(1994) 04 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 915 of 1983

Makers Development Services Pvt. Ltd. APPELLANT

Vs

V.P. Deshpande, Superintendent of Stamps and others RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Bombay Stamp Act, 1958 — Section 2(n), 54
Constitution of India, 1950 — Article 226

Citation : (1994) 04 BOM CK 0040

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : M.O. Chinoy, P.L. Nain and Ms. Anjali Chandurkar instructed by Gagrat and Co, for the Appellant; Suraj M. Shah, for the Respondent

Final Decision : Allowed

Judgement

D.R. Dhanuka, J.—By this petition filed under Article 226 of Constitution of India, Makers Development Services Private Limited has impugned Notice of Demand dated 4th March 1983, addressed to Messrs Paramount Premises Private Limited issued by Superintendent of Stamps, Bombay, demanding a sum of Rs. 8,06,500/- on account of stamp duty alleged to be payable by the said Company on the correspondence exchanged between it and the Government of Maharashtra, invoking Article 36 of Schedule I to the Bombay Stamp Act, 1958. It is the contention of the Respondents that the relevant correspondence between the parties referred to hereinafter constituted an agreement to let chargeable as "lease" for purpose of stamp duty under Article 36 of Schedule I to the Bombay Stamp Act, 1958. The said Company known as "PARAMOUNT PREMISES PRIVATE LIMITED" was amalgamated with the petitioner company w.e.f. 1st January 1980 as set out in para 2 of the petition. The petitioner has filed this petition as successor in interest of the said former company.

2. The relevant facts having bearing on subject matter of this petition are summarised hereinafter.

3. Paramount Premises Private Limited used to carry on business of constructing multistoreyed buildings and selling the tenements on ownership basis. The petitioner company is carrying on similar business. In or about the year 1968, the Government of Maharashtra started reclamation work in the Backbay Reclamation area of Bombay city abutting on the Cuffe Parade and Nariman Point and developed a scheme for granting leases of the plots, reclaimed or to be reclaimed, for the construction of multi-storeyed buildings. The land reclaimed or to be reclaimed was divided into blocks III to VI.

4. In or about the year 1970, the Government of Maharashtra invited members'' of the public to make offers for intended lease of various plots in block V with the intention that multi-storeyed buildings be put up thereon and after completion of such buildings, leases for 99 years be granted in respect of lands and buildings thereon on the agreed rent. Pursuant to the said invitation to offer, the Petitioner''s predecessor company i.e. the said Paramount, made a written offer being offer dated 15th December 1970, offering to take plot No. 38 in Block V admeasuring about 2601 square meters at the rate of 2,365/- per square meter, subject to the exact area of the plot to be ascertained on joint survey. The Notional price of the said plot was to be worked out. The annual rent was to be fixed at the rate of 6 1/2% of such notional price. At or about the same time one another company named "JOLLY AND MAKER PRIVATE LIMITED", being a sister concern of "Paramount" also made a similar offer to acquire plots Nos. 36 and 37 on lease. The said offers were accepted by the respondents Nos. 2 and 3 on the footing that till the agreement of lease was executed, the offerer shall have no legal interest in the land.

5. By a letter dated 5th March 1971, addressed by the said Paramount to the Secretary, Revenue Department of the Government of Maharashtra and confirmed by the said Jolly Maker Pvt. Ltd., the said Paramount applied to the Government that the said plots Nos. 36 and 37 which were allotted to the said Jolly and Maker be instead allotted to the said Paramount and amalgamated with Plot No. 38 already allotted to the Paramount for sake of convenience. The said proposal appears to have been accepted by the Government. The said plots Nos. 38, 37 and 36 were renumbered as new plots Nos. 95, 96 and 97.

6. As desired by the Respondents No. 2 and 3, on 3rd August 1971, Paramount Premises Pvt. Ltd. executed an undertaking in favour of the Collector of Bombay. The said undertaking is most relevant for purpose of decision of this petition. The said undertaking is extracted in extenso hereinafter :

Paramount Premises Pvt. Ltd., Maker Bhavan, 1, New Marine Lines, Bombay 400 020.

The Collector of Bombay, Old Custom House, Bombay 1.

