(2018) 01 BOM CK 0132

In the Bombay High Court

Case No : 13502 of 2017

Yuvraj Developers (Shankar Sudam Bhilare) APPELLANT

Vs

Gavtya Dhondu Mhatre RESPONDENT

Date of Decision : 23-01-2018

Acts Referred:

Constitution of India, 1950 — Article 227
Registration Act, 1908 — Section 49
Bombay Stamp Act, 1958 — Section 25, Section 33, Article 25, Article 3, Article 36, Section 2(na)

Citation : (2018) 01 BOM CK 0132

Hon'ble Judges : Dr. Shalini Phansalkar-Joshi

Bench : Single Bench

Advocate : S.M. Oak, Sagar A. Joshi, Pravin Desai

Final Decision : Dismissed

Judgement

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Oak, learned counsel for the Petitioners, and Mr. Desai, learned counsel appearing on behalf of Respondent Nos.1 and 5.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 22nd August 2017 passed by the Civil Judge, Senior Division, Panvel, below "Exhibit-230" in Special Civil Suit No.324 of 2008.

3. The application at "Exhibit-230" was filed by the present Petitioners for impounding of the document, namely, the ''Memorandum of Understanding'' dated 20th June 2011, relied upon by the Respondents on the ground that, the said document is not registered and, therefore, the bar of Section 49 of the Registration Act is attracted and, secondly, also on the ground that, in order to fix the valuation, the document needs to be sent for impounding, under Section 33 of the Maharashtra Stamp Act, 1958, for payment of proper stamp-duty.

4. The application was resisted by Respondent No.5 contending, inter alia, that, by the said ''Memorandum of Understanding'', (for short, "MOU"), the parties have agreed only on certain terms and conditions, upon which the plot of land was to be given on lease in future and no present right, title, interest or possession was to be passed on. As per the contents of the MOU, only after fulfilling the terms and conditions mentioned therein, the lease was to be executed and, that too, after receipt of permission for transfer of lease from the City and Industrial Development Corporation of Maharashtra Limited, (for short, "CIDCO"). Therefore, it was submitted that, the said document, in any case, can never confer or convey any title in favour of Respondent No.5, so as to pay the stamp-duty, or, for such document to be registered.

5. It was further submitted that, the plot of land in question is the leasehold property, of which the CIDCO is the owner, and leasehold rights can be transferred, only with the permission of the CIDCO and without such permission, no right, title, interest can be conveyed to anyone. Thus, it was submitted that, only upon execution of the Tripartite Agreement, the plot was to be conveyed and not by virtue of MOU. Hence, neither the MOU is required to be registered, nor it is required to pay stamp-duty on the market value of the property.

6. The Trial Court, after considering the submissions advanced at bar, was pleased to hold that, the document is not required to be

compulsorily registered, as per Section 17 of the Registration Act, 1908, and it also cannot be called as ''Deemed Conveyance'', for which stampduty is required to be paid, as per ''Explanation'' to Section 25 of the Maharashtra Stamp Act, 1958. The Trial Court has, accordingly, rejected the said application.

7. While challenging the impugned order passed by the Trial Court, the submission of learned counsel for the Petitioners is that, the contents of the MOU clearly go to show that the leasehold right, title and interest in the suit plot were agreed to be handed over under this MOU to Respondent No.5 for a consideration of Rs.3,44,00,000/-. In Clause No.4 of the said MOU, it was clearly stated that, hereafter ''Vendor'' has no right, title or interest in the said plot and possession thereof was also handed over to the ''Vendee'' and, accordingly, the necessary document will also be executed. It is further stated that, Vendor''s rights in the said plot are now ceased. In view of these recitals in the MOU, according to learned counsel for the Petitioners, the MOU clearly attracts the ''Explanation'' to Section 25 of the Maharashtra Stamp Act, 1958, and hence, Respondent No.5 should have paid the proper stamp-duty thereon, as per the market-value of the plot.

