nos. 1 to 8 and Defendant No. 9 for convenience.

[2] Briefly stated, Suit is filed in the year 2020 for specific performance of contract / agreement of the year 1989, cancellation of registered sale deed dated 25.02.2011 and declaration of title. There are three principal prayers prayed for by the Plaintiff in the Suit plaint. The declaratory relief is for declaring Plaintiff as owner of the Suit property. Relief of specific performance of agreement is of an agreement for sale of 1989 executed between predecessor-in-title of Defendant Nos. 1 to 8 and Plaintiff. Relief for cancellation of registered sale deed is of sale deed executed between Defendant Nos. 1 to 8 with Defendant No.9. Suit is filed in the year 2020. Defendant No. 9 is in possession of the suit property since 2011.

[3] Defendant No.9 filed Application below Order VII Rule 11 of the CPC and suffered rejection. He is the Revision Applicant before me. Learned Advocate for Applicant would submit that on the face of record, facts of the present case are such that the suit is not maintainable as it is hit by the bar of limitation. He would submit that no declaratory relief can be passed in favour of Plaintiff on the basis of the prayers prayed for. He would submit that Plaintiff seeks specific performance of agreement of the year 1989 for the first time in the year 2020. He would next submit that Plaintiff seeks cancellation of a registered sale deed between Defendant Nos. 1 to 8 on the one side and Defendant No. 9. He would submit that even if it is assumed to be true that there is a purported Agreement between Plaintiff and the predecessor-in-title of Defendant Nos. 1 to 8 in the year 1989, seeking specific performance of that Agreement in the year 2020 is at a much belated stage. He would submit that Defendants deny the alleged Agreement of the year 1989 which on the face of record is undated, unstamped and unregistered.

3.1. He would draw my attention to the copy of Agreement appended at Exhibit-A to CRA and would contend that the said Agreement does not record handing over possession of the suit property to Plaintiff nor it is witnessed by any person. He would draw my attention to the fact that the said Agreement incorporates a mobile number of the party, when admittedly in the year 1989 mobile services were not in vogue in the first place itself. He would therefore contend that the said Agreement is sham, bogus

and a fabricated Agreement, manufactured by Plaintiff to stake a false claim to the suit property. He would submit that assuming for the sake of argument that such an Agreement was executed, the Vendors in the said Agreement namely Pandurang and Chintamani could never have been able to sell the entire property to Plaintiff since there were several coparceners who were entitled to their share in the suit property and in the absence of consent of the remaining five coparceners, such an Agreement would have been null and void.

3.2. He would next submit that Suit property is amenable to the the provisions of the Maharashtra Tenancy and Agricultural Land Act, 1948 (for short "**the said Act**") and hence the bar under Section 43A of the said Act for sale / transfer would apply, as permission for such sale from the Competent Authority i.e. Collector is a mandatory requirement. He would vehemently submit that if it is Plaintiff's case that in the year 1989 such an unstamped and unregistered Agreement for sale was executed and monies were paid to the predecessor-in-title of Defendant Nos. 1 to 8, then nothing prevented the Plaintiff from seeking mutation of his name in the revenue record of the Suit property. He would vehemently submit that one of the coparceners who executed the purported Agreement in 1989 namely Pandurang D. Pachadkar expired on 26.10.1996 pursuant to which vide Mutation Entry No.1030 names of his legal heirs were brought on record. He would submit that had Plaintiff being entitled to the Suit property, he would have objected to the said mutation entry No.1030, however there has been no objection raised to the same whatsoever since 1996.

3.3. In the above backdrop he would submit that Defendant Nos. 1 to 8 entered into a registered Agreement for sale dated 20.01.2011 to sell the property to Defendant No. 9. He would submit that on 24.02.2011, Defendant Nos. 1 to 8 obtained permission for sale of the said property from the Competent Authority i.e. SDO, Mahad, pursuant to which, by sale deed dated 25.02.2011, Suit property was sold to Defendant No.1 for lawful consideration. He would submit that said sale deed / conveyance was registered on 28.02.2011. He would submit that pursuant thereto, name of Defendant No. 9 was mutated in the ownership column in the revenue record as holder of the Suit property. He would submit that it is only some time in the year 2019 that Plaintiff and his son started creating a nuisance in the Suit property on the premise that the predecessor-in-title of Defendant Nos. 1 to 8 sold the suit property to Plaintiff in 1989 and in view thereof Defendant No. 9 filed a police complaint.

3.4. In the year 2019, Plaintiff filed ALT Case No.13 of 2019 against Defendant Nos. 1 to 8 and Defendant No. 9 under Section 70 (b) of the said Act. By order dated 12.05.2020, the Competent Authority i.e. Tahsildar held that Plaintiff failed to produce documentary evidence with respect to substantiating his claim to entitlement of the Suit property and rejected Plaintiff's challenge in the ALT case. The said order dated 12.05.2020 is not challenged by Plaintiff till date, instead the Plaintiff has filed the present Suit in the year 2020 seeking declaration of ownership in respect of Suit

property as also specific performance of Agreement of the year 1989 and for cancellation of registered sale deed in favour of Defendant No. 9.

3.5. In the above backdrop, Mr. Khatu would contend that Application filed by Defendant No.9 seeking rejection of Suit plaint ought to have been considered since present Suit is filed in the year 2020 and reliefs prayed for therein are clearly barred by the law of limitation. He would therefore urge the Court to interfere with the impugned order dated 10.04.2023 and allow the present CRA.

[4] Per Contra, Mr. Satale, learned Advocate appearing for Plaintiff who is Respondent No.1 before me, would contend that the issue of limitation cannot bar the Plaintiff to file the present Suit in the year 2020 since it is filed due to rejection of Plaintiff's ALT Case by the Competent Authority in 2020 itself. He would submit that suit is filed within period of three years from the date of rejection of Plaintiff's ALT case and therefore it is within time. In the alternate, he would submit that issue of limitation is a mixed question of law and facts and hence Suit cannot be rejected on this ground without Plaintiff being given an opportunity to lead evidence on triable issues raised in the suit plaint by Plaintiff. He would submit that on the issue of limitation various Courts have held that the same has to be decided only after leading of evidence by parties and therefore the impugned order correctly holds that the issue of limitation is a mixed question of fact and law and will have to be decided on its own merits. Hence he would submit that the impugned order be sustained.

[5] I have heard Mr. Khatu, learned Advocate for the Applicant and Mr. Satale, learned Advocate for Respondents and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

[6] Impugned order dated 10.04.2023 proceeds on the premise that the issue of limitation cannot be decided prima facie without going into the merits of the case. It refers to two decisions; one of the Supreme Court in the case of Ganesh Keshav Patole Vs. Sheetal Sikhandar Darne,2018 SCConlineBom 649 and a decision of this Court in the case of **K.S. Dhondy Vs. Her Majesty Queen of Netherlands & Anr**, 2013 4 MhLJ 64 wherein Courts have held that the issue of limitation is required to be decided after evidence is led by the parties and a plaint cannot be rejected on the ground of limitation without the same being tried by the Court.

[7] From the above, it is gathered that according to the learned Trial Court, in the facts of this case, issue of limitation is required to be tried. In that view of the matter, plaint will have to be read in order to understand the case of the Plaintiff qua the reliefs prayed for by him. Plaintiff has filed RCS No. 25/2020 seeking relief of declaration, decree for specific performance, injunction and for cancellation of sale deed dated 25.02.2011. In this Suit filed in the year 2020, Plaintiff claims to have acquired ownership right in the suit property pursuant to an undated, unstamped and unregistered agreement for sale of the year 1989 executed by him and purportedly by the predecessor-in-title of Defendant Nos. 1 to 8. As delineated while narrating the

facts and submissions, it is seen that the purported agreement of 1989 mentions a mobile phone number. In the year 1989, mobile phones were neither invented nor available in India and therefore the agreement itself raises a grave doubt and suspicion. That apart it is seen that the present suit is filed after almost 31 years after the said agreement of 1989 on the basis of which Plaintiff claims to have acquired ownership in the suit property. This fact is prima facie evident on reading of the suit plaint.