Dear Sir,

Subject: Lease of Plot Nos. 95, 96 and 97 Block V, Backbay Reclamation

The Government of Maharashtra has agreed to grant us a Lease of the above Plots. We have paid all necessary deposits, but the Agreement to Lease is not yet executed. We shall be obliged if you will give us the possession of the above plots pending execution of the Agreement to Lease. We hereby unconditionally agree to abide by the terms and conditions of the Lease and will execute the Agreement to Lease within a period of 6 months from the date the possession of the plot is given to us.

We hereby further agree that till the Agreement to Lease is executed we shall have no legal interest in the land.

Dated the 3rd day of August 1971.

Yours faithfully. FOR PARAMOUNT PREMISES PRIVATE LIMITED, Sd/- A DIRECTOR

Witness

It is thus clear that no demise was to be created in favour of the said Paramount until the agreement of lease was executed.

7. Prior to execution of the said undertaking dated 3rd August 1971, by letter dated 22nd February 1971, the Collector of Bombay had informed M/s Paramount Premises Pvt. Ltd. that the Government of Maharashtra was pleased to grant sanction in respect of the proposal to lease plot No. 38 in favour of M/s Paramount Premises Pvt. Ltd. as a promoter of Jolly and Maker Apartments No. III Co-operative Housing Society (proposed) on the ground rent calculated at 6 1/2% per annum on the value of the land at Rs. 2,365/- per square meter subject to the terms and conditions detailed in the Government Memo which terms and conditions were already agreed upon by M/s Paramount Premises Pvt. Ltd.. It was further stated in the said letter that the Assistant Solicitor to Government, Law and Judiciary Department, was requested to take in hand the preparation of the draft agreement for lease. By the said letter the said Paramount was called upon to pay a sum of Rs. 300/- to the Collector of Bombay as deposit for cost of the agreement to lease.

8. The Respondents contend that:

(a) offer dated 15th December 1970 made by Paramount Premises Pvt. Ltd.,

(b) letter dated 2nd February 1971, from Collector of Bombay, referred to hereinabove;

(c) Undertaking executed by Paramount Premises Pvt. Ltd. (meaning thereby undertaking dated 3rd August 1971) referred to hereinabove constitutes an agreement to let within meaning of Article 36 of Schedule I to the Bombay Stamp Act, 1958 read with section 2(n) of the Act and is chargeable with stamp duty in sum of Rs. 8,06,500/-.

The petitioner disputes the claim made by the Respondents. The petitioner contends that the correspondence relied upon by the Respondents does not constitute lease or an agreement to let within meaning of Article 36 of Schedule I to the Bombay Stamp Act, 1958 as alleged or otherwise. At one stage a statement was made to this Court by the learned Government Pleader on instructions that the Chief Controlling Revenue Authority, State of Maharashtra, Pune, had agreed to make a reference to this Court in respect of the above referred dispute as to payment of stamp duty as contemplated u/s 54 of the Bombay Stamp Act, 1958. In view of the said statement, this petition was allowed to be withdrawn by an Order passed by this Court on 10th August 1980. No such reference was made. The petition is revived by an Order passed by the Honourable Supreme Court. The petition is now being disposed of finally after hearing the learned counsel on both sides.

9. The learned counsel for the petitioner submits that the correspondence relied upon by the Respondents consisting of offer dated 15th December 1970 and letter dated 22nd February 1971 read with the undertaking dated 3rd August 1971 referred to hereinabove (copies whereof are Annexures "A", "M" and "J") do not constitute lease or an agreement to let within meaning of Article 36 of Schedule I to the Bombay Stamp Act, 1958 and the Notice of Demand dated 4th March 1983 (Exhibit "K" to the petition) is liable to be quashed and set aside by this Court. The learned counsel for the petitioner submits that only such agreement of lease are chargeable with stamp duty as on lease which create an immediate and present demise. The learned counsel for the petitioner invites attention of the Court to Explanation III to Article 36 of Schedule I to the Bombay Stamp Act, 1958 as substituted by Maharashtra Act 27 of 1985. Article 36 of Schedule I to the said Act including Explanation III appended thereto is set out in extenso hereinafter :

36. LEASE, including an under-lease or sub-lease and any agreement to let or sub-let or any renewal of lease -

(a) where by such lease the rent is fixed and no premium is paid or delivered -

(i) where the lease purports to be for a term less than one year; The same duty as is leviable on a conveyance under clause (a), (b), of Article 25, for the whole amount of rent payable.

(ii) where the lease purports to be for a term in excess of one year but not more than three years; The same duty as is leviable on a conveyance under clause (a), (b), (c) or (d) as the case may be, of Article 25, on the amount of average annual rent.

