IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.290 OF 2016

Ishwer Realty and Technologies Pvt. Ltd.
& Anr. .. Petitioner

vs.

State of Maharashtra & Ors. .. Respondents

WITH

WRIT PETITION NO.1737 OF 2016

Macrotech Developers Ltd. .. Petitioner

vs.

State of Maharashtra & Ors. .. Respondents

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Mr.Girish S. Godbole i/b Mr.Atharva A. Dandekar and Mr.Rahul Soman for the petitioner

Mr.Rajan S. Pawar, A.G.P. for the State in Writ Petition No.290 of 2016

Mrs.P.J.Gavhane, A.G.P. for the State in Writ Petition No.1737 of 2016

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CORAM: K.K.TATED &
N. R. BORKAR, JJ.
DATED : DECEMBER 14, 2020

P.C.

. Heard.

2. By consent of both the parties, both the matters are

taken on board for final hearing at the stage of admission itself.

3. In Writ Petition No.290 of 2016, petitioners are challenging the demand notice dated 30.12.2015 and 18.03.2016 issued by the respondents calling upon them to pay additional sum of Rs.94,60,33,855/- (Rupees Ninety Four Crores Sixty Lakhs Thirty Three Thousand Eight Hundred Fifty Five Only) towards the Nazrana amount.

4. In Writ Petition No.1737 of 2016, the petitioners are challenging the demand notice dated 31.12.2015 issued by the Respondents calling upon the petitioners to pay additional stamp duty of Rs.11,77,66,993/- in respect of agreement to sell dated 31.12.2014 for the land admeasuring 255523.21 sq. mtrs.situated at Villages Balkum, Dhokali and Kolshet, District Thane.

5. The learned Counsel for the Petitioner submits that as per the agreement to sell dated 31.12.2014, the petitioner agreed to purchase the sanad land at Villages Balkum, Dhokali and Kolshet in the Registration District and Sub-District of Thane, Thane, Maharashtra for the sum of Rs.386,57,00,000/- on several terms and conditions i.e. to apply for permission to convert the use of the said land and other NOC from various authorities. He submits that thereafter, the conveyance was executed between the parties on 13.03.2015 after obtaining necessary documents. He submits that at the time of purchase of the said property, they paid full stamp duty of 23,42,00,000/- (Twenty Three

Crores Fourty Two Lakhs Only) as determined by the stamp authority. He submits that land being the sanad land, they had to pay 50% nazrana of the purchase value to the Government. He submits that as per the calculation done by the authority, they paid the sum amount of Rs.193,27,33,219/- (Rupees One Billion Ninety Three Crores Twenty Seven Lakhs Thirty Three Thousand Two Hundred Nineteen Only) as nazrana in four instalments.

6. The learned Counsel for the Petitioner submits that the Respondent on the basis of objection raised by the Accountant General, Nagpur issued demand notice dated 31.12.2015 calling upon the Petitioner to pay inadequate stamp duty of 11,77,66,993/- (Rupees Eleven Crores Seventy Seven Lakhs Sixty Six Thousand Nine Hundred Ninety Three Only) and also demand notice dated 30.12.2015 and 18.03.2016 demanding sum of Rs.94,60,33,855/- (Rupees Ninety Four Crores Sixty Lakhs Thirty Three Thousand Eight Hundred Fifty Five Only) by way of additional nazrana amount. Hence, they preferred the present Writ Petition.

