**(1994) 04 GUJ CK 0037**

**In the Gujarat High Court**

Narendra Dharmshbhai Mapara APPELLANT

Vs

The Chief Controlling Revenue Authority RESPONDENT

**Date of Decision :** 08-04-1994

**Acts Referred:**
Bombay Stamp Act, 1958 — Section 2(1), 37, 5, 53(1), 56(2)

**Citation :** (1994) 1 GLR 908

**Hon'ble Judges :** Y.B. Bhatt, J;M.B. Shah, J;H.L. Gokhale, J

**Bench :** Full Bench

## Judgement

M.B. Shah, J.—The common questions which are referred in these three References are (1) whether "instrument" termed as agreement to sell is in the nature of an agreement liable to stamp duty of Rs. 10/- under Article 5(h) of Schedule I to Bombay Stamp Act, 1958, hereinafter referred to as "Stamp Act", and (2) whether it is a "conveyance" for the total consideration mentioned in the document and is liable to stamp duty as provided under Article 27 (new Article 20) of Schedule I to the Bombay Stamp Act, 1958.

Statement of the case:

2. It is stated that for purchase of flats the instruments termed as agreements were executed between City Construction and Development Corporation, Ranjit Towers, Lai Bungalow Circle, Jamnagar, and different purchasers of the flats who were referred as buyers. The said agreements for the purchase of flats which were to be constructed in a building known as ''Ranjit Towers" situated at Jamnagar were registered in the Office of Sub-Registrar, Jamnagar, on various dates between 1977 and 1978 by affixing adhesive stamp of Rs. 5/- or Rs. 10/-.

3. During the audit of the Sub-Registrar''s Office, Jamnagar, the Accountant General Office raised the objection that in Jamnagar many documents were executed for the transfer of flats of Ranjit Towers by paying the full amount of consideration and by handing over possession, still the instrument titled as an agreement was executed with intent to evade stamp duty. The said document is

 

chargeable with stamp duty u/s 5 of the Bombay Stamp Act. The Sub-Registrar, Jamnagar, agreed with the said audit objection and forwarded the photo copy of the agreements u/s 37 of the Stamp Act to the Collector (Stamps), Rajkot for taking further suitable action in the matter.

4. The Collector (Stamps), Rajkot Division, Rajkot by his common order dated 31st July, 1989 arrived at the conclusion that five documents were in the nature of sale-deeds and were liable to be stamped as provided under Article 27 of the Stamp Act. He, therefore, directed to recover the deficit stamp duty with penalty as stated in the order.

5. Against that order the applicants preferred separate revision applications u/s 53(1) of the Bombay Stamp Act. The Chief Controlling Revenue Authority confimed the cider passed by the Collector and rejected the revision petitions filed by the applicants by holding that the document in dispute was evidence of absolute ownership because for a period of 13 years neither the builder nor a purchaser of the flat has executed a registered sale-deed that the possession of the premises is handed over to the purchaser and the consideration is also paid by the purchaser. He, therefore, held that agreements were required to be stamped as conveyance deeds.

6. Hence these references at the instance of the applicants.

7. For deciding the controversy, we would only refer to two classes of the agreements mentioned in the statement of case given by the authority. They are as under:

(1) Clause 6 of the instrument provides that the Buyer shall not get any right, title or interest of any kind whatsoever into or over the said land or buildings or part there of, such conferment to take place only upon the execution of the conveyance to a limited Company or a Co-operative Housing Society or an incorporated body to be formed of the Buyers and/ or Hire Purchasers of different premises in the said buildings.

(2) Clause 35 provides that after all the buildings are completed and after the society or limited Company is incorporated and registered and only after all '' the Flats and other premises in the said buildirgs have been sold and disposed of by the builders and after the builders have received all dues payable to them under the terms of the agreement and agreements with various other purchasers of premises the builders shall cause execution of an indenture of lease and such other appropriate documents in favour of the said Society limited Company subject to the covenants and agreements in the said original indenture of lease Deed entered into between the Builder and the Original Lessor.

In our view, considering the aforesaid two clauses it is apparent that an instrument cannot be termed as a conveyance by any stretch of imagination. It specifically provides that the buyer shall rot get any right, title or interest over the land or building or part there of under the said instrument. Rights would be conferred only upon the execution of the conveyance to a limited Company or a Co-operative Housing Society or an incorporated body which may be formed by the buyers and/or hire purchasers of different premises in the building. The provisions of the Gujarat Ownership Flats Act, 1973 would not in any way change the nature of the agreement. Hence the said provisions are not required to be discussed in these References. The Revenue Authorities cannot ignore the terms of document which is before them for adjudication and base their decision by drawing some, adverse inference that as the conveyance deed is not executed for a period of 13 years, agreement to sell should be considered as "conveyance". The authorities are not having any such power under the Bombay Stamp Act. The authorities under the Bombay Stamp Act can decide the nature of the instrument by construing the recitals and terms of the document before them. From the document it is apparent that title to the property is not transferred by the impugned document. Hence the document is required to be considered as an agreement to sell and not of "conveyance".

8. Further, in the present case photostat copy or the copy of the agreement to sell is impounded and not the original instrument. Mr. Shah learned Advocate appearing for the applicants, vehemently submitted that this is totally against the provisions of the Stamp Act. He submitted that the expression "instrument" as defined u/s 2(1) of the Stamp Act refers to the original instrument by which any right or liability is or purports to be, created, transferred, limited, extended, extinguished or recorded.

9. In our view, this submission of the learned Advocate for the applicants is well founded because the right or the liability, as the case may be, is created by the original instrument and not by its copy. The copy of such document cannot fall within the description of the instrument because it is not the copy which creates or purports to create a right but only the document creates or purports to create a right. This question is also concluded by the decision of this Court in the case of The Chief Controlling Revenue Authority, Ahmedabad Vs. The Nutan Mills Ltd., . Further, dealing with a similar provision under the Indian Stamp Act the Supreme Court in the case of AIR 1971 1070 (SC) , has held that the definition of "instrument" does not cover copy of document for purposes of Stamp Act and there is no scope of inclusion of copy of a document as an instrument for the purpose of the Stamp Act. Admittedly, in the present case the original document was not impounded. Hence the whole procedure adopted by the authority is illegal.

10. In the result, it is held that the impugned instrument is in the nature of an agreement to sell and is liable to stamp duty accordingly. It cannot be held to be a deed of conveyance. Hence both the questions are answered accordingly.

References stand disposed of accordingly. The parties will bear their own cost. The Registrar is directed to send a copy of this judgment under the seal of the Court and the signature of the Registrar to the Chief Controlling Revenue Authority as provided u/s 56(2) of the Stamp Act.

 