

Pawan Kishore Harlalka Vs State Of West Bengal And Others

Court: Calcutta High Court

Date of Decision: June 11, 2020

Acts Referred: West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001 " Rule 2(1), 3, 3(2), 3(8), 3(9), 4(1), 5, 10(1)

Indian Stamp Act, 1899 " Section 27(2)(1), 29, 47A(2), 47(5), 47(6), 47(8)(5), 47A, 47A(3), 47A(5), 47B, 47C

Hon'ble Judges: Sabyasachi Bhattacharyya, J

Bench: Single Bench

Advocate: Amritam Mandal, Swati Agarwal, Mahendra Prasad Gupta, Soma Mal, Antara Panja

Final Decision: Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The grievance of the writ petitioner is that the petitioner presented a sale deed for registration to the respondent no.3 (Additional Registrar of

Assurances-II) on June 27, 2003. The petitioner alleges that, after completion of all formalities regarding registration, the office of the respondent no.3

had duly issued an IGR Receipt bearing no. R278249 dated June 27, 2003, recording the deed number as 04851. After the expiry of one month, which

is the usual time taken for completion of formalities regarding final registration, the petitioner approached the office of the respondent no.3 for

obtaining the original deed after registration. However, the said office did not hand over such original to the petitioner. Even after visiting the office of

the respondent no.3 several times, it is alleged that the original sale deed was never made available to the petitioner. According to the petitioner,

whenever the petitioner or his representatives went for that purpose to the office of the respondent no.3, they were told that, due to inadvertence, the

said sale deed was not uploaded by scanning in its regular course of business and such insertion can only be done by the expert of the respondent no.4,

that is, the National Informatics Centre (NIC). After waiting for an inordinately long period, your petitioner was constrained to issue a demand for

justice through his advocate on June 14, 2019, which is annexed as annexure P/2 at page 17 of the writ petition.

2. Yet, the original registered sale deed has not been provided till date by the office of the respondent no.3, compelling the petitioner to file the present

writ petition.

3. Learned counsel for the petitioner, apart from reiterating the allegations made in the writ petition, submits that the IGR supplied to the petitioner,

annexed as annexure P/1 at page 15 of the writ petition, indicates that all formalities relating to registration were completed on that date, which is

reflected from the IGR itself. Even the deed number was allocated and referred to in the IGR, as 04851.

4. In the affidavit-in-reply, another deed, allegedly executed and registered on the same date with similar valuation is annexed (page 10 thereof). In the

case of the said other deed, there was also no deficit and the same was smoothly executed and registered and the original was handed over to the

petitioner. It is argued that, had there been any deficit in paying stamp duty and registration fee, the letter "Pending", signifying "Pending", would

find place in the IGR, which is not reflected from the IGR of the present deed-in-question.

5. Learned counsel for the petitioner further submits that, after the filing of the writ and after a lapse of about 18 years, the petitioner was intimated by

the registering authorities, to cover up their own laches, that there was deficit stamp duty payable by the petitioner on the deed-in-question. However,

no notice under Section 47A(2) of the Indian Stamp Act, 1899 (as amended in West Bengal) (hereinafter referred to as "the Stamp Act") was

ever served on the petitioner, hence, depriving the petitioner of any opportunity of disputing such amount. Neither was anything pleaded in the

affidavit-in-opposition of the respondent nos.2 and 3 about any notice being given to the petitioner either under Section 47A(2) or 47A(5) of the Stamp

Act.

6. In the absence of any such notice, it is argued, there could not be any declaration as to there being deficit court fees.

7. Moreover, since the IGR was issued, giving the serial number of the deed, there was no scope for further deficit of stamp duty, since the IGR itself

did not contain any note as to the pendency of the registration.

8. Hence, it is argued by the petitioner that the respondents be directed to complete all statutory formalities for registration of the deed dated June 27,

2003 (IGR No. R278249) and to hand over the original sale deed to the petitioner.

9. Learned counsel appearing for the respondent authorities submits that the petitioner had lost his chance of disputing the deficit stamp duty after 18

years of such assessment. As such, the writ petition should be dismissed on such ground alone.