7. The learned Counsel for the Petitioner submit that as the respondent authorities failed and neglected to grant permission for completing the said transaction and change of user, they preferred application before the Hon'ble Minister, Revenue bearing no. land 2714/C.No.272/J-4. He submits that the Hon'ble Minister, Revenue Department, Government of Maharashtra by its order dated 18.06.2014 permitted the petitioner to change the user of the land. He

submits that even the learned Minister specifically recorded in the said order that at the time of calculating the market value of the bulk land, Government Resolution no. Land-11/2007/M.No.98/L-1 dated 29.04.2008 is required to be considered. He relies on paragraph 4, 5 and 6 of the said order dated 18.06.2014 passed by the learned Minister. Original order is in Marathi. Official English translation is reproduced as under:

> *"4) The Applicant has requested that, the unearned income, due and payable to the Government, may be included in the valuation, shown in the ready-reckoner and accordingly, the unearned income should be calculated. However, this request is rejected. The Applicant has also requested that, for the purpose of calculation of unearned income, the village-wise area of the land may be consolidated together and then, valuation of such area may be made as per the provisions made in the Government Resolution No. Land-11/2007/M. No. 98/L-1, dated 29th April, 2008. As the said request of the Applicant is in accordance with the provisions made in the prevailing policy of the Government, the same is granted. (Accordingly) while calculating the amount of unearned income, the Collector should consolidate the village-wise lands and then valuation should be made as per the provisions made in the Government Resolution dated 29th April, 2008.*
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> *5) In connection with the calculation of unearned income, by the present application, it has been requested that, while calculating the unearned Income, the cost of acquisition and development of the said land may be deducted from the amount that would be calculated as per*

the prevailing market rate. As the request of the Applicant is proper, the same is granted. While calculating the unearned income, the Collector should first deduct the cost incurred for acquisition and development of the land from the valuation that will be calculated as per the prevailing market rate and only thereafter, he should calculate the unearned income and should, accordingly, recover the amount to the extent of 50 per cent as Government's share.

6) By the present application, it has been requested to allow to make a change in the usage of the said land. The said land will be transferred to its prospective buyers. The rule in the Development Control Rules of Thane Municipal Corporation has been amended by the Notification dated 19th June, 2007 issued by the Urban Development Department. As per the said amendment, the usage of the land, being used for industrial purpose, has been made admissible for residential, commercial as well as other admissible purpose. As Government Resolution of very intention has been issued by the Urban Development Department on the date 08th July, 2012, Applicant's request to allow to make use of the said land from industrial purpose to residential, commercial as well as for other admissible purpose, appears to be reasonable. Hence, permission is granted to make use of the said land as per the provisions made in the sanctioned Development Control Rules of Thane Municipal Corporation. The matter of fixing a policy about as to how much premium should be paid for change in user is under consideration of the Government. However, with a view that no proposal for change in user remains pending till the time such a policy is fixed, action of making recovery of premium in provisional nature is taken *by the Government. As per the same, permission for change in user can be granted after making recovery of premium, at the rate of 3 per cent of the Annual Statement of Market Value Rate (Ready Reckoner) in the case the change in user is for residential purpose and at the rate of 5 per cent in the case the change in user is for commercial purpose. Accordingly, approval of the Government is granted for change in user to the prospective buyer of the said land. For that purpose, Collector should issue orders to grant permission for change in user only after necessary premium is recovered."*

8. The learned Counsel for the Petitioner submits that bare reading of the Government Resolution dated 29.04.2008 clearly shows that market value of the government land in the state is required to be determined as per the slab system. He submits that if the plot of land is less than 2000 sq. mtr.,there is no question of any concession and whereas if the plot of land is more than 10,000 sq.mtr, the market value is required to be calculated by giving 40% deduction. Government Resolution dated 29.04.2008 is in Marathi and Official English Translation of the Government Resolution reads thus:

"__Govt. Resolution__ :-

As provided under rule 4 of Bombay Stamp (Determination of True Market Value of property) Rules, 1995, the Annual Statement of Rates are published every year by the Registration and Stamps Department. In the guidelines for implementation (Valuation guidelines) as mentioned in the Annual

Statement of Rates, the guidelines about valuation of large/bulky lands have also been incorporated. The said guidelines shall be held valid for valuation of Govt. lands and for valuation of large/bulky lands, as mentioned in Annual Statement of Rates, published every year, instead of area wise slab mentioned in the Slab System given in annexure B to the said guidelines, for the included in under Residential Commercial/Industrial as per the Regional Plan/Development Plan as well as for the area in the value area viz. Potential non-agricultural and non-agricultural, following area wise Slab System should be taken into consideration and in all the cases where it is necessary to make valuation of Govt. lands in the State, the valuation should be made as mentioned hereinbelow.

