

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.6268 OF 2022

Sukoon Construction Pvt. Ltd.] ... Petitioner

Vs.

The Collector of Stamp & Anr.] ... Respondents

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Mr. Mayur Khandeparkar with Mr. Durgaprasad Sabnis i/b Lex Firmus for the petitioner.

Ms. Jyoti Chavan, A.G.P. for the State.

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CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 07TH APRIL, 2022.

PRONOUNCED ON : 21ST APRIL, 2022.

ORDER :-

1. The petitioner, a private limited company, is engaged in the business of construction and development of properties. It has approached this court assailing the distinct notices issued to it by respondent No.1-Collector of Stamps as well as notice dated 02/02/2022 attributing default and asking the petitioner to show cause as to why it's properties shall not be attached, on account of

failure to make the payment of alleged outstanding amount of Rs.1,00,14,900/- (Rupees One Crore Fourteen Thousand Nine Hundred only) within ten days from the date of receipt of notice of demand.

2. Heard Mr. Mayur Khandeparkar, the learned counsel for the petitioner and Ms. Jyoti Chavan, the learned A.G.P. for the respondent-State.

Issue Rule. Rule made returnable forthwith. By consent of the parties, taken up for final hearing.

3. The document in question, which is subjected to the orders passed by the Collector is, a Deed of Assignment dated 29/08/2009 (for short, **“the Deed”**) executed by Mr. Vasudev Babayya Kamat, assigning his leasehold rights, title and interest in the property, being a plot of land admeasuring 1 Acre (4840 sq. yards i.e. 4046.82 sq. mtrs. and as per CTS Extract, 3577.4 sq. mtrs. or thereabouts together with all structures and building standing thereon at Mouje Oshiwara in favour of the petitioner.

4. The case of the petitioner is that prior to the execution of the said Deed of Assignment, stamp duty of Rs.3,75,000/- came to be paid and, at the time of it's registration, the petitioner applied for adjudication of the said Deed under Section 31 of the Maharashtra Stamp Act, 1958 (for short, **“the said Act”**). On indepth consideration of the said document and upon reflecting the nature

of transaction, the market value of the said property, is certified as Rs.6,11,68,000/- (Rupees Six Crores Eleven Lakhs Sixty Eight Thousand only) and respondent No.1-Collector endorsed the said Deed on 29/05/2010 in accordance with Section 32(1)(b) of the said Act and determined the stamp duty as Rs.30,58,400/-.

Considering the stamp duty earlier paid, the deficit duty payable upon the said adjudication, of Rs.26,83,400/- was duly paid by the petitioner on 29/05/2010 and, accordingly, a certificate to that effect was endorsed on the Deed.

The specific case of the petitioner is that the full stamp duty of Rs.30,58,400/- was charged in terms of Article 25(b) of Schedule-I appended to the Stamp Act and it was paid.

5. As per the petition, a Deed of Confirmation dated 4/06/2010 came to be registered with the Sub-Registrar of Assurances at Andheri on 07/06/2010 under Registration No.5177 of 2010 between the parties.

It is pleaded in the petition, that on 08/01/2014, a notice dated 31/12/2013 issued by respondent No.1 was received by the petitioner. The notice, *inter alia*, informs the petitioner that the Audit Team during the internal audit of the office of respondent No.1 had noticed that the Deed of Assignment dated 29/08/2009 was inadequately stamped and a true copy of the Deed along with the details of 59 tenants / occupants as well as other relevant documents were directed to be produced along with the alternative accommodation agreements.

A query was also raised about the present status of the property.

6. The aforesaid notice issued, according to the petitioner, is issued after a gap of six years, but at the insistence of respondent No.1, the petitioner submitted his reply vide his letter dated 27/03/2019. On 26/08/2019, the petitioner received the first demand notice from respondent No.1 raising the demand of deficit stamp duty of Rs.26,35,500/-. Another such notice was issued on 26/11/2019 and on 03/02/2022. The third notice of default, with reference to the reminders being issued stated that sum of Rs.26,35,500/- was payable towards levy of stamp duty, along with penalty of Rs.73,79,400/- i.e. a total sum of Rs.1,00,14,900/- is due and recoverable as arrears of land revenue under Section 46 of the Maharashtra Stamp Act, 1958.