(iii) where the lease purports to be for a term in excess of three years but not more than ten years; The same duty as is leviable on a conveyance under clause (a), (b), (c) or (d), as the case may be, of Article 25, on twice the amount of the average annual rent.

(iv) where the lease purports to be in excess of ten years but not more than thirty years; The same duty as is leviable on a Conveyance under clause (a), (b),

(c) or (d) as the case may be of Article 25, on thrice the amount of the average annual rent.

(v) where the lease purports to be in excess of thirty years, or in perpetuity or does not purport to be for any definite period; The same duty as is leviable on a Conveyance under clause (a), (b), (c) or (d) as the case may be of Article 25, on ten times the amount of the average annual rent.

(b) where the lease is granted for fine or premium or money advanced or to be advanced and where no rent is fixed; The same duty as is leviable on a Conveyance under clause (a), (b), (c) or (d) as the case may be, of Article 25, on the amount of such fine or premium or money advanced or to be advanced.

(c) where the lease is granted for a fine or premium or money advanced or to be advanced in addition to rent, fixed. The same duty as is leviable on a Conveyance under clause (a), (b), (c) or (d), as the case may be, of Article 25, on fine or premium or money advanced or to be advanced, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid:

Provided that, in any case, where an agreement to tease 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 exceed ten rupees.

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

At the material time, Article 36 of Schedule I stood as at present except for addition of Explanation III thereto which was added as a matter of abundant caution.

10. The learned counsel for the petitioner submits that even prior to insertion of Explanation III in the said article it was always the law of the land as interpreted by the Privy Council and this Court that only such agreement of lease are chargeable as a lease which create an immediate and present demise. The learned counsel for the petitioner has relied upon the ratio of the following judgments in support of his contention;

(1) Judgment dated 11th February 1994, delivered by the Hon''ble Supreme Court in Civil Appeal No. 3570 of 1993;

(2) Judgment of Bombay High Court in Reference In re Indian Stamp Act II of 1899, reported in 54 B.L.R. 230;

(3) Judgment of Bombay High Court in the case of In re Maneklal Manilal reported in 30 B.L.R. 1396;

(4) Judgment of the Privy Council in Hemanta Kumari Debi vs. Midnapur Zamindari Company reported in 16 B.L.R. 236.

The learned counsel for the Respondent made a faint attempt to distinguish the said judgments. To my mind the Respondents have no answer to the case of the petitioner in view of well settled law in the subject as pointed out by the learned counsel for the petitioner.

11. In Civil Appeal No. 3570 of 1993, State of Maharashtra and Others Vs. Atur India Pvt. Ltd., , the Hon''ble Supreme Court made a neat and clear distinction between agreement to lease and an agreement of lease. After surveying large number of cases on the subject and noticing the Privy Council judgment in Hemanta Kumari Debi''s case and the earlier judgment of the Hon''ble Supreme Court in Tiruvenibai and another vs. Smt. Lilabai, 1959(2) Suppl. SCR 107, the Supreme Court held that the expression "an agreement of lease" must be interpreted to mean a document which created a present and immediate interest in the land" Our High Court has made similar observations in the above referred Bombay Judgment. The Privy Council took the same view in the above-referred judgment in Hemanta Kumari Debi''s case. Even though the earlier Bombay Judgments were rendered while interpreting Article 35 of Schedule I appended to Indian Stamp Act (II) of 1899, the ratio of the said judgments is clearly helpful to the petitioners. Nothing more is required to be discussed in view of the Hon''ble Supreme Court judgment in the case of M/s Atur India Pvt, Ltd. referred to hereinabove.

12. The question to be asked is as to whether the offer dated 15th December 1970, letter dated 22nd February 1971 and undertaking dated 3rd August 1971, constitutes an agreement of lease so as to create an immediate and present demise. It is clear from the express language of the undertaking extracted in earlier part of this judgment that no demise was created or intended to be created merely by exchange of letters referred to hereinabove.

13. After applying the ratio of the above-referred decision to the facts of this case, I have reached the conclusion that the petition deserves to be allowed.

14. In the result, the Rule is made absolute in terms of prayers (a) and (b). The impugned Notice of Demand is quashed.

15. Having regard to the facts and circumstances of the case, there shall be no Order as to costs.

16. Issue of certified copy is expedited.