

(2024) 08 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 4889 Of 2024

M/s. Chandiwalla Enterprises

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 16-08-2024

Acts Referred:

Maharashtra Stamp Act, 1958 — Section 47, 47(c)(5), 48, 48(1)
Bombay Stamp Rules, 1939 — Rule 21, 22

Citation : (2024) 08 BOM CK 0001

Hon'ble Judges : R. M. Joshi, J

Bench : Single Bench

Advocate : Girish Godbole, Sanjeev Singh, Ritesh Singh, J. P. Patil

Final Decision : Disposed Of

Judgement

R. M. Joshi, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.

2. This petition takes exception to order dated 8th January 2018 passed under Section 47 of the Maharashtra Stamp Act (for short "the Act") whereby application filed by the petitioner for refund of stamp duty was rejected.

3. The facts which led to the filing of present petition, can be narrated in brief as under:

The petitioner, a registered partnership firm, entered into a Development Agreement with Neel Ashiward CHS Ltd. on 2nd September 2016. On execution of the said agreement and before registration, the agreement was sent for adjudication to the authority under the Act. On 29 August 2016, adjudication was done and stamp duty of Rs.94,20,675/- was called upon to be paid. The petitioner paid the stamp duty on 29th August 2016. It is the case of the petitioner that the said society and the petitioner have decided not to proceed

with the Development Agreement. It is its further contention that within a period of six months as contemplated under the Act, an online application was filed for refund of the spoiled stamps of Rs. 94,20,675/- paid on the said Development Agreement. It is the case of the petitioner that its case is duly covered by Section 47(c)(5) of the Act. By order dated 19th May 2017, it was informed to the petitioner that his application, though filed within a period of limitation, does not fall under section 48(1) of the said Act and hence application dated 10th February 2017 is rejected. This order was served upon the petitioner on 8th January 2018.

4. Learned senior counsel appearing on behalf of the petitioner submits that respondent No.2 has committed error in misreading the provisions of Section 48 to be substantive provision when this provision only provides for the period of limitation for making an application for the allowance of spoiled stamps. By referring to Section 47, it is submitted that the said provision is a substantive provision, which provides for the refund of the stamp duty in the cases/events specified therein. It is his submission that the case of the petitioner squarely falls under Section 47(c)(5) of the Act. It is further argued that the finding recorded by respondent No.2 about the Development Agreement being not amenable to the provisions of Section 47 is incorrect. To support his submissions, he placed reliance on the judgment of this Court in case of Satish Buba Shetty versus Inspector General of Registration and Collector of Stamps and ors. in Writ Petition 9657 of 2022 dated 11 th January 2024(Coram N. J. Jamadar, J.). It is contended that though said petition essentially takes into consideration the period of limitation for the refund of stamp duty, however, at the same time, observations are made with regard to the document of deed of Development Agreement being covered under the said provisions. It is further submitted that the clause (c)(5) of Section 47 does not distinguish between any document and it applies to all instruments irrespective of nature of document. Only condition for the same would be instrument has become unenforceable or purpose of execution has failed. Reliance is also placed on the following judgments :

1. Sandeep Dwellers Pvt. Ltd., Nagpur versus The State of Maharashtra and ors. Reported in 2022 (5) Mh.L.J.; (Development Agreement would have to be treated at par with instrument of conveyance as the stamp duty payable on the said instrument is as per duty payable for conveyance under Article 25 of the Act.)

2. Shweta Infrastructure and Housing (I) Pvt. Ltd. Versus The State of Maharashtra and ors. 2022 SCC Online Bom 1735; (Conveyance for the purpose of the stamp duty under the Act covers agreement to sale of immovable property and also Development Agreement).

3. Freedom City Ventures, Thane versus State of Maharashtra and ors. 2023 (3) Mh.L.J.; (High Court set-aside the order passed by the Authority under the Act since the application was filed beyond limitation of six months for allowance in respect of stamp duty on instrument of Development Agreement).

4. Shri Ravindra Champalal Khivsara versus The State of Maharashtra and ors. In Writ Petition No.10017 of 2018 (Bench at Aurangabad); (It is held that the development agreement is an instrument within Section 2(i) of the Act and is covered by Section 47(c)(5).

5. Sanman Trade Impex Pvt. Ltd. Versus The State of Maharashtra and ors. 2005 (1) Mh.L.J. (Section 47(c)(5) does not distinguish between agreement to sale and sale deed and that it applies to all instruments)

6. Bano Saiyed Parwaz versus Chief Controlling Revenue Authority and Inspector General of Registration and Controller of Stamps and ors. 2024 SCC Online SC 979 (Hon'ble Supreme Court held therein that the State should not ordinarily rely upon technicalities).

5. Learned AGP opposed the said contentions on the ground that Section 48 of the Act provides only for the agreement to sale in respect of which, the stamp duty can be levied under Article 25 of the Schedule I of the Act and no other document can be said to have been covered by the said proviso to Section 48. It is further argued that there is nothing on record to indicate that the Development Agreement has been cancelled and/or there is compliance of Section 47(c)(5) of the Act in order to petitioner becoming entitled to seek refund of the stamp duty.

