IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 812 OF 2019

M/s. Asteroid Realties Pvt. Ltd.
… Petitioner
V/s.
The Collector of Stamps, Mumbai and Anr.
… Respondents

Mr. Rajiv Narula a/w Mr. Advait Raorane I/b Jhangiani Narula & Associates the Petitioner.
Mr. Himanshu Takke, AGP for the Respondent Nos. 1 and 2.

CORAM: K.K.TATED, J.
DATED : 27/09/2019

P.C.

1 Heard.

2 By consent of both the parties, matter is taken on board for final disposal at the stage of admission itself.

3 By this Writ Petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the order dated 12.07.2017 passed by the Collector of Stamps, Mumbai in Case No. ADJ/M/325/2017 holding that Petitioner has to pay stamp duty on the basis of market value of the property to the extent of Rs.24,84,21,500/- and also the order dated 08.08.2018 passed by the Additional Controller of Stamps, Mumbai.

4 The learned Counsel for the Petitioner submits that the impugned orders are required to be set aside only on the ground

that same are passed by violating the principle of natural justice. He submits that bare reading of order dated 12.07.2017 passed by the learned Collector of Stamps, Mumbai, shows that, without hearing the Petitioner, the same was passed. He submits that in para 3 of the impugned order, the date of hearing is kept blank. He submits that as soon as they learnt the order dated 12.07.2017, they filed application under the Right to Information Act dated 03.08.2017 calling upon the Collector of Stamps, Mumbai to disclose on what basis the said order was passed and when the notice was served on other side. He submits that they received a reply from concerned authority on 21.09.2017.

5 The learned Counsel for the Petitioner submits that they paid the stamp duty on the basis of the said order and immediately filed the Appeal challenging the same before Additional Controller of Stamps, Mumbai on 07.06.2018, disputing the market value determined by the said authority. He submits that before the Additional Controller of Stamps, Mumbai, they filed their written submissions dated 13.07.2018 and specifically raised objection about undated notice in paragraph 4. Paragraph 4, reads thus:

> *"4. In fact the Demand notice does not even mention the date on which the Appellant is required to remain present in person and submit his objection. The para 3 of the impugned Demand Notice has Blank Date although the time of 11.30 a.m. is mentioned therein. As such the same is against he principles of natural justice. The said notice therefore, also cannot be considered as a proper notice. The Demand Notice is not a proper Notice, and the Appellant is not given a fair opportunity to respond and make his representation and as such the entire act of the*

> *Collector is against and principles of natural justice and therefore the Demand Notice ought to be set aside. In support of the above the Appellant relies upon the judgment of the Hon'ble Supreme Court reported in (2009) 10 Supreme Court Cases 32- Biecco Lawrie Limited and Anr. V/s. State of West Bengal & Anr. and Case of Yadavrao Ganpatroa Raje v/s. Tahasildar, 2007 (1) BOM CR 132."*

6 The learned Counsel for the Petitioner submits that in spite of this fact, the Additional Controller of Stamps, Mumbai by its impugned order dated 08.08.2018 dismissed the Petitioner's Appeal without considering the fact that, Authority passed the order without hearing to them. He submits that if the order is passed without hearing them, the same is required to be set aside as null and void. He relies on Judgment of our High Court in the matter of ***Sunil Barwarilal Loiya v/s. State of Maharashtra and Anr. reported in 2005(6) Bom. C.R. 419***. He submits that in this authority, our High Court held that if the order is passed without following due procedure as required by law, then the said order is required to be set aside. In support of this contention, he relies on paragraph 8 of the said Judgment, which reads thus:

> *"8. Thus from perusal of Rule 3, it is clear that the respondent No. 2 has after receipt of reference or information issued a notice in Form No. 1, to the petitioner and required him to submit his representation in writing within 30 days along with the said information to show that the market value of the property mentioned in such instrument is true market value. Sub-rule (3) requires the Collector, respondent No. 2 to conduct an enquiry and for that purpose the said respondent may record the statement of person in whose favour instrument has been executed. The proviso to Sub-rule (4) to Rule 3, shows that after he record and*

evidence before him is perused by the respondent No. 2, an order provisionally determining the market value of property which according to him would be the true market value is required to be passed, mentioning the proper duty payable in respect of such instrument along with the penalty. After the provisional order is passed it is required to be communicated to the person concerned with notice upon him to lodge his objection if any, to the market value so determined and thereafter the respondent No. 2 has to call upon the parties to be present on the date specified in the notice and after hearing them and after considering their objections, respondent No. 2 has to pass final order determining the true market value of the property, the stamp duty payable on the instrument and the penalty charged upon it. This Court in its earlier judgment dated 13-11-1992, has considered this position and the findings recorded in para No. 5 are important. The said paragraph No. 5 reads as under :

> *"5. Only after proper notice is served the market value of the property could be determined in the matter provided Sub-rule (4) of Rule 3. The said sub-rule provides that after receipt of the representation and other information from the person concerned, the respondents have to pass an order provisionally determining the market value which according to them would be the true market value of the property and the penalty, if any. The said rule also provides that the basis on which the true market value has been arrived at should be clearly indicated in the provisional order and after communicating the provisional order, the Collector has to call upon the concerned person to be heard as to whether the provisional order should be finalised or not. A perusal of the provisional order would show that the basis for arriving at the true market value of the property is not to be found therein. The principles adopted under the Land Acquisition Act are required to be*

> *followed for the purpose of determining the market value of the property. In this context it may be necessary even to record evidence. In the absence of following all the prescribed procedure, the respondent No. 2 in cyclostyled printed proforma filled in the blanks at random and prepared the provisional order. It appears that the value of the property is put in whatever the authority felt without there being any basis whatsoever. Such a procedure is unheard of and can never stand judicial scrutiny.*"

7 On the basis of this fact, the learned Counsel for the Petitioner submits that both the orders are required to be set aside, directing the Collector of Stamps, Mumbai to rehear the said matter after giving opportunity to the Petitioner i.e. to file their reply, documents and submissions, if any and personal hearing. He submits that if petition is not allowed, irreparable loss and injury will be caused to them. He submits that they paid the stamp duty for executing the said document, but subject to their rights.

8 On the other hand, the learned AGP for Respondent vehemently opposed the present Writ Petition, but he failed to satisfy that on what basis the Collector of Stamps, Mumbai passed the order dated 12.07.2017 without hearing the Petitioner.

9 I heard both the sides at length. Bare reading of the order darted 12.07.2017 particularly para 3 clearly shows that Collector of Stamps Mumbai passed impugned order dated 12.07.2017 without fixing any date of hearing and/or giving any opportunity

to the Petitioner to put its case before him. Hence, the same is required to be set aside.

10 Apart from that even the order passed by the Additional Controller of Stamps, Mumbai dated 08.08.2018 shows that he failed to consider the submissions made by the Petitioner about the opportunity of the hearing of the matter.

11 Considering this fact and the law laid down by our High Court in the matter of Sunil Barwarilal Loiya (supra), I am satisfied that the Petitioner has made out a case for allowing this Writ Petition with direction to the Collector of the Stamps, Mumbai to rehear the case No. ADJ/M/325/2017 after giving opportunity to the Petitioner to file his reply and document and personal hearing.

12 Hence, the following order is passed:

a) Order dated 12.07.2017 passed by the Collector of Stamps, Mumbai in Case No. ADJ/M/325/2017 and order dated 08.08.2018 passed by the Additional Controller of Stamps, Mumbai in Appeal No. ESO/32-B/38-2017, are set aside.

b) The Collector of Stamps, Mumbai is directed to hear the Petitioner after giving opportunity to them to file reply and documents and then decide the matter on its own merits as early as possible.

c) Writ Petition is allowed accordingly.

d) No order as to costs.

(K.K.TATED, J.)