

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 6640 of 2008**

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CENTURY TILES
THROUGH DIRECTOR GANPATBHAI DAHYABHAI PATEL
Versus
THE DEPUTY COLLECTOR & 2 other(s)

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Appearance:

MR R.K.MANSURI(3205) for the Petitioner(s) No. 1

MR HARDIK D MEHTA, AGP for the Respondent(s) No. 1,2,3

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 05/08/2022

ORAL ORDER

Vide order dated 22.08.2008, this Court, while issuing rule, had directed that the present writ petition to be heard with Special Civil Application No.8632 of 2008. By the order dated 20.07.2017 this Court has allowed Special Civil Application No.8632 of 2008.

1. Heard learned advocate Mr.R.K.Mansuri for the petitioner and learned Assistant Government Pleader Mr.Hardik Mehta for the respondent State and its authorities.

2. The petitioner has prayed to setting aside the order dated 31.03.2006 passed by the respondent No.1-Deputy Collector, Stamp Duty Department, Himatnagar, Sabarkantha and the order dated 26.03.2008 passed by the respondent No.2-Chief Controller of Revenue Authority, Gandhinagar rejecting the appeal of the petitioner.

3. The facts in brief are that Dena Bank, Himatnagar had sanctioned a loan for an amount of Rs.11,40,00,000/- to the petitioner-Company. In that connection, a memorandum dated 07.03.2005 was executed between the bank and petitioner. On the said document, stamp duty was paid under Article 6(1)(a)(i) of Schedule-I of the Bombay Stamp Act, 1958. On the basis of circular dated 31.07.1993 issued by the Director, Gujarat State, Gandhinagar, the respondent No.1 took a view that the stamp duty was not proper and was deficit, therefore, issued a notice on 05.12.2005 for payment of deficit stamp duty.

3.1 According to the respondent-Deputy Collector, Stamp Duty, the total stamp duty payable was Rs.1,00,000/- and Rs.80,000/- towards sur-charge. It was stated that since the party had paid Rs.1,00,000/-, the balance of Rs.1,80,000/- was payable towards deficit stamp duty. The petitioner was therefore, required to pay the amount of Rs.1,80,000/- under the impugned order. The petitioner had also preferred an appeal against the order dated 31.03.2006, after depositing an amount of Rs.45,100/- in the State Bank of India, which appeal was rejected vide order dated 27.03.2008. It appears that the loan taken by the petitioner was also repaid. It is contended that the original document was not with the authority at the time of issuance of notice

and passing of the impugned order, which is in violation of Section 37B of the Act.

3.2 The Rule in the petition was issued on 22.08.2008 and the interim stay was granted by this court against recovery on the condition that the petitioner shall not transfer or alienate the property in question without express leave of the Court.

4. Learned AGP has submitted that the impugned orders do not require any interference as the same has been passed appropriately directing the petitioner to deposit the deficit stamp duty since the documents in question in the instrument is a mortgage deed and not the memorandum of title. He has further submitted that the respondent authority had acted at the behest of the auditor of the bank since he has raised the objection and forwarded the same to the respondent authority.

4.1 Two main submissions were canvassed on behalf of the petitioner for questioning the impugned orders. The first was that the document in question was not a deed of mortgage but it was a document, whereby only the title deeds relating to the property were deposited with the bank. It was submitted that it was a document confined to the transaction of deposit of title deeds. On the basis of these aspects, it was submitted that the

stamp duty, as required to be paid for the memorandum of title deed relating to the deposit of title deeds, pawn, pledge or hypothecation under Article 6 of the Schedule-I of the Bombay Stamp Act was payable and was accordingly paid. The second plank of submission was that the authorities had acted to pass the order regarding the stamp duty, without impounding the document in question, rendering the action without jurisdiction.

5. On both the aforesaid counts, the case of the petitioner could be countenanced. On going through the document dated 07.03.2005, which is titled as "*Memorandum of Deposit of Title Deeds*", it could be gathered that it provided for handing over to and deposit with the bank the title deeds of the property mentioned in the second schedule of the memorandum. The deposit was in connection with credit facility granted to the petitioner-Company.

5.1 This being the position emerging, the learned advocate for the petitioner could successfully rely on the decision of this court in the case of *Sumesh Prahladbhai Bakshi vs. State of Gujarat* being Special Civil Application No.15388 of 2013 decided on 04.07.2016, in which similar issue was dealt with and it was held that for attracting stamp duty in respect of document in the nature of Memorandum of Deposit of Title Deeds, Article

6 of Schedule-I of the Bombay Stamp Act, 1951 would apply. The authorities could not have adverted to Article 36 of Schedule-I for the purpose of levying stamp duty treating the documents to be a mortgaged deed. In the facts of this case, the decision of this court in ***Sumesh Prahladbhai Bakshi (supra)*** is required to be followed.

5.2 The second contention raised by the petitioner also merits acceptance which is that the authority under the Stamp Act, could not have exercised his powers unless there was an impounding of the document. A valid exercise of the powers under Section 33 read with Section 39 of the Act can only be done after the instrument is impounded. Mere securing copy of the instrument is no impounding but original document has to be taken into custody to make it an act of impounding. It is well settled that it is only after the instrument is lawfully impounded, the jurisdiction would vest in the stamp authorities to proceed under Sections 33 and 39 of the Act for the purpose of charging document and assessing the same to stamp duty.

6. The principle in respect of impounding of the document to be a condition precedent for exercise of powers is propounded in decision of this court in the case of *Bileshwar Industrial Estate Developers Private Limited Vs State of Gujarat,*

[2013 (2) GLR 1435], as also in decision of special bench of this Court in the case of the Chief Controlling Revenue Authority, Ahmedabad Vs Nutan Mills Limited. Further, in the decision of the Full Bench of this Court in the case of Narendra D. Mapara Vs Chief Controlling Authority [1994 (1) GLR 908 (FB) and in the case of Tata Tele Services Limited Vs State of Gujarat being Special Civil Application No.2064 of 2009 decided on 12.09.2014, it was reiterated that impounding of the instrument is *sine qua non* for exercise of the powers.

6.1 Following were also the observations on the same lines in the case of Panchal Trikamlal Khemchanddas Vs State of Gujarat being Special Civil Application No.6931 of 2008 and connected petitions decided as per the judgment dated 25.02.2016.

"It was the submission of learned advocate for the petitioner, which could not be brushed aside lightly, that the loan was repaid and the Title Deeds were returned to the petitioners. While returning the Title Deeds also, a document was executed, copy of which is placed on record. In the said agreement dated 25th September, 2003 whereunder physical possession of the Title Deeds were handed over back to the petitioners, it becomes evident that at the time when the stamp authorities sought to demand the deficit stamp duty, there was no possibility of physical availability of documents with the stamp authorities, much less taking custody thereof, which was an essential for valid impounding of the documents. It was submitted that unless there was an impounding in law, and the impounding pre-supposes taking physical custody of the document, the entire exercise of issuing notice and assessing the document

for deficit stamp duty was an illegal exercise. On this ground also, the petition deserves to be allowed."

7. In view of the foregoing reasons, discussion and position of law emerging, the petitioner is entitled to succeed. The order dated 31.03.2006 passed by the respondent No.1-Deputy Collector, Stamp Duty Department, Himatnagar, Sabarkantha and the order dated 26.03.2008 passed by the respondent No.2-Chief Controller of Revenue Authority, Gandhinagar are hereby set aside. Since the impugned orders are set aside, the petitioner shall be refunded the amount of Rs.45,100/-, after due verification. Rule is made absolute.

NVMEWADA

Sd/-
(A. S. SUPEHIA, J)