[8] Next it is seen that Plaintiff has challenged the registered sale deed / conveyance executed between Defendant Nos. 1 to 8 and Defendant No. 9 in respect of the suit property which is registered on 28.02.2011. What is crucial to be noted is that the Competent Authority has given its permission for this sale pursuant to application made by vendors under the provisions of the said Act seeking permission under Section 43-A which is mandated under the said Act. If the same yardstick is to be applied to the alleged agreement of 1989 between Plaintiff and predecessor-in-title of Defendant Nos. 1 to 8, then the alleged agreement does not refer to any such permission. It also does not refer to giving of possession of the suit property. The agreement is part of the suit plaint in respect of which a declaratory relief is sought by Plaintiff. It is invoked by Plaintiff for the first time after 31 years in the year 2020. It is Plaintiff's case that he has paid the entire consideration to his vendor under the said agreement. If that be the case, then silence of the Plaintiff from 1989 to 2020 speaks volumes of his conduct. Not once has the Plaintiff attempted to seek mutation of his name in respect of the suit property from 1989 onwards. Even in the interregnum sometime in 1996, one of the original owner of the property i.e. predecessor-in-title of Defendant Nos. 1 to 8 expired pursuant to which mutation entry No. 1030 was effected. Plaintiff remained conspicuously silent and has challenged the said mutation entry in the year 2019 by filing the ALT case. It is in the year 2019 that Plaintiff and his son attempted to create nuisance in suit property. Plaintiff filed ALT Case No. 13/2019 against Defendant Nos. 1 to 8 and Revision Application under Section 70(b) of the said Act. ALT Case filed by Plaintiff is dismissed comprehensively by order dated 12.05.2020 holding that Plaintiff failed to produce documentary evidence to substantiate his right and claim in the suit property. It is only thereafter that present suit is filed by stating that rejection of the ALT case results in cause of action to file the present suit. However if that is to be the cause of action according to Plaintiff, then reliefs prayed for by the Plaintiff in the suit plaint are completely incongruous with the said cause of action. After 31 years Plaintiff is seeking specific performance of an undated, unstamped and unregistered agreement of the year 1989. This itself on the face of record is clearly barred by the law of limitation. Filing and rejection of the ALT case cannot give to the Plaintiff any cause of action as the said order is an appealable order before the first appellate authority.

[9] Next relief prayed for by Plaintiff is for setting aside the registered conveyance / sale deed dated 28.02.2011 between Defendants. Once again on the face of record, filing of suit plaint in the year 2020 is clearly barred by the law of limitation. Thus on

the basis of Plaintiff's own pleadings in the suit plaint itself and looking to the prayers, suit is clearly barred by the law of limitation.

[10] This Court in its judgment dated 09.08.2024 passed in Civil Revision Application No. 75 of 2024 (Jayesh Dinesh Kadam & Anr. Vs. Andrew David Fernandes & Ors) in paragraph Nos. 19 and 20 in the facts therein which were somewhat similar to the present case has held as under:-

"19. It is predominantly observed by me in many similar proceedings that successors-in-title from the subsequent generations are filing similar Suits as is the case of the Plaintiff to challenge vintage registered sale deeds. These vintage registered sale deeds are executed by the predecessors-in-title of the Plaintiffs who file such Suits. It is seen that considering that property prices, rather land prices have increased manifold and have reached exceedingly high proportions, litigants like the Plaintiff file such Suits to create nuisance to the Defendants - Developers who are developing the property with the sole intention and aim of attempting to extract an extra pound of flesh by resorting to filing Suit proceedings on some pretext or the other. The sole intention which drives such litigants who approach the Civil Courts is to extract a deal for the nuisance and delay that they would cause in development, thereby affecting the rights of the flat purchasers in the development and in turn the subsequent purchasers and the developer. Such is the case herein. It is an admitted position that when admittedly the Plaintiff has been residing on a portion of the larger Suit property and similarly when the successors-in-title of the remaining five sons of late Domingo Fernandes are also residing on a portion of the larger Suit property in their respective residences/bungalows, the Plaintiff cannot plead and state that he got knowledge about the twin registered sale deeds of 1969 and 2008 for the first time in the year 2022. In these facts, the above defence of gaining knowledge is not at all open to the Plaintiff.

20. This is a clear case where the Plaintiff by virtue of clever drafting is attempting to overcome the bar of limitation. It is not the Defendants' case that they are developing the larger Suit property just now. Development has been carried out by them over a period of time and is continuing. Hence, the filing of the Suit plaint by Plaintiff is nothing but a vexatious and extortionist claim by the Plaintiff and such claims are to be nipped in the bud at the threshold itself. If this is not done by the Court of law, litigants like the Plaintiff will end up taking the law into their hands. That is the precise reason for the existence of provisions of Order VII Rule 11 in the CPC. "

10.1. What is stated herein above would apply to the present case also. Here is the Plaintiff who has admittedly remained silent for the past 31 years. The suit land / property is amenable to the provisions of the said Act. Without taking recourse to the provisions of the said Act, Plaintiff claims ownership on the basis of an purported undated, unstamped and unregistered agreement of 1989 and seeks specific performance of the said agreement in the year 2020. It is seen that prayer clause (a) of the plaint seeks declaration of ownership. It is a composite prayer where Plaintiff seeks a prayer of injunction coupled with a declaratory relief. Both these reliefs are compositely sought on the basis of the 1989

agreement. In prayer clause (b), Plaintiff seeks specific performance of agreement of 1989 whereas in prayer clause (c), Plaintiff seeks declaration that the registered deed of conveyance of 28.02.2011 between Defendants is not binding on Plaintiff. Prayer clause (d) is in respect of seeking direction to Defendant Nos. 1 to 8 to enforce the agreement of 1989 in favour of Plaintiff. Once the suit plaint and prayers are perused, there is no reason for the learned Trial Court to come to the conclusion that in these facts limitation is required to be proved by evidence. Such clear facts as clear as daylight emanate from the suit plaint itself and they do not leave any room for doubt. Suit plaint is thus clearly barred by the law of limitation on these facts and is hit by the provisions of O. VII R. 11 of CPC. Hence the proposition that issue of limitation is required to be decided only after evidence is led by the parties cannot be an absolute proposition which can be applied to the facts of this case. It is seen that ground of limitation is itself a mixed question of law and fact. In the given case when the facts are crystal clear so as to ascertain and determine the availability of right to a litigant, there is no reason for the Court to then conclude that issue of limitation cannot be decided without going into the merits of the case. In every case that is filed, objection raised under O. VII, R. 11 has to be decided on the facts of the case pleaded in the suit plaint, cause of action and reliefs sought for. It cannot be stated by the Court that issue of limitation raised by Defendant cannot be decided at an early stage since it is a mixed question of fact and law as is done in the present case. If what is countenanced by the learned Trial Court is accepted, then provisions of O. VII, R. 11 of the CPC will be rendered completely redundant. There will never be an effective check on litigants like the Plaintiff approaching the Court at any point of time without adhering to limitation. The challenge to the registered document after a long delay or to seek declaratory relief in terms of a document executed several decades ago cannot be permitted. Hence, in the present case filing of the suit plaint by Plaintiff seeking the desired reliefs which have been delineated herein above is after much delay. Suit plaint is clearly hit by the provisions of O. VII R. 11(d) of the CPC. Once the Plaintiff claims to be an agricultural tenant by virtue of the 1989 agreement with the predecessor-in-title of Defendant Nos. 1 to 8, then he cannot claim declaratory ownership of the suit property by taking a diametrically opposite plea. In any event on a prima facie reading of the suit plaint, it is seen that the case of Plaintiff does not meet the test required under O. VII R. 11 of the CPC.

[11] In view of my above observations and findings, the impugned order dated 10.04.2023 passed below Exh. 22 deserves to be interfered with. It is therefore quashed and set aside. Resultantly the Application filed by Defendant under O. VII R. 11 of the CPC below Exh. 22 stands allowed. In view of this, RCS No.25/2020 filed by the Plaintiff stands rejected.

[12] Learned Trial Court shall take cognizance of a server copy of this order and pass appropriate orders.