6. In order to appreciate the rival submissions, it would be relevant to take into considerations of provisions of 47 of the Act which reads as under :

47. Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 48, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases hereinafter mentioned, namely :—

(a) the stamp on any paper inadvertently and undersignedly spoiled, obliterated or by error in writing or any other means rendered unfit for the purpose intended before any instrument written thereon is executed by any person;

(b) the stamp on any document which is written out wholly or in part, but which is not signed or executed by any party thereto ;

(c) the stamp used for an instrument executed by any party thereto which—

(1) has been afterwards found [by the party] to be absolutely void in law from the beginning;

[(1A) has been afterwards found by the Court, to be absolutely void from the beginning under section 31 of the Specific Relief Act, 1963 ;]

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended ;

(3) by reason of the death of any person by whom it is necessary that it should

be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed ;

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended ;

(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose ;

(6) becomes useless in consequence of the transaction intended to be thereby effected by some other instrument between the same parties and bearing a stamp of not less value ;

(7) is deficient in value and the transaction intended to be thereby effected had been effected by some other instrument between the same parties and bearing a stamp of not less value;

(8) is inadvertently and undersignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that, in the case of an executed instrument, [except that falling under sub-clause (1A)], no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument is given up [to be cancelled or has been already given up to the Court to be cancelled.]

7. A bare perusal of this provision indicates that an inquiry is contemplated to be done by the Collector on an application made for allowance for spoiled stamps. This provision further indicates that such application has to be made in prescribed period as contemplated in Section 48 of the Act. It is thus clear that Section 47 is provision which is substantive in nature and is relevant for the purpose of allowance for spoiled stamps and not Section 48. It would be useful to refer to the said provisions, which reads thus :

48. The application for relief under section 47 shall be made within the following period, that is to say,—

(1) in the cases mentioned in clause (c)(5), within [six months] of the date of the instruments:

[Provided that, where an agreement to sale of immovable property on which stamp duty is paid under Article 25 of the SCHEDULE I, is registered under the provisions of the Registration Act, 1908 and thereafter such agreement is cancelled by a registered cancellation deed for whatsoever reasons before taking the possession of the property which is the subject matter of such agreement, within a period of five years from the date of execution of the agreement to sale,

then the application for relief may be made within a period of six months from the date of registration of cancellation deed.]

[(2) in the case when for unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instruments ;

(3) in any other case, within [six months] from the date of purchase of stamps].

8. Phraseology used in the opening part of the Section indicates that any application made for relief under Section 47 shall be made within the period prescribed herein. This provision further indicates that an application for relief under Section 47 shall be made within the period of six months from the date of instrument in cases mentioned in clause (c)(5). In any other case, the said period is six months from the date of purchase of the stamps. A proviso was introduced to sub-section (1). According to this proviso, where an agreement for sale of immovable on which stamp duty is paid under Article 25 of the Schedule I is registered under Registration Act and thereafter such agreement is cancelled by registered cancellation deed, the period of limitation for making an application for allowance under Section 47 would be five years from the date of execution of the agreement to sale and within six months from the date of registration of cancellation deed.

9. As such, this provision more than sufficiently clarifies that Section 48 of the Act does not contemplate creation of any right in favour of any person to seek relief of allowance in respect of impressed stamps spoiled, under Section 47. It is only an enabling provision, under which a party is required to make an application within six months in case of clause (c)(5) of the date of instrument and in other case within six months from the date of purchase of stamps. Sub-section (2) further provides that in the case when unavoidable circumstances, any instrument for which another instrument has been substituted cannot be given up to be cancelled, the application may be made within six months after the date of execution of the substituted instrument. Thus, this provision takes into consideration all possible eventualities in which the application could be filed and prescribes time limit therefor.

10. Reverting back to the facts of the present case, there is no dispute about the fact that a Development Agreement came to be executed on 2nd September 2016. It was adjudicated upon and the stamp duty of Rs.94,20,675/- was required to be paid which admittedly is paid by the petitioner. Further there is no denial that within a period of six months from the date of execution of the instrument, an application came to be filed under Section 47 of the act for seeking relief of allowance.

11. The impugned order indicates that the application for the allowance under Section 47 came to be rejected solely on the ground that the document in respect of which the said relief is sought is a Development Agreement and the

same is not covered by the proviso to Section 48(1) of the Act and while passing the order, no dispute is made with regard to the fact that the application is filed in time.

12. In the light of aforesaid facts and having regard to provisions quoted above, it can be seen that the authority has committed error in considering Section 48 of the Act, more particularly, proviso to sub-section 1, as a substantive provision and rejecting application on the ground that document is not agreement to sale but Development Agreement and hence applicant is not entitled for allowance.