10. It is further submitted on behalf of the respondent authorities that the appropriate remedy of the petitioner, if he was aggrieved with the

assessment of deficit stamp duty, was to approach the appellate authority, as contemplated in Section 47B of the Stamp Act. Moreover, it is submitted

by the respondent authorities that the allegations made in the writ petition requires a detailed hearing on facts and law and evidence to substantiate

those. This, according to the respondent authorities, is beyond the scope of this court under its writ jurisdiction.

11. Upon considering the submissions of both sides, it is evident that an IGR Receipt was issued to the petitioner on June 27, 2003 itself, without any

indication that the registration of the same was pending. Moreover, the serial number of the deed-in-question was also indicated in the IGR.

12. However, the issuance of the IGR and mention of the serial number of the deed may not conclusively prove that the registration was complete on

such date itself. Unlike the other document, which was registered on the same day, the original of the deed-in-question was not returned to the

petitioner. Mere issuance of the IGR and indication of the serial number of the deed therein is not sufficient, ipso facto, to prove that the registration

was completed on the said date. Such issuance can at best prove the presentation of the deed for registration on the said date. Also, mere non-

mention of the letter 'P' (Pending), by itself, is not proof enough to show the completion of registration.

13. However, it is not pleaded anywhere in the affidavit-in-opposition that the respondent no.3 ever communicated to the petitioner regarding the

alleged deficiency of the stamp duty. Neither has the issuance of any notice under Section 47A [sub-section (2) or sub-section (5) thereof] been

pleaded or proved, even prima facie, by the respondents; nor was any notice under Rule 3(2) or Rule 5 of the West Bengal Stamp (Prevention of

Undervaluation of Instruments) Rules, 2001 (hereinafter referred to as "the Prevention Rules") was pleaded, let alone being prima facie proved

by the respondent authorities.

14. In this context, a perusal of Sections 47A and 47B (as amended) of the Stamp Act and Rules 3 and 5 of the Prevention Rules is necessary. Those

are set out below:

"Indian Stamp Act, 1899:-

47A. Instruments of conveyance, etc., undervalued, how to be dealt with " (1) Where the registering officer appointed under the

Registration Act, 1908, has, while registering any instrument of -

(a) agreement or memorandum of any agreement relating to a sale or lease-cum-sale of immovable property,

(b) conveyance,

(c) exchange of property,

(d) gift,

(e) partition,

(f) power-of-attorney-

(i) when given for consideration to sell any immovable property, or

(ii) in such other cases referred to in article 48 of Schedule IA, where proper stamp duty is payable on the basis of market value,

(g) settlement,

(ga) lease, including a under-lease or a sub-lease and any agreement to let or sublet for a period exceeding thirty years,

(h) transfer of lease by way of assignment, reason to believe that the market value of the property which is the subject-matter of any such

instrument has not been truly set forth in the instrument presented for registration, he may, after receiving such instrument, ascertain the

market value of the property which is the subject-matter of such instrument in the manner prescribed and compute the proper stamp duty

chargeable on the market value so ascertained and thereafter he shall, notwithstanding anything to the contrary contained in the

Registration Act, 1908, in so far as it relates to registration, keep registration of such instrument in abeyance till the condition referred to in

sub-section (2) or sub-section (7), as the case may be, is fulfilled by the concerned person.

(2) Where the market value of the property which is the subject-matter of an instrument has been ascertained and the proper duty

chargeable thereon has been computed under sub-section (1), the registering officer shall, in the manner prescribed, send to the concerned

person a notice calling upon him to make payment of the deficit amount of stamp duty within such time as may be prescribed, and if such

person makes payment of such deficit amount of stamp duty in the prescribed manner, the registering officer shall register the instrument.

(3) Where the concerned person does not make payment of the stamp duty as required under sub-section (2) within the time specified in the

notice issued under that sub-section, the registering authority shall refer the matter to such authority and in such manner as may be

prescribed for determination of the market value of the property which is the subject-matter of such instrument and the proper stamp duty

payable thereon:

Provided that if the concerned person, before receipt of any communication from such authority intimating him the market value of the

property which is the subject-matter of the instrument and the proper stamp duty payable thereon determined by such authority, makes

payment of the deficit amount of stamp duty as ascertained by the registering officer, such registering officer shall accept such payment,

register the instrument and intimate the matter to such authority in the manner prescribed.

