
(1990) 08 BOM CK 0059

In the Bombay High Court

Case No : Writ Petition No. 2494 of 1983

Atur India Private Ltd.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-08-1990

Acts Referred:

Bombay Stamp Act, 1958 — Article 36, 2, 33(1), 34, 34(6)

Citation : (1991) 1 BomCR 63 : (1991) 93 BOMLR 319

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : N.G. Thakker and J.C. Chasmawalla, for the Appellant; S.M. Shah, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Daud, J.—Article 226 of the Constitution is invoked to question a demand made upon the petitioner based on section 34(b) of the Bombay Stamp Act, 1958 (Act).

2. Petitioner is a Company incorporated under the Companies Act, 1956 and carries on the business of construction and sale of multi-storeyed buildings. In the year 1968 the Ocean submerged area abutting the Cuffe Parade and Nariman Point, was reclaimed to provide for construction of buildings. The reclaimed land was divided into blocks, each given a number. For block No. V the State of Maharashtra issued an invitation to the public to make offers for purchase of plots with a view to put up multi-storeyed buildings thereon. The plots and structures were to be given on a 99 years lease at specified rates. Petitioner tender " Rs. 2297/- per square metre was accepted. A request was made that the necessary documents for the execution of a lease-deed in favour of the flat purchasers who would band together to form a co-operative society or a Company be drafted. Government agreed to grant a lease in petitioner's favour as promoter of a co-operative housing society or an incorporated body. Petitioner's replied pointing out that the purchasers of flats in the buildings

under construction were to form a co-operative society under the name and style of Basant Co-operative Housing Society Ltd. (Society). Permission was sought to transfer the petitioner's right, title and interest in the plot to the society. This request was to on 13th December, 1972 in the following words:-

" Government has sanctioned your request to transfer right, title and interest in plot No. 101 from Block V --- to the society."

Petitioner on 17-2-1978 requested that the lease deed be executed directly in the name of the Society. By letter dated 25-7-1980, the Collector agreed to the execution of a lease deed directly in the name of the society on petitioner being a confirming party and subject to charging of premium made up of various components. These included amount of stamp duty chargeable (i) on a document between original allottee and the Government and (ii) document of assignment between the original allottee and the Society. Petitioner was up in arms contending that it had made clear its position of being a mere promoter dealing on behalf of a Society or Company, that it had no right, title or interest in the plot and that asking to pay stamp duty, was uncalled for. Letters flew back and forth. Respondents explained their stand in Exs. P and W dated 24-2-1983 and 12-9-1983. Shortly stated, their contention is that the agreement on which stamp duty was claimed was established by the correspondence between parties which exceeded the minimum of two letters specified in section 34(b) of the Act. Duty was payable u/s 3 read with Article 36 of Schedule I to the Act.

2-A. For convenience these provisions are reproduced to the extent necessary:

"2(n) "lease" means a lease of immovable property, and includes also

(i) a Patta;

(ii) a Kabulayat, or other undertaking in writing not being a counterpart of a lease to cultivate, occupy to pay or deliver rent for immovable property;

(iii) any instrument by which tolls of any description are let;

(iv) any writing on an application for a lease intended to signify that the application is granted.

34. No instrument chargeable with duty not being any instrument referred to in sub-section (1) of section 32-A 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:

Provided that:-

(a) ...

(b) where a contract or a agreement of any kinds is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp; the contract or are agreement shall be deemed to be duly stamped.

Article 36 of Schedule I

LEASE, including an under-lease or sub-lease

and any agreement to let or sub-let or any

renewal of lease:-

(a) ...

(b) ...

(c) where the lease is granted for The same duty as is leviable on a Con a fine or premium or money veyance under clauses (a), (b), (c) advanced or to be vanced in or (d), as the case may be, of Article addion to rent fixed. 25, on fine or premium or money ad vanced or to be advanced, in addition to the duty which would have been pay able on such lease, if no fine or premium or advance had been paid.

Provided that, in any case, where an agreement to lease is stamped with ad valorem stamp required for a lease and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not ex ceed ten rupees.

