(2015) 04 BOM CK 0354

In the Bombay High Court

Case No : Writ Petition No. 2762 of 2014

Akshay Vitta Management and Investment Consultancy Services Pvt. Ltd. and Others — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 23, 24, 25, 26, 34

Citation : (2016) 1 ALLMR 638 : (2015) 5 BomCR 461

Hon'ble Judges : A.A. Sayed, J.

Bench : Single Bench

Advocate : Atul Daga and Y. Kamdar i/b. Ganesh and Co., for the Appellant; Anurag Gokhale, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

A.A. Sayed, J.—By this petition under Article 226 of the Constitution of India, the petitioners have impugned two orders, both dated 25 July 2014. By the impugned orders, the respondent No. 2 and respondent No. 3 respectively declined to register the Deed of Conveyance dated 31 December 2009 on the ground that more than the eight months had elapsed from the date of execution of the Deed of Conveyance, which is the time stipulated for presentation of a document for registration under sections 23 and 25 of the Indian Registration Act, 1908. Under a Deed of Conveyance dated 31 December 2009, the petitioners had acquired certain land and building from one Jimmy Minu Batty. The total consideration under the said Deed of Conveyance was Rs. 65,00,000/- (Rupees Sixty-five Lakhs only). On 15 April 2010, the petitioners submitted the Deed of Conveyance to the Collector of Stamps for adjudication and determination of stamp duty payable thereon in terms of section 31 of the Bombay Stamp Act, 1958 (now Maharashtra Stamp Act, 1958). The petitioners had calculated the stamp duty at the time of execution of the Deed of Conveyance at Rs. 3,25,000/- (Rupees Three Lakhs and Twenty-Five Thousand only) and paid the said amount accordingly. After a period of about 3 years & 10 months, on 25 February 2014, an adjudication order came to be passed making a demand for additional stamp duty amount and penalty. According to the petitioners, the Collector of Stamps adjudicated the Deed of Conveyance and determined the deficit stamp duty at Rs. 74,200/-, on which penalty of Rs. 7,420/- was imposed. On 1 March 2014, the petitioners paid the deficit stamp duty of Rs. 74,200/- and the penalty of Rs. 7,420/-, aggregating to Rs. 81,620/- by way of e-stamping and an endorsement to that effect was made on the Deed of Conveyance which reflects the receipt of the entire amount.

2. According to the petitioners, the Deed of Conveyance duly adjudicated and endorsed was received by them on 12 March 2014. On 25 July 2014, the petitioners forwarded the Deed of Conveyance under cover of their letter to the respondent No. 2 and respondent No. 3 for the purpose of registration. Respondent No. 2, however, by the impugned order dated 25 July 2014 declined to register the Deed of Conveyance on the ground that it was presented beyond the time prescribed under sections 23 & 25 of the Indian Registration Act, 1908. Respondent No. 3 also by the impugned order of even date viz. 25 July 2014, declined to register the Deed of Conveyance on the same ground. Hence this petition.

3. I have heard the learned Counsel for the petitioners and the learned AGP. It would, at the out set, be appropriate to set out the relevant dates and events/ particulars. The same are as under:

Sections 23 & 25 of the Indian Registration Act 1908, are relevant for our purposes. They read 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 date on which the decree or order was made or, where it is appealable, within four months from the day on which it becomes final.

25. Provision where delay in presentation is unavoidable

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

(2) Any application for such direction may be lodged with Sub-Registrar, who

shall forth-with forward it to the Registrar to whom he is subordinate.

(emphasis supplied)

From reading of the aforesaid provisions, it would be clear that the document is required to be presented within 4 months of the date of execution, which period, on payment of fine, if any, can be extended for a further period of 4 months i.e. in the aggregate a period not exceeding 8 months.

