

2024:BHC-AS:20065



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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 4838 OF 2017**

1. Shri Kshitij Pravin Desai  
Age : 60 years, Occupation –  
Service/Agriculturist  
Address : Juhu Versova Link Road  
Andheri West  
Mumbai-400 061
  2. Shri Jayant Ruplal Nangia  
Age : 60 years, Occupation –  
Service/Agriculturist  
Address : Silver Oka Co-op Hsg. Soc,  
Flat No. 702, B-Wing, Hiranandani Garden  
Pawai, Mumbai-400076 ... Petitioners
- Versus
1. Chief Controlling Revenue Authority, Pune  
Office of the Inspector General of  
Registration and Controller of Stamps,  
Maharashtra State, Pune Ground Floor,  
Administrative Building  
Pune-411 001
  2. The State of Maharashtra  
Department of Ministry of Revenue  
Mantralaya  
Mumbai ... Respondents

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Mr. Abhijeet Rane a/w. Ms. Swarta Suryawanshi for the Petitioners.  
Ms. M. S. Bane, AGP for the State.

**CORAM: GAURI GODSE, J.**

**RESERVED ON: 25<sup>th</sup> JANUARY 2024**

**PRONOUNCED ON: 2<sup>nd</sup> MAY 2024**

**JUDGMENT:**

1. This petition challenges an order dated 6<sup>th</sup> May 2016 passed by the Chief Controlling Revenue Authority rejecting the appeal preferred under Section 53(1A) of the Maharashtra Stamp Act, 1958 ("The Stamp Act"). The petitioners preferred the said appeal to challenge an order dated 18<sup>th</sup> September 2012 passed by the Collector in an adjudication case under Section 31 of the Stamp Act, calling upon the petitioners to pay an amount of Rs.7,14,740/- against deficit stamp duty on the deed of conveyance. Based on a sale permission for the non-agricultural use of the land for a housing scheme, the deed of conveyance was executed in favour of the petitioners.

2. Learned counsel for the petitioners submitted that on 9<sup>th</sup> November 2006, the owners executed an agreement for sale in favour of the petitioners for agricultural land. However, the petitioners were

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unable to register the said agreement. Subsequently, the document was impounded by an order dated 26<sup>th</sup> April 2011 passed in Evasion Case No. 168 of 2011. Order dated 13<sup>th</sup> January 2012 directed the petitioners to pay an amount of Rs.61,560/- towards deficit stamp duty and a penalty of Rs.66,377/-. Accordingly, the petitioners deposited the amount towards the deficit stamp duty and penalty on the document of agreement for sale dated 9<sup>th</sup> November 2006.

3. The learned counsel for the petitioners submitted that an application was filed for sale permission under Section 43 of The Maharashtra Tenancy and Agricultural Land Acts, 1948 ("the Tenancy Act"). The sale permission was granted on 1<sup>st</sup> August 2012. The petitioners applied for a zone certificate, which was issued by the Town Planning and Valuation Department, Alibaug, on 5<sup>th</sup> September 2012, classifying the said land as 'Agricultural Land in G-1 (Green) Zone'. Thereafter, the sale deed was prepared for the said land and submitted before the Collector of Stamps for adjudication. By order dated 18<sup>th</sup> September 2012, the Collector of Stamps passed an order under Section 31 of the Stamp Act, and the document was adjudicated for payment of stamp duty of Rs.7,14,740/-. The petitioners paid the

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amount of stamp duty, and the document was registered on 25<sup>th</sup> September 2012. Thereafter, the petitioners filed an appeal under Section 53(1A) of the Stamp Act to challenge the adjudication made by the Collector of Stamps. By order dated 6<sup>th</sup> May 2016, the said appeal was rejected by the Deputy Inspector General of Registration and Deputy Controller of Stamps.

4. The learned counsel for the petitioners submitted that the said appeal was rejected on an erroneous ground that the appeal ought to have been filed before the Deputy Inspector General of Registration and Deputy Controller of Stamps under Section 32B of the Stamp Act. Hence, this petition is filed to challenge the order dated 6<sup>th</sup> May 2016. The petitioners also prayed for a refund of the stamp duty of Rs.7,14,540/- paid on the conveyance which was registered.

