IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13783 OF 2017

Dhiraj Kumar Infrastructure Pvt. Ltd. .... Petitioner.

V/s

Dy. Inspector General of
Registration and Dy. Controller of
Stam, Pune and others. ..... Respondents.

ALONGWITH
WRIT PETITION NO.5067 OF 2018

Kumar Resort & Amusement Pvt. Ltd. ..... Petitioner.

V/s

Dy. Inspector General of Registration
and Dy. Controller of Stamp, Pune
Division Pune and Others ..... Respondents.

Mr. S.P. Kanuga I/b Ms. Sapna Nath for the Petitioner in both the Petitions.
Mr. R.P. Kadam, AGP for Respondent Nos. 1 to 4 in both the Petitions.

CORAM: NITIN W. SAMBRE, J.

DATE: 23rd July, 2019

P.C.:-

1] Since both these Petitions involve a common issue, they are being heard and decided finally with the consent of respective parties. For the purpose of convenience, the facts in Writ Petition No.13783 of 2017 are taken into consideration.

2] Petitioner in Writ Petition No.13783 of 2017, is a private Company. The Petitioner, vide Conveyance Deed dated 22/07/2010, purchased 1/3rd undivided share from one Ram Vasand Kotak out of land CTS No.172, RS 170 Ward B, admeasuring Hectare 00 55 acres at Village Lonavala, Taluka Maval, District Pune. The Deed of Conveyance was registered on 22/07/2010. On the said registered deed, the market value of the property was disclosed at Rs 47,00,000/- pursuant to the Ready Reckoner, which is claimed to have been published by the Respondent-Authority.

3] Petitioner in Writ Petition No.5067 of 2018 is also a Private Limited Company which has purchased the subject plot and the bungalow from Shri Sham Vasant Kotak and 4 others being Survey No.170, CTS No.172 admeasuring H 00-55.64 Ares assessed at Rs 16-

50 paise, Ward 'B", situated at village Lonavla, Taluka Maval, District Pune. The Deed of Conveyance was tendered for registration on 06/08/2014 and it accordingly came to be registered, wherein the market value of the property was disclosed as Rs 4,00,00,000/- pursuant to the the Ready Reckoner, which is claimed to have been published by the Respondent-Authority.

4] A notice under Section 33-A of the Maharashtra Stamp Act (For short "the Act") came to be issued to the Petitioner on 06/10/2016, alleging deficit payment of stamp duty to the extent of Rs 2,64,960/-, after adjusting already paid stamp duty of Rs 2,82,000/-. The total stamp duty, as per market value, is considered to be leviable to the extent of Rs 5,46,960/-. As such, Petitioner was called upon to pay deficit stamp duty with penalty of 2% per month, which was replied by the Petitioner on 02/11/2016, questioning jurisdiction and authority of the Respondents.

5] Since the Petitioner has disputed the liability, it appears that Petitioner has sought calculation of the stamp duty. Accordingly, Respondent-Authority has, on 17/03/2017, issued calculation as sought for by the Petitioner in reference to the guidelines provided by higherups as referred in the said communication. Petitioner, as such, was called upon to forward his explanation. The matter was accordingly posted for hearing pursuant to the aforesaid two notices before Respondent No.2. Before Respondent No.2, Petitioner sought adjournments time and again. Petitioner, instead of filing reply, has chosen to go for oral arguments by disputing his liability to pay deficit stamp duty. Accordingly, Respondent No.2 has passed a reasoned order, directing the Petitioner to pay deficit stamp duty of Rs 2,64,960/- alongwith 2% penalty pursuant to the provisions of Section 39 of the Act. The said order was subject matter of challenge before Respondent No.1 pursuant to the provisions of Section 32-B of the Act in the form of an appeal. Appeal also came to be dismissed on 28/08/2017. Hence, this Petition.

6] Heard learned Counsel for the Petitioner and the learned AGP appearing on behalf of the Respondents.