[13] Civil Revision Application is allowed and disposed

2024(2)MLPJ546

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

[Before Anil L Pansare]

Writ Petition No. 2000 of 2023, 1783 of 2023, 1784 of 2023, 2064 of 2023

dated 12/09/2024

Amitkumar S/o Bhimrao Bankar

Versus

Additional Divisional Commissioner; Bharti Ravindra Panse; Gram Panchayat; Divisional Commissioner; Sunanda; Uttara; Nareshchandra Pandurang Raut

DELEGATION OF POWERS

Bombay Village Panchayats Act, 1958 - Sec. 16, Sec. 182, Sec. 14; Maharashtra Land Revenue Code, 1966 - Sec. 13 - Delegation of Powers - Petitioners challenged the order passed by Additional Commissioner setting aside their disqualification - Collector initially disqualified Respondent No. 2 under Section 14(1)(h) of Bombay Village Panchayats Act for failure to pay taxes - Appeal was heard by Additional Commissioner based on delegation of powers under the Maharashtra Land Revenue Code - Petitioners contended that post-amendment in 2018, only Commissioner could hear the appeal under Section 16(2) of Village Panchayats Act - Court ruled that delegation of powers to Additional Commissioner through government notification still applied post-amendment - Additional Commissioner's reliance on affidavit of Peon without providing opportunity to cross-examine and ignoring evidence led to setting aside of both the Collector and Additional Commissioner's orders - Matter remanded to Collector for fresh consideration. - Petitions Partly Allowed

Law Point: Delegation of powers to Additional Commissioner under Section 16(2) of Bombay Village Panchayats Act remains valid post-amendment, but failure to consider evidence fairly can lead to remand of case for reconsideration.

Acts Referred:

Bombay Village Panchayats Act, 1958 Sec. 16, Sec. 182, Sec. 14

Maharashtra Land Revenue Code, 1966 Sec. 13

Counsel:

D S Jagyasi, V S Mishra, K Jhamb, D V Chawhan, N Y Thengre, D Verma

JUDGEMENT

Anil L. Pansare, J.- [1] Rule. Rule is made returnable forthwith. Heard finally with consent of learned counsel for the parties.

[2] Respondent No.2, in each petition, suffered disqualification under Section 14(1)(h) of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as

the, "Act of 1958"), for failure to pay taxes due to the Gram Panchayat within three months from the date on which the amount of taxes was demanded. The Collector, Chandrapur, on 10.10.2022, passed order of disqualification. The order of Collector was successfully challenged in terms of Section 16(2) of the Act of 1958. Thus, the Additional Commissioner, vide orders dated 18.01.2023, set aside the order passed by the Collector. These orders have been challenged in the present petitions.

[3] It is the contention of the petitioners that in terms of Section 16(2) of the Act of 1958, the appeal lies before the Commissioner, however, in the present case, the appeal has been entertained by Additional Commissioner. According to petitioners, the impugned orders are, therefore, without an authority and are unsustainable in the eyes of law.

[4] Thus, the question involved in these petitions is, whether the Additional Commissioner is/was empowered to entertain the appeal in terms of Section 16(2) of the Act of 1958. Section 16(2) reads thus:

"16. Disability from continuing as member:

(1) .....

(2) If any question whether a vacancy has occurred under this section is raised by the Collector suo motu or an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the Commissioner, and the orders passed by the Commissioner in such appeal shall be final:

Provided that, no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard."

[5] Section 16(2) of the Act of 1958 was amended on 19.07.2018 and the words, "State Government", were replaced by "Commissioner". Thus, prior to 19.07.2018, the appeal under Section 16(2) would lie before the State Government.

[6] Learned Government Pleader has invited my attention to the Government notification dated 20.04.1977 which indicate that the State Government, in exercise of powers under Section 182 of the Act of 1958, had delegated its power to the Commissioner vide notification dated 08.12.1970. The State Government in exercise of powers conferred under Section 13(3) of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "MLR Code") has then, vide aforesaid notification dated 20.04.1977, delegated powers of the Commissioner to the Additional Commissioner. Accordingly, for all these years, the powers delegated by the State Government to the Commissioner to deal with the matters under various provisions, including Section 16(2) of the Act of 1958, were exercised by the Additional Commissioner within his jurisdiction. He submits that the amendment to Section 16(2)

of the Act of 1958 will not take away the powers so delegated to the Additional Commissioner.

[7] The effect of delegation of powers under the MLR Code has been considered by the Division Bench of this Court in the case of **Vimal Bhimrao Rathod Vs. State of Maharashtra and Ors**, 2009 3 MhLJ 546. A reference was made to the Division Bench to consider, "Whether Additional Commissioner is legally competent to exercise appeal powers under Section 16(2) of the Act of 1958". The Division Bench referred to the provisions of the Act of 1958, the notification dated 20.09.1977 issued by the State Government and Section 13 of the MLR Code and observed thus:

"13. Plain reading of provisions of sub-section (3) of section 13 of the Code shows that it empowers the State Government to confer powers, duties and functions exercised by the Commissioner on the Additional Commissioner not only under the provisions of the Land Revenue Code, but also under any law for the time being in force by issuing notification in the Official Gazette in this regard. Notification dt. 20-4-1977 has been issued by the State Government in exercise of powers conferred on it under above referred sub-section (3) of section 13 of the Code and therefore, even if by virtue of notification dt. 11-11-1995 issued by the State Government in exercise of powers under section 182(1) of the BVP Act, powers under section 16(2) of the BVP Act are delegated in favour of Commissioner, that does not take away power and jurisdiction of the State Government to issue notification under sub section (3) of section 13 of the Code, empowering the Additional Commissioner to discharge the duties and functions exercised by the Commissioner not only under the Code alone, but also under the BVP Act; since the Commissioner, Additional Commissioner, Assistant Commissioner, Collector, Additional Collector, Tahsildar etc. are all Officers of the Revenue Department of State Government.

14. The State Government in exercise of power under section 182(1) of the BVP Act delegated appellate powers vested in it under section 16(2) of the BVP Act in favour of the Commissioner. By virtue of provisions of section 182(1), the State Government is legally entitled to delegate the said appellate power even in favour of any other Officer of the Revenue Department including Additional Commissioner, by issuing appropriate notification in this regard under section 182(1), by withdrawing the notification dt. 11- 11-1995. Similarly, the provisions of sub-section (3) of section 13 of the Code empowers the State Government to confer upon Additional Commissioner duties and functions exercised by the Commissioner not only under the provisions of the Code, but under any law for the time being in force which includes the BVP Act.

15. It is necessary to consider that the power vested in the State Government under section 182(1) of the BVP Act is distinct and different than the one vested in the State Government under sub-section (3) of section 14 of the Code. Under section 182(1) of the BVP Act, power of delegation vested in the State Government is restricted and can be exercised only in respect of provisions of the BVP Act. Whereas, the power vested under sub-section (3) of section 13 of the Code is of general nature

which empowers the State Government to confer duties and functions exercised by the Commissioner not only under the provisions of the Code, but also under any other law for the time being in force (which includes the BVP Act) on Additional Commissioners, by issuing notification in the Official Gazette in this behalf. Since the power vested in the State Government under section 182(1) of the Act and under section 13(3) of the Code operates in different and distinct areas, exercise of power by the State Government under these respective provisions does not result in any kind of inconsistency or conflict with each other or with the provisions of either of the Acts. Hence, we are of the view that the State Government is wholly competent to do so. It is also pertinent to note that petitioners have not questioned validity of the notification dt. 20- 4-1977 issued by State Government in exercise of powers under sub-section (3) of section 13 of the Code."

[8] The Division Bench, thereafter, has answered question in the affirmative. In other words, the Division Bench has held that the Additional Commissioner is legally competent to exercise the appellate powers under Section 16(2) of the Act of 1958.

[9] The only issue, that requires answer now is, the consequence of amendment dated 19.07.2018 to Section 16(2) of the Act of 1958, by which the words, "State Government" are replaced by the word, "Commissioner".

[10] It is the contention of the petitioners that prior to the amendment, the State Government was empowered to hear the appeal and by virtue of Section 182 of the Act of 1958, the State Government was authorized to delegate its powers to revenue officers and, accordingly, the Commissioner or Additional Commissioner were empowered to entertain the appeals under Section 16(2) of the Act of 1958. By way of amendment, the appeal now lies before the Commissioner. There is no provision in the Act of 1958, by virtue of which the Commissioner can delegate his powers to Additional Commissioner or any other revenue officer and, therefore, reliance cannot be placed on the notification dated 20.04.1977 to contend that the powers of Commissioner stand delegated to the Additional Commissioner.

[11] I do not find substance in the aforesaid argument. The State Government has delegated powers in terms of Section 13 (3) of the MLR Code, which reads thus:

"13. Powers and duties of Revenue Officers.

(1) & (2) .....

(3) The Additional Commissioner and the Assistant Commissioner, and the Additional Collector and the Additional Tahsildar shall each exercise within his jurisdiction or part thereof such powers and discharge such duties and functions of the Commissioner, the Collector or, as the case may be, the Tahsildar under the provisions of this Code or under any law for the time being in force, as the State Government may, by notification in the Official Gazette, direct in this behalf.