(4) After the registering officer issues a notice under sub-section (2) in respect of any instrument referred to in clause (b), clause (c), clause

(d), clause (e), clause (g), or clause (ga) of sub-section (1), which has been presented before him for registration prior to the coming into

force of the Indian Stamp (West Bengal Amendment) Act, 1998, and if the concerned person makes payment of the deficit amount of stamp

duty within the time specified in such notice, he shall register such instrument:

Provided that where such instrument has been so registered under this sub-section, any reference that has been made to the authority

referred to in sub-section (3) in respect of determination of the market value of the property which is the subject-matter of the instrument

shall be deemed to have been withdrawn and the registering officer shall intimate the matter to such authority in such manner as may be

prescribed.

(5) On receipt of a reference under sub-section (3), the authority specified under that sub-section shall, after giving the parties concerned

in respect of the instrument referred to in sub-section

(1) a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed, determine the market value

of the property which is the subject-matter of the instrument and the proper stamp duty payable thereon, and shall thereafter issue a notice

in the manner prescribed directing the concerned person to make payment of such deficit amount of stamp duty within such time as may be

prescribed.

(6) Where the concerned person does not make payment of the deficit amount of stamp duty within the time specified in the notice issued

under sub-section (5), such person shall be liable to pay an interest at the rate of one per centum for each British Calendar month of default

from the first day of such month following the month in which such person was required to make payment of such deficit amount of stamp

duty under sub-section (5) up to the month preceding the month of full payment of such duty, subject to a maximum of rupees twenty

thousand.

(7) Where the concerned person makes payment, in the manner prescribed, of the deficit amount of stamp duty determined under sub-section

(5) together with interest, if any, charged under sub-section (6), the registering officer shall, upon furnishing by the concerned person a

copy of receipted challan or bank draft in proof of such payment, register the instrument within such time as may be prescribed.

(8) (a) The authority referred to in sub-section (3) may, on receipt of any information or otherwise, suo motu within five years from the date

of registration of any instrument, where such instrument was registered on the basis of the market value which was set forth in the

instrument or which was ascertained by the registering officer referred to in sub-section (1), call for and examine any such instrument and

any other document relating thereto for the purpose of satisfying himself as to the correctness of the market value of the property which is

the subject-matter of such instrument and which was set forth in the instrument or which was ascertained under sub-section (2) and the

stamp duty payable thereon.

(b) If, after such examination, the authority referred to in clause (a) has reasons to believe that the market value of the property which is the

subject-matter of such instrument has not been truly set forth in the instrument or correctly ascertained under sub-section (2), he may, after

giving the parties concerned in the instrument a reasonable opportunity of being heard, determine the market value of the property which is

the subject-matter of such instrument and the amount of stamp duty chargeable thereon in the manner referred to in sub-section (5), and the

difference in the amount of stamp duty, if any, between the stamp duty so determined by him and the stamp duty already paid by the

concerned person shall be required to be paid by him in the prescribed manner:

Provided that nothing in this sub-section shall apply to -

(a) any instrument referred to in clause (b), clause (c), clause (d), clause (e), clause (g), or clause (ga) of sub-section (1) registered before

the 31st day of January, 1994, or

(b) any instrument referred to in clause (a), clause (f), or clause (h) of sub-section (1) registered before the coming into force of the Indian

Stamp (West Bengal Amendment) Act, 1998.

(9) Notwithstanding anything contained elsewhere in this section or section 47B, no interest shall be payable in such cases, under such

circumstances, and subject to such conditions, if any, as may be prescribed.

Explanation. - For the purposes of this section, section 47B and section 47C, "concerned person" shall mean the person who is liable

to bear the stamp duty under section 29.

47B. Appeal (1) Any concerned person aggrieved by any order passed under sub-section (5), or sub-section (8) of section 47A

determining the market value may, in the prescribed manner, prefer an appeal to such appellate authority as may be prescribed within sixty

days from the date of receipt of such order or such further period as may be allowed by the said authority for cause shown to his

satisfaction.

(2) Subject to such rules or procedure as may be prescribed, the appellate authority shall dispose of any appeal preferred before him under

sub-section (1) in the prescribed manner.

