(2015) 11 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 1218 of 2007

Makhanlal APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Citation : (2015) 11 BOM CK 0012

Hon'ble Judges : N.W. Sambre, J.

Bench : Single Bench

Advocate : P.F. Patni, Advocate, for the Appellant; R.V. Dasalkar, AGP, for the Respondent

Final Decision : Allowed

Judgement

N.W. Sambre, J.—Class-2 land under the Maharashtra Land Revenue Code was purchased by the petitioner by sale deed dated 25/9/1988. Since the unearned income was required to be deposited out of said sale transaction an application to that effect was moved by original land owner Gulab Motiram Sonar on 15/5/1997 which was not decided by the authority.

2. From the record, it appears that without awaiting decision on the said application sale deed in question was executed.

3. Subsequent thereto, the original owner moved another application on 13/3/2002 to the Tahsildar with the same request for regularising the sale transaction in question by expressing that he is ready and willing to deposit the unearned income.

4. Pursuant thereto the Tahsildar appears to have initiated action in the matter and the Circle Inspector has formed opinion that an amount of Rs. 6,75,462/- would be considered as unearned income in the present transaction as is apparent from the report dated 11/4/2002 submitted to the authority.

5. Ignoring the said report, the Collector without any detail calculation on record

has submitted report to the Divisional Commissioner on 22/12/2005 thereby stating that as per panchanama amount consideration of the land would be considered as 22,63,365/- as per sale deed and Rs. 62,78,525/- as per the valuation made by the said Registrar. According to the Collector, an amount of Rs. 47,08,902/- is required to be deposited by the present petitioner towards unearned income.

6. Pursuant thereto, the Divisional Commissioner appears to have noticed that since the petitioner was not willing to deposit the said amount of Rs. 47,08,902/- order of attachment of the property in question was passed in view of violation of terms of original allotment.

7. It appears that this Court while dealing with legality and validity of the order passed by Divisional Commissioner while admitting petition on 26/6/2008 has taken into account the fact that the petitioner has deposited Rs. 2,50,000/- and directed him to deposit Rs. 5 lakhs before this Court which he has already deposited.

8. In this background, while relying upon judgment of Division Bench in the matter of Trimbakrao Mugutrao Deshmukh Vs. State of Maharashtra and Another, , Mr. Patni, learned counsel for petitioner would urge that the date of the first application in 1997 is the date on which calculation of unearned income is required to be assessed. According to him, the petitioner cannot be put on fault, as his vendor at the time of sale has already approached the appropriate authority on 15/5/1997 and unearned income is required to be calculated keeping in mind the said date of application. He would then urge that at the most the petitioners claim as regards the payment of unearned income would have been assessed taking into consideration date of sale deed i.e. 25/9/1998. He would then urge that the act on the part of the Divisional Commissioner and the Collector calling upon him to deposit an amount of Rs. 47,08,902/- based on the assessment date of 2005 is wholly misconceived and misplaced as same has no bearing in the facts of the present case. In addition he would urge that neither any hearing nor opportunity was given to the petitioner in the matter before order of assessment or attachment of the property of the petitioner was passed.

9. While opposing petition, learned AGP while relying upon Government Resolution dated 8/9/1983 would urge that the date of passing of the order as regards assessment of payment of unearned income would be a relevant date in the absence of any express provision to that effect. Either under the Rule or under the Government Resolution dated 8/9/1983, according to him, the transaction itself cannot be regularised as the petitioner has got executed sale deed in his favour without any consent or approval of the State Government as is contemplated under the relevant Rules. According to him, the Petition lacks merit and is liable to be dismissed.

10. Having considered rival submissions it is required to be noted that it is the intention of the authorities to regularise the sale transaction of the petitioner in

relation to the land in question and as such order of assessment of the payment of unearned income to the tune of Rs. 47,08,902/- came to be passed. The facts remains that while passing the said order, the petitioner was neither put to notice nor he was heard in the matter. There are no calculations and the material relied upon is reflected in the orders impugned wherein it can be inferred that the amount of Rs. 47,08,902/- is required to be recovered as the unearned income. The assessment as reached at is without any basis or without disclosing legal provision or appropriate Government Resolution.

11. In view of above, in my opinion, it will be in the fitness of things that the amount deposited in this Court by the petitioner be directed to be transferred to the Collector Dhule who shall consider the same to be advance deposit in the present case subject to further adjudication in the matter. Order impugned attaching of the property of the petitioner is hereby quashed and set aside. The petitioner is directed to appear before Collector, Dhule on 30/11/2015. The Collector is directed to make available the entire original record and the inspection thereto to the petitioner who in case if required may move for certified copy of the documents for filing his objection. The inspection of the original record be granted on 10/12/2015 and the petitioner thereto shall apply for certified copies if any from the record on the same date. The Collector is directed to ensure that copies of the documents which are sought by the petitioner are supplied within period of one week thereafter and the petitioner shall file his objection/application in writing by 21/12/2015. Thereafter the Collector shall make every endeavour to decide the claim of the petitioner as expeditiously as possible in any case within four weeks thereafter.

12. It is expected of the Collector while passing order of determining the payment of unearned income to take into account the date as it will be relevant for the assessment and calculation of unearned income based on the relevant Rules, policy of the Government and also the judgment cited supra in the matter of Trimbakrao. In addition, it is expected of the Collector to give entire details of the calculations whereby he is forming opinion as regards the appropriate payment of unearned income in the present matter. Writ Petition stands allowed. Rule made absolute in above terms with no order as to costs.

13. If it is noticed by the Collector that excess amount is deposited by the petitioner, by separate order; the Collector shall ensure that the excess amount apart from the unearned income if any be refunded to the petitioner within six weeks from the date of order of assessment of unearned income.

