(2023) 01 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No.1280 Of 2022

Deepti Kavit Ved APPELLANT

Vs

District Collector Borivali & Anr RESPONDENT

Date of Decision : 07-01-2023

Acts Referred:

Bombay Stamp Act Rules 1939 — Rule 21
Maharashtra Stamp Act, 1958 — Section 52, 52A, 53(1A)

Citation : (2023) 01 BOM CK 0037

Hon'ble Judges : Sandeep K. Shinde, J

Bench : Single Bench

Advocate : Rajesh L. Shethia, Chetan R. Shah, Chetan Dharod, S.B.Gore

Final Decision : Disposed Of

Judgement

Sandeep K. Shinde, J

1 Rule. Rule made returnable forthwith. With consent of the parties, petition is taken up for final hearing.

2 The, Collector of Stamps, Bombay Suburban District (Borivali) having failed to exercise the jurisdiction under Section 52 read with 52A of the Maharashtra Stamp Act, 1958 read with Rule 21 of the Bombay Stamp Act Rules 1939, this Petition is filed.

3 Facts essential for the decision of this Petition are as under;

Petitioner desired to purchase Flat No.707, 'B' Wing, Nishchy Building for total consideration of Rs.74 Lakhs. Thus, she entered into negotiation with M/s. Shreeraj Developers LLP. Whereafter on 29th June, 2020 she paid requisite stamp-duty Rs.3,70,000/- and Rs.30,000/- registration fees, vide e-challan. Due to certain family constraints and the then out-break of Covid pandemic, petitioner conveyed, in the month of November, 2020 her inability to proceed with said purchase, to which said Shreeraj Developers LLP, agreed and as a result, proposed agreement of sale did not come to be executed. That on or about January, 2021, Petitioner attempted to lodge on-line claim on the portal of the Respondent. Due to technical glitches, petitioner’s attempts were allegedly failed. Therefore, on 5th February, 2021, she filed an application in physical form in the respondent’s office for refund of duty. Refund claim was declined by the Collector of Stamps on the ground that in terms of Section 52 of the Maharashtra Stamp Act, 1958, Petitioner ought to have sought refund within a period of six months next preceding the date on which stamps were purchased. Feeling aggrieved by the said order dated 22nd June, 2021, petitioner has approached this Court.

4 Heard learned counsel for the Petitioner and the learned Assistant Government Pleader for the State. Perused the affidavit-in-reply filed by the Collector of Stamps, Borivali.

5 Rule 21 of the Bombay Stamp Rules, 1939, provides for the procedure in relation to the evidence to be collected by the Collector in cases where a claim for refund of stamp-duty is made. In terms whereof, the Collector may require any person claiming a refund to make an oral deposition on oath or affirmation or to file an affidavit, setting forth the circumstances under which the claim has arisen, and may also, if he thinks fit, call for the evidence of witnesses in support of the statement set forth in any such deposition or affidavit.

6 Impugned order on the face of it does not indicate that the Respondent-Collector of Stamps followed the procedure as contemplated.

7 Be that as it may, it is Petitioner’s case that, she could not present, application claiming refund of the stamp-duty within six months, reason being, at the material time, there was out-break of Covid-19 pandemic and thus, could travel to reach respondent’s office. Petitioner would submit that the Hon’ble Supreme Court in Miscellaneous Application No.665 of 2021 issued directions, “that in computing the period of limitation for any appeal, application or proceedings, the period from 15th March, 2020 till 2nd October, 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15th March, 2021, if any, shall become available with effect from 3rd October, 2021.” Thus, learned counsel, would contend that though the application, claiming refund, was required to be submitted within six months, nevertheless, in view of the order passed by the Hon’ble Supreme Court since limitation period of six months stood extended, Collector of Stamps ought to have, entertained the application and refunded the duty. Learned counsel would, therefore, urge that the impugned order may be quashed and set aside and the Respondent-Collector of Stamps may be directed to refund duty to the Petitioner within reasonable time. Whereas, Mr. Gore, the learned Assistant Government Pleader would submit, in view of the alternate efficacious remedy available under Section 53(1A) of the Maharashtra Stamp Act, 1958, petition was not maintainable. Even otherwise, he would justify the impugned order.

8 Section 52 read with 52A deal with the allowance for duty. It provides, when a stamp with subject to such Rules as may be made by the Government as to the evidence require or enquiry to be made, Collector of Stamps on application made within a period prescribed in Section 52 and if he is satisfied as to the facts, make allowance for stamps not required for use. In the case at hand, when the application was made by the Petitioner for refund of stamp-duty, Covid-19, was pandemic. As result, movements of citizens were subject to order. Taking care of the situation, the Hon'ble Apex Court vide order dated 23rd September, 2021 directed to exclude the period from 15th March, 2020 till 2nd October, 2021 for computing the period of limitation for any suit, appeal, application or proceedings. Although, it was argued by the learned Assistant Government Pleader that the order passed by the Hon'ble Apex Court was in respect of the proceedings in the Court and has-had, no application to proceedings before the quasi-judicial authorities, yet, in my view, the State cannot, treat Petitioner-Applicant or class of applicants, differently than class of persons presenting their lis, in Court of law, to whom benefit has been extended by excluding period of pandemic, for calculating period of limitation.

9 In consideration of above facts and for the reasons stated, the impugned order dated 22nd June, 2021 is quashed and set aside. In the result, the Collector of Stamps, Borivali shall decide the Petitioner's application dated 5th February, 2021 present for refund of stamp-duty in accordance with the Maharashtra Stamp Act and the Rules, keeping in mind the order passed by the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 in Suo-Motu Writ Petition (Civil) No.3 of 2020. Thus, the following order;

(1) The impugned order dated 22nd June, 2021 is quashed and set aside;

(2) The Collector of Stamps, Borivali shall decide, the Petitioner's application dated 5th February, 2021 in accordance with the Maharashtra Stamp Act and Rule 21 of the Rules, 1939;

(3) The learned Assistant Government Pleader shall communicate this order to the Collector of Stamps, Borivali forthwith.

10 Rule is discharged.

11 Petition is disposed of.