[12] As could be seen, the Additional Commissioner is required to exercise, within his jurisdiction or the part thereof, such powers and discharge such duties and

functions of the Commissioner under the provisions of MLR Code or under any law for the time being in force as the State Government, by notification in official gazette, direct in this behalf.

[13] The State Government, vide notification dated 20.04.1977, has directed the Additional Commissioner to exercise within his jurisdiction the powers, duties and functions conferred on the Commissioner under the provisions of the Act of 1958, which includes the provision under Section 16(2). The Additional Commissioner is duty-bound to exercise these powers in terms of Section 13(2) of the MLR Code. The Division Bench in Vimal's case has held that the power vested under sub-section (3) of section 13 of the Code is of general nature which empowers the State Government to confer duties and functions exercised by the Commissioner not only under the provisions of the Code, but also under any other law for the time being in force (which includes the BVP Act) on Additional Commissioners, by issuing notification in the Official Gazette in this behalf. Accordingly and in terms of Government notification dated 20.04.1977, the powers of Commissioner are being exercised by the Additional Commissioner within his jurisdiction. Present case is one of such case where Additional Commissioner has exercised powers under Section 16(2) of the Act of 1958.

[14] The question may arise, whether the notification dated 20.04.1977 is applicable to the subsequent Acts or amendments like in the present case, Section 16(2) of the Act of 1958 was amended on 19.07.2018. The answer should be in the affirmative, for the following reasons.

[15] Section 13(3) of the MLR Code provides that the Additional Commissioner shall exercise within his jurisdiction such powers and discharge such duties and functions of the Commissioner under the provisions of the MLR Code or any law for the time being in force, as the State Government, by notification in official gazette, directed in this behalf. The expression, 'for the time being in force', will have to be understood in the context in which it has been used.

[16] Section 13 of the MLR Code deals with the powers and duties of the revenue officer. Sub Section (1) thereof provides that the revenue officer above the rank of Tahsildar shall exercise powers and discharge the duties and functions conferred and imposed on them under the MLR Code or any law for the time being in force. The proviso to Sub Section (1) provides that Tahsildar shall exercise such powers as may be delegated to him by Collectors under the general or special order of the State Government. Sub Section (2) provides that the revenue officer shall also exercise such powers and discharge such duties and functions as the State Government may by an order in writing, confer or impose on them, for the purpose of carrying out the provisions of any law for the time being in force. Scope of Section (3) has been already discussed above.

[17] It could be thus gathered from Section 13 of the MLR Code that the revenue officers are required to exercise various powers and discharge various duties and functions under the provisions of the MLR Code and under other laws viz. Act of 1958,

Mamlatdar's Courts Act, 1906, The Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, the Maharashtra Zilla Parishads And Panchayat Samitis Act, 1961 and so on. Considering the powers, duties and functions of the revenue officers, Section 13 provides for delegation of powers for implementation of provisions of the MLR Code as also the other laws. If the delegation of powers is to be extended to other laws, the phraseology, "laws for the time being in force", would necessarily mean the law in force from time to time and not the laws in force only at a fixed point of time i.e. the date on which the notification was published, particularly when the subsequent laws or amendments do not provide for special qualification that would preclude/forbid Additional Commissioner to exercise the powers of Commissioner.

[18] The clue for such an interpretation can be taken from the judgment of the Supreme Court in the case of **Management of M.CD. v. Prem Chand Gupta**, 2000 AIR(SC) 454, wherein the Supreme Court expressly rejected a similar argument that for construing regulation of conditions of service, only relevant rules in force at that time must be looked into. It was held that the phrase "rules for the time being in force" occurring in Regulation 4 (1) of Delhi Municipal Corporation Service Regulations of 1959, means rules in force from time to time and not rules in force only at first point of time in the year 1959, when service regulations are promulgated.

[19] Thus, the "laws for the time being in force" would mean the laws in force from time to time and not laws in force only at first point of time. That being so, the argument that subsequent to amendment in the year 2018, the Additional Commissioner has no powers to entertain the appeal under Section 16(2) of the Act of 1958, is without any substance and is accordingly rejected.

[20] Accordingly, and for the purpose of clarification, it is hereby held that even after amendment to Section 16(2) of the Act of 1958, the powers of Commissioner stands delegated to the Additional Commissioner by virtue of Government Notification dated 20.04.1977.

[21] On merit, the common ground for disqualification of respective respondent No.2, is that they have failed to pay taxes due to Gram Panchayat within three months from the date of demand.

[22] For this purpose, I will refer to the facts of Writ Petition No.1783/2023. The tax invoice was dated 18.06.2021 amounting to Rs.1238/- (page 25). The copies of tax invoices were served on respondent No.2 on 18.06.2021. Tax has been, however, paid on 12.10.2021 i.e. after about 115 days. The Collector, Chandrapur, therefore, had passed an order of disqualification under Section 14(1) (h) of the Act of 1958.

[23] This order was challenged in terms of Section 16(2) of the Act of 1958. Additional Commissioner has relied upon the affidavit of the employee of Gram Panchayat which was filed belatedly. The employee stated that when he had distributed the tax invoices to the petitioner, the petitioner had not written date below signature. The employee has further stated that Secretary of Gram Panchayat had later

on called him at his house and instructed him to write a date on the backside of the invoice and accordingly, he has written the date 18.06.2021. The Additional Commissioner has then observed that the Collector has not taken cognizance of this evidence. He further noted that had the employee made false statement, he would have been removed from the service but has been not removed. Thus, the Commissioner found substance in the affidavit of the employee. The Commissioner has also noted that the signature and the date bear different inks. Accordingly, the Additional Commissioner took a view that it is not possible to ascertain the exact date when the tax invoices were served on the petitioner. The appeal was accordingly allowed by setting aside the order of Collector.

[24] The learned counsel for the petitioner submits that the Additional Commissioner lost sight of the fact that the Peon, who has been examined, is a close relative of respondent No. 2. The counsel for respondent No.2, is the one who has identified him below affidavit. He further submits that the Additional Commissioner has also ignored the report dated 24.05.2022 filed by the Secretary stating therein the true and correct facts which indicate that the respondent No. 2 has failed to pay the taxes within stipulated time.

[25] The counsel further submits that the inquiry under Section 16 is summary in nature and, therefore, is to be decided expeditiously on the basis of documents placed on record and not by permitting the parties to lead evidence. In support, he has relied upon judgment passed by the coordinate Bench of this Court in the case of **Rahul Raju Kulsange .Vs. Additional Collector, Nagpur and Ors.**, 2022 2 MhLJ 555, wherein this Court taking stock of various judgment has held thus:

"15. It is, thus, apparent, a plain reading of the language of section 16(2) and the proviso thereto, of the M.V.P. Act, would indicate that the enquiry under section 16(2) of the M.V.P. Act, has to be summary in nature restricted to the observations of the principles of natural justice and cannot be converted into an enquiry of an adversarial nature, requiring evidence to be led by permitting parties and witnesses to be examined and cross-examined, by reading into it such a requirement. Such a concept, would be totally alien to the nature of enquiry, as contemplated under section 16 of the M.VP. Act as an enquiry of an adversarial nature was not intentionally provided by the legislature while enacting section 16 of the M.V.P. Act, though it was aware, that the disqualification would result, in denial of a right vested in the elected member, due to his election.

16 & 17. .....

18. In my considered opinion, the issue as regards the nature of enquiry under section 16 of the M.V.P. Act, has been considered and decided in Vishwas Laxman Bhagat (supra), which holds that it is summary in nature and the argument that the Collector while following the principles of natural justice would be bound to record evidence and give an opportunity to the other side to rebut the same, has been rejected, which is a judgment of the learned Division Bench of this Court, which has not been

brought to the notice of the Courts, which have rendered the judgment in Lalita, Hanumant Sahebrao Patil, Mandabai (supra). The Courts rendering these judgments were also not called to dilate upon the nature of enquiry to be conducted under section 16(2) of the M.V.P. Act and therefore could be said to be per incuriam to Vishwas Laxman Bhagat (supra). In so far as Vivek (supra) is concerned, which is earlier in point of time, the view taken in Vivek (supra) being that of a learned Division Bench of this Court, shall prevail. The leading of evidence, as indicated in these judgments, thus has to be construed as filing of documents, substantiating the plea raised for disqualification, and the defence taken thereto, and not otherwise."

