Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION ST NO.23162 OF 2019

STT Global Data Centres India Pvt Ltd & Anr ...Petitioners

Versus

The Chief Controlling Authority for Revenue & Ors ...Respondents

---

Dr Birendra Saraf, Senior Advocate, *with Samit Shukla, Namrata Zaveri & Ashima Ghosh, i/b DSK Legal, for the Petitioners.*

Ms Geeta Shastri, *Additional GP, with Ms RA Salunkhe, AGP, for the Respondents-State.*

CORAM: S. C. Dharmadhikari & G. S. Patel, JJ.

DATED: 27th September 2019

PC:-

1. The petitioners are seeking three reliefs in this writ petition:

> "A. That this Hon'ble court be pleased to issue a writ of certiorari, or a writ in the nature of certiorari or any other appropriate writ, order under Articles 226 and 227 of the Constitution of India calling for the records and proceedings pertaining to the decision of Respondents No. 1 being the Second Order, dated April 16, 2019 (being Exhibit B hereto) and decision of Respondent No. 2 being the First Order, dated January 9, 2018 (being Exhibit A hereto) and after examining the legality, validity and

propriety thereof quash and set aside the same to the limited extent impugned herein.

B. That this Hon'ble Court be pleased to order or direct Respondent No. 2 to re-adjudicate the market value of the Property forming subject matter of Lease Deed dated March 28, 2014 (being Exhibit C hereto) by following the procedure prescribed under the 1995 Rules and after ascertaining the same charge stamp duty in accordance with the provisions of Article 36(iii) of the Schedule I to the Act.

C. That this Hon'ble Court be pleased to order and direct Respondent No. 3 to register the Lease Deed dated March 28, 2014 (being Exhibit C hereto) direct Respondents No. 1, 2 and 3 to do all such act(s), matter(s), deed(s) and thing(s) as may be required to effectuate registration of the Lease Deed dated March 28, 2014 (being Exhibit C hereto)."

2. One of the grounds on which the relief is claimed is that the petitioner has in terms of the requirements of the statute forwarded the instrument by making an application for determination of the stamp duty.

3. It is contended that the first order is perverse and has been passed by the 2nd Respondent without complying with the principles of natural justice. It is not a speaking order. No reasons are provided for reaching the conclusion. Further, the provisions set out in Section 32A read with the Rules enabling determination of market value have also not been abided by to determine the true market value of the property.

4. Such an order, therefore, should have been interfered with by the Appellate Authority. The Appellate Authority also failed to notice the fundamental errors. Rather the 1st respondent – Appellate Authority exceeded its powers in determining and deciding the appeal.

5. When these arguments were canvassed before us and our attention was invited to the two orders, we find from a bare reading of the same that the Chief Controlling Revenue Authority had before it the proceedings by way of an application dated 28th April 2014. There are two interim orders passed on 10th May 2016 and 28th September 2017. The instrument was allegedly impounded, though that is factually incorrect; it was submitted for determination of true market value. In these circumstances, the Mumbai Region (Determination of True Market Value) Rules 1995 ought to have been complied with.

6. In so far as the appeal is concerned, there as well we find that before the Appellate Authority such a ground was indeed raised. The Appellate Authority however sought to interpret the transaction embodied in the instrument and thereafter dismissed the appeal. The market value was then determined and it was held that the deficit stamp duty is Rs. 3,74,68,907/-.

7. To our mind, the objections as raised in the grounds of appeal and highlighted before the Appellate Authority have not been considered by him at all. Instead the Appellate Authority proceeded on the footing that this is a case where the stamp duty has been not properly levied. If the duty is short levied, then there are specific provisions enabling the authority to take note of such an issue. There are stated to be proceedings for determination of market value. The petitioner-appellant was also aggrieved by the determination of the market value.

8. We do not think that we can sustain either of the orders for the simple reason that the grievances as projected in the writ petition arise squarely from the grounds before the Appellate Authority. In these circumstances, we proceed to quash and set aside both the orders.

9. The petitioners' instrument would now be placed before the Collector. The Collector shall proceed to adjudicate on the chargeability of the instrument to stamp duty and decide the issue afresh in accordance with law. In doing so, he shall abide by the mandate of Sections 31 and 32A of the Maharashtra Stamp Act 1958 and the above referred Market Value Rules. The Collector shall take into consideration the instruments, namely, Lease Deed dated 28th March 2014 and the Addendum dated 1st August 2016. He shall also independently apply his mind to the question of the term of the lease and, specifically, whether or not a renewal option clause without specifying the terms of the renewal can be justifiably considered an extension of the lease period or tenure.

10. We clarify that we have not expressed any opinion on the rival contentions.

11. The petitioner shall appear before the Collector of Stamps (2nd Respondent) who shall give a notice mentioning the date and time on which the adjudication will be held.

12. All concerned to cooperate with the Collector (Stamps) in disposing of the matter expeditiously.

13. The adjudication be completed as expeditiously as possible and in any event by 14th December 2019.

14. The deposit of the amount made with the Collector (Stamps) shall abide by the final decision in the proceedings.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)