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"STATE MUST ACT AS AN HONEST PERSON AND NOT RELY ON TECHNICALITIES  
TO DEFEND ITSELF"

By

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1. In a recent judgement passed by the Division Bench of the Supreme Court of India comprising of Their Lordships the Hon'ble Mr. Justice B.R. Gavai and the Hon'ble Mr. Justice Prashant Kumar Mishra in the case of (*Bano Saiyed Parwaz Vs. Chief Controlling Revenue Authority & Ors.*) reported in 2024(4) Bom.C.R. 374, the Apex Court held that the refund of stamp duty should not be denied merely on technicalities. Whilst deciding the case, Apex Court relied heavily on the observations made over 70 years ago in the matter of (*Firm Kaluram Sitaram Vs. Dominion of India*), A.I.R. 1954 Bom.50. The Learned Chief Justice Shri M.C. Chagla (as he then was) in his distinctive style had held that - "...we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent judges, as an honest person."

2. In the matter before Apex Court, the Appellant had agreed to purchase a property at Kurla, Mumbai. A Deed of Conveyance was prepared and sent for adjudication for payment of stamp duty and which the Appellant paid Rs. 25,34,350/- on 13<sup>th</sup> May, 2014. The Appellant then learnt that the Vendor had played a fraud on the Appellant as he had earlier sold the same property to a third party in 1992. Although public notice was given, however, nobody came forward to object. Appellant thus, decided to cancel the transaction. However, the Vendor was not available, which compelled the Appellant to file a police complaint. Cancellation Deed was subsequently executed on 13<sup>th</sup> November, 2014 by the Vendor. However, prior thereto, on 22<sup>nd</sup> October, 2014, the Appellant applied for refund of stamp duty under Section 48 of the Act. The Appellant's application was rejected by the Chief Controlling Revenue Authority on the ground that "it was filed beyond the period of limitation".

3. On behalf of the Appellant, Section 47(c)(1) and (5) of the Maharashtra Stamp Act, 1958 and Rules 21 and 22A of the Bombay Stamp Rules, 1939 were pressed into services. It was argued on behalf the Appellant that in view of aforesaid sections, the law of refund envisaged 2 separate and distinctive stages (i) making of application for refund within 6 months; and (ii) holding enquiry and leading evidence as per Rules to satisfy the Collector.

4. The Apex Court, after considering the rival submissions held that the Appellant being a *bona fide* purchaser was a victim of fraud and although the stamp duty of Rs. 25,34,350/- was paid under Conveyance Deed it was not lodged in view of the fraud coming to light and that on 22<sup>nd</sup> October, 2014, the Appellant had applied for refund from the Authorities. That only on the intervention of the Police, the Vendor came forward and a Cancellation Deed was executed on 13<sup>th</sup> November, 2014. The Apex Court thus held that there was no laxity in the approach of the Appellant to seek the refund. The Apex Court observed and whilst submitting the online Application, there was no caution to the Appellant that all documents and materials are required to be submitted for satisfaction of the Collector and that Sections 47 and 48 of the Act envisage only for application for release of refund to be made within 6 months from date of instrument, which was done by the Appellant. The Apex Court relied heavily upon the observation of Shri M.C.



Chagla C.J. (as he then was) in the case of *Firm Kaluram Sitaram Vs. Dominion of India*, which was cited with approval in (*Committee-GFIL Vs. Libra Buildtech Private Limited & Ors.*) 2015 B.C.I.(soft) 563(S.C.) : (2015)16 S.C.C. 31. The Apex Court also reiterated the settled position of law that the period of expiry of limitation prescribed under any law may bar the remedy but not the right. The Apex Court held that the Appellant was pursuing her case as per remedies available to her and therefore, refund of stamp duty should not be denied on technicalities as in the present case on learning of fraud played on her, she had proceeded to cancel the conveyance.

5. The aforesaid quote that the State whilst dealing with the citizen should not ordinarily rely on technicalities and if the State is satisfied that the case of the citizen is a just one it must act as a honest person even though the State may have legal defences upon to it has been reiterated and relied upon by the Supreme Court of India in various judicial pronouncements. In the case of (*Netram Sahu Vs. State of Chhattisgarh and Anr.*) 2018(5) S.C.C. 430, the Appellant had put in 25 years and 3 months in continuous service out of which 22 years were as a daily wager and 3 years as a regular employee. The benefit to gratuity was denied. The Apex Court relying upon the aforesaid decision and observation made by Shri M.C. Chagla C.J. (as he then was) rejected the opposition by the State on technical grounds. In the case of (*Balwantsingh Vs. Commissioner of Police and ors.*), 2015(4) S.C.C. 801, the Supreme Court of India whilst dealing with the case of citizens; right to peaceful living in one's home and who wanted protection against the noise pollution and other forms of nuisance like frequent *dharanas*, procession and gatherings by political and non-political parties in proximity of his house and from use of loudspeakers, the Supreme Court of India applauded the State, who did not contest the Appellant's complaint by raising technical/legal grounds and on the contrary had come out with remedial suggestions to deal with the situation. In that context, the Supreme Court of India relied upon the observations by Shri M.C. Chagla, C.J. (as he then was) whilst deciding the case between citizen on the one hand and the State on the other and made the above observations. In the case of (*Sureshkumar Wadhwa Vs. State of Madhya Pradesh and ors.*) 2017(16) S.C.C. 757, in a case where the Appellant being declared the highest bidder had deposited the security amount of Rs. 3,00,000/- sought its refund as the Appellant declined to accept "special terms and conditions", which were not communicated to the bidders before the auction proceedings. The Government had sought to forfeit the security deposit. The Supreme Court of India observed and held that it was expected from the State to act as honest person whilst dealing with the individual citizen and in all fairness should have returned the security deposit amount without compelling him to take recourse to legal proceedings. In this contest, the Supreme Court of India relied upon the observations of Shri M.C. Chagla C.J. (as he then was) and held that they were in respectful Agreement with the observations made by Shri M.C. Chagla C.J. (as he then was). Thus, it is seen that the Supreme Court of India time and again expressed and held against the State and in that context has relied upon the above observations made by Shri M.C. Chagla C.J. (as he then was), which have stood the test of time and in good stead and aided the citizens of our country to prevail upon the State from time to time.

6. The judgement of the Supreme Court of India as discussed herein will come in aid of various such persons, who have in good faith paid stamp duty on Conveyance Deed and/or Sale Agreements and thereafter been a victim of fraud and thus, are compelled to cancel the Deed. As is held in a long line of cases, the State whilst dealing with the citizen, should not ordinarily rely on technicalities and if satisfied, that the citizen has a just case though legal defences may be open to the State, it must act as an honest person and do justice instead of compelling the citizen to knock the door of Courts.