IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2967 OF 2017

Universal Enterprises ....Petitioner
vs
The Addl. Controller of Stamps Mumbai And Anr. ...Respondents
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Mr. Y.S. Jahagirdar, Senior Advocate, a/w. Mr. Suresh M. Sabrad and Mr. Amey C. Sawant, i/b. Savina S. Bangera, for the Petitioner.

Mr. Manish Upadhyay, AGP, for State.
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CORAM : S.C. GUPTE, J.

DATED: 4 APRIL 2019

P.C.:

. This writ petition challenges an order passed by Collector of Stamps Mumbai in a stamp duty adjudication matter and the appellate order passed by Additional Controller of Stamps, Mumbai confirming that order.

2. The grievance of the Petitioner is that the Petitioner held development rights in respect of the suit property and had entered into a joint venture agreement with one Sadguru Enterprises for its development. Since Sadguru Enterprises was unable to develop the property, a new joint venture agreement was executed by the Petitioner and Sadguru Enterprises, with one Deluxe Laboratories. Under this agreement, a part of the constructed area was to be retained by the Petitioner as its share of consideration for the development. The dispute

concerns adjudication of this latter document for stamp duty payable on it. The Collector of Stamps, who was approached under Section 32 of Maharashtra Stamp Act ('Act'), by his order dated 23 November 2016, adjudicated the stamp duty and penalty payable on the document as per the provisions of Article 5(g-a) of the Schedule to the Act. The instruments referred to in clause (g-a) of Article 5 *inter alia* include an instrument relating to giving of an authority or power to a promoter or a developer, by whatever name called, for construction on, development of, or sale or transfer of, any immovable property. The Article provides that in case of such instrument, the stamp duty, as is leviable on a conveyance under clauses (a), (b) or (c), as the case may be, of Article 25 on the market value of the property, shall be levied. Though the order does not say so, it appears that the Collector of Stamps adjudicated stamp duty payable under Article 25(b) on the basis that the property is within the limits of Municipal Corporation of Greater Mumbai, i.e. any Municipal Corporation or any Cantonment area annexed to it or any urban area, not mentioned in sub-clause (ii). The order of the Collector is devoid of any reasons to indicate how the adjudication was made in it. The Petitioner relies on two provisions of the Ready Reckoner Guidelines issued for the City of Mumbai for the year 2016-17. It is, firstly, submitted that under clause 23 (a) of the guidelines, the value of area comprised in the share of the landowner in a development agreement is to be as per the rate of construction plus the value worked out after taking into consideration the monetary compensation awarded to the landowner apart from the area of construction, interest on deposit, development charges and such other factors as are mentioned in the instrument. Under clause 23(b), the developer's share is to be valued on the basis of area of the land comprised in it multiplied by the land rate. Of the two values, i.e. those worked out under sub-clauses (a) and (b), the higher should be considered as the market value. It is, secondly, and alternatively, submitted that under clause 28 of the guidelines, which provides for valuation of instruments concerning the flats/shops/offices, etc. retained by the developer in the context of a development agreement for self-purchase, valuation of the developer's share is on the basis of the rates assigned to flat/shops/offices, etc. under annual statement of rates after deducting therefrom rates of new construction as per the applicable classification. It is essentially the case of the Petitioner that the document should be valued either as per clause 23 of the guidelines or clause 28 as area retained by the developer for self-purchase in the context of a development agreement.

3. Whereas the original order of adjudication does not indicate any application of mind to these issues, the appellate order of the Additional Controller shows that the only basis, on which the appeal was rejected by the Controller, was that the Petitioner had not produced any evidence to show that it was the owner of the property. Clause 23 of the guidelines makes it clear that the valuation of a development agreement has to be on the basis of higher of the values of (i) the share awarded to the owner of a land and (ii) the share awarded to a developer, value of the share so awarded being determined after taking into account area of land comprised in the share of the developer multiplied by the rate of the land. Alternatively, the developer's share ought to be valued under clause 28 as noted above. It is apparent from the impugned order that the Petitioner's appeal was rejected only on the ground that he

could not demonstrate that he was the owner of the property. For the purpose of adjudicating the document providing for the developer's share and calculating stamp duty payable thereon, what the Controller was called upon to determine was the value of the developer's share. He could not have rejected the appeal on the ground that a case of ownership was not made out.

4. The impugned order of the Additional Controller dated 4 July 2017 is accordingly quashed and set aside and Appeal No.GSO/32-B/29/2016 is remanded to the Additional Controller of Stamp Duty for a fresh hearing in accordance with law considering all grounds raised in this petition and after taking into account the matters referred to in this order. Rule is made absolute and the petition is disposed of accordingly.

5. The Controller shall hear the parties and decide the appeal as expeditiously as possible and preferably within a period of four months from the date this order is pointed out to the Controller. The Petitioner may appear before the Controller on 22 April 2019 and produce an authenticated copy of this order.

(S.C. GUPTE, J.)