13. Chapter V of the Act is titled as ALLOWANCES FOR STAMPS IN CERTAIN CASES. These certain cases are enumerated in Section 47(a)(b) and (c)(1) to (8). As far as present case is concerned, it is the contention of the petitioner that his application falls in sub-clause (5) which reads thus :

"(5) by reason of the refusal of any person to act under the same, or to advance any money intended to be thereby secured, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose ;

14. It is thus clear that if applicant satisfies the authority that the instrument in question has totally failed of the intended purpose, for any reason mentioned therein, he would be entitled for the allowance for spoiled stamps. Pertinently, these clauses from clause (a) to (c)(1) to (8) do not indicate any particular document in respect of which such allowance can be sought. As against this, Section 48 of the Act contemplates period of limitation and in case of clause (c) (5), the period of limitation is six months from the date of instrument. The proviso to sub-section 1 of Section 48 is intended only to give extended period of limitation in case of agreement to sale of immovable property, which also provides two different periods of limitation i.e. five years from the date of execution of the agreement to sell and in case there is cancellation of deed, within six months thereof.

15. This more than sufficiently demonstrates that Section 48 of the Act has no bearing on the right of any person to seek allowance for spoiled stamps. The order impugned, therefore, cannot sustain and deserves to be set-aside, since the same is passed on the basis of incorrect interpretation of the provisions of the Act.

16. One more aspect deserves consideration is the submission made by learned AGP, that there is no cancellation of the Development Agreement and hence no allowance for spoiled stamps can be granted. His submission is based upon the proviso to Section 48 of the Act. This submission does not deserve acceptance for the simple reason that entire Section 47 does not contemplate cancellation of any instrument but provides for circumstances in which allowance can be granted for spoiled stamps.

17. It is trite that while interpreting the provision of any statute, it is not

permissible for the Court to add or subtract any words. Subject to proviso to Section 47 of the Act, if it is read that only in case of cancellation of the instrument, allowance can be granted for spoiled stamps, it would be contrary to legislative intention and amount to re-writing of provisions of Act, which is not permissible in law.

18. A reference to the cancellation of the agreement to sale as mentioned in proviso to Section 48(1) only indicates that in case of execution of agreement to sale without cancellation thereof, period of limitation to apply under Section 47 would be five years, and whereas, in case it is cancelled, within six months thereof. As such there cannot be mandate that only in case of cancellation of instrument, allowance can be granted under Section 47 of the Act.

19. Now the question arises as to whether the petition can be allowed thereby directing the Authority under the Act to refund the stamp duty for spoiled stamps as claimed by the petitioner. Undeniably, Section 47 of the Act contemplates that an inquiry is required to be made by the collector on an application made. It is on the basis of such inquiry and on the evidence as required, a finding will have to be recorded, such as in the instant case, case of the petitioner being covered by clause (c)(5) of Section 47 of the Act, subject to applicability of proviso thereto.

The Bombay Stamp Rules, 1939 in Chapter IV makes provision with regard to the enquiry contemplated for refund or renewal of stamp and payment of allowances. Rule 21 reads thus :

"21. Evidence as to circumstances of claim to refund or renewal.

The collector may require any person claiming a refund or renewal under Chapter V of the Act, or his duly authorized agent, 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."

Rule 22 states that :

22. Payment of allowances in respect of spoiled or misused stamp or on the renewal of debentures.

When an application is made for the payment, under Chapter V of the Act, of an allowance in respect of stamp which has been spoiled or misused or for which the applicant has had no immediate use, or on the renewal of the debenture, and an order is passed by the collector sanctioning the allowance or calling for further evidence in support of the application then, if the amount of the allowance or the stamp given in lieu thereof is not taken, or if the further evidence required is not furnished, as the case may be, by the applicant within six months of the date of such order, the application shall be struck off, and the spoiled or misused stamp (if any) sent to the Superintendent of Stamps, or other officer appointed in this

behalf by the State Government for destruction.”

These provisions clearly show that for the purpose of refund or allowance in respect of spoiled stamps, Collector sanctioning allowance or refund is to call for evidence in support of application and if no evidence is furnished, application can be struck off.

20. In order to enable the petitioner to seek allowance for the spoiled stamps under this clause, it is obligatory on his part to prove that the impressed stamps are spoiled; (i) By reason of refusal of any person to act on the stamp; (ii) To advance any money intended to be thereby secured; (iii) By refusal or non-acceptance of any office thereof granted, totally fails of the intended purpose. Authority under the Act, therefore, must conduct an enquiry into the application and on the basis of available evidence record findings on above aspects, before allowing / rejecting application. Needless to say that, the petitioner, therefore has to lead evidence in order to indicate that the Development Agreement has totally failed of the intended purpose.

21. Perusal of record does not show any inquiry of this nature being conducted by the authority. For want of any such inquiry conducted by the authorities and recording any finding of fact, on the said issue cannot be done for first time in this writ petition. This Court, therefore, is left with no other option but to set-aside the order and to relegate back the matter to the authority to decide the same in accordance with Section 47 of the Act.

22. It is expected that an enquiry will be conducted by the Collector having regard to the rules made under the Act and appropriate findings shall be recorded while deciding application filed by petitioner. Appropriate order shall be passed on the application of Petitioner, within a period of eight weeks from date of this order.

23. The petition is disposed of in above terms.