Unless the amount was paid within 20 days from the date of service of notice, the compulsory proceedings were contemplated against the petitioner for recovery of dues by attachment and sale of moveable properties or by attachment and sale of such immovable property, which will satisfy the demand or by sealing of the bank account till the amount along with penalty is realized.

The arrears of land revenue were worked out as Rs.1,00,14,900/- by the Collector of Stamps.

7. The aforesaid order is assailed, in the present writ petition primarily on two grounds; the first being the exercise of power by

respondent No.1-Collector is beyond the provisions of Section 32 of the Maharashtra Stamp Act and the second being, the action contemplated is in blatant violation of principles of natural justice, inasmuch as, no hearing was granted to the petitioner before revising the stamp duty payable on the said Deed and before issuing demand notice in respect thereof.

8. The learned counsel Mr. Khandeparkar, would submit that there is no clarity in the proceedings of the Collector as to under which provision the process of revising the stamp duty has been initiated after the certificate was issued by the Collector under Section 32(1) and an endorsement to that effect being made on the Deed, leading to an inference that the document was duly stamped. The learned counsel would submit that the exercise of this power by the Collector is subject to the power of revision to be exercised by the Chief Controlling Revenue Authority under Section 53-A of the said Act within six years from the date of certificate being issued by the Collector. He would submit that the Chief Controlling Revenue Authority may require the concerned parties to produce before him, the instrument and after giving a reasonable opportunity of being heard, examine such instrument to determine whether there is any deficit duty and make an endorsement to pay such deficit duty. The argument advanced is, only the Chief Controlling Revenue Authority has power to revise the decision of the Collector under Section 32 of the Act and once such endorsement is

made by the Collector by stamping the instrument, he becomes *functus officio*.

9. The learned counsel would submit that respondent No.1 had exercised the power of adjudicating the duty payable on the Deed and issued the certificate in exercise of powers vested under Section 32 of the said Act and, at the time of adjudication, he has taken into account all requisite parameters for determining the duty payable on the Deed. He would further submit that the action of respondent No.1, is thus patently erroneous and smacks of arbitrariness, since he has travelled beyond the power conferred on him, under the Act and the revision of stamp duty is *ex facie* illegal and without jurisdiction. In any case, it is argued that even if the power was to be exercised by initiating proceedings under Section 53-A of the said Act, limitation was of six years and beyond that, there cannot be even a revision of the decision of the Collector by the Chief Controlling Revenue Authority. He would place reliance upon the decision of this court in case of **Guruashish Construction Pvt. Ltd. v. Collector of Stamps & Anr.** reported in **2012 SCC Online Bom. 584.**

10. Per contra, the learned A.G.P. would justify the impugned order by submitting that, since the stamp duty levied on the said deed was not properly calculated and since it was deficit, respondent No.1-Collector has notified the requisite stamp duty on the Deed. She would submit that though the notice was issued to

the petitioner and two reminders were sent to pay the deficit stamp duty, he failed to pay any heed to the same, which constrained the Collector to initiate an action under Section 46 of the Act.

Factually speaking, Ms. Chavan would submit that in the subject document, it was not mentioned as to how many tenants were involved and what was the area occupied by the said tenants. The report submitted by the Office of the Collector to the Accountant General on 27/11/2012 had enclosed a list of tenants and table showing their rent and area occupied. Accordingly, the total built up area was calculated at 29308 sq. ft. and by letter dated 27/03/2019, the party has submitted evidence of the tenants and in it's terms, 23 tenants, out of 59 tenants are becoming eligible. On this premise, by calculating the Ready Reckoner of market value of the year 2010, the market value was assessed at Rs.11,38,78,000/- and the stamp duty payable upon it, is worked out at Rs.56,93,000/- and deducting the stamp duty paid earlier, the deficit was worked out as Rs.26,35,500/-.