Sr.No.	***Area***	***Percentage per Sq.mtr. Value rate to be considered if only per sq. mtr. rates are given***
1	*0 to 2000 sq. mtr.*	*100%*
2	*More than 2000 sq.mtr. upto 4000 sq.mtr.*	*90%*
3	*More than 4000 sq.mtr. Upto 6000 sq.mtr.*	*80%*
4	*More than 6000 sq.mtr. Upto 10000 sq.mtr.*	*80%*
5	*More than 10000 sq.mtr.*	*60%*

2. While making valuation of Govt. lands excluding the area of land mentioned in the aforesaid table, other rules in the Annual Statement of Rates and provisions in the guidelines should be applicable as it is."

9. The learned Counsel for the Petitioner submits that on the basis of audit report, Accountant General, Nagpur informed the concerned authority that the total market value of the said land should be fixed at Rs.581,75,34,147/-. He submits that reply filed by the State Government, it shows that authority issued impugned demand notice dated 30.12.2015 and 18.03.2016 demanding additional nazrana of 94,60,33,855/- and demand notice dated 31.12.2015 demanding additional stamp duty of Rs.11,77,66,993/- on the basis of Accountant General's report. He submits that bare reading of the affidavit in reply filed by the Respondent clearly shows that the Accountant General at the time of calculating market value, failed and neglected to consider the Government Resolution dated 29.04.2008 regarding making valuation of Government lands as per the Annual Statement of Rates while allotting / transferring the government land for various purposes as well as while determining the valuation of the government land and also order dated 18.06.2014 passed by the learned Hon'ble Minister (Revenue), Government of Maharashtra. He submits that it is the policy of the Government that whenever the bulk land is purchased or sold, at that time, market value is required to be determined on the basis of Government Resolution dated 29.04.2008. These facts were not considered by the Accountant General and hence, the respondent issued demand notice calling upon the petitioner to pay additional nazrana as well as stamp duty. He submits that when the petitioner paid stamp duty on the basis of market value determined by the authority and also

50% nazrana on the basis of said market value, there is no question of calling upon the petitioner again to pay additional amount of nazrana as well as stamp duty which is on the basis of report submitted by the Accountant General, Nagpur.

10. The learned Counsel for the Petitioner submits that when this court called upon the State to explain their stand for determining the market value of the government land on the basis of Government Resolution dated 29.04.2008, they filed additional affidavit dated 10.12.2020. In the said affidavit, they specifically stated that the order passed by the learned Revenue Minister Government of Maharashtra is valid and subsisting. They also admitted that, they issue demand notice dated 30.12.2015, 18.03.2016 and 31.12.2015 on the basis of report submitted by the Accountant General, Nagpur. He relies on paragraph nos.3, 4 and 5 of the respondent's additional affidavit-in-reply dated 10.12.2020 which reads thus:

> *"3. Accordingly, the District Collector, Thane was directed that at the time of calculating the amount of unearned income, the Collector should consolidated lands village-wise and value the same in accordance with the provisions of the above GR. I further state that in compliance of the aforesaid Order passed under Section 257 of the Maharashtra Land Revenue Code, 1966, the Collector, Thane directed Joint District Registrar and Collector of Stamps, Thane City to submit a valuation report for the purpose of determining and*

recovering 50% of unearned income. The Joint District Registrar and Collector of Stamps, Thane City directed Assistant District and Town Planner to submit a report and the same was duly prepared and furnished by him by giving the bulk land benefit as per the GR dated 29.04.2008. The Assistant District and Town Planner fixed the valuation of Rs.386,54,74,182/-. Accordingly, on the basis of aforesaid valuation the Collector Thane had calculated a nazrana amount of Rs.193,27,33,219 being 50% of the above valuation amount.