5. Learned counsel for the petitioners submitted that the petitioners wanted to register the sale deed; hence, the stamp duty was paid as per the assessment made on 18<sup>th</sup> September 2012. However, the petitioners realised that the adjudication was wrongly made and therefore filed the appeal by relying upon Section 50 of the Stamp Act

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and the principles of law laid down by the Hon'ble Supreme Court in the decision of ***Commissioner of Sales Tax, U.P Vs Auriaya Chamber of Commerce, Allahabad***.<sup>1</sup> He further submitted that the petitioners had paid stamp duty on the agreement and, therefore, were not liable to pay stamp duty again at the time of registration of the conveyance.

6. Learned counsel submitted that the agreement was already assessed as 'Agricultural Land' at the time of adjudication of the agreement for sale dated 9<sup>th</sup> November 2006; however, subsequently, the adjudication is made by the Collector of Stamps by considering the said land as 'Non-Agricultural Land'. He submitted that at the time of execution and registration of the deed of conveyance, the status of the land was 'Agricultural Land', and the status was never changed. He submitted that since the said land was 'Agricultural Land', permission was also granted under Section 43, read with Section 63 of the Tenancy Act.

7. Learned counsel relied upon the order passed granting sale permission and submitted that the grant of sale permission under

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<sup>1</sup> (1986) 3 SCC 50

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Section 43, read with Section 63 of the Tenancy Act itself, indicates that the nature of the land was never changed. Thus, the petitioners, by filing an appeal, raised objection on the assessment made by the Collector of Stamps while adjudicating the deed of conveyance by considering the status of the said land as 'Non-Agricultural Land'. He then submitted that the petitioners were thus required to pay additional stamp duty because of the wrong adjudication; hence, the petitioners are entitled to a refund of the additional stamp duty paid as per the assessment of the Collector of Stamps and the amount of penalty imposed by the said adjudication order.

8. Learned AGP supported the impugned orders and submitted that the petitioners had accepted the assessment made by the Collector of Stamps, paid stamp duty, and got the document registered. Thus, the petitioners cannot be termed as an aggrieved party for filing an appeal. She submitted that the petitioners, not being an aggrieved party cannot claim benefit by challenging the order after payment of stamp duty and getting the document registered. She further submitted that the benefit of the stamp duty paid by the petitioners as per the earlier adjudication of the agreement for sale is already given to the

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petitioners at the time of adjudication of the deed of conveyance.

9. Learned AGP submitted that at the time of execution of the deed of conveyance, since the amount of market value was higher than the amount of consideration for the sale, the petitioners were liable to pay the stamp duty on the higher value in terms of Section 4 of the Stamp Act. She thus submitted that no fault can be found in the adjudication made by the Collector of Stamps and the subsequent order upholding the adjudication. She thus submitted that there is no substance in the arguments made on behalf of the petitioners, and they are entitled to a refund of stamp duty and penalty imposed on the deficit stamp duty.

10. In response to the submissions made by the learned AGP, learned counsel for the petitioners submitted that the Collector of Stamps while adjudicating the document for agreement for sale, had taken into consideration the market value of the land and the amount of consideration of the document. He relied upon the market value of the land as referred to by the adjudicating authority as Rs.3,11,500/- at the time of the adjudication order made on 13<sup>th</sup> January 2012.

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11. He further submitted that the zone certificate issued by the Town Planning and Valuation Department, Alibaug, on 5<sup>th</sup> September 2012, certifies that the said land is in a green zone. He thus submitted that once the status of the land never changed, the adjudicating authority committed serious error in considering the market rate as per the ready reckoner rates of non-agricultural land for the purpose of adjudication of the deed of conveyance. He thus submitted that in view of the incorrect adjudication made by taking into consideration the valuation of non-agricultural land, the petitioners were required to pay additional stamp duty. Hence, they are entitled to a refund of the additional stamp duty paid.