11. In the wake of the aforesaid rival contentions advanced, I have perused the writ petition along with it's annexures.

The Maharashtra Stamp Act contemplates a scheme for charging the instrument with duty and Section 3 of the said Act prescribes the manner in which the instrument shall be chargeable with duty, of the amount indicated in Schedule-1 as the proper duty. The Act, therefore, contemplates that every instrument executed in the State and executed for the first time outside the

State and brought in the State, relating to any property situated or in any matter or thing done or to be done in the State, shall be chargeable with stamp duty prescribed under the Stamp Act. The stamp duty is levied on the instrument and not upon the transaction.

The scheme of the enactment in Chapter III provides for adjudication as to the duty and Section 31 provides that, when an instrument whether executed or not and whether previously stamped or not, is brought to the Collector, by one of the parties to the instrument and such a person seeks an opinion as to the duty chargeable, the Collector shall determine the duty with which or article of Schedule-I under which in his judgment, the instrument is chargeable. For exercising the said power, the Collector may require to be furnished with a true copy or an extract of the instrument and also with such affidavit or other evidence as he may deem necessary to prove all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of duty, with which it is chargeable.

Sub-section (4) of Section 31 prescribes the procedure to be followed by the Collector and reads thus:

“31. Adjudication as to proper stamps.

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) *When an instrument is brought to the Collector for adjudication, -*

(i) *within one month of the execution or first execution of such instrument in the State; or*

(ii) *if, such instrument is executed or first executed, out of the State, within three months from the date of first receipt of such instrument in this State,*

the person liable to pay the stamp duty under section 30 shall pay the same within sixty days from the date of service of the notice of demand in respect of the stamp duty adjudicated by the Collector. If such person fails to pay the stamp duty so demanded within the said period, he shall be liable to pay a penalty at the rate of two per cent of the deficient portion of the stamp duty, for every month or part thereof, from the date of execution of such instrument, or as the case may be, date of the first receipt of such instrument in the State.

Provided that, in no case, the amount of the penalty shall exceed four times the deficient portion of the stamp duty.”

12. Section 32 specifies to the manner in which the Collector shall determine the stamp duty and issue a certificate. The said section reads thus:

“32. Certificate by Collector.

(1) *When an instrument brought to the Collector under section 31, is in his opinion, one of a description chargeable with duty, and -*

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such sum as with the duty already paid in respect of the instrument, is equal to the duty, so determined has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the relevant Article of Schedule I and the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Subject to the provisions of section 53-A, any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped.”

13. Reading of the aforesaid two provisions, contained in Chapter III of the Maharashtra Stamp Act, it conveys that, subject to Sections 53-A, any instrument upon which an endorsement is made by the Collector shall be deemed to be duly stamped or not chargeable with duty, as the case may be, and if chargeable with duty, it becomes receivable in evidence. Upon the power being exercised by the Collector, Section 32A contemplates the manner in which an instrument of conveyance, which is found to be

undervalued and it being noticed by the registering officer on the basis of the information available with him, to the effect that the market value of the immovable property, which is the subject matter of the said instrument, has not been set forth therein, then he shall refer it to the Collector for determination of the true market value of such property. The said section then contemplates a penalty if the deficit stamp duty is not paid. There is a provision contained in the very said chapter providing for appeal and revision being aggrieved by the order passed by the Collector.

14. Chapter VI of the Maharashtra Stamp Act provides for the control of the Chief Controlling Revenue Authority and Section 53-A contemplates revision of the Collector's decision under Sections 32, 39 and 41, which reads thus:

“[53A. Revision of Collector's decision under sections 32, 39 and 41. - (1) Notwithstanding anything contained in sub-section (3) of section 32, sub-section (2) of section 39 and sub-section (2) of section 41, when through mistake or otherwise any instrument is charged with less duty than leviable thereon, or is held not chargeable with duty, as the case may be, by the Collector, the Chief Controlling Revenue Authority may, within a period of six years from the date of certificate of the Collector under section 32, 39 or 41, as the case may be, require the concerned party to produce before him the instrument and, after giving a reasonable opportunity of being heard to the party, examine such instrument whether any duty is chargeable, or any duty is less levied, thereon and order the recovery of the deficit duty, if any, from the

concerned party. An endorsement shall thereafter be made on the instrument after payment of such deficit duty.

