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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

PUBLIC INTEREST LITIGATION NO. 54 OF 2011

CHANDRAKANT B. NANEKAR :- PETITIONER
VERSUS
THE STATE OF MAHARASHTRA
AND ANR. :- RESPONDENTS

Mr. Surel Shah, for the Petitioner.
Mr. Nitin Deshpande, AGP, for Respondent Nos. 1 and 2.

CORAM :- A. M. KHANWILKAR &
A. P. BHANGALE, JJ.

DATED :- MARCH 1, 2013

P.C. :-

The issue raised in this Petition is essentially about the erroneous stand taken by the Department in respect of the decision of the Division Bench of this Court in the case of *Prabha Laxman Ghate vs. Sub-Registrar and Collector of Stamps, Pune and anr.*¹. In that decision, the Court, while considering the agreement before it as to whether it amounts to conveyance or otherwise, took the view that since the Petitioner continued to be the owner of the land and the flats, by no stretch of imagination, such transaction can be considered as conveyance and made amenable to payment of Stamp Duty as such. Paragraph 4 of the said decision reads thus:

¹ AIR 2004 Bom. 267.

"4. The second contention of the Respondents is that the Agreement dated 10th April, 1989 is a conveyance. Conveyance in law would contemplate a transfer of the property or interest from one person to another. In the instant case, on a perusal of the agreement between the Petitioner and the developer, it is clear that there has been no transfer of property or interest in property by the Petitioner in favour of the developer. On the contrary, all that is provided is that the developer shall develop the property and reserve for the Petitioner herein two flats on the said property. The developer in turn was given the right to sell FSI in respect of other four flats. The Petitioner, therefore, continued to be the owner of the property and if and at all in respect of the other four flats, at the highest, on the conveyance being entered into with parties purchasing the flats, stamp duty would be payable. In so far as the two flats, which are reserved for the Petitioner on her own land, the Petitioner continued to be the owner of the land and the flats and, therefore, there was no question of the Petitioner being called upon to pay stamp duty.

Even in respect of the remaining four flats, the Petitioner has averred in Paragraph 5 of the Petition that the four flat purchasers had already paid their respective stamp duties for their flats as such there is no requirement of payment of stamp for the agreement. In so far as these averments are concerned, there is no specific denial by the Petitioner. Even otherwise at the highest, if the flat purchasers had not paid the stamp duty, it is only those other flats which have been transferred to the flat purchasers which will be assessable to stamp duty. It is clear that in so far as the Petitioner is concerned, the developer has only constructed a building for the Petitioner on the Petitioner's own land and there has been no transaction of interest in the property in favour of the developer nor would the agreement constitutes an instrument under which any right, title or interest has been transferred from the Petitioner to the developer. The very fact that Article 5(g-a) we introduced by the amendment would indicate that the legislature in order to bring such transactions, which otherwise were not covered under the provisions of the Act, as it then stood, thought to amend the Stamp Act and bring such transactions also within the ambit of the Stamps Act and subject to duty. Considering that we find that the second contention of the Respondents is also devoid of merit."

2) The Learned AGP, in all fairness, submits that the said decision is still holding the field and therefore, the Department cannot take any other view than the one expounded by this Court, in the fact situation similar to the decided case. He further submits that the Inspector General of Stamps will issue appropriate circular to all concerned to follow the legal position expounded by this Court in the abovesaid case. That circular be issued within two weeks from today.

3) In this view of the matter, nothing more is required to be done in the present Petition (PIL). The same is disposed of accordingly.

(A. P. BHANGALE, J.)

(A. M. KHANWILKAR, J.)