(3) Where the appellate authority modifies the amount of stamp duty determined under sub-section (5), or sub-section (8) of section 47A and

the modified amount of such stamp duty is higher than the stamp duty already paid by the concerned person, he shall pay interest at the rate

specified in sub-section (6) of section 47A on the modified amount of such stamp duty from the month in which he was liable to pay interest

under sub-section (6) up to the month preceding the month of payment of such modified amount of stamp duty.

“West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001: -

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3. Manner of determination of market value and furnishing of particulars relating to any property. - (1) The market value within the

meaning of clause 16(B) of section 2 in relation to any land or any land with building shall, after taking into consideration the particulars

referred to in sub-rule

(2), be determined on the basis of the highest price for which sale of any land or any land with building, of similar nature and area and in

the same locality or in a comparable locality, has been negotiated and settled during the five consecutive years immediately preceding the

date of execution of any instrument setting forth such market value, or on the basis of any court decision after hearing the State

Government, or on the basis of information, report or record that may be available from any court or any officer or authority of the Central

Government or the State Government or any local authority or local body, or on the basis of consideration stated in such instrument for

such land or land with building, whichever is greater.

(2) Any person executing an instrument of agreement or memorandum of an agreement relating to a sale or lease-cum-sale of immovable

property, conveyance, exchange of property, gift, partition, power-of-attorney where proper stamp duty is payable on the basis of market

value, settlement, transfer of lease by way of assignment, shall furnish to the registering officer, in addition to the particulars referred to in

sub-section (1) and sub-section (2) of section 27, such particulars in respect of the property as may be applicable to that property and as

specified in a statement in Form I, in case the land with building is situated in an urban area, in Form II, in case the land with building is

situated in a rural area, in Form III, in case the land is situated in urban area, in Form IV, in case the land is situated in rural area.

(3) Such a statement shall be signed and verified by the person executing the instrument referred to in sub-rule (2), and presenting it before

a registering officer for registration.

(4) A statement shall, after being signed and verified as required by sub-rule (3), be annexed in duplicate, to the instrument referred to in

sub-rule (2), which is, upon execution, presented before the registering officer for registration.

(5) If an instrument referred to in sub-rule (2) relates to more than one item of property, the statement referred to in sub-rule (2) shall be

furnished by the person executing such instrument for each item of property separately in Form I, Form II, Form III or Form IV, as the case

may be.

(6) If, in relation to any property which is the subject-matter of registration of any instrument referred to in sub-rule (2), the market value is

not set forth therein, and if the facts and circumstances affecting the chargeability of an instrument with stamp duty and the particulars

relating to such facts and circumstances are not fully and truly set forth and furnished in a statement referred to in sub-rule

(3), filled in, signed and verified by the person executing the instrument in the manner referred to in sub-rule (4), the registering officer may

refuse registration of such instrument after giving such person a reasonable opportunity of being heard.

(7) On receipt of any instrument referred to in sub-rule (2) in relation to a property together with the statement in Form I, Form II, Form III

or Form IV, as the case may be, annexed thereto, if the registering officer has reason to believe that the market value of the property has

not been truly set forth in such instrument, he may make such enquiries and take into account such court decision, information, report or

record from any court or any officer or authority of the Central Government or the State Government or any local authority or local body

or any person having knowledge relating to market value of the property of similar nature and area, and situated in the same locality or in

a comparable locality as he deems fit, for ascertaining the market value of the property and proper stamp duty chargeable.

(8) On the basis of enquiries, court decision, information, report or records referred to in sub-rule (7), as the case may be, the registering

officer shall ascertain the market value of the property and shall pass an order in writing to that effect in Form I, Form II, Form III or Form

IV, as the case may be, and if he finds that the market value of the property is more than that has been set forth in the instrument referred to

in sub-rule (2), he shall keep the registration of the document in abeyance and shall issue notice in Form V communicating the person by

whom the stamp duty is payable under section 29, or his authorised agent, or authorised advocate the amount which he believes to be the

market value of such property and calling upon him to make payment of the deficit amount of stamp duty within the period of thirty days

from the date of receipt of such notice. The registering officer shall record the particulars of such documents in Form VA.