[26] Thus, the Court has held that nature of inquiry under Section 16 of the Act of 1958 is summary in nature and cannot be converted into an inquiry of adversarial nature requiring evidence to be led by permitting the parties and witnesses to be examined and cross-examined.

[27] In the present case, the Additional Commissioner has relied upon affidavit of Peon, which can be said to be an evidence led in support of case of respondent No.2. Firstly, no such evidence could be led in terms of judgment in Rahul Kulsange's case and secondly, if at all the evidence was to be considered, the petitioners ought to be given an opportunity to cross-examine the said witness. The Additional Commissioner has ignored this position of law. He has further not taken into account the report submitted by Secretary of Gram Panchayat. Thus, his order is not sustainable.

[28] At the same time, the order passed by Collector also does not indicate that the statement made by the Peon on affidavit was considered. The Collector may refuse to accept the evidence but there has to be finding with reasons for the same because if what has been said by the Peon is correct then not only that he will attract penal action for tampering with the record of Gram Panchayat viz. tax invoices where he has inserted date below the signature of the recipient, but also that the respondent may not be guilty of evading tax or of not paying same within stipulated time. The matter, therefore, will have to be relegated back to the Collector.

[29] Resultantly, the Writ Petitions are partly allowed. Orders dated 18.01.2023 passed by Additional Commissioner, Nagpur in V.P.A.Nos.28/2022-23, 27/2022-23, 26/2022-23 and 25/2022-23 are quashed and set aside. Orders dated 10.10.2022, passed by Collector, Chandrapur in Gram Panchayat Case Nos.6/2022, 1/2022, 4/2022 and 5/2022 of mouja Kaleta, Tq. Brahmapuri, Dist. Chandrapur set aside. Gram Panchayat Case Nos.6/2022, 1/2022, 4/2022 and 5/2022 are restored on the file of Collector, Chandrapur for consideration afresh, in accordance with law and in the light of what has been said in the body of order.

Parties shall appear before the Collector, Chandrapur on 26.09.2024.

Rule is disposed of in the above terms. No order as to costs

2024(2)MLPJ554

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before Sharmila U Deshmukh]

Writ Petition No 3102 of 1995, 10925 of 2017 **dated 11/09/2024**

Balkrishna, Dadoba Yedekar; Sonabai Parashram Jagdale; Indubai Balkrishna Yedekar; Asha Chandrakant Kale; Shital Tukaram Patil; Vrinda Balkrishna Yedekar; Umesh Balkrishna Yedekar

Versus

Sangli Municipal Council; Sangli Miraj Kupwad Municipal Corporation

TENANT RIGHTS

Land Acquisition Act, 1894 Sec. 6 - Transfer of Property Act, 1882 Sec. 111 - Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 43C, Sec. 70, Sec. 4B, Sec. 85A, Sec. 88B, Sec. 4A, Sec. 88 - Bombay Tenancy Act, 1939 Sec. 3A, Sec. 23, Sec. 4, Sec. 3 - Tenant Rights - Appellants were tenants of land leased in 1942 - Land acquired by Sangli Municipal Council for development under Land Acquisition Act - Appellants claimed continued tenancy under Bombay Tenancy Act, 1948, including protection under Section 4B, which prohibits termination by efflux of time - Municipal Council argued tenancy terminated after lease expiration and land exemption from Tenancy Act - Civil suit and reference proceedings established that appellants were tenants, but later development plan exempted land under Section 88, ending tenancy rights - Court held that Section 4B could not protect appellants due to sanctioned development plan and Gazette Notification - Petitions dismissed as tenancy rights were extinguished by land's exemption from Tenancy Act provisions. - Petitions Dismissed

Law Point: Section 4B of Bombay Tenancy Act only restricts termination by efflux of time, but does not prevent extinguishment of tenancy rights when land is exempted for development purposes under Section 88.

Acts Referred:

Land Acquisition Act, 1894 Sec. 6

Transfer of Property Act, 1882 Sec. 111

Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 43C, Sec. 70, Sec. 4B, Sec. 85A, Sec. 88B, Sec. 4A, Sec. 88

Bombay Tenancy Act, 1939 Sec. 3A, Sec. 23, Sec. 4, Sec. 3

Counsel:

Vivek V Salunke, N V Walawalkar (Senior Advocate), G H Keluskar

JUDGEMENT

Sharmila U Deshmukh, J.- [1] The papers of Writ Petition No.3102 of 1995 were permitted to be reconstructed. Writ Petition No.10925 of 2017 was admitted vide order dated 21st February, 2024.

[2] This Court vide order dated 25th June, 2013 observed that there was mis joinder of causes of action as Writ Petition No.3102 of 1995 challenged the order of Assistant Judge, Sangli in Civil Appeal No.435 of 1969 reversing the order passed by the Civil Judge, Junior Division, Sangli recording compromise decree dated 17th September, 1958 and also the order of the Maharashtra Revenue Tribunal [for short "MRT"] dated 23rd March, 1995 under Maharashtra Tenancy and Agricultural Lands Act, 1948 [for short "Tenancy Act"]. This Court permitted the Petitioners to file an independent Petition to challenge the order of MRT and retained the challenge to the Civil Court order in Writ Petition No. 3102 of 1995. Subsequently Writ Petition No. 10925 of 2017 came to be filed. Common submissions were advanced and the Petitions are being disposed of by this common judgment.

FACTUAL MATRIX:

[3] There is a chequered history to this litigation which has commenced way back in the year 1952 leading to several rounds of litigation between the parties which is set out hereinafter briefly.

[4] The subject land is Survey No.99/2 admeasuring 13 acre and 18 guntas. By registered lease deed dated 29th January, 1942, the subject land was leased for period of four years to father of the Petitioner No.1 i.e. Dadoba Yedekar by the owner i.e. Mahadev Dattatray Bhide. During the subsistence of the lease, on 23rd June, 1945, notification was issued under Section 6 of the Land Acquisition Act, 1894 by the State Executive Council of Sangli State published in the Gazette dated 30th June, 1945 for acquisition of land for northern extension scheme of Sangli town. By Huzur Order (Royal Decree) dated 6th March, 1948, issued by Sangli State the subject land was declared to form the corpus of a Trust, with Sangli Municipal Council as trustee to implement the object of Trust of providing water and drainage scheme. On 17th June, 1950, Trust came to be registered.

[5] The subject land continued to be under the cultivation and possession of Dadoba. In the interregnum, in the year 1948, the Bombay Tenancy and Agricultural Land Act, 1948 came on the statute book repealing the Bombay Tenancy Act, 1939 to the extent mentioned in Schedule-I.

[6] Sangli Municipal Council filed a suit being Chalu Vahiwat Suit No. 3 of 1952 in the Court of Mamlatdar Miraj for possession of the subject land on the ground that Dadoba was only tenant for the year 1949-50. The Mamlatdar's Court dismissed the suit on 13th October, 1952 holding that Dadoba was annual tenant against which Revision Application was preferred before Assistant Collector which came to be allowed. Dadoba challenged the order of the Assistant Collector by filing Civil

Revision Application No.1386 of 1952 before this Court which by order dated 26th August, 1955 set the order of the Assistant Collector and held Dadoba to be the annual tenant of the agricultural land and unless the tenancy is determined, the possession of the subject land cannot be recovered from Dadoba.

[7] The Sangli Municipal Counsel terminated the tenancy of the Dadoba by notice dated 25th February, 1956 calling upon him to hand over possession of the agricultural land on 6th June, 1956. For recovery of possession, Regular Civil Suit No.59 of 1957 was filed in the Sangli Court. On 17th September, 1958, Dadoba and Sangli Municipal Council entered into compromise terms under which it was agreed that Dadoba will be the tenant of Sangli Municipal Council for the period of 7 years from 1957 to 31st March, 1964 and after expiry of the said period, Dadoba would hand over the possession of the subject land to Sangli Municipal Council.

[8] Due to non compliance of the compromise terms by Dadoba, Sangli Municipal Council filed Durkhast No.140 of 1964 seeking possession. The execution was resisted contending that the compromise was against the provision of Tenancy Act and therefore, the decree is not executable, that the judgment debtor is a protected tenant and in view of Section 4B of the Tenancy Act, the tenancy cannot be terminated. The jurisdiction of Civil Court was questioned to entertain issue of eviction of agricultural tenant. The Executing Court rejected the contentions of judgment debtor and issued warrant of possession. During the pendency of the Darkhast, Dadoba expired and his legal heir, the Petitioner No.1 challenged the order of issuance of warrant of possession by way of Civil Appeal No.39 of 1967. The Appellate Court set aside the order of issuance of warrant of possession dated 20th November, 1967 observing that the Dadoba was protected tenant and remanded the matter to Trial Court for fresh consideration vide order and Judgment dated 30th July, 1968.