Explanation I---Rent paid in advance shall be deemed to be premium or money advanced within the meaning of this article even if there is provision to set off towards any instalment or instalments of rent.

Explanation II---When a lessee undertakes to pay any recurring charge such as Government revenue, landlord's share of acesses, of the owner's share of municipal rates or taxes, which is by law recoverable from the lessor, the amount so agreed to be paid by the lessee, shall be deemed to be part of the rent.

Explanation III---An agreement of lease shall not be chargeable as a lease unless there is an immediate and present demise."

3. Petitioner takes exception to the demand and contends and that it had from the beginning made it clear that it claimed no interest in the plot and was acting for and on behalf of the Society or Company. It having acted in this capacity and the respondents having accepted this position, could not now turn back and contend that it had acquired an interest in the plot and that it was that interest which was to be assigned to the Society. No duty was payable by it and the demands contained in Exs. P and W deserved to be quashed.

4. Respondent 2, the Superintendent of Stamps contends that the transaction in the first instance was primarily between the petitioner and the Government. The Society comes in at a later stage. Petitioner had taken possession of the land, built a multi-storeyed structure and sold the flats forming part thereof. On 10-2-1972 it had given an unequivocal commitment that possession of the plot be given to it pending the execution of the agreement to lease which Government was to grant in its favour. Next on 11-2-1972 it had acknowledged the duty to abide by the terms and conditions of lease which were to be

incorporated in a document of lease to be executed by it. These documents are annexed to the return of respondent 2.

5. The principal question arising in this petition is whether a contract or agreement as between petitioner qua itself and the 1st respondent is inferable from correspondence ? The answer to this question depends upon careful study of the documents including those annexed to the return of respondent No. 2. Ex. B shows that it was petitioner who had bid for the plot. Form A dated 15-12-1970 contained the petitioner's offer to take the plot on lease and also that the lease would commence from the date on which petitioner was notified of the plot being available for taking of possession or the agreement for lease was executed, whichever date be earlier. Accompanying the said form was a questionnaire and part of an answer given to one query was worded thus:-

" The Company proposes to sell the flats in the said proposed building on ownership basis and the purchasers of such flats will form into a co-operative Society or an incorporated body to whom the property and rights of the Company will be transferred."

Ex. D dated 23-2-1971 written by petitioner to respondent 3 reiterates the above; but with a rider viz. that petitioner will be acting as Promoters or Builders for the scheme and that the lease of the plot will be taken in the name of the Society or incorporated body to be formed later. The reply to this is at Ex. E dated 16-3-1971 and it recites.

" Government has sanctioned the lease of the ... plot in your favour as promoters of a... Society or incorporated body to be formed by you."

In Ex. F dated 21-6-1972 petitioner seeks the permission of respondent 3 to transfer "our right , title and interest in the aforesaid plot in favour of the Society." Ex. G dated 13-12-1972 is the third respondent's acceptance of the proposal that petitioner be permitted to effect the transfer mentioned above. Later, i.e. on 25-7-1980 vide Ex. K. respondent 3 set out the demands which led to the filing of this petition.

6. The first contention is that third respondent viz. the Collector had no jurisdiction u/s 33 to impound any document and make a demand based upon Article 36 of the Act. The proposed impounding is by respondent 2 who is the Superintendent of Stamps. He is in charge of the General Stamp Office. In that capacity he would be covered by the words "every person in charge of a public office" within the meaning of section 33(1). It may be argued that the correspondence said to constitute the contract had not been produced before him. Section 33(1) also takes in its sweep the "coming" of a document before the specified authority or officer, though of course "in the performance of his functions." It may be suggested that the correspondence had not come before the second respondent in the performance of his functions. The words underlined should not be read on a literal sense. Respondent 2 is enjoined by the law to see that duty on documents liable thereto is paid and paid properly. Awareness that

document requiring duty have escaped the impost would be synonymous with the awareness contemplated by the words underlined. This plea has thus to be rejected.

