

(2015) 06 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 1480 of 2013

Nestor Builders and Developers Pvt. Ltd. and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Bombay Stamp Act, 1958 — Section 31
Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 15
Registration Act, 1908 — Section 23, 23A, 24, 25, 26

Citation : (2015) 4 ABR 675 : (2015) 6 BomCR 190

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Yadunath Choudhari and Kejal Kamdar i/b. Reena Salunkhe, for the Appellant; P.G. Lad, A.G.P. and Madhubala Kajale, Advocates for the Respondent

Final Decision : Allowed

Judgement

G.S. Kulkarni, J.—Rule returnable forthwith. Respondents waive service. By consent of the parties and at their request, heard finally.

2. This Writ Petition under Article 226 of the Constitution of India prays for a direction to the respondents to accept the "Deed of Conveyance" dated 13 April 2012 in respect of the property bearing Survey No. 427, Hissa No. 9 situated at Village Kolekalyan, Taluka Andheri, Mumbai suburban District, for its registration, under the provisions of the Indian Registration Act, 1908 (for short "the Registration Act").

3. The petitioners' case is that in pursuance of a permission granted by the Charity Commissioner in favour of the erstwhile owner A.H. Wadia Trust the deed of conveyance in question dated 13 April 2012 came to be executed between A.H. Wadia Trust and the petitioners by which the said property came to be transferred and conveyed in favour of the petitioners. On 11 May 2012 the petitioners lodged this Deed of Conveyance for adjudication in the office of the

Collector of Stamps for determination of the stamp duty payable on the said document under the provisions of the Maharashtra Stamp Act. In the adjudication proceedings the Collector of Stamps passed an interim order dated 3 September 2012 fixing the market value of the property at Rs. 8,24,99,500/- and a stamp duty of Rs. 41,24,975/- payable by the petitioners. The petitioners were called upon to submit their objections on this interim determination of the market value and the stamp duty so payable. The petitioners accordingly submitted their representation dated 25 September 2012, 1 October 2012 and 4 October 2012 which was required to be adjudicated and decided by the Collector of Stamps. However, as the Collector of Stamps did not take a decision, the petitioners, made a representation to the Joint Director, Town Planning (Valuation), Pune dated 8 October 2012 requesting to direct the Collector of Stamps to pass an adjudication order. As again no action was taken another representation dated 11 January 2013 was made by the petitioners to the Joint Director. However, there was no response from any of the authorities, the petitioners therefore now approached the Inspector General of Registration by their letter dated 14 January 2013 requesting to direct the Collector of Stamps to pass an adjudication order. The petitioners again addressed letters dated 28 January 2013, 1 February 2013, 6 February 2013, 7 February 2013 and 12 February 2013 to different authorities requesting to take a decision to adjudicate the Deed of Conveyance as per the provisions of Section 31 of the Maharashtra Stamp Act.

4. On the aforesaid background the Collector of Stamps finally passed an order dated 18 February 2013 accepting the market value of the said property at Rs. 1,50,00,000/- and determined a stamp duty of Rs. 7,50,000/- payable on the said Deed of Conveyance which was paid by the petitioners.

5. The petitioners have averred that thereafter the petitioners took steps to get the document registered by filling up a form for the on-line registration. This on-line registration form of the petitioners was not accepted by the computer. On enquiries the petitioners were informed that the document is executed more than eight months back and hence in view of the limitation of four months as prescribed under Section 23 of the Registration Act, same could not be accepted for registration. The petitioners, therefore, addressed a letter dated 12 March 2013 to the Sub-registrar and recorded that the delay in lodging the said Deed of Conveyance for registration was not intentional but it was due to the delay by the Collector of Stamps to adjudicate the stamp duty payable on the said document. It was stated that the market value of the property for the purpose of stamp duty was determined by respondent No. 4 on 18 February 2013 and hence, it was beyond the control of the petitioners to lodge the said document for registration during the prescribed period of four months. The petitioners also personally approached the sub-registrar with a request to register the Deed of Conveyance, however, the officers expressed their inability to accede to petitioners' request. The petitioners have thus approached this Court by the present petition.