[9] After remand, the Trial Court held that the decree passed in terms of compromise was not executable as the agreement defeated provisions of law and dismissed the Darkhast by judgment and order dated 26th September, 1969. Sangli Municipal Council preferred Civil Appeal to the District Court against the order of dismissal of the Darkhast and the District Court observed that the Civil Court has no jurisdiction to decide whether the Dadoba or his heirs were the tenants of the agricultural land in view of Section 85A of the Tenancy Act. The District Court stayed the execution and allowed the Trial Court to refer the issue of tenancy to the Revenue Court i.e. the Mamlatdar for determination of issue of tenancy by judgment and order dated 15th July, 1971.

[10] The issue of tenancy was referred to the Tahsildar in Tenancy Case No.24 of 1978. The Petitioners contended that the issue of tenancy was already adjudicated in Vahiwat Suit No.3 of 1952 and that the Petitioners were continuously cultivating the land since year 1942 and they be declared as tenants under Section 70(b) of the Tenancy Act. The Mamlatdar came to a conclusion that the subject land is situated in the municipal limits and major portion of the land was under grass which grows

naturally and held that the judgment debtors were not tenants by order dated 29th November, 1988.

[11] The Petitioners preferred Tenancy Appeal No.6 of 1988 before the Subdivisional Officer who dismissed the Appeal as against which Revision Application No.30 of 1989 was preferred before MRT. The Learned Member of MRT by the impugned judgment and order dated 22nd December, 1989, dismissed the Revision Application holding that the Petitioners cannot be declared as tenants on the suit land. The Review Application filed by the Petitioners came to be dismissed by order dated 22nd March, 1995.

SUBMISSIONS:

[12] Mr. Salunkhe, Learned Counsel for the Petitioners would submit that by virtue of consent terms entered in the year 1958, the Petitioner was to remain as tenant of the decree holder in respect of the subject land from 1st April, 1957 till 31st March, 1964. He submits that the compromise was entered into after the amendment to the Tenancy Act of 1956, which brought Section 4B on the statute book prohibiting termination of tenancy by efflux of time. He would point out that though under Section 88B(1), the land of the local authorities is exempted from other provisions of the Tenancy Act, however, Section 4B is applicable. He has taken this Court in detail through the various orders passed in the proceedings and submits that in first Chalu Vahiwat Suit of 1952, Dadoba was held to be annual tenant and therefore, there was no question of again referring the issue of tenancy to the Revenue Court. He has taken this Court in detail through the order of MRT and would submit that the MRT has accepted that Dadoba was a tenant of the suit land and had also held that the provisions of Section 4B are applicable to this case. He further submits that the MRT after holding that Section 43C of the Tenancy Act which is applicable to the area under Municipal Council cannot take away the continuation of tenancy rights, travelled beyond the scope of the reference and held that the Petitioners cannot be declared as tenants under Section 70(b) of the Tenancy Act by relying upon the photocopy of the Gazette dated 28th March, 1977 which shows that out of survey No.99/2 some portion is reserved for development scheme Nos. 24 and 25 and therefore Section 88 of the Tenancy Act would apply. He submits that on 15th July, 1971, the reference was directed by the Appellate Court and the reference was made on 9th September, 1976. He submits that the relevant period for determining the issue of tenancy is the date of reference and subsequent development of the year 1977 could not have been taken into consideration. He submits that the reference was not an original proceeding and the later development was not the subject matter. He submits that once it is accepted that the Petitioners are the tenants of the premises, it cannot be said that the Petitioners have lost the tenancy right for the reason that from the date of notification, the Tenancy Act was not applicable by virtue of Section 88. He would further submit that the reference was made as the provisions of the Tenancy Act were applicable and

therefore, now it cannot be said that the Tenancy Act is not applicable by virtue of Section 88.

[13] Per Contra, Mr. Walawalkar, learned Senior Advocate would submit that under Section 85A of the Tenancy Act whenever any issue arises which is required to be dealt with by any of the authority under the Tenancy Act, the same is to be referred to the Competent Authority for determination. He submits that the reference was on the issue whether the Petitioner's tenancy is protected by the Tenancy Act. He has taken this Court in detail through the order of MRT and submits that MRT has held that there are no rights left of the Petitioners as tenants. He would submit that the suit which was filed by the Sangli Municipal Council resulting in an agreement created a tenancy in the year 1958. He submits that if the Petitioner claims tenancy of the year 1942 then, the unamended provisions of the Tenancy Act would apply and the land leased by the local authority would be exempted from the provisions of the Tenancy Act.

[14] He submits that if the Petitioners claims tenancy of the year 1958, then in view of Section 88(1)(b), the Tenancy Act will not apply. He submits that the decree has already been executed and the possession has been taken by the Sangli Municipal Counsel and there is a bus depot and only the Petitioner's structure is protected by this Court. He would submit that the Petitioners cannot become deemed purchasers. He submits that the consent terms were executed in the year 1958 and as per Section 111 of the Transfer of Property Act, 1882, the tenancy is determined by efflux of time. He submits that as the tenancy was determined, no notice is required to be issued under the provisions of Transfer of Property Act, 1882. He submits that the Tenancy act will not protect the tenancy created by virtue of the Consent Terms and the tenant will have no higher status that of an ordinary tenant.

[15] He submits that Writ Petition No.3102 was filed in the year 1995 and in 2013, liberty was given to file the second Petition, which was filed in the year 2017 after a lapse of about four years. He submits that the order of MRT passed on 22nd December, 1989 had been challenged by virtue of the second Petition filed in the year 2017. He would further submit that the operation of the bus depot is in public interest and therefore, delay and laches come into play and this Court may not exercise jurisdiction under Article 227 of Constitution of India.

[16] In rejoinder, Mr. Salunke would dispute that the possession has been taken and submits that portion of land has been reserved for development scheme. He admits that there has been delay in filing of the Petition, however, the issue of delay will not arise as the Petitions were already admitted.

[17] In sur-rejoinder, Mr. Walawalkar, would submit that the Respondent Municipal Council was not heard at the time of admission and the status quo for the structure was given. He would further submit that Mr. Salunke has admitted that portion is reserved for development out of Survey No.99/2.

REASONS AND ANALYSIS:

[18] Although it was contended by Mr. Salunkhe that the fate of Writ Petition No.3102 of 1995 would decide the fate of Writ Petition No.10925 of 2017, the substantial submissions advanced by Mr. Salunkhe was on the validity of the MRT order dated 22nd December, 1989. In the reconstructed Writ Petition No.3102 of 1995, the prayer clause seeks relief in respect of the Civil Court's order as well as the orders of the Competent Authority under the Tenancy Act. However, I have considered the order of this Court dated 25th June, 2013 which permitted the Petitioners to retain the challenge to the Civil Court's order in Writ Petition No.3102 of 1995.

[19] As far as the relief sought qua the Civil Court's orders are concerned, the prayer is to quash and set aside the impugned Judgment and Order dated 17th September, 1958 recording the compromise decree. No submissions were advanced on the aspect of setting aside of the compromise decree and rightly so as in exercise of jurisdiction under Article 227 of Constitution of India, no such relief could be granted.

[20] The other order under challenge is the order dated 15th July, 1971 passed in Civil Appeal No.435 of 1969 directing Reference. By the impugned order dated 15th July, 1971, the Appellate Court framed the issue whether the Executing Court had the jurisdiction to decide the question whether the Judgment Debtors were the tenants. The Appellate Court rightly considered the provisions of Section 70(b) and Section 85A of the Tenancy Act and directed the reference. The defence which was raised by the Petitioners to the execution proceedings was that Dadoba was the protected tenant and the Sangli Municipal Council had not obtained a decision from the Tenancy Court that Dadoba was not protected tenant and Civil Court had no jurisdiction and the execution proceedings be stayed under Section 85A of Tenancy Act and matter be sent for decision to the Mamlatdar. The said contentions were accepted by the Appellate Court and the matter was referred under Section 85A of Tenancy Act. Having questioned the jurisdiction of Civil Court to decide the Petitioner's tenancy and invoking Section 85A of Tenancy Act, the Petitioners are now estopped from contending that there could be no reference under Section 85A as the Mamlatdar had held that the Petitioners pre-decessor was annual tenant in Chalu Vahiwat Case No.3 of 1952. There was no challenge to the order directing Reference and the Petitioners participated in the proceedings before the Competent Authority and therefore, cannot now maintain a challenge to the order of Reference of the year 1971.

