

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1968 OF 2021

J.P. Morgan Services India Pvt. Ltd. & Anr.Petitioners
v/s.		
Union of India & Ors.		...Respondents

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Mr. Venkatesh Dhond, Senior Counsel, Mr. Ankoosh Mehta, Ms. Sanika Gokhale, Mr. Aviral Sahai i/b M/s. Cyril Amarchand Mangaldas for the Petitioners.
Ms. Geeta R. Shastri, Additional GP for the Respondent/State.

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**CORAM : A.A. SAYED &
MADHAV JAMDAR, JJ.**

DATED : 02 FEBRUARY2021

JUDGMENT (per A.A. Sayed, J.)

1 By this Petition, the Petitioners have impugned the communication dated 17 December 2020, whereby Respondent No.3-Joint Sub-Registrar of Assurances has refused to register the 'Agreement to License' executed between the Petitioners. Respondent No.3 has declined registration essentially on the ground that the time-period of 4 months for the registration of the Agreement under section 23 of the Registration Act, 1908, has elapsed. The Petitioners have also prayed for an order directing Respondent No.3 to accept Agreement to License for registration. According to the Petitioners, Respondent No.3 has ignored and/or failed to consider that the delay in the presentation of the Agreement to License was solely attributable to delay of 319 days on the part of Respondent No.4-

Collector of Stamps in adjudicating the Agreement to License for the purpose of stamp duty.

2. Both the Petitioners are Companies who had executed an 'Agreement to License' (hereinafter referred to as 'the Agreement') dated 5 December 2019 whereby the Petitioner No.2 has agreed to license certain premises viz. Blocks B-9, B-10 and B-11 of Nirlon Knowledge Park, Western Express Highway, Goregaon (East), Mumbai – 400 063 to the Petitioner No.1. Under clause 27 of the Agreement the Petitioner No.1 is required to pay the stamp duty and registration charges.

3 On 12 December 2019, the Petitioner No.1 filed an Application before the Respondent No.4-Collector of Stamps for adjudication of stamp duty payable on the Agreement under section 31 of the Maharashtra Stamp Act, 1958 (hereinafter referred to as "the Stamp Act"). According to the Petitioners, despite following up with the Respondent No.4, the adjudication of stamp duty payable was not completed by Respondent No.4 till 26 October 2020. In the meantime, due to outbreak of Covid-19 pandemic a nation-wide lockdown was imposed from 23 March 2020 and the offices of the Respondent Nos.3 and 4 were shut. Meanwhile, on 4 April 2020 the four month period envisaged under section 23 of the Stamp Act for registration of the Agreement elapsed.

4 On 26 October 2020 after a delay of more than 10 months, the Respondent No.4-Collector of Stamps issued a Notice of Adjudication and Demand intimating the Petitioner No.1 that the stamp duty payable on the Agreement had been adjudicated/determined at Rs.39,07,89,725/-. The entire stamp duty amount has accordingly been paid by the Petitioner No.1 on 4 December 2020 which is well within the statutory period of 60 days prescribed under section 31(4) of the Stamp Act. According to the Petitioner, when the Petitioner No.1 approached the Respondent No.3-Joint Sub-Registrar of Assurance to lodge the Agreement for registration, it was informed that it will not be possible to register the Agreement as the period for registration under section 23 of the Registration Act, 1908 i.e. four months from the date of execution of the Agreement had expired. According to the Petitioners, they were informed that no circumstances existed to exercise discretion by the Registrar under the proviso to section 25 of the Registration Act, 1908 whereunder a further period of four months, in case of an urgent necessity or unavoidable circumstances, is provided.