12. I have considered the submissions made by both parties. Perused the record. A perusal of the impugned order indicates that the Appellate Authority has examined the basic facts of the case as under:

(i) Petitioners executed an agreement for sale on 9<sup>th</sup> November 2006; however, the document was not registered. The document was subsequently impounded by an order dated 26<sup>th</sup> April 2011, and the petitioners were directed to deposit an

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amount of Rs.61,560/- towards deficit stamp duty and a penalty of Rs.66,377/-. The document dated 9<sup>th</sup> November 2006 is styled as 'Agreement for Sale'.

(ii) On 13<sup>th</sup> January 2012, the petitioner deposited the amount of deficit stamp duty and penalty on the document dated 9<sup>th</sup> November 2006.

(iii) Since the petitioners wanted to execute a deed of conveyance pursuant to the said agreement for sale, they filed an application for adjudication before the Collector of Stamps, who decided the application under section 31 of the Stamp Act on 18<sup>th</sup> September 2012.

(iv) The document submitted for adjudication was classified as a document under Section 25(b) of Schedule I of the said Act.

(v) By order dated 18<sup>th</sup> September 2012, the petitioners were directed to pay an amount of stamp duty of Rs.7,14,740/- by giving set off against the stamp duty of Rs.61,560/- already paid by the petitioners on the agreement for sale. The market value of the said land was ascertained as Rs.1,55,24,000/-.

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(vi) The petitioners accordingly deposited the adjudicated amount of stamp duty on 25<sup>th</sup> September 2012, and the document for the deed of conveyance was registered.

13. Aggrieved by the order of adjudication passed on 18<sup>th</sup> September 2012, the petitioners filed the appeal before the Chief Controlling Revenue Authority under section 53(1A) of the Stamp Act. In view of the contentions raised on behalf of the petitioners, the Appellate Authority framed points for consideration on the petitioners' right to file an appeal under Section 53(1A) of the Stamp Act and whether the petitioners had proved that any excess stamp duty was paid on the instrument submitted for adjudication.

14. After examining the submissions made on behalf of the petitioners, the Appellate Authority held that the petitioners had accepted the adjudication order passed on 18<sup>th</sup> September 2012 and got the document registered by paying stamp duty as per the adjudication order. The Appellate Authority observed that in the order dated 18<sup>th</sup> September 2012, the Collector of Stamps indicated that if the petitioners were aggrieved by the adjudication, an appeal remedy

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is available under section 32(B) of the Stamp Act, which can be filed within 60 days of the date of the order. However, the petitioners failed to exhaust the said remedy by filing any appeal under section 32(B) of the Stamp Act. However, the petitioners accepted the adjudication, paid stamp duty and got the document registered.

15. The Appellate Authority further observed that the petitioners had filed an application for adjudication under Section 31 of the Stamp Act, deposited the stamp duty on completion of adjudication, got the document registered and thereafter filed the present appeal under Section 53(1A) of the Stamp Act contending that the petitioners are aggrieved by the original order of adjudication passed on 18<sup>th</sup> September 2012. Hence, the Appellate Authority held that the petitioners had no locus standi to file an appeal before the Appellate Authority to challenge the order of adjudication made on 18<sup>th</sup> September 2012. The petitioners have already accepted and complied with the order.

16. With regard to the petitioners' contention that an excess payment was made towards stamp duty, the Appellate Authority held that the

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petitioners, without proving the case on the merits of any excess payment of stamp duty, filed the appeal on assumptions and presumptions. Thus, with these observations, the Appellate Authority rejected the appeal preferred by the petitioner, and therefore, the original adjudication order passed on 18<sup>th</sup> September 2012 was confirmed.

17. From the perusal of the record, it appears that the agreement for sale dated 9<sup>th</sup> November 2006 was executed in favour of the petitioners and on adjudication, the petitioners had paid stamp duty of Rs.61,560/-. The said adjudication was made on consideration of the amount of the agreement, i.e. Rs.10,25,750/- as the same was higher than the market value of Rs.3,11,800/- as per the ready reckoner rates for agricultural land.

18. Admittedly, an application was made for permission to sell and execute the deed of conveyance in terms of the agreement for sale. The Assistant Collector granted the permission by order dated 1<sup>st</sup> August 2012 passed under Section 43, read with Section 63 of the Tenancy Act, on certain terms and conditions. A perusal of the sale

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permission indicates that the land is classified as situated in a green zone 200 meters away from the gaathan. The said order further states that as per Rule 15.8.1(D) of the Regional Development Control Rules, it is permissible to construct a single family housing scheme for an area of 2000 square meters. Hence, permission for sale was granted for non-agricultural use of the land for a single family housing scheme. Thus, the permission for sale was granted for non-agricultural use for the purpose of construction under the said scheme.

19. Thus, at the time of adjudication of the agreement for sale, the status of the said land was agricultural. However, to execute the sale deed, sale permission was mandatory under the Tenancy Act. Hence, an application was made for sale permission, which was granted on certain terms and conditions, including non-agricultural use of the land to construct a housing scheme. It appears that by considering the terms and conditions of the sale permission, the adjudicating authority has valued the land based on the market value of non-agricultural land.

20. When under sub-section (1) of Section 31 of the Stamp Act, a

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party brings an instrument to the Collector for an opinion as to the duty with which it is chargeable, the Collector determines the duty, if any, with which in his judgment, the instrument is chargeable. Sub-section (2) of Section 31 permits calling for an affidavit or evidence as deemed necessary by the Collector to examine the facts and circumstances affecting the chargeability of the instrument with duty or the amount of the duty with which it is chargeable. This provision also allows the Collector to refuse to proceed with the adjudication unless a true copy of the abstract of the instrument and evidence have been furnished. Sub-section (3) of Section 31 permits stamp duty assessment by determining the true market value of such property as specifically provided in the said provision. Thus, adjudication for assessing the stamp duty is required to be made by determining the true market value of the property. Section 2 (na) of the Stamp Act defines “market value” as under:

*“market value, in relation to any property which is subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument whichever is higher”*

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21. Thus, adjudication as to proper stamps, done under Section 31 of the Stamp Act, requires determination of the property's true market value on the date of execution of the instrument to assess the stamp duty chargeable on the instrument. In the present case, adjudication under Section 31 of an agreement for the sale of agricultural land was made based on the market value of agricultural land. Mandatory sale permission under Section 43, read with Section 63 of the Tenancy Act, was taken to execute the sale deed in terms of the agreement. The sale permission was given on certain terms and conditions enumerated in the order, including non-agricultural use for constructing a housing scheme. Thus, by examining all the relevant facts and circumstances, the true market value of the property was determined for the stamp duty chargeable on the instrument of sale deed.

22. It is not the petitioners' case that the stamp duty was paid under any protest. Thus, the petitioners accepted the adjudication made under Section 31 of the Stamp Act, acted on it and registered the sale deed by paying the stamp duty. Thus, after deriving the adjudication order's benefit, it was challenged on the ground of a mistake. It is not disputed that the benefit of the amount of stamp duty paid on the

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agreement for sale is given as a set-off while assessing the stamp duty on the deed of conveyance. Thus, there is no question of any refund as prayed by the petitioners. Therefore, in view of the facts of the present case, the decision in the case of ***Commissioner of Sales Tax Vs Auriaya Chamber of Commerce, Allahabad***, relied upon by the learned counsel for the petitioners, is of no assistance to the petitioners.

23. Thus, there is substance in the submissions made by the learned AGP. No fault can be found in the reasons and findings recorded in the impugned orders. There is no manifest error or any illegality in the impugned orders. The powers under Articles 226 and 227 of the Constitution of India are equitable and discretionary. In view of the facts of the case, I do not see any reason to exercise these powers. The petition is devoid of any merits.

24. Hence, for the reasons recorded above, the petition is dismissed.

[GAURI GODSE, J.]

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signed by  
RAJESHWARI  
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