7. The second ground advanced to assail the impugned demand is that Exs. B and D which have been impounded do not spell out a "lease" and this renders Article 36 inapplicable. Exs. B and D may not in the strict sense amount to a contract or agreement. The deal is spread over a period of time and all the documents must be taken into consideration for determining the applicability or otherwise of section 34(b). Thus viewed, Exs. B together with its accompaniments read with Ex. C dated 1-1-1971 certainly makes out a contract within the meaning of that expression as popularly as also legally understood.

8. Petitioners disputes the label of a lease sought to be placed on the transaction between them and respondent 3. It is argued that at best it would be an agreement to lease and not an agreement of lease. This contention has a technical merit and no more. Possession of the land had been delivered to the petitioner by respondents 1 and 3. A building with numerous flats has come up on the site. The flat owners are in possession of their flats. A co-operative housing Society has come up to take over the property. What remains, and that only, is the execution of a formal document. Part of the explanation for section 34(b) was the need to counteract arguments like the one now being dealt with. The well-know Heydon's Rule will apply and resting my conclusion thereon I hold that a lease has come in to existence though a formal document embodying the terms thereof (on which also there is no dispute) remains to be drawn up.

9. Ground (d) taken in the petition does not apply for the correspondence discloses that the offer being an accompaniment to Ex. B is signed for the petitioner and is addressed to the Governor. That dignitary was so addressed because of the requirements of Article 299 of the Constitution. Compliance with the requirements of that Article has to be inferred from the acts done subsequently. Petitioners took possession of the land, put up a building thereon, sold out the flats to different people. All this negatives the contention that no contract as required by Article 299 has not yet been reached. Ground (e) is an amplification of the point considered in para 8 above. All that need be added thereto is to point to Ex. 1 annexed to the return of respondent 2. The first part thereof is an unequivocal commitment to abide by the terms and conditions of the lease, the document relating thereto to be executed by the terms within six months of the plot being delivered to their possession. True this is followed by the nominal disclaimer that they will have no legal interest in the land until the execution of the agreement. But petitioner's sole interest was to get possession of the land, erect a structure comprising several flats and sell these to others. Ex. 1 is virtually a promise to take possession of the land irrespective of the terms and conditions to be incorporated in the formal document of lease.

10. Reverting to the principal question viz. the contention that the petitioner was mere promoter and not the lessee, Ex. 1 shows the contrary. Therein the

petitioner says that the lease will be executed by it. In Ex. 2 it seeks possession in advance of the formal document. Petitioner got possession after paying the requisite price. True petitioner did say that it was promoter and builder and that its purpose was to erect a building on the site. But this building was to be sold a collection of people who would constituted themselves into a Company or co-operative Society. Ex. G is pleaded as an acceptance by respondent 3 of the request transfer the right in the land to the Society. But this cannot mean there was no privity of contract between petitioners and respondents 1 and 3 or that the petitioner was mere promoter. In fact the deal was primarily between petitioner and respondent 1. What respondents 1 and 3 later sanctioned was a proposal of the petitioner to transfer its right, title and interest to the Society. Form A to Ex. B which it submitted contained a recital that the lease would commence the day (i) it took possession of the plot or (ii) the lease agreement was executed-whichever event took place first. All this cannot be overlooked because of a stray recital in this or that letter.

11. It may be said that a fiscal statute like the Stamp Act must be strictly constrained and where the words lend themselves to diverse interpretations, that favourable to the subject must be preferred. After McDowell and Co. Ltd. Vs. Commercial Tax Officer, that rule stands considerably eroded. The proper way to consider a fiscal provision now is, to quote, Chinappa Ready J. in the above case :-

" In our view, the proper way to construe a taxing statute, while considering a device to avoid tax, is not to ask whether the provisions should be constructed literally or liberally, nor whether the transaction is not unreal and not prohibited by the statute, but whether the transaction is such that the judicial process may accord its approval to it."

Tested in this light there is no mistaking the pith and substance of the correspondence. To put it briefly, it shows the existence of a contract of lease. Respondent 2 was thus right in the demand made.

12. The petition fails and is hereby dismissed with parties left to bear their own costs. Rule discharged and interim relief as per prayer (d) to stand vacated three months after this day.