[21] Coming now to the challenge to the order of MRT dated 22nd December, 1989, the moot question which arises for consideration is whether the tenancy of the Petitioners cannot be determined in view of Section 4B of Tenancy Act and therefore, the Petitioners continue to be tenants of the subject land.

[22] Before deciding the applicability of Section 4B, a brief recapitulation of the facts is necessitated as the ownership of the subject land changed over different periods of time and accordingly the applicable statutory provisions will have to be considered. The Petitioner was a lessee of the subject land under the original owner in

the year 1942, the land came to be acquired by virtue of a notification under Section 6 of the Land Acquisition Act, 1894 on 23rd June, 1945, on 6th March 1948, there was a royal decree issued stating that the land would form corpus of the Trust and Sangli Municipal Council will be the trustee. On 17th June, 1950, the trust was registered. In the year 1952, the suit was filed before the Mamlatdar for recovery of possession which was dismissed by holding Dadoba to be annual tenant. On 25th February 1956, the Sangli Municipal Council terminated the tenancy by issuing notice of termination. Regular Civil Suit No.59 of 1957 was filed for recovery of possession and on 17th of September, 1958, by virtue of compromise decree, it was agreed that Dadoba will be a tenant of Municipal Council for seven years from 1st April, 1957 to 31st March, 1964. For execution of the said compromise terms, Darkhast was filed in which the issue of tenancy was referred to the Competent Authority leading to the impugned order.

[23] In the interregnum, by virtue of Amendment Act 13 of 1956, Section 4B was brought on the statute book prohibiting determination of tenancy by efflux of time. At the time of executing compromise terms in the year 1958, Section 4B was already introduced. In the execution proceedings taken out by Sangli Municipal Council, the issue whether the Petitioners are tenants of the decree holder was referred to the Revenue Authorities in view of Section 85A of the Tenancy Act, which reads thus:

"[85A. (1) If any suit instituted in any Civil Court involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or deal with such issues under this Act (hereinafter referred to as the "competent authority"), the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto."

[24] In the reference proceedings, the Tahsildar held against the Petitioners who approached the MRT. The findings of the MRT can be broadly summarized as under:

(a) Dadoba cannot be considered as deemed purchaser on tiller's day i.e. 1st April, 1957 as the subject land was located within municipal limits and belonged to a Trust and therefore the status of Dadoba remained as a tenant.

(b) The compromise terms executed between Dadoba and Sangli Municipal Council created a tenancy for 7 years.

(c) Section 4B of Tenancy Act is applicable and Section 43C cannot take away continuation of tenancy rights as only statutory rights of purchase are kept in abeyance.

(d) The Petitioners are not tenants under Section 70(b) of Tenancy Act as the Gazette dated 28th March, 1977 produced along with the development plan for Sangli Municipal Council shows that out of Survey No. 99/2 a portion is reserved for development under Scheme No. 24 and 25 and the Municipal Council requires the

entire survey No. 99 for the purpose of development scheme which is sanctioned by Government of Maharashtra.

(e) In view of Section 88(b) of Tenancy Act, there is no right left in the Petitioners to claim tenancy of the subject land and therefore it is not possible to grant him the status of tenant under Tenancy Act.

[25] The issue will have to be examined by going back to the provisions of the erstwhile Bombay Tenancy Act, 1939 as the lease was first created in the year 1942 for period of four years which would have expired in the year 1946. Under Section 23(1)(b) of the Bombay Tenancy Act, 1939 as it stood amended in 1946 every lease subsisting on the date when that section came into force was deemed to be for a period of not less than 10 years. The effect of Section 23(1)(b) would therefore be that the Petitioner's lease which would have expired in the year 1946 continued till the year 1952 in view of the deeming provision.

[26] The Tenancy Act of 1948 came into force repealing the 1939 Act however, the Tenancy Act did not repeal but modified Section 3, 3A and 4 of the 1939 Act which dealt with protected tenancy. Section 3A which was modified by 1948 Act provided that every tenant shall, from 8th day November, 1947 be deemed to be protected tenant for the purposes of 1948 Act and his right as such protected tenant shall be recorded in the record of rights unless his landlord has prior to the death made an application to a Mamlatdar for a declaration that the tenant is not a protected tenant. In the present case, it is not shown that any such application was made as contemplated under Section 3A. The result was that the Petitioner became protected tenant by virtue of 1948 Act read with Section 3A of the 1939 Act.

[27] Till the introduction of Section 88B exempting the lands leased from local authority from certain provisions of Tenancy Act, the Petitioner remained a protected tenant under the 1948 Act and theereafter his status was of a ordinary tenant. However, Section 4B continued to apply. Section 4A of Tenancy Act, which also came to be introduced by the Act of 1956, provided that the person shall be recognised to be a protected tenant if such person is deemed to be a protected tenant under Section 3, 3A and Section 4 of the Bombay Tenancy Act, 1939. Section 4A does not apply to tenancy governed by Section 88B(1)(a) of the Tenancy Act therefore, the Petitioners were no longer the protected tenants in respect of the subject land.

[28] Having dealt with the issue of protected tenancy of the Petitioners and negating the same, I shall now consider the pivotal issue of applicability of Section 4B of Tenancy Act. Section 4B reads thus:

"4B: No tenancy of any land 1 [other than the tenancy of the land duly sanctioned under section 36 or section 36A of the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966)] shall be terminated merely on the ground that the period fixed by agreement or usage for its duration has expired]."

[29] Section 4B prohibits the termination of tenancy merely on the ground that the period fixed by agreement or usage for its duration has expired. A plain reading of

Section 4B would indicate that Section 4B militates against termination of tenancy which is sought to be terminated only on the ground that the duration for which the tenancy was created has expired. Section 4B does not put a complete embargo on the determination of tenancy on any other reason including the reason of the subject land itself being exempted from the provisions of Tenancy Act.

[30] The question referred to the Competent Authority was whether the Petitioners were tenants of the Sangli Municipal Council pursuant to the order of the Appellate Court dated 15th July, 1971. The reference was rightly directed by the Executing Court as Section 85A provides for reference by the Civil Court of the issues which are required to be settled by competent authority under the Tenancy Act. The issues which are within the jurisdiction of competent authority under Tenancy Act is provided under Section 70 which reads thus:

"70. For the purposes of this Act the following shall be the duties and functions to be performed by the Mamlatdar:-

(a) to decide whether a person is an agriculturist;

(b) to decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant;

(c) to determine the rates of rent under section 9;

(d) to decide dispute regarding class of land under section 9A;

(f) to determine the amount of compensation under section 10 for the contravention of sections 8, 9, 9A and 9C;

(h) to determine the amount to be refunded to a tenant under section 13(5);

(i) to determine the amount of compensation for trees to which a tenant is entitled under section 19;

(j) to determine any dispute regarding the right to produce of trees naturally growing under section 20;

(k) to determine the cost of repairing protective bunds under section 23;

(kk) to hold an inquiry and restore possession of land under subsection (1B) of section 32;

(l) to sanction exchange of tenancies under section 33;

(m) to determine the amount of compensation payable to tenant for any improvement under section 41;

(ma) to determine what is reasonable rent under section 43B;

(mb) to issue a certificate under section 84A, and to decide under section 84B or 84C whether a transfer or acquisition of land is invalid and to dispose of land as provided in section 84C;

(mc) to decide reference under section 85A;

(md) to decide any dispute under section 88C;

(n) to take measures for putting the tenant or landlord or the agricultural labourer or artisan or person carrying on an allied pursuit into the possession of the land or dwelling house under this Act;

(o) to decide such other matters as may be referred to him by or under this Act.

