IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7454 OF 2013

1 M/s. Atharva Developers & Anr. ... Petitioners

Vs

1 The Collector (Stamps)Raigad & Anr. ... Respondents

Mr. Prasad Dani, senior advocate, with Mr. Nishant Tripathi and Mr. Vaibhav Bandgar for the Petitioner.

Mr. B.V. Samant, AGP, for the Respondent Nos.1 & 2 - State.

CORAM : S.C. DHARMADHIKARI &
G.S. PATEL, JJ.

THURSDAY, 26TH SEPTEMBER, 2019

P.C. :

1 Heard Mr. Dani, learned senior counsel appearing for the petitioner and Mr. Samant, learned AGP for the respondents.

2 The challenge in this writ petition is to the Notice, copy of which is at Exhibit-C, page 62 of the paper-book. It calls upon the petitioner to pay Rs.57,97,825/- as a differential duty or a duty which is short levied. The argument is that this Notice, though styled as such itself, is a demand and it is not preceded by

any adjudication. Our attention has been invited by Mr. Dani to certain provisions of the Maharashtra Stamp Act, 1958. He would submit that the Maharashtra Stamp Act contains specific provisions in relation to adjudication as to stamps. These provisions are set out in Chapter III titled as 'Adjudication As To Stamps'. Proper stamp duty is contemplated by section 31 and at the end of it, the Collector has to come to a definite conclusion as to whether the chargeability of the instrument with duty or the amount of the duty with which it is chargeable are fully and truly set forth in an application which is made to him in terms of sub-section (1). That provides for the whole process, namely, 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 person applies to have the opinion of that officer as to the duty with which or the Article of Schedule I under which it is chargeable and pays the necessary fee. Thus, Mr. Dani would submit that if the Collector exercises these powers and adjudicates the stamp duty, that has to be remitted within sixty days from the date of service of the notice of demand in respect of the stamp duty adjudicated by the Collector. Thus, the whole exercise is an exercise of adjudication, resulting in the demand and not vice versa. That duty has been paid according to Mr. Dani and a certificate is also obtained. That certificate, once issued, does not enable the respondents to re-open the matter. However, our attention is fairly invited to sub-section (3) of section 32 which is subject to the provisions of section 53-A. Thus, the argument is that if the matter has not been reopened, they will have to be in accordance with section 53-A and not otherwise. Our attention is also invited to the provisions of the Act dealing with determination of market value should that be not set out correctly and fully.

3 Mr. Samant, learned AGP, appearing on behalf of the respondents would submit that the affidavit-in-reply explains as to how the notice has been issued. It is stated that in this case, the petitioner's application for adjudication of the draft of the tripartite agreement executed between CIDCO and Dosu Ardeshir Bhiwandiwala and M/s. Atharva Developers was filed with the Collector of Stamps, Raigad. He determined the market value of the property at Rs.8,84,50,000/- and directed the petitioner to make payment of the stamp duty to the tune of Rs.8,84,500/-. The certificate was also issued. However, the audit team of the

Accountant General (II) Nagpur conducted a local inspection and took objection to the tripartite agreement being adjudicated upon in the manner done and urged that a higher stamp duty was payable on it than the one which is determined. The scrutiny, therefore, revealed that though styled as a licence, there is a transfer and assignment of the lease hold rights. Therefore, the adjudication should have been by construing the document as transfer of lease hold rights and Article 60 would come into play instead of Article 5(g-a). This resulted in short-levy of stamp duty of Rs.57,97,825/-.

4 We have carefully perused this affidavit-in-reply. None of the statements made in paragraph 7 of this affidavit are to be found in the documents impugned in the petition. The law has a specific provision. If the law enables on par with other statutes to recover duty which is short-levied or erroneously levied or unpaid, though correctly levied, then, those powers have to be exercised in the manner set out in the law itself and not otherwise. A notice of demand could not have been issued straight away in this case. It should have been preceded by the exercise now sought to be placed on record of this petition. We

express no opinion, but we do not think that we can uphold the impugned Notice which flies in the face of the express legal provisions.

5 We, therefore, allow this petition, quash and set aside the impugned notice, but grant liberty to the respondents to take recourse to law if they are of the opinion that there is a short-levy of stamp duty to the tune of Rs.57,97,825/- . All contentions in relation to this controversy of both parties are kept open. The writ petition is disposed of in these terms. There will be no order as to costs.

G.S. PATEL, J. ***S.C. DHARMADHIKARI, J.***