6. Learned Counsel for the petitioners submits that the impugned action on the part of the respondents is arbitrary as the delay in not presenting the document for registration within the prescribed statutory limit of four months as prescribed under Section 23 of the Registration Act, was beyond the control of the petitioners. It is submitted that the Deed of Conveyance was lodged for adjudication on 11 May 2012 and that a final adjudication order came to be passed by the Collector of Stamps on 18 February 2013. It is submitted that the petitioners had made all attempts by approaching the authorities seeking an early adjudication and determination of the stamp duty payable on the deed of conveyance and thus there was no delay whatsoever on the part of the petitioners. In support of his submissions, the learned Counsel for the petitioners relied upon the decision of the learned Single Judge of this Court in Writ Petition No. 2662 of 2012 dated 17 January 2013 and in Writ Petition no.903 of 2014 dated 26 June 2014, to submit that in a similar situation this Court was pleased to direct the Authorities to accept the document for registration.

7. On the other hand, the learned A.G.P. for the respondents has supported the action on the part of the respondents to submit that the document cannot be accepted for registration as the statutory period of four months as prescribed under Section 23 of the Registration Act, 1908 to lodge the document for registration after its execution, had expired. It is submitted that the contention of the petitioners that the delay was attributable to the Collector of Stamps for passing final adjudication order, cannot be a ground to accept the document for registration as prayed by the petitioners.

8. With the assistance of the learned Counsel for the parties, we have perused the relevant documents as annexed to the petition. We have also considered the rival submissions as made on behalf of the parties. It is not in dispute that the Deed of Conveyance dated 13 April 2012 executed between A.H. Wadia Trust and the petitioners was lodged for adjudication on 11 May 2012 and an interim order was passed by the Collector of Stamps whereby a provisional valuation of the property in question for payment of stamp duty was fixed at Rs. 8,24,99,500/- calling upon the petitioners to pay the stamp duty of Rs. 41,24,975/-. This was objected by the petitioners by making a representation. This was followed by the Collector of Stamps undertaking adjudication of the objection as raised on behalf of the petitioners. The Collector of Stamps admittedly did not complete the exercise of final adjudication within four months from the date the petitioners lodged the Deed of Conveyance for adjudication. In fact, the interim order dated 3 September 2012 itself was passed after about four months from the petitioners lodging the deed of conveyance for adjudication. The petitioners had addressed several letters requesting the Collector of Stamps to pass a final order of adjudication. However, as there was complete inaction on the part of the Collector of Stamps, the petitioners had also approached the Joint Director as also the Inspector General making a request to issue directions in this regard. A final order on adjudication ultimately came to be passed under Section 31 of the Bombay Stamp Act on 18 February 2013 determining the stamp duty payable of

the deed of conveyance. The petitioners, thereafter, took recourse to the On-line procedure to register the said Deed of Conveyance. However, the form of the petitioners was rejected by the Computer on the ground that the document was more than eight months old and, therefore, the petitioners by their letter dated 12 March 2013 immediately approached the Authorities and clarified the position in regard to the delay to state that the same was not intentional and that the delay in adjudication was attributable at the hands of Collector of Stamps. All these facts clearly indicate that the petitioners were in a position to present the document for registration only after the final order dated 18 February 2013 was passed by the Collector of Stamps under Section 31 of the Act on which day the appropriate stamp duty as adjudicated also stood paid by the petitioners. The delay in presenting the document for registration was thus attributable to the delay in the adjudication process and cannot be said to be intentional or any lapse on the part of the petitioners.

9. To examine the issue, it would be appropriate to examine the relevant provisions namely Section 23, 23A, 25 and 26 of the Registration Act, 1908 which read thus:-

"23. Time for presenting documents

Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution:

PROVIDED that a copy of a decree or order may be presented within four months from the date on which the decree or order was made or, where it is appealable, within four months from the day on which it becomes final.

