(2010) 04 BOM CK 0027

In the Bombay High Court

Case No : Latters Patent Appeal No. 575 of 2009 in Writ Petition No. 4520 of 2009

Pankaj Ramlakhan Dubey APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:
Bombay Stamp Act, 1958 — Section 31(3), 32(B)

Citation : (2010) 3 BomCR 546

Hon'ble Judges : Kode P.D., J;Bobde S.A., J

Bench : Division Bench

Advocate : B.G. Kulkarni, for the Appellant; D.P. Thakre, A.G.P. for Respondent Nos. 1 to 6, for the Respondent

Final Decision : Allowed

Judgement

Bobde S.A., J.—Admit. Taken up for final hearing by consent.

2. His is a letters patent appeal against the judgment of the learned Single Judge holding that the document in question is not a lease and, therefore, the notification dated 12.6.2007 which exempts leases from payment of stamp duty under the Bombay Stamps Act is not applicable.

3. The Maharashtra Industrial Development Corporation had allotted Plot No. C43/2 to Smt. Nitu Vinod Dubey, trading as Proprietor of M/s. Yashoda Milk & Allied Products. The allotment was made by an agreement to lease the plot to the said Smt. Nitu Dubey. The lease-deed was to be executed upon fulfilment of certain conditions by the allottee. The allottee, however, agreed to transfer the rights under the agreement to lease to the appellant/petitioner Pankaj Ramlakhan Dubey. The MDC signed the said agreement as a consenting party and Clause 3 of that agreement reads as follows:

As soon as the Executive Engineer has certified that the factory building and works on the plot described in the First Schedule to the Principal Agreement have been erected and if the parties of the Third Part shall have observed all the stipulations and condition contained in the Principal Agreement the Grantor will grant and the parties of the Third Part will accept a Lease (which shall be executed in duplicate of the said plot described in the First Schedule to the Principal Agreement and the factory building erected there on the Standard form of Lease prescribed by the Grantor for the term and at the yearly mentioned in the principal Agreement without any further concurrence of the Licensee.

Thus, it was agreed that after the appellant/petitioner complies with all the conditions contained in the principal agreement, the Grantor, i.e. MIDC will grant a lease and the petitioner will accept it. It is clear from the above recital that no lease-deed was executed either in favour of the original allottee Smt. Nitu Dubey or the petitioner by this agreement.

4. This agreement was submitted for adjudication u/s 31(3) of the Bombay Stamp Act to the Collector of Stamps. Before the Collector, it was the contention of the petitioner that the document did not constitute a lease and was merely an agreement to lease the property in question. In the alternative, according to the petitioner, if it was to be treated as a lease, the transaction was exempted from payment of duty under a Government Resolution No. Stamps 2007/C. No. 196(2) M-1, dated 12th June, 2007, which provided that there shall be remission of stamp duty chargeable under the Act in respect of a lease if it is executed for starting a new unit in the Information Technological Park or the Biotech Park. There is no dispute that the property in question is located in the Biotech Park.

5. The Collector of Stamps passed an order on 7.7.2009 holding that the document in question amounts to a transfer of lease by Smt. Nitu Dubey in favour of the petitioner and was, therefore, chargeable to duty under Entry No. 60 of Schedule I which reads as follows:

Against the said order, the petitioner preferred an appeal u/s 32B of the Bombay Stamps Act, 1958 before the Deputy Inspector General of Registration and Deputy Controller of Stamps (Appellate Authority), Amravati. The Appellate Authority held that the document, i.e. the proposed agreement to lease did not come under the purview of the Government Resolution dated 12.6.2007 and was, therefore, not entitled for exemption but it is chargeable to stamp duty by virtue of Entry 60 (supra). Against the order of the Appellate Authority, the petitioner referred writ petition before the learned Single Judge of this Court. The learned Single Judge came to the conclusion that the document in question is not a lease-deed since it is an agreement to lease. The learned Single Judge came to the conclusion that it is not a lease-deed and, therefore, not chargeable under Entry 36 of the Stamp Act but nonetheless is chargeable to stamp duty under Entry 60 of the Stamp Act. The learned Single Judge thus dismissed the writ petition.

6. Shri Bhanudas Kulkarni, the learned Counsel for the appellant, submitted that the document in question was rightly construed by the learned Single Judge as

an agreement to lease since no transfer of property by way of lease is effected by that document. However, according to the learned Counsel since the document was not liable to be construed as a lease, then its assignment by the original allottee Smt. Nitu Dubey to the appellant could not have been considered to be a transfer of lease under Entry No. 60 and, therefore, the document could not have been charged to stamp duty as if it were a lease.

7. Mr. D.P. Thakre, the learned A.G.P. for respondents, did not dispute the contents of the document and submitted that the document was rightly held to be an agreement to lease and not a lease by the learned Single Judge.

8. Having considered the matter, we are of the view that if the document was not to be treated as a lease but only as an agreement to lease, the writ petition filed by the appellant ought to have been allowed. Indeed, if no lease had ever been executed by the MIDC in favour of Smt. Nitu Dubey, the transfer or assignment of her rights under the agreement to lease could not have been considered to be a transfer of lease. The rights that were transferred by Smt. Nitu Dubey, i.e. in favour of the appellant were exactly those which she had acquired from the MIDC. Since she had not acquired any leasehold rights from the MIDC, she could not have transferred any such rights to the appellant. Therefore, the document could not have become chargeable to duty under Entry No. 60 (supra) which makes stamp duty leviable on transfer of lease by way of assignment. The learned Single Judge seems to have overlooked this position.

9. In the circumstances, we find that the document in question has been rightly held to be an agreement to lease. We, however, set aside the judgment of the learned Single Judge to the extent that the document has been treated to be a transfer of lease under Entry 60. We accordingly hold that the document is not chargeable to stamp duty as a lease or as a transfer of lease. We direct that the amount paid by the appellant towards stamp duty shall be refunded to the appellant upon a proper application made in that regard.

10. In the result, the appeal stands allowed. There shall be no order as to costs.

