IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5414 OF 2021

Radha Govind Seva Mission
A Public Charitable Trust
bearing NO.E -1121-A
Satala, Tq. & Dist. Aurangabad
through its Sole Trustee
Radhakrishna Yadavchandra Parashar,
Age : 61 years, Occu: Social Worker,
R/o. Satala, Tq. and Dist. Aurangabad ... **PETITIONER**

VERSUS

1. The State of Maharashtra,
through the Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai

2. The Collector, Aurangabad

3. The Tahsildar, Aurangabad

4. The Joint Sub Registrar Class – 2,
Aurangabad – 5. ... **RESPONDENTS**

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Advocate for Applicant : Mr. Satish S. Manale
AGP for Respondents: Ms. R.P. Gour

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CORAM : MANGESH S. PATIL AND SANDEEP V. MARNE, JJ.

DATE : 24.08.2022

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. The respondent No.4 by communication dated 30.11.2016 which is under challenge informed the petitioner that the instrument presented by him and registered on 09.03.2016 was insufficiently stamped. The market rate of the property that was conveyed was something else. In purported exercise of the power under Section 32A of the Maharashtra Stamp Act, 1958 he called upon the petitioner to pay the deficit stamp duty and penalty assessed by him within stipulated time and also informed the petitioner that steps under Section 46 of that Act would be taken if the order was not complied. The learned advocate for the petitioner would vehemently submit that the order is illegal. No opportunity of being heard was ever extended. Straightway the decision was taken. There was no inquiry