

INFORMATION MEMORANDUM :

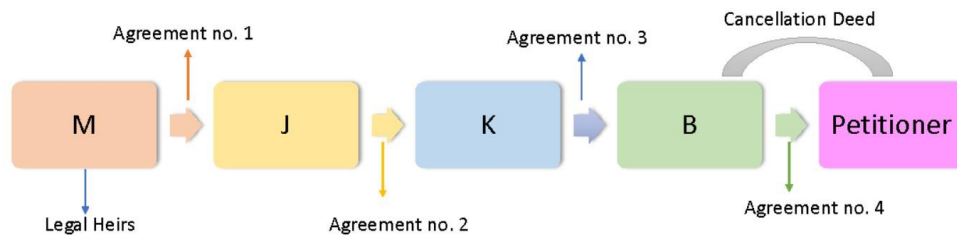
If as per contract a party has to fulfil several conditions before handing over possession of an immovable property then such contract cannot be termed as conveyance agreement..

Vikrant Vikas Raikar v. State of Maharashtra and Others.

Civil Appeal no. 6234 of 2018 (HC-BOM)

Order dated 05/03/2020

An "agreement for sale" is subject to stamp duty or not would depend upon facts and conditions mentioned in that agreement

**FACTS OF THE CASE :**

M was allotted a plot under 12.5% GES by CIDCO on 11/05/2004. Prior to allotment of plot one J had entered into an agreement dated 26/07/2000 (Agreement no. 1) with M for acquiring all rights, title and interest including development rights in respect of plot to be allotted to M.

Thereafter, J entered into an agreement dated 09/04/2001 (Agreement no. 2) with

one K by which rights under Agreement no. 1 were assigned to K. In the meantime, M died and her heirs applied for heirship certificate. Subsequently J and K transferred their rights in Agreement no. 1 and 2 respectively in favour of B vide agreement dated 04/03/2006 (Agreement no. 3).

B transferred its right in Agreement 3 in favour of Petitioner vide agreement dated 16/03/2006 (Agreement 4). The said

Agreement no. 4 provided for a requirement of execution of a tripartite agreement between the heirs of M, CIDCO and B to perfect title of B before it could be

transferred to Petitioner. The Petitioner paid advance for the said transaction.

Conditions of Agreement no. 4 could not be complied with and vide letter dated 27/02/2008 (Cancellation Document), B cancelled Agreement no. 4. In the said Cancellation Document, B agreed to refund the advance along with compensation.

The Petitioners filed commercial suit against B for recovery of refund before the Commercial Court. During the course of hearing Commercial court found that the Cancellation Document is not stamped. Accordingly, Commercial Court sent the Cancellation Document for adjudication to the Collector under S.33 of the Bombay Stamp Act, 1958 for stamping. The Collector valued the said plot at Rs.478,00,000/- and levied stamp duty of Rs.23,92,000/- along with penalty Rs.57,88,700/- on Agreement no. 4.

PROCEEDINGS BEFORE HIGH COURT:

The Petitioner challenged the said order levying stamp duty before the High Court.

PETITIONER'S SUBMISSION : It was not open for the Collector to impound or levy deficit stamp duty and penalty on Agreement no. 4 for the following grounds:

- (i) Court has referred Cancellation Document for adjudication and not Agreement no. 4 ;
- (ii) Agreement no. 4 stands cancelled by issuance of Cancellation Document ;
- (iii) Agreement no. 4 cannot be said to be conveyance for the reason that it contemplates a further agreement being executed between parties after transferor / assignee's obtaining possession from CIDCO and heirs of M obtaining heirship certificate.

RESPONDENT'S CONTENTION :

- (i) Agreement no. 4 indicate an agreement to deliver possession ;
- (ii) The Collector had independent powers to impound Agreement no. 4 and to levy deficit stamp duty and penalty ;
- (iii) Mere cancellation of Agreement no. 4 cannot wipe out the liability to pay deficit stamp duty and penalty (Nanik Daryani v. Dy. Inspector General of Registration 2008 SCC Online Bom 310 ; Veena Jain v.

State of Maharashtra AIR 1999 SC 807).

QUESTION BEFORE THE HIGH COURT:

Whether Agreement no. 4 is a conveyance documents for the purpose of levy of stamp duty within the meaning of Explanation I to Article 25 ?

RULE :

Explanation I to Article 25 reads as under :
"For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred or agreed to be transferred to the purchaser before the execution, or at the time of execution or after the execution of, such agreement, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly".

ANALYSIS OF HIGH COURT:

(1) Subsequent, cancellation of Agreement no. 4 will not absolve the Petitioner from payment of stamp duty leviable on Agreement no. 4 if it otherwise is deemed to be a conveyance.

- (2) The contention of the Petitioner to the effect that as Cancellation Document was referred to the Collector, the Collector could not have impounded Agreement no. 4 is not acceptable.
- (3) The question whether a particular agreement to sell any immovable property amounts to a conveyance or not would depend on facts and circumstances of each case.
- (4) In the present case, there were several formalities and conditions to be satisfied for the entire transaction to materialise :
- (i) Obtain heirship certificate ;
 - (ii) Get lease agreement executed with CIDCO ;
 - (iii) Handover the possession of the said plot after obtaining possession from CIDCO ;
 - (iv) Get Tripartite Agreement executed between CIDCO, Heirs and transferee / assignees.

HIGH COURT HELD:

Agreement no. 4 cannot be said to be a "conveyance" within the meaning of Explanation to Article 25 of the Bombay Stamp Act as the stage of conveyance was

dependent upon various conditions which were not fulfilled.

Key Principles :

Explanation I to Article 25 of Maharashtra Stamp Act will not apply where:

- a) The transaction is dependent upon the fulfilment of various pre conditions and;
- b) Another document is required to be executed to consummate the transaction.

ACELEGAL ANALYSIS :

The amendment to Article 25 in the Maharashtra Stamp Act has been made so as to try and collect the stamp duty before the transaction of conveyance of property is finally completed. Accordingly, the legislature has added the words to the effect that where possession is transferred even after the execution of such agreement, it would be liable to stamp duty. The said amendments have been made to overcome the past judicial pronouncements which did not permit levy of stamp duty on an agreement to lease.

The courts had held that stamp duty is payable only on the document through which the possession is actually transferred. Hence, amendment was made to the Article 25 by which stamp duty was payable even if the possession was to be transferred subsequently on the basis of such document.

The above Article is a deeming fiction which deems an instrument of conveyance even if the conveyance is not taking place through the said document. However, the above amendment created its own set of problems. The stamp authorities in the zeal to collect the revenue for the state started insisting on stamping of even those agreements which were conditional and contingent and in the nature of an understanding. These documents do not by themselves create any interest in the property or do not lead to conveyance.

Therefore, the present decision by the Mumbai High Court clarifying that such conditional and contingent agreements need not be stamped, will go a long way in resolving the conflict. It shall bring in relief to a large number of parties who face notices and demands for stamp duty even on those documents which are inchoate.

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