4. I say that thereafter pursuant to the observations made by the Accountant General, Nagpur to the effect that the benefit of the bulk land could not be given for the purpose of determination of the unearned income since the lands in question were already been used for industrial purpose, the then Tahsildar issued the impugned Demand Notice dated 30.12.2015 addressed to Clariant Chemicals (India) Limited (being Exhibit B to the Writ Petition) and dated 18th March 2016 addressed to the Petitioner (being Exhibit M to the Writ Petition) demanding a sum of Rs.94,60,33,855/-.

5. I say that the Order dated 18.06.2014 is valid and subsisting. I further state that the G.R. dated 29.04.2008 was valid and subsisting and in existence till 20.02.2016 when the new Government resolution was issued. Hence the Government resolution dated 29.04.2008 applicable to the lands in question for the *purpose of determination of its valuation. I say that the GR stipulates as follows "The Market Value Sheets are published through the Registration and Stamp Department in each year in accordance with the provision under Rule 4 of the Bombay Stamp (Determination of Exact market Value) Rules, 1995. The guidelines pertaining to valuation of bulk and are also included in the valuation guidelines stipulated in the market value sheet. Such guidelines should be held valid/admissible for valuation of Government lands. By considering following area wise method instead of area wise method mentioned in Exhibit-B of the market value rate sheet published in every year in respect of the valuation guidelines relating to bulk land including residential/commercial/industrial use and area falling under potential non-agriculture and non-agriculture, the valuation should be carried by following way in all the matters wherein valuation of Government is considered to be necessary." I say that the valuation done by the Assistant Director, Town Planning is correct and in consonance with the G.R. dated 29.04.2008 and in compliance with the directions contained in the Order dated 18th June 2014 passed by the Hon'ble Revenue Minister."*

11. The learned Counsel for the Petitioner submits that in any case, even though Respondent issued impugned notice for additional nazrana as well as stamp duty, they failed and neglected to hear the Petitioner. He submits that neither the Respondent issued any show cause notice to the Petitioners

nor called upon the explanation in respect of additional nazrana amount as well as stamp duty. Even on this ground, impugned notices are required to be set aside.

12. The learned Counsel for the Petitioners submits that bare reading of the Government Resolution dated 29.04.2008 and order dated 18.06.2014 passed by the Hon'ble Minister (Revenue), State of Maharashtra and additional affidavit dated 10.12.2020, it is crystal clear that Accountant General failed to consider the procedure prescribed for determining the market value of Government land. Hence, impugned notice dated 30.12.2015 and 18.03.2016 issued by the Respondent calling upon the Petitioner to pay additional amount of nazrana to the extent of Rs.94,60,33,855/- and notice dated 31.12.2015 calling upon the Petitioner to pay additional stamp duty to the extent of Rs.11,77,66,993/- is required to be set aside. He submits that if both the Writ Petitions are not allowed, irreparable loss and injury will be caused to the petitioners. He submits that petitioners already paid nazrana amount to the extent of Rs.193,27,33,219/- being 50% of market value and stamp duty to the extent of Rs.23,42,00,000/-.

13. On the other hand, the learned A.G.P. for the State vehemently opposed both the Writ Petitions. He submits that market value of the government land are determined by the authorities as per the Maharashtra Stamp Act, 1958. On the basis of objection raised by the Accountant General, they issued impugned notices to the Petitioners calling upon them to pay additional nazrana amount as well as stamp

duty. He submits that alternate remedy is available to the Petitioners to challenge the orders / demand notices passed by the authority calling upon them to pay additional nazrana amount as well as stamp duty. He further submits that in the audit report, Accountant General has considered the market value on the date of execution of documents and therefore, directed respondents to take appropriate steps for recovery of nazrana amount as well as stamp duty on Rs.581,75,34,147/- being land value. He submits that if nazrana amount is calculated @ 50% of market value, total nazrana amount comes to Rs.290,87,67,074/-. He submits that as per the letter dated 17.07.2015 issued by the Accountant General Maharashtra Nagpur, Collector directed concerned authority to take action for recovery of deficit nazrana amount as well as stamp duty.

14. The learned A.G.P. for the State submits that the learned Minister (Revenue) in its order dated 18.06.2014 considered all facts, for calculating market value of Government land i.e. Government Resolution dated 29.04.2008 and other relevant correspondence and held that market value of the land after giving bulk amount benefits comes to Rs.386,56,74,182/-. Hence, Writ Petition is required to be dismissed with costs.

15. We have heard both the sides at length.

16. It is to be noted that the issue involved in the present matter is whether market value determined by the authority after considering the government resolution dated

29.04.2008 is correct. It is to be noted it is specifically stated in the Government Resolution dated 29.04.2008 that at the time of calculating the market value of the government land, some concession is required to be given on the basis of area of land. In the present proceeding, the area of the land in question is more than 10,000 sq. mtr. Hence, authority has deducted 40% area at the time of calculating market value. Even Assistant Director, Town Planning (Valuation), Konkan Division, Thane has prepared and fixed the valuation of the subject land by giving bulk land benefit to the tune of Rs.386,56,74,182/-. On the basis of market value determined by the Assistant Director, Town Planning, Petitioner paid stamp duty as well as nazrana amount. There is no dispute between the parties that nazrana amount is always 50% of the market value. Only dispute is about determining the market value.

17. Considering the fact that the market value was determined by the Assistant Director, Town Planning and the order dated 18.06.2014 passed by the learned Minister, (Revenue) State of Maharashtra, we do not find any reason to accept the view taken by the authority, calling upon the Petitioners to pay additional nazrana as well as stamp duty on the basis of report submitted by the Accountant General, Nagpur. It is to be noted that bare reading of the report submitted by the Accountant General clearly shows that they failed to consider the Government Resolution dated 29.04.2008 for calculating market value of land. Not only that it is specifically stated in the said resolution that, whether land is situated in developed area or not, bulk

concession is required to be given. Whereas Accountant General in its observation stated that it is not correct on the part of Assistant Director, Town Planning Konkan Division, Thane to determine market value of the government land by giving the concession as per the Government resolution dated 29.04.2008 because the land is developed and N.A. which was being used for the industrial purpose.

18. It is to be noted that bare reading of G.R. dated 29.04.2008 shows that concession is available to all the bulk lands. In view of these facts and considering the G.R. dated 29.04.2008, order dated 18.06.2014 passed by the learned Minister (Revenue), State of Maharashtra and paragraph nos.3, 4 and 5 of the respondents additional affidavit dated 10.12.2020, we hold that impugned demand notice calling upon the Petitioners to pay additional nazrana as well as additional stamp duty is required to be set aside. Hence, following order is passed:

a. Both the Writ Petitions are allowed.

b. In Writ Petition No.290 of 2016, demand notice dated 30.12.2015, Exhibit B page 28 and demand notice dated 18.03.2016, Exhibit M 120A issued by the Respondents in Form No.1 in Rule 5 of the Maharashtra Land Revenue Code, 1966 calling upon the Petitioners to pay additional amount of nazrana Rs.94,60,33,855/- is set aside.

c. In Writ Petition No.1737 of 2016, demand notice dated 31.12.2015 issued by Joint Sub Registrar, Thane calling upon the Petitioners to pay additional stamp duty of Rs.11,77,66,993/- is set aside.

d. Respondents are restrained from taking any coercive action against the Petitioners on the basis of this impugned demand notices dated 30.12.2015, 18.03.2016 and notice dated 31.12.2015 issued by Respondents.

e. No order as to costs.

(N. R. BORKAR, J.) **(K.K.TATED, J.)**