5 On 4 December 2020 the Petitioner No.1 addressed a letter to the Respondent No.3 pointing out that the delay was caused by the Respondent No.4 in issuance of the Notice of Adjudication and Demand which could not be attributed to the Petitioner No.1, which letter was responded to by the Respondent No.3 by a reply stating that it would not be

possible to accept the Agreement as it was executed on 5 December 2019. A tabular statement showing the date, particulars and the time taken, is set out hereinbelow:

Sr.No	Particulars	Date	Time taken (in days)
01	Execution of the Agreement to License	December 5, 2019	-
02	Filing of application for adjudication of stamp duty on the Agreement to License with Respondent No.4.	December 12, 2019	07
03	Pandemic Notification issued	March 23, 2020	109
04	Period of 4 months for Registration expired	April 4, 2020	121
05	Issuance of the Notice of Adjudication and Demand	October 26, 2020	326
06	Receipt of the Notice of Adjudication and Demand	October 26, 2020	326
07	Payment of Stamp Duty	December 4, 2020	365
08	Application for registration of the Agreement to License	December 4, 2020	365

6 The question which arises for consideration is whether the time period taken by the Respondent No.4 for adjudication of stamp duty (i.e. 319 days) ought to be excluded while calculating the time period of four months as prescribed in sections 23 of the Registration Act. Sections 23 of the Registration Act reads as follows:

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

7 Two Affidavits-in-Reply have been filed on behalf of the State Government; one is by the Respondent No.4-Collector of Stamps and the other by the Respondent No.3-Joint Sub-Registrar of Assurances. In the Affidavit-in-Reply of the Respondent No.4-Collector of Stamps, it is stated in paragraphs 2 and 3 as follows:

“2. Without prejudice to what is stated above, I say that the document known as ‘Agreement to license’ was executed between the Petitioner Nos.1 and 2 on 05.12.2019. I say that on 12.12.2019 Mr. Shiish Wankhede, Global Real Estate India Private Limited made an Application under section 31 of Maharashtra Stamp Act, 1958 with Respondent No.4, the Collector of Stamps for adjudication of stamp duty payable on the aforesaid document. The copy of said Application is annexed as Exhibit B at Page No.484 to the Petition. I say that Respondent No.4 issued Notice dated 16.10.2020. I say that the Respondent No.4 in proceeding under Section 31 of Maharashtra Stamp Act, 1958 by adjudication Order dated 16.10.2020 in Adjudication Case No.ADJ/1100902/1542/19 informed J.P. Morgan Services India Private Limited that a sum of Rs.39,07,89,725/- was payable as stamp duty on the afore stated document as per Article 36 read

with Article 25(9b) of Schedule I of Maharashtra Stamp Act, 1958. The copy of said adjudication Order dated 16.10.2020 was served on 26.10.2020. I say that Interim Order is annexed as Exhibit "C" at page No.476 to the Petition. The stamp duty of Rs.39,07,89,725/- was paid on 01.12.2020 and accordingly on 03.12.2020 an endorsement of issuance of certificate under section 32 of Maharashtra Stamp Act was done on the said document.

3. I say that the period for completion taken for the process of adjudication was of 10 months due to COVID-19 pandemic situation, the office work was started on regular basis in the month of June-2020 and due to huge number of applications."

8 In para 9 to 11 of the Affidavit-in-Reply of the Joint Sub Registrar of Assurances, it is stated as follows:

"9. I say that the relevant dates in the instance matter are as under:

(i) The document is executed on 05.12.2019.

(ii) The Application under section 31 of the Maharashtra Stamp Act, 1908 to the Collector of Stamp is made on 12.12.2019 as stated in the Affidavit of the Respondent No.4.

(iv) The Order of adjudication under section 31 of the Maharashtra Stamp Act, 1908 is passed on 16.10.2020 and was served on 26.10.2020 as stated in the Affidavit of the Respondent No.4.

(v) The payment of stamp duty of Rs.39,07,89,725/- was made on 01.12.2020 as stated in the Affidavit of the Respondent No.4.

(vi) I say that the certificate under section 32 of the Maharashtra Stamp Act was issued on 03.12.2020 as stated in the Affidavit of the Respondent No.4.

(vii) The Petitioner No.1 made Application to Respondent No.3 by letter dated 04.12.2020 with copy of document to provide date and time for registration.

(viii) The said letter dated 04.12.2020 of the Petitioner No.1 was received by Respondent No.3 on 14.12.2020.

(ix) The Respondent No.3 by letter dated 17.12.2020 informed the Petitioner that the period of presentation of document for registration was over as the document was executed on 05.12.2019, and therefore the Registration process of said document cannot be done.

10. I say that in view of the aforesaid facts the relevant dates after excluding the time taken for adjudication i.e. 10 months 17 days period then the document for registration would be one months and twenty seven days till 14.12.2020 and would be three months and fifteen days till 02.02.2021.