23A. Re-registration of certain documents :

Notwithstanding anything to the contrary contained in this Act, if in any case a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it has not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefor under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of this section, shall be deemed to have been duly registered for all purposes from the date of its original registration:

PROVIDED that, within three months from the twelfth day of September, 1917, any person claiming under a document to which this section applies may present the same or cause the same to be presented for re-registration in accordance with this section, whatever may have been the time when he first became aware that the registration of the document was invalid.]

25. Provision where delay in presentation is unavoidable :-(1) if, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in (India) is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration fee, such document shall be accepted for registration.

(2) Any application for such direction may be lodged with a Sub Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

26. Documents executed out of (India) - When a document purporting to have been executed by all or any of the parties out of (India) is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied-

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in (India), may, on payment of the proper registration fee, accept such document for registration."

(emphasis supplied)

A cumulative reading of the aforesaid provisions and more particularly the provisions of Section 25 of the Registration Act, clearly demonstrate the intention of the legislature that if a document in a given situation cannot be presented for registration within the period of four months prescribed under Section 23 of the Registration Act then it can still be accepted for registration beyond the prescribed period. However, this would necessarily be when the delay on the part of the party presenting the document beyond the prescribed period was bonafide and not intentional and was on account of a genuine cause beyond the control of such a party.

10. A legal right accrued to the petitioners to get the document registered as per the provisions of the Registration Act cannot stand defeated when such reasons exist which are beyond the control of the party presenting the document for registration. The legal position in this regard has been succinctly enunciated in the decision of the Supreme Court in the case *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*, AIR 1987 SC 2195 : (1988) 2 ARBLR 151 : (1987) 3 JT 555 : (1987) 2 SCALE 551 : (1987) 4 SCC 398 : (1988) 1 SCR 118 ". This decision concerned registration of an Award dated 28 November 1977. In the proceedings adopted by the parties under the Arbitration Act, 1940, the Award

had remained in the custody of the Court. An application was made by the Arbitrators before the learned Sub-Judge to return back the Award to enable them to present the same before the Sub Registrar of registration. An order came to be passed in January, 1980 on the said application whereby the learned Sub-Judge ordered return of the Award to the Arbitrators to enable them to present it for registration. This order of the learned Sub-Judge was set aside by the High of Calcutta by order dated on 6 March 1981 and it was held that during the subsistence of the interim injunction, the Arbitrators could not have taken back the Award for presenting the same for registration. In further proceedings on 24 November 1983 the Arbitrators got back the Award from the Court and on the next day i.e. on 25 November 1983 the Arbitrators presented the Award before the Sub-Registrar who registered the Award on 25 November 1983. By order dated 19 June 1986 the High Court quashed the registration under Article 227 of the Constitution holding that the Award has been presented for registration beyond time. In considering the challenge to this order of the High Court, the Supreme Court while holding that the delay from the period 20 November 1977 to 25 November 1983 (about 6 years) was rightly excluded by the Sub-Registrar. In Paragraphs 6 and 7 the Supreme Court has observed thus:-

"6. We have to bear in mind two maxims of equity which are well settled, namely, "ACTUS CURIAE NEMINEM GRAVABIT"- An act of the Court shall prejudice no man. In Broom's Legal Maxims. 10th edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution. The other maxim is "LEX NON COGIT AD IMPOSSIBILIA" (Broom's Legal Maxims-P. 162)- The law does not compel a man to do that which he cannot possibly perform. The law itself and the administration of it, said Sir W. Scott, with reference to an alleged infraction of the revenue laws, must yield to that to which everything must bend, to necessity; the law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of laws must adopt that general exception in the consideration of all particular cases.