8. Per contra, learned counsel for the Respondents submits that, by the ''Memorandum of Understanding'', only the leasehold rights are agreed to be transferred and the Tripartite Agreement is only for

transfer of leasehold rights. Hence, it is not an outright sale or an Agreement of Sale. As regards the transfer of leasehold rights, Section 36 of the Maharashtra

Stamp Act, 1958, will be applicable, according to which stamp-duty is to be paid only to the extent of 90% of the amount of market-value on the Agreement of Lease and not on any prior Memorandum of Understanding. Moreover, according to him, under MOU, the leasehold rights are not transferred, but they are transferred subsequently, by virtue of Tripartite Agreement dated 24th June 2011 and, therefore, Respondents are not liable to pay any amount of stampduty on the consideration amount mentioned in the MOU.

9. In this respect, learned counsel for the Petitioners has placed reliance on the ''Explanation'' to Article 25 of the Maharashtra Stamp Act, 1958, by submitting that, as per the said ''Explanation'', if by any instrument, possession is transferred, then, it is liable for the payment of stamp-duty as if it is a deemed conveyance. By invoking the analogy of Article 25 and particularly its reference being made in Article 36, it is urged that, in the present case, as under the MOU, the possession is also handed over, this Court can definitely consider the ''Explanation'' to Article 25 to impound the MOU, which has, ultimately, led to ''Tripartite Agreement of Lease''. He has further submitted that, Article 36, which pertains to ''Agreement to Lease'', also refers to Article 25 and hence, ''Explanation'' attached to Article 25 is required to be read for the purpose of interpreting Article 36, in order to understand the intention

of the legislature, which is to protect the revenue of the State.

10. In order to understand these rival submissions, it would be useful to reproduce relevant provisions of Article 25 with its ''Explanation'' and Article 36 of the Maharashtra Stamp Act, 1958, as follows :-

"25. How transfer in consideration of debt or subject to future payments etc. to be charged -

Where any property is transferred to any person?

(a) In consideration, wholly or in part, of any debt due to him; or

(b) subject either certainly or contingently to the payment or transfer (to him or any other person) of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, such debt, money or stock, shall be deemed to be the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty :

Provided that, nothing in this section shall apply to any such certificate of sale as is mentioned in Article 16 of Schedule I.

Explanation.?Where property is sold and sale is subject to a mortgage or other encumbrance, any unpaid mortgage-money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale, whether or not the purchaser expressly undertakes with the seller to pay the same or indemnify the seller if the seller has to pay the same :

Provided that, where any property subject to a

mortgage is transferred to the mortgage, he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

36. Admission of Improperly Stamped Instrument :

The State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution."

11. Thus, it is clear that, for the purpose of determining market-value of leasehold property, the reference is made to Article 25, but, no such ''Explanation'', as appearing to Article 25, is appearing in Article 36.

12. Hence, as rightly submitted by learned counsel for the Respondents, Maharashtra Stamp Act, 1958, being a fiscal statute, imposing financial liability, like all other such statutes, its provisions are required to be construed strictly. In the absence of any provision like ''Explanation'' to Article 25, which makes the party liable to pay stampduty on the market-value of the plot, even on the MOU / Agreement of Sale, if the possession is transferred thereunder, there is no such corresponding ''Explanation'' to Article 36, which deals with Agreement to Lease. If the intention of the legislature was to make such MOU for Agreement to Lease also, subject to payment of stamp-duty on market-

value, if the possession was handed over thereunder, the legislature would have made such provision in the Act, as there was no difficulty to do so. Hence, in the absence of such provision, this court cannot, on the basis of some analogy, make the instrument, which is not covered under Section 3 of the Act, liable for stamp-duty.

13. Learned counsel appearing on behalf of Respondent Nos.1 and 5, in this respect, brings to the notice of this Court, the provisions of Section 3 of the Maharashtra Stamp Act, 1958, to submit that, only the documents mentioned therein can be chargeable with the stamp-duty and the said provision refers to the instruments mentioned in ''Schedule-1'', which are chargeable under the Act. It is submitted that, ''Schedule-1'' does not refer to the ''Memorandum of Understanding'', which, ultimately, is leading to the ''Agreement of Lease'' and hence, according to him, if the instrument is not chargeable with the stamp-duty, under the provisions of Section 3 of the Maharashtra Stamp Act, 1958, then, in no case, it can be impounded.