4. From the table extracted in para 3 above, it would be seen that after the Deed of Conveyance was executed on 31 December 2009, the same was submitted to the Collector of Stamps for adjudication on 15 April 2010, i.e. after a period of 3 months & 15 days. On and from 15 April 2010, when the Deed of Conveyance was submitted to the Collector of Stamps for adjudication till the Deed of Conveyance was adjudicated and received by the petitioners on 12 March 2014, a period of 3 years 10 months & 25 days had elapsed. From 12 March 2014, when the Deed of Conveyance was adjudicated and received by the petitioners, till 25 July 2014 when the Deed of Conveyance was forwarded to the Sub Registrar for the purpose of registration by the petitioners, a period of 4 months & 13 days had elapsed. According to the petitioners, the period of 3 years 10 months and 25 days mentioned above, is required to be excluded in calculating the period of eight months envisaged under sections 23 & 25 of the Indian Registration Act 1908. Thus, according to the petitioners, the total time taken to present the Deed of Conveyance for registration was 7 months & 28 days, which is ''within'' the maximum period of eight months provided under sections 23 & 25 of the Indian Registration Act.

5. The issue for consideration in the fact situation of the present case, when the Deed of Conveyance was executed on 31 December 2009 and presented for registration to the Sub-Registrar only on 25 July 2014, whether respondents Nos. 2 & 3 were right in declining to register the same as it was not presented within eight months from the date of execution thereof. In other words, whether the period between the submission of the Deed of Conveyance to the Collector of Stamps for adjudication till the said Deed of Conveyance was duly adjudicated and received by the petitioners, (which period works out to a period of 3 years 10 months & 25 days), is required to be excluded while calculating the period of eight months as envisaged under sections 23 read with 25 of the Indian Registration Act, 1908.

6. In (Chhabildas Dalichand Bhayani Vs. The Sub-Registrar of Mumbai and anr.), (Writ Petition No. 903 of 2014) decided on 26 June 2014 a learned Single Judge of this Court held that the Authorities had misapplied the provisions of section 23 of the Indian Registration Act in refusing the request of the petitioner to register the document. In that case the sale certificate was presented to the Sub-Registrar, Mumbai on 22 November 2012 and the order was passed under section 31 of the Bombay Stamp Act on 3 April 2013 determining the stamp duty and the final stamp duty was determined by an order dated 31 August 2013. The

learned Single Judge accepted the contention on behalf of the petitioner that the delay had occurred on account of adjudication of the document and that delay cannot be taken into consideration for declining the registration. The learned Single Judge held that there was no delay on the part of the petitioner to lodge the document for registration to attract the provisions of sections 23 & 25 of the Indian Registration Act 1908. The learned Single Judge in coming to this conclusion relied upon the judgment of this Court in Kirti Jagdish Mulani Vs. The State of Maharashtra and The Registrar of Assurances, wherein it was held that the time taken by the Authority to adjudicate the stamp duty cannot be taken into consideration while computing the period of four months as stipulated under section 23 of the Indian Registration Act.

7. In the present case, it is an admitted position that the Authorities took 3 years 10 months & 25 days to adjudicate and return the Deed of Conveyance. Applying the ratio laid down in the aforementioned judgments, the period of 3 years 10 months and 25 days is required to be excluded in reckoning the period of eight months, as envisaged by section 23 r/w. section 25 of the Indian Registration Act, within which period the Deed of Conveyance was required to be presented for registration. It is not disputed before this Court that if the aforesaid period of 3 years 10 months & 25 days is excluded, the time taken to present the document for registration would be 7 months & 28 days, which is less than the maximum period of 8 months.

8. It is submitted by the learned AGP that the petitioners have an alternate remedy under section 72 of the Indian Registration Act and the writ petition ought not to be entertained and the petitioners be relegated to exercise that remedy. I am, however, not inclined to accept this submission. It is a settled principle of law that the power relating to exercise of writ jurisdiction has been considered to be a rule of self imposed limitation and is essentially a rule of policy, convenience and discretion and not a rule of law. The writ petition in the case of Chhabildas Bhayani (supra) was entertained on the aforesaid basis. In any event, I do not see the Appellate Authority viz.; the Registrar of Assurances going beyond the provisions of section 23 & 25 of the Indian Registration Act to grant reliefs in favour of the petitioner and in that sense, the alternate remedy, in my view, may not be an efficacious one. The further contention of the learned AGP is that by allowing registration, it would amount to defeating the provisions of sections 23 & 25 of the Indian Registration Act. In the facts and circumstances of the case, I do not find any merit in this contention. The petitioner cannot be penalised for the time taken by the authorities in adjudicating the Stamp Duty.