[31] Under sub section (b) of Section 70, the Competent Authority is enjoined with the duty to decide whether a person is, or was at any time in the past, a tenant or a protected tenant or a permanent tenant. MRT has held the Petitioners to be tenants of the subject land and the applicability of Section 4B to the Petitioner's tenancy. These findings have not been challenged by the Respondent Sangli Municipal Council and rightly so. The issue would still remain as to whether the Petitioners continued to remain as tenants of the subject land upon the issuance of Gazette Notification of 28th March, 1977. The Petitioners by reason of the compromise terms of the year 1958 became tenants of Sangli Municipal Council and Section 4B placed an embargo on the determination of the tenancy by efflux of time. As indicated above, the embargo is not an absolute embargo and only restricts determination of tenancy by reason of efflux of time. During the pendency of the Reference proceedings, the Gazette Notification dated 28th March, 1977 and the development plan approved by the Government for Sangli Municipal Council was sanctioned reserving portion of Survey No 99/2 for development Scheme Nos. 24 and 25. By reason of the intervening event of the development plan being sanctioned, the provisions of Section 88(1)(b) of Tenancy Act became applicable to the subject land making it exempt from the provisions of Tenancy Act bringing with it the end of the tenancy rights of the Petitioners. I find no substance in the submission of Mr. Salunkhe that the finding of MRT was based on the subsequent development which is beyond the scope of reference and the status of Petitioners had to be decided on the date of reference. Firstly considering Section 70(b) of Tenancy Act, the Competent Authority was required to determine whether the Petitioners are or were at any time in the past the tenants or protected tenants. The MRT after holding that the Petitioners were in the past tenants of the subject land have thereafter considered whether the Petitioners continue to remain tenants in view of the gazette notification of the year 1977. The whole purport of the Reference was to decide the status of the Petitioners as tenants so that the Civil Court could have adjudicated the execution application. In my view, the date of Reference is immaterial and it is the status of the Petitioners which was required to be determined.

[32] Learned Member of MRT has held that the Municipality requires the entire Survey No.99 for purpose of development scheme which is sanctioned by the Government of Maharashtra. Mr. Salunkhe has not brought to the notice of this Court any material to dispute the said position that the entire Survey No.99 was not reserved for non agricultural purpose. That being so, the subject land was exempted from provisions of Tenancy Act by virtue of Section 88(1)(b) resulting in determination of tenancy rights of the Petitioners.

[33] As far as the contention that MRT could not have held that the Tenancy Act was not applicable as reference was made, in my view, while determining the status of the Petitioners, as by reason of intervening event, the provisions of Tenancy Act were not applicable to subject land, merely because the reference has been made by Executing Court will not alter the position. The reference was made in view of defence raised by the Petitioners that they were agricultural tenants and the Competent Authority is empowered to hold that the Petitioners are not tenants by reason of subject land being exempted under Section 88.

CONCLUSION:

[34] Section 4B of Tenancy Act puts an embargo on termination of tenancy only on the ground that the tenancy has been determined by efflux of time. Section 4B cannot come to the aid of the Petitioners in view of the sanctioned development plan published in the Gazette Notification dated 28th March, 1977. Learned Member of MRT has held that the Government has already published in Official Gazette the non agricultural use of the suit land by approving the development Scheme Nos. 24 and 25 for the Sangli Municipal Council and there is no material shown to this Court to dispute the said position.

[35] As the Competent Authority was determining the status of Petitioners whether tenant or not, it is not the date of Reference which is material but the status of Petitioners. The Learned Member of MRT has rightly considered the Gazette Notification dated 28th March, 1977 publishing the development plan and reached the correct conclusion that the Petitioners had no rights left with them to claim tenancy.

[36] In light of the above discussion, both the Petitions fail and stand dismissed. Rule stands discharged.

[37] At this stage request is made for extension of the interim relief which has been operating in favour of the Petitioners for the period of eight weeks. Mr. Walawalkar, learned Senior counsel for the Respondent opposes the extension of the interim relief. As the interim stay has been operating since long, I am inclined to extend the same for a period of eight weeks from today

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2024(2)MLPJ564

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[Before R N Laddha]

Anticipatory Bail Application No 2432 of 2024 **dated 02/09/2024**

Mahesh Motiram Kumbhar

Versus

State of Maharashtra

BUILDING COLLAPSE

Maharashtra Regional and Town Planning Act, 1966 Sec. 54 - Bharatiya Nyaya Sanhita, 2023 Sec. 125, Sec. 3, Sec. 105, Sec. 324 - Building Collapse - Appellant

sought anticipatory bail after being charged with constructing an unauthorised four-storey building that collapsed, causing three fatalities - Appellant financed the building but denied responsibility, blaming a co-constructor - Investigation revealed substandard materials and disregard for structural integrity, leading to collapse - Prosecution argued appellant's inaction despite demolition notices - Court found sufficient material suggesting appellant's involvement in construction and ownership - Held that gravity of offence and ongoing investigation necessitated denial of anticipatory bail - Application Rejected

Law Point: Anticipatory bail is not granted in cases involving severe negligence resulting in loss of life, especially when the investigation is at an early stage and the accused's involvement in illegal construction is evident.

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 Sec. 54

Bharatiya Nyaya Sanhita, 2023 Sec. 125, Sec. 3, Sec. 105, Sec. 324

Counsel:

Shekhar Ingawale, Yogesh Y Dabke

JUDGEMENT

R.N. Laddha, J.- [1] By this application, the applicant seeks pre-arrest bail in connection with CR No.244 of 2024, registered at NRI Sagari Police Station, Mumbai, for offences punishable under Sections 105, 125(a), 125(b), and 324(4) read with 3(5) of the Bharatiya Nyaya Sanhita, 2023, and Section 54 of the Maharashtra Regional and Town Planning Act, 1966 ('MRTP Act').

[2] The following events led to the present crime: On 27 July 2024, the four-storey 'Indira Niwas' building, comprising seventeen flats and three shops, suddenly collapsed, trapping three individuals, who later succumbed to their injuries at the hospital. An investigation by the informant, a Junior Engineer from Navi Mumbai Municipal Corporation, revealed that the building lacked proper authorisation and contravened the provisions of the MRTP Act. Further inquiry revealed that the applicant and the co-accused, Sharad Waghmare, had knowingly constructed the building using inferior materials, disregarding its structural integrity and putting the lives of its residents at risk.

[3] Mr Shekhar Ingawale, the learned Counsel appearing on behalf of the applicant, contends that although the applicant financed the construction of the building in 2009, his partner, Vijay Gawade, was solely responsible for its construction and management. The applicant owns four flats in the building and denies any involvement in its construction or maintenance. Moreover, the applicant claims that the actual cause of damage was the ongoing hammer work in the adjacent building, as reported by one of the occupants. The learned Counsel asserts the applicant's innocence and submits that he has been falsely implicated in the crime.

[4] Mr Yogesh Dabke, the learned Additional Public Prosecutor representing the respondent/ State, argues that the applicant was responsible for the construction activities, and despite receiving notices from the Corporation to demolish the unauthorised construction, the applicant failed to take any action. The building's construction utilised inferior materials, ultimately leading to its collapse, which resulted in three fatalities and several injuries. The learned APP emphasises the severity of the offence, necessitating the applicant's custodial interrogation.

[5] This Court has given anxious consideration to the rival contentions and perused the records.

[6] The applicant faces allegations of constructing a four-storey building without necessary permissions and using substandard materials, violating the provisions of the MRTP Act. The building's collapse allegedly resulted from negligence, endangering lives and safety. The material on record suggests the applicant's involvement in construction, financing, and owning four flats, with a Memorandum of Understanding revealing a share in the land. These flats were rented, and the applicant derived benefit therefrom. As a landlord, the applicant was responsible for the building's construction, maintenance, and repairs. The investigation indicates the applicant's involvement in the crime and raises questions about the corporation's concerned departments' role in allowing the unauthorised building to stand for so many years. A thorough investigation is necessary to uncover the circumstances surrounding the building's construction and prolonged unauthorised status. The rising occurrence of unapproved construction projects has a detrimental impact on public infrastructure. It depletes resources and poses a serious risk to public safety. The absence of proper legal approval and expert consultation during construction, as well as routine post-construction checks, inevitably leads to catastrophic events like building collapse. The consequences are severe, resulting in loss of property and lives. Once a life is lost, it is an irreversible tragedy.

[7] It is a settled position in law that granting anticipatory bail is an extraordinary power. While regular bail is generally considered the norm, the same principle does not apply to anticipatory bail. Considering each case's specific circumstances, the Court must exercise careful and prudent discretion when deciding whether to grant anticipatory bail. There is no one-sizefits-all approach. Caution is necessary, as granting protection in serious cases could potentially hinder investigation or lead to miscarriage of justice by allowing tampering with evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in Srikant Upadhyay v. State of Bihar,2024 SCCOnLineSC 282.

[8] Given the gravity of the offence wherein three persons lost their lives and several others were seriously injured and the fact that the investigation is at a nascent stage, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the application stands rejected

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