11. I say that the Hon'ble Court, in view of the judgments as quoted above and relied by the Petitioner in the above case can pass appropriate Orders regarding Registration of said document as per the provisions of Law."

9 It is thus an admitted position that the process of adjudication of the Agreement itself took about 319 days. It is also an admitted position that if the time for adjudication (i.e. 319 days) is excluded, the time for

presentation of the Agreement for registration would be within four months as envisaged in section 23 of the Registration Act.

10 Learned Senior Counsel for the Petitioners has placed reliance on the following judgments of this Court:

- i) Accord Nidhi Developers and Anr. vs. The State of Maharashtra and Ors., 2016 SCC OnLine Bom 1572 of Division Bench of this Court;
- ii) Nestor Builders & Developers Pvt. Ltd. vs. State of Maharashtra, 2015 SCC OnLine Bom 3480, Division Bench of this Court;
- iii) Snehanjali Electronics and Trading Private Limited vs. Inspector of General of Registration and Controller of Stamps, 2017 SCC OnLine Bom 6755, Division Bench of this Court;
- iv) Tardeo Properties Private Ltd. and Another vs. State of Maharashtra and Another, 2015 SCC OnLine Bom 6544, Division Bench of this Court ;
- v) Akshay Vitta Management and Investment Consultancy Services Pvt. Ltd. and others vs. State of Maharashtra and others, 2016(2) Mh.L.J. 395, Single Judge of this Court.

11 In **Nestor Builders & Developers Pvt. Ltd. vs. State of Maharashtra, 2015 SCC OnLine Bom 3480**, the Division Bench of this Court in paras 10 and 11 observed as under:

“10. 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 documents registered for no fault on their part.”

“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.”

12 In **Accord Nidhi Developers and Anr. vs. The State of Maharashtra and Ors., 2016 SCC OnLine Bom 1572**, the Division Bench of this Court following the aforesaid judgment in **Nestor Builders & Developers Pvt. Ltd. vs. State of Maharashtra, 2015 SCC OnLine Bom 3480** observed as under:

“8. We are of the view that no hairsplitting or distinction of the principle laid down by this reported judgment is now permissible. For, this Court has elaborately discussed the rival contentions, the ambit and scope of the legal provisions and held that if the delay was purely attributable to a distinct authority, namely, the Collector of stamps under the Maharashtra Stamps Act, 1958 and who took time to adjudicate the stamp duty and

pass an order, then, that period ought to be excluded and the benefit thereof should be extended to parties like the Petitioners.

9. Hence, the time spent from the date of presentation before the registration authority and the date of receipt of the adjudication order was liable to be excluded. Even on 4th November, 2015 the authority was approached. It may be that if one goes by mathematical calculation that there was a marginal delay, however, that was capable of being condoned and relying on the principle. Eventually these are acts of public bodies and public officials. Parties like the Petitioners cannot be expected to control them. If they take their time in adjudicating matters and passing an order and thereafter communicating the same to the parties like the Petitioners, then, such instance and a rigid one would be fatal and the interest of parties would be adversely affected in the absence of registration. For all these reasons, we are not in agreement with Ms. Kantharia that the point is not covered by this Court's judgment referred above.”

The other judgments cited across the bar also support the case of the Petitioners.

13 The issue raised in the Petition is squarely covered by the aforesaid judgments of this Court. The delay of 319 days on part of the Respondent No.4 in carrying out the adjudication process is required to be excluded in reckoning the period of four months from the date of execution of the Agreement to the date of presentation of the Agreement for

registration, as prescribed in section 23 of the Registration Act. If this period of 319 days is excluded, the presentation of the Agreement for all intent and purposes would be well within the statutory period of four months.

14 In light of the above, the Respondent No.3 is directed to accept the Agreement to License dated 5 December 2019 when presented by the Petitioners for its registration under the provisions of the Registration Act. We record the statement of the learned Senior Counsel that the Agreement to License shall be presented by the Petitioner for registration within one week from the date this order is uploaded.

15 The Writ Petition is allowed in the aforesaid terms.

(MADHAV JAMDAR, J.)

(A.A. SAYED, J.)