(9) If the person by whom the stamp duty is payable under section 29, or his authorised agent, or authorised advocate to whom the market

value has been communicated under sub-rule (8), offers to pay the deficit amount of stamp duty, if any, he shall deposit it into a Government

Treasury on appropriate head of Account under appropriate challan, obtainable at any office of the registering officer, or any Government

Treasury, after it is countersigned by the registering officer concerned, or shall pay it by a bank draft drawn on any agency bank in favour

of the concerned registering officer before whom such instrument was presented for registration.

(10) The challan as aforesaid shall be filled up in quadruplicate and shall contain the name and address of the person on whose behalf

stamp duty is deposited and the particulars of the instrument. On deposit of the amount, the duplicate copy of the challan shall be retained

by the Government Treasury, the triplicate copy shall be sent to the registering officer and the other two copies shall be returned to the

depositor duly signed as proof of payment.

(11) On receipt of the challan or bank draft, as the case may be, as proof of payment of the deficit amount of stamp duty, the registering

officer shall, within ten days from the date of receipt of the said challan or bank draft, as the case may be, certify, by recording in such

instrument that the proper stamp duty with which such instrument is chargeable, has been paid and register the instrument:

Provided that the provisions of sub-rule (1) to sub-rule (11) of this rule, shall not be applicable in case an instrument is registered through e-

nathikaran software.

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5. Determination of the market value of the property by the Collector on reference. -

(1) On receipt of a reference from the registering officer under sub-rule (1) of rule 4, the Collector shall issue a notice in Form VIII, within thirty days

from the date of receipt

(a) to every person by whom, and

(b) to every person in whose favour the instrument has been executed and inform him the receipt of reference and ask him to submit to him his

objections, if any, in writing to support that the market value of the property has been truly and fully set forth by him in his instrument.

(2) If the Collector, on receipt of any information or suo mote, within five years from the date of registration of any instrument referred to in sub-rule

(2) of rule 3, has reason to believe that the market value of the property which is the subject matter of such instrument has not been truly set forth in

the instrument or correctly ascertained under sub-section (2) of section 47A, he shall issue notice referred to in sub-rule (1) to the person mentioned

therein and inform him of the reasons which led him to believe that the market value of the property has not been truly set forth, or correctly

ascertained under sub-section (2) of section 47A, as the case may be, and ask him to submit his objection, if any, in writing to support that the market

value has been truly set forth in the instrument, or correctly ascertained under sub-section (2) of section 47A.

(3) The Collector may, if he thinks fit for the purpose of enquiry, -

(a) call for any information, report or record from any public, officer or authority under the Central Government, or the State Government, or any local

authority, or local body, or any person who has, in his opinion, knowledge with respect to valuation of property;

(b) examine any information, report, or record referred to in clause (a);

(c) examine the order of the registering officer referred to in sub-rule (8) of rule 3;

(d) inspect the property which is the subject matter of such instrument.

(4) After hearing the person to whom a notice has been issued under sub-rule (1) or sub-rule (2), considering the objections, if any, and examining the

information, report, or record along with the written order of the registering officer, the Collector shall pass an order in writing, determining the market

value of such property, and the proper stamp duty payable on the instrument relating to such property.

(5) A notice in Form IX with a copy of the order referred to in sub-rule (4) shall be issued by the Collector to the person by whom the stamp duty is

payable under section 29, or his authorised agent intimating him the market value as determined by the Collector under that sub-rule, and directing

such person to pay the deficit stamp duty, within such time, ordinarily not before fifteen days from the date of issue of the notice, as may be specified

in such notice, in such manner as referred to in sub-rule (9) of rule 3:

Provided that the Collector, may, upon application from any person by whom the stamp duty is payable under section 29 or his authorised agent,

extend the date specified in the notice for reasons to be recorded in writing.

(6) A copy of the order referred to in sub-rule (4), shall be sent to the concerned registering officer who made the reference under sub-rule (1) of rule

4, or who registered the instrument, as the case may be, and the appropriate District Registrar.

(7) On receipt of the notice from the Collector as referred to in sub-rule (5), the person to whom the notice has been issued or his authorised agent,

shall deposit the deficit amount of stamp duty within the date specified in the notice in the same manner as referred to in sub-rule

(9) of rule 3. If the person liable to pay stamp duty under section 29 of the Indian Stamp Act, 1899, does not make such payment within the date

aforesaid, he shall be liable to pay an interest at the rate of two per centum for each British Calendar month of default from the first day of such

month following the month in which such person was required to make payment of deficit duty as prescribed in the aforesaid notice up to the month

preceding the month of full payment of such duty.