7] The learned Counsel for the Petitioner submits that the order impugned passed by Respondent No.2 is without any authority or jurisdiction and therefore it ought not to have been confirmed by Respondent No.1 in appeal, as according to him, at the time of initial registration of the document on 22/07/2010, Respondent No.3, after valuation, has accepted the stamp duty from the Petitioner to the tune of Rs 2,82,000/- and Rs 30,000/- towards registration fees. According to him, after a period of about six years, proceedings are reopened by the Respondents for payment of deficit stamp duty, which are not maintainable. The learned Counsel then would urge that in the absence of appropriate calculations and demand in appropriate form under the Act, mentioning reasons for issuing of such demand, the orders impugned are not justifiable. The learned Counsel then would submit that both the orders lack considerations which were canvassed by the Petitioner as regards the proper valuation based on the correct market value and in the absence of detail calculations as regards correct stamp duty, the orders impugned are not sustainable. He would then urge that the orders impugned lack reasons and are non-speaking orders. According to the

Petitioner, valuation of instrument is provided under Section 32-A and undervaluation thereof is required to be analysed with minute details which should have been communicated to the Petitioner, so as to answer a specific issue. Further contention is, the Rules framed under the Maharashtra Stamp Act, particularly Rule Nos. 6 and 7 are not taken into account. The learned Counsel relied on the judgment of the Apex Court in the matter of *Income Tax Officer & Ors vs. Lakhmani Mewal Das*[1] and the Judgment of this Court in Original Side Writ Petition No.2287 of 2009 with connected matters decided on25/01/2010, so as to canvas that in view of non-satisfaction of conditions of Section 32-A, the authority ought not to have exercised its powers. As such, according to him, the orders impugned are liable to be set aside.

8] The learned Assistant Government Pleader, while inviting attention of this court to the material available, on behalf of the Respondents-Authorities submits that vendor of the present Petitioner has brought to the notice of the Respondent-Authorities about short payment of stamp duty by the Petitioner by undervaluing the

1 (1976) 1976 CTR 0220(SC): (1976) 103 ITR 0437

property. According to him, pursuant to the directions of Respondent No.1, Respondent No.3 – Assistant Registrar in the Sub-Registrars Office has checked valuation of the property and payment of appropriate stamp duty. It is upon such inquiry, when it was noticed that document in favour of the Petitioner was not properly stamped, action under Section 33-A of the Act was initiated. He would then urge that it is Respondent Nos. 2 and 3 who have determined the market value of the property to the extent of Rs 91,16,000/- and accordingly reached to the conclusion of deficit stamp duty being paid by the Petitioner. The learned AGP, as such, sought dismissal of the Petition.

9] The undisputed facts, as can be borne from the pleadings of the Petitioner in Writ Petition No.13783 of 2017 and the other documentary evidence on record are, by Conveyance Deed dated 22/07/2010, Petitioner has deposited, pursuant to the valuation, stamp duty of Rs 2,82,000/-. However, there was no adjudication of the stamp duty, as was claimed by the Petitioner by any of the Respondents/Authority. Accordingly, the Deed was registered on

22/07/2010. Pursuant to Article 25(b)(iv-a)(i) of the Maharashtra Stamp Regulations, after considering valuation of the property, stamp duty was calculated to the tune of Rs 5,46,960/-. As against the stamp duty calculated, the Petitioner has paid the stamp duty of Rs 2,82,000/-. Petitioner thus has paid less stamp duty of Rs 2,64,960/-. As per Regulation No.39, the authority is empowered to levy 2% of fine to be calculated on the short duty paid and or four times of stamp duty. Accordingly, Petitioner was served with notice on 06/10/2016 to which Petitioner submitted its reply, seeking detail calculations of deficit stamp duty and valuation on 17/03/2017. Respondent No.2 furnished detail calculations to the Petitioner, including that of statutory provisions under which the same is demanded from the Petitioner. It appears that instead of filing reply on merit, Petitioner has relied upon the reply given to earlier notice which was duly considered by Respondent No.2. Respondent No.2 has also intimated the Petitioner in the notice dated 17/03/2017 that with the help of Town Planner attached to the Office of Respondent No.2, market value of the property was determined as Rs 91,16,000/-. Accordingly, stamp duty was levied based on Article 25(b)(iv-a)(i) of Schedule-II of the Maharashtra Stamp Regulations, 1958. This very valuation given by the Town Planner was never questioned by the Petitioner. The Town Planner is an expert authority attached to the Office of the Respondents herein, based on whose calculation about market value of the property, the stamp duty was calculated and justified.