14. I find much substance in this submission advanced by learned counsel for Respondent Nos.1 and 5, in view of the provisions of Article 3 of the Maharashtra Stamp Act, 1958, which are reproduced as follows :-

"3. Instruments Chargeable with Duty -

Subject to the provisions of this Act and the exemptions contained in Schedule 1, the following instruments shall

be chargeable with duty of the amount indicated in Schedule 1 as the proper duty therefor respectively, that is to say?

(a) Every instrument mentioned in Schedule 1, which, not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act ;

(b) Every instrument mentioned in Schedule 1, which, not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State :

Provided that a copy or extract, whether certified to be a true copy or not and whether a fascimile image or otherwise of the original instrument on which stamp duty is chargeable under the provisions of this section, shall be chargeable with full stamp duty indicated in the Schedule 1 if the proper duty payable on such original instrument is not paid;

Provided further that] no duty shall be chargeable in respect of?

(1) Any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument or where the Government has undertaken to bear the expenses towards the payment of the duty.

(2) Any instrument for the sale, transfer or other

disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Bombay Coasting Vessels Act, 1838, or Merchant Shipping Act, 1958."

15. Thus, bare perusal of this provision makes it clear that, only the instruments mentioned in ''Schedule-1'' of the Maharashtra Stamp Act, 1958, can be chargeable with duty. Admittedly, ''Schedule-1'' of the Maharashtra Stamp Act, 1958, does not refer to any instrument like ''Memorandum of Understanding'', leading to execution of the ''Agreement of Lease'' and, therefore, such MOU cannot be chargeable to the stampduty.

16. At this stage, learned counsel appearing on behalf of Respondent Nos.1 and 5 submits that, already the Tripartite Agreement is executed with the CIDCO. The copy of the said Tripartite Agreement dated 24th June 2011 is also produced on record of this Court to show that the market-value of the said plot is assessed by the CIDCO at Rs.2,96,99,460/- and, accordingly, the stamp-duty is paid. Therefore, according to him, now, on this ground, there is no more question of

impounding the MOU.

17. Learned counsel for the Petitioners, however, submits that the MOU is executed for a consideration of Rs.3,44,00,000/-; whereas, the

Tripartite Agreement is executed, holding the market-value thereof as Rs.2,96,99,460/- and, therefore, for the "value", which is much below the amount which was agreed between the parties and which is found mentioned in the MOU. Hence, an amount of Rs.47,00,545/- still remains as regards the market-value, on which the stamp-duty is necessary to be paid. According to learned counsel for the Petitioners, the stamp-duty has to be paid on the "market-value" of the property and the definition of the "market-value", as given in Section 2(na) of the Maharashtra Stamp Act, 1958, lays down that, "The market-value in relation to any property, which is the subject matter of an instrument, means the price, which such property would have fetched, if sold in open market on the date of execution of such instrument, or, the consideration stated in the instrument, whichever is higher". [Emphasis Supplied]

18. In this case, it is submitted that, as the consideration stated in the MOU is Rs.3,44,00,000/- and it is higher than the market-value stated in the Tripartite Agreement, which is only Rs.2,96,99,460/-, the MOU still needs to be impounded for the remaining amount of Rs.47,00,540/-.

19. According to learned counsel for the Petitioners, the consideration mentioned in the MOU, being far more than the consideration or the market-value mentioned in the ''Tripartite Agreement'', either the MOU should be impounded, or, as now, the ''Tripartite Agreement'' is executed on the basis of the said MOU, it should be impounded, as it refers to the

market-value, which is lower than the market-value referred to in the MOU.

20. However, in my considered opinion, this submission cannot be accepted for the simple reason, namely, that, for the first time, the ''Tripartite Agreement'' is produced in this Court and on the basis of the same, this argument is being advanced. Hence, it would not be proper on the part of this Court to interfere in the impugned order passed by the Trial Court, which was passed on the basis of the facts before it.

21. In the face of the facts, which were appearing before the Trial Court, as the impounding of the MOU was sought and, that too, on the count that, under the said MOU, the possession was delivered and, therefore, the ''Explanation'' to Article 25 was invoked and as that analogy cannot be accepted, considering the provisions of Articles 3 and 36 of the Maharashtra Stamp Act, 1958, in my considered opinion, the impugned order passed by the Trial Court does not call for any interference.

22. The Writ Petition, therefore, being devoid of merits, stands dismissed.

23. Rule is discharged.