(2) On failure to produce the original instrument by the party, the Chief Controlling Revenue Authority shall proceed under this section on the basis of the true copy or an abstract of the instrument filed with the Collector under section 31 or sub-section (2) of section 37 and such copy or abstract shall be deemed to be the original instrument for the purposes of this section.]”

15. In the scheme of the enactment, once the Collector has passed an order i.e. he certifies an endorsement on the document depicting payment of full duty, then adjudication becomes effective and final and, it is not open for him to reopen the said adjudication.

The Hon’ble Apex Court in the case of ***The Government of Uttar Pradesh v. Raja Mohammad Amir Ahmad Khan*** reported in ***AIR 1961 SC 787*** considered the provisions of Sections 31, 32 and 33 and held as follows:

“6. Chapter IV of the Act which deals with instruments not duly stamped and which contains Sections 33 to 48, provides for impounding of documents, how the impounded documents are to be dealt with, Collector's powers to stamp instruments impounded and how the duties and penalties are to be recovered. It would be an extraordinary position if a person seeking the advice of the Collector and not wanting to rely upon an instrument as evidence of any fact to be proved nor wanting to do any further act in regard

to the instrument so as to effectuate its operation should also be liable to the penalties which unstamped instruments used as above might involve. The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under s. 31. If it is properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under s. 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed document is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes functus officio and the provisions of s. 33 have no application. The provisions of that section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done.”

16. Further the learned Single Judge of this court in the case of **Guruashish Construction Pvt. Ltd. (supra)** relying upon the above decision of the Hon’ble Apex Court has also held as under:

“11. Section 53A of the said Act is relevant for our purposes. The same is extracted hereunder :

"53A. ig Revision of Collector's decision under sections 32, 39 and 41.

(1) Notwithstanding anything contained in sub-section (3) of section 32, sub-section

(2) of section 39 and sub-section (2) of section 41, when through mistake or otherwise any instrument is charged with less duty than leviable thereon, or is held not chargeable with duty, as the case may be, by the Collector, the Chief Controlling Revenue Authority may, within a period of six years from the date of certificate of Dmt 11 wp842-12 the Collector under section 32, 39 or 41, as the case may be, require the concerned party to produce before him the instrument and, after giving a reasonable opportunity of being heard to the party, examine such instrument whether any duty is chargeable, or any duty is less levied, thereon and order the recovery of the deficit duty, if any, from the concerned party. An endorsement shall thereafter be made on the instrument after payment of such deficit duty.

(2)"

From a bare reading of the aforesaid section, it would be apparent that it is only the Chief Controlling Revenue Authority which has been given the power of revision, when through mistake or otherwise any instrument is charged with Dmt 12 wp842-12 less duty than leviable thereon or is held not leviable with duty, as the case may be, by the Collector. Once the Collector has, in the present case, under Section 32 (1) of the said Act issued adjudication certificate by making an endorsement on the 'Shifting Agreements', the 'Shifting Agreements' are deemed to be duly stamped. Such endorsement having been made by the Collector, it was only the Chief Controlling Revenue Authority who had power to revise and examine the instrument for ascertaining whether the stamp duty was properly charged and the Collector had no

power to review its own decision either suo moto or because of any objection raised by Auditors or otherwise. In reviewing his own order and passing the impugned order, the Collector, in my view, has clearly acted without jurisdiction.”

17. In view of the scheme of the Maharashtra Stamp Act, running through its various provisions, to which a reference is made above, and in the wake of the decision of the Hon'ble Apex Court in the case of **Raja Mohammad Amir Ahmad Khan (supra)**, I have no hesitancy to hold that the Collector could not have revised the stamp duty upon the Deed of Assignment, when he has already once levied the stamp duty and endorsed a certificate to that effect on the Deed and, based on which the stamp duty was also paid by the petitioner. The Collector has clearly acted beyond his powers in revising the stamp duty on the ground that it was not properly levied and since he had become *functus officio*, he could not have exercised the power of revising the duty, which is, at the most, available with the Chief Controlling Revenue Authority under Section 53-A of the Stamp Act. Necessarily, the impugned notice issued by the Collector and also the repeated demand notices particularly spelt out in the prayer clause (a) of the petition are quashed and set aside. Rule is made absolute in the aforesaid terms.

[SMT. BHARATI DANGRE, J.]