7. In this case indisputably during the period from 26th of July, 1978 to 20th December, 1982 there was subsisting injunction preventing the arbitrators from taking any steps. Furthermore, as noted before the award was in the custody of the court, that is to say, 28th of January, 1978 till the return of the award to the arbitrators on 24th of 124 November, 1983, the arbitrators or the parties could not have presented the award for its registration during that time. The award as we have noted before was made on 28th of November, 1977 and before the expiry of the four months from 28th November, 1977, the award was filed in the court pursuant to the order of the court. It was argued that the order made by the court directing the arbitrators to keep the award in the custody of the court was wrong and without jurisdiction, but no arbitrator could be compelled to disobey the order of the court and if in compliance or obedience with court of

doubtful jurisdiction, he could not take back the award from the custody of the court to take any further steps for its registration then it cannot be said that he has failed to get the award registered as the law required. The aforesaid two legal maxims-the law does not compel a man to do that which he cannot possibly perform and an act of the Court shall prejudice no man would, apply with full vigour in the facts of this case and if that is the position then the award as we have noted before was presented before the Sub-Registrar, Arambagh on 25th November, 1983 the very next one day of getting possession of the award from the court. The Sub-Registrar pursuant to the order of the High Court on 24th of June, 1985 found that the award was presented within time as the period during which the judicial proceedings were pending that is to say, from 28th of January, 1978 to 24th of November, 1983 should be excluded in view of the principle laid down in section 15 of the Limitation Act, 1963. The High Court, therefore, in our opinion, was wrong in holding that the only period which should be excluded was from 26th July, 1978 till 20th December, 1982. We are unable to accept this position. 26th July, 1978 was the date of the order of the learned Munsif directing maintenance of status quo and 20th of December, 1982 was the date when the interim injunction was vacated, but still the award was in the custody of the court and there is ample evidence as it would appear from the narration of events hereinbefore made that the arbitrators had tried to obtain the custody of the award which the court declined to give to them???????"

(emphasis supplied)

In the facts of the present case the delay was purely attributable to the Collector of Stamps in passing a final adjudication order under Section 31 of the Maharashtra Stamps Act on 18 February 2013. This delay on the part of the Collector of Stamps cannot be held to be detrimental to the petitioners who were not at fault and who were diligently pursuing the proceedings before the Collector of Stamps as observed above. The action of the respondents not to exclude the period taken by the Collector of Stamps in adjudication of the documents for the purpose of determination of the stamp duty would entail serious consequences, defeating the rights of the petitioners to get the document registered for no fault on their part. This certainly cannot be said to be the intention of the Legislature. In the decision of the learned Single Judge of this Court (Coram: R.M. Savant, J.) in Writ Petition No. 2662 of 2012 relied on behalf of the petitioners, the learned Single Judge after taking into consideration the provisions of the Registration Act has held that it would be appropriate to exclude the time taken by the authority to adjudicate the stamp duty payable on the document sought to be registered. The reliance of the petitioners on this decision is appropriate. In the circumstances, a bonafide delay beyond the control of the petitioners as caused in the present case which cannot be attributed to any intentional or a deliberate act or negligence on the part of the petitioners, would be required to be excluded in permitting the petitioners to avail registration of a document in question. A similar view has been taken by this Court by one of us (G.S. Kulkarni, J.) in Writ Petition No. 903 of 2014 decided on 26 June 2014

(Chhabildas Dalichand Bhayani Vs. The Sub-Registrar of Mumbai and Anr.) and which follows the Judgment of R.M. Savant, J.

11. Having examined the relevant provisions of the Registration Act and applying the above principles of law as laid down by the Supreme Court, we are of the considered opinion that the time taken by the Collector of Stamps for adjudication is required to be excluded by the respondents in accepting the said document for registration. It would thus be appropriate that in the facts of the present case the respondents are directed not to take into consideration the period from 11 May 2012 to 18 February 2013 which was spent in the adjudication of the said document and excluding the said period, register the petitioners' deed of conveyance.

12. In the light of the above observations, the respondents are directed to accept the Deed of Conveyance dated 13 April 2012 as presented by the petitioners for its registration under the provisions of the Registration Act.

13. The Writ Petition stands allowed in the aforesaid terms. No order as to costs.