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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5064 OF 2019

M/s. Anandtara Properties through Partner, Suhas A. Gaikwad .....Petitioner

V/s.

The Deputy Inspector Gen. Of Registration and Dy. Controller of Stamps, Pune Div. and another .....Respondents

Mr. Ravindra S. Pachundkar for the Petitioner
Mr. S. H. Kankal AGP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : JULY 30, 2019.

P.C.

After having heard respective counsel including learned AGP, in my opinion, the orders impugned are not sustainable for the following reasons.

2 The Development Agreement was executed on 09/01/2015, on which date according to petitioner, property in question falls within

Municipal area of Pune Municipal Corporation.

3 After Development Agreement was executed, the petitioner was served with a notice under Section 32A of the Maharashtra Stamps Act ('the Act' for short) calling upon him to deposit stamp duty of Rs. 2,68,375/- with 2% of penalty.

4 Another notice under Rule 6(1) of the Act came to be issued on 17/04/2017 and after granting opportunity of hearing to the petitioner, respondent-authority proceeded to assess total deficit stamp duty with penalty, vide order impugned passed on 20/03/2018, in exercise of powers under Section 32A of the Act. This very order was confirmed in Appeal.

5 The basis for passing the order impugned is, an objection raised by Auditor General that owner has received consideration of Rs. 33 Lakhs plus constructed area admeasuring 243.97 Sq. Mtrs.

6 Said objection raised by the Auditor was accepted and formed

to be a basis for adjudication under Section 32A of the Act.

7 It appears that the petitioner was the owner of land admeasuring 243.97 Sq. Mtrs plus 169.10 Sq. Mtrs out of which first part was retained by the petitioner-owner i.e. 243.97 Sq. Mtrs. for his own residence whereas land to the extent of 169.10 Sq. Mtrs. was parted by him towards the development.

8 Instead of receiving consideration as is reflected in the terms of the Development Agreement dated 09/01/2015, it was agreed that the amount to the extent of Rs. 33 Lakhs to be received towards the consideration of 169.10 Sq. Mtrs. will be spent on development of the property of the petitioner i.e. 243.97 Sq. Mtrs. This amount is considered to be consideration received by the petitioner.

9 Apart from above, in addition to the aforesaid consideration, an amount of Rs. 53,67,340/- was added to liability of the petitioner towards cost of the developed property which the petitioner was to receive. The cost of developed property was calculated at the rate of

Rs. 22,000/- per Sq. Mtrs.

10 At the outset, it is required to be noted that Development Agreement nowhere speaks of parting of the title by the petitioner of the land to the extent 243.97 Sq. Mtrs. and what has been agreed between petitioner-developer and the landlord is, Rs. 33 Lakhs to be received towards consideration by the landlord to be spent on development of area of 243.97 which is owned by the land owner.

11 As far as the valuation of stamp duty over the property to the extent of 169.10 Sq. Mtrs. Same is calculated at the rate of Rs. 19,140/-. However, an issue is also sought to be raised as to over similar type of development, valuation per square meter differs to that of developed property of the landlord. The aforesaid anamoly is also not dealt with in the orders impugned.

12 In the wake of above, the calculation and levy of duty in the order impugned based on the entry reflected in Article 5(g-a) and Article 25 Clause (i), is not justifiable.

13 As such, petition stands partly allowed. The orders impugned dated 20/03/2018 and 02/11/2018 are hereby quashed and set aside.

14 Respondent Jt. District Registrar/Collector of Stamps, Pune City, Pune shall grant hearing to the petitioner afresh on the issue of notice under Section 32A of the Maharashtra Stamps Act and shall take decision afresh after taking into consideration the observations made herein above.

[NITIN W. SAMBRE, J.]