10] Similarly, the undisputed facts as can be borne from the pleadings of the Petitioner in Writ Petition No.5067 of 2018 and the other documentary evidence on record are, by Conveyance Deed dated 06/08/2014, Petitioner has deposited, pursuant to the valuation, stamp duty of Rs 20,00,000/-. However, there was no adjudication of the stamp duty, as was claimed by the Petitioner by any of the Respondents/Authority. Accordingly, the Deed was registered on 06/08/2014. Pursuant to Article 25(b)(iv-a)(i) of the Maharashtra Stamp Regulations, after considering valuation of the property, stamp duty was calculated to the tune of Rs 34,83,775/-. As against the stamp duty calculated, the Petitioner has paid the stamp duty of Rs 20,00,000/-. Petitioner thus has paid less stamp duty of Rs 14,83,800/-. As per Regulation No.39, the authority is empowered to levy 2% of fine to be calculated on the short duty paid and or four times of stamp duty. Accordingly, Petitioner was served with notice on 06/10/2016 to which Petitioner submitted its reply, seeking detail calculations of deficit stamp duty and valuation on 18/10/2016. Respondent No.2 however vide notice/letter dated 17/3/2017 called upon the Petitioner to explain the sentence “co parcenary shares undivided share” mentioned in the Conveyance Deed and desired to know what was the area of plot that was sought to be conveyed by the vendor to the Petitioner. It appears that instead of filing reply on merit, Petitioner has submitted his written arguments through its advocate. Respondent No.2 in his order impugned has observed that with the help of Town Planner attached to the Office of Respondent No.2, market value of the property is determined as Rs 6,96,75,300/--. Accordingly, stamp duty was levied based on Article 25(b)(iv-a)(i) of Schedule-II of the Maharashtra Stamp Regulations, 1958. This very valuation given by the Town Planner was never questioned by the Petitioner. The Town Planner is an expert authority attached to the Office of the Respondents herein, based on whose calculation about market value of the property, the stamp duty was calculated and justified.

11] Apart from above, the fact remains that Respondents are having every authority pursuant to the provisions of Section 32 sub-section (5) to recover deficit stamp duty within a period of 10 years from the date of registration of the documents.

12] Petitioner was furnished entire calculation of the stamp duty and the Petitioner has chosen not to file any reply after second communication by Respondent No.2 on 17/03/2017, even though time and again adjournments were sought.

13] Apart from above, it is the vendor of the Petitioner who has brought to the notice of the authorities about undervaluation of the Conveyance Deed and short payment of stamp duty, which was very much brought to the notice of the Petitioner.

14] The appellate authority, while dealing with the contentions of the Petitioner has also looked into the extent to which the Petitioner has purchased the undivided share, the Ready Reckoner rates in Part-VI of the year 2010 and the Report of the Town Planner and has accordingly proceeded to pass the order of dismissal of appeal.

15] Apart from above, the facts remains that on demand of the Petitioner about detail valuation of the stamp duty and property, same was very much communicated and the Petitioner, at no point of time, was able to demonstrate the said valuation as incorrect.

16] As far as the aforesaid judgments relied upon by the learned Counsel for the Petitioner are concerned, the same are based on the provisions of Income Tax Act and the said provisions are not in p*ari materia* with the provisions under Section 32-A of the Maharashtra Stamp Act. Apart from above, the Respondents have reason to believe that the Petitioner has paid deficit stamp duty by undervaluing the document, as the original owner of the property himself lodged a complaint to that effect. Such complaint was inquired into and the valuation of the property was carried out by the Respondents with the assistance of the Town Planner. As such, the aforesaid Judgments will not be of any assistance to the Petitioner.

17] In the aforesaid background, in my opinion, no case for interference is made out. Writ Petitions, as such, fail and the same stand dismissed.

(NITIN W. SAMBRE, J.)