(8) The person by whom the stamp duty is payable under section 29 or his authorised agent, shall furnish the original copy of receipted challan, or the

bank draft, as proof of payment of the deficit amount of stamp duty together with interest, if any, as referred to in sub-rule (7) to the registering officer

and thereupon, the registering officer shall, within fifteen days from date of receipt of the challan or bank draft, certify by recording in such instrument

that proper stamp duty has been paid and register the document, if not already registered.

(9) Where the Collector, upon hearing under sub-rule (4), finds that the market value of property as set forth in the instrument is correct and the

proper stamp duty has been paid thereon, he shall, within fifteen days from the date of order that he passed in connection with determination of such

market value, direct the registering officer to certify by recording in the instrument that the proper stamp duty has been paid, and send a copy of such

order to the person by whom the stamp duty is payable under section 29.

(10) On receipt of the copy of the order referred to in sub-rule (9) from the Collector, the registering officer shall, within ten days from the receipt of

such order, certify by recording in the instrument that in terms of the order of the Collector, proper stamp duty has been paid and register the

document, if not already registered:

Provided that the provisions of sub-rule (1) to sub-rule (10) of this rule shall not be applicable in case an instrument is registered through e-nathikaran

software.

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15. In the event there was any deficit of stamp duty, it was incumbent upon the respondent no.3 to serve a notice on the petitioner under Section

47A(2) of the Stamp Act and Rule 3 of the Prevention Rules.

16. Upon hearing the disputes of the petitioner, if raised, it was also the duty of the registering authority to send the matter to the Controller, which

authority was again duty bound to serve a notice on the petitioner under Section 47A(5) of the Stamp Act and Rule 5 of the Prevention Rules.

17. In the absence of any such notice being pleaded in the affidavit-in-opposition, let alone proved prima facie, there is nothing to raise the presumption

that the deed was assessed to be undervalued by the respondent no.3. The right of the petitioner, who presented the deed, to dispute such assessment,

is provided for in Section 47A(3) of the Stamp Act as well as under Rules 3 and 5 of the Prevention Rules. In the event the petitioner raised a dispute

in that regard, the deed was mandatorily to be referred to a Collector, before whom the petitioner had to be given an opportunity of hearing before

either confirming or setting aside the assessment. In the absence of any such pleading, it has to be deemed that, even if there was any assessment of

deficit stamp duty by the registering authorities, the same was invalid in the eye of law, since no notice or hearing was given to the petitioner, as

indicated above, at any stage.

18. Hence, it is palpable from the pleadings in the writ petition and the affidavits-in-opposition and reply, which are a part of the records of the writ

petition, that there was no valid dispute as regards the stamp duty paid by the petitioner at the time of presentation of the deed for registration being

undervalued, thus entitling the petitioner to get back the original registered sale deed, after completion of formalities, on the basis of the stamp duty

already paid by the petitioner.

19. It is further admitted in the affidavit-in-opposition that the deed could not be uploaded for a considerable time due to some technical defaults in the

respondents' network system. Hence, there does not arise any question of the delay in registration being occasioned by insufficient stamp duty

having been paid by the petitioner, particularly since no notice of payment of deficit stamp duty was ever served by the registering authorities at any

point of time.

20. The question of preferring an appeal lies only after an opportunity is given to the petitioner to raise a dispute first and then an opportunity of

hearing for the purpose of assessment by the Collector.

21. In such circumstances, the excuse of deficiency in stamp duty, for not handing over the original registered sale deed to the petitioner upon

completion of registration, is not tenable in the eye of law.

22. Accordingly, W.P. No. 21080(W) of 2019 is allowed on contest, thereby directing the respondent nos.2 and 3 to complete the formalities for

registration of the sale deed, presented for registration under IGR No. R278249 dated June 27, 2003, within one month from this date and to hand over

the original registered sale deed to the petitioner, upon intimation to the petitioner as regards completion of the registration, immediately thereafter.

23. There will be no order as to costs.

24. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.