9. Moreover, in the present case it is noticed that the petitioners have paid substantial amount of stamp duty viz. Rs. 3,25,000/- at the time of presenting the document for adjudication and it cannot be said that the petitioners'' intention was to delay the payment of stamp duty by keeping adjudication pending and not following up with the authorities. In the Affidavit in Reply filed on behalf of the respondent Nos. 2 & 3 there is no averment that the dates

mentioned by the petitioners are incorrect nor has the conduct of the petitioner been faulted or any mala fides alleged in respect of the document remaining pending for adjudication for a substantial period. There was no explanation brought on record by the respondent Nos. 2 & 3 as to why there was such a huge delay on the part of the Office of the Collector of Stamps to adjudicate the Stamp Duty.

10. By order dated 18 February 2015 the petitioner was directed to implead the Collector of Stamps as party-respondent No. 4 and to file Affidavit-in-Reply. Accordingly, the Affidavit-in-Reply has also been filed by the Collector of Stamps dated 2 March 2015. In the said Affidavit there is a reference to a letter dated 10 June 2010 requesting the petitioner to submit certain documents. It is alleged in the said Affidavit that the delay took place in the adjudication case due to non-submission of the essential documents by the petitioners. Significantly in the Rejoinder the petitioner in paragraph 8.3 has denied receipt of such letter dated 10 June 2010 from the office of the respondent No. 4. There is however nothing placed on record by the Collector of Stamps to show that the said letter dated 10 June 2010 was received by the petitioner. As a matter of fact, it is an admitted position that there is no acknowledgment of receipt of the said letter by the petitioners. It appears that the petitioners had even addressed a letter dated 21 June 2013 to the respondent No. 4 to refer the case to the Deputy Director of Town Planning (Valuation) Mumbai, which, prima facie, demonstrates the fact that the petitioners were pursuing the matter. In the aforesaid circumstances, I am inclined to accept the case of the petitioners that they had not received the letter dated 10 June 2010 from the office of the respondent No. 4, their conduct cannot be faulted as such.

11. In light of the above discussion, the impugned orders cannot be sustained. They accordingly set aside. The only question which remains is that, since the document has been presented after four months (but within eight months), what penalty is to be levied as per section 25 of the Indian Registration Act 1908, which provides that penalty upto ten times the amount of the registration-fee can be imposed.

12. I find that there are no satisfactory reasons given by the petitioners why the Deed of Conveyance was presented after 7 months and 28 days which is beyond the period of 4 months prescribed under section 23 of the Registration Act. Learned A.G.P. has pointed out Rule 27 of the Maharashtra Registration Rules, 1961 which reads as follows:-

"27. Scale of fines under section 25 or 34 :-

The scale of fines to be imposed under section 25 or 34 , shall be as follows, namely:-

(1) If the delay does not exceed one month-not exceeding 2 1/2 times the proper registration fee;

(2) if the delay exceeds one month but does not exceed two months-not exceeding five times the proper registration fee;

(3) if the delay exceeds two months but does not exceed three months-not exceeding 7 1/2 times the proper registration fee;

(4) if the delay exceeds three months but does not exceed four months-not exceeding ten times the proper registration fee.

Note: This rule does not affect the Registrar''s discretion to impose a smaller fine than the above maximum, under sections 25 and 34 , in suitable cases."

13. In my view, considering the facts and circumstances of the case and the scale of present Registration fee payable on Deed of Conveyance, interest of justice would be served by directing the petitioners to pay an amount of Rs. 1,00,000/- as fine for the delay beyond 4 months. It is accordingly ordered. On payment of the aforesaid amount of fine within one month from today, the Authorities shall accept and proceed to register the Deed of Conveyance in accordance with law. The petition is allowed in the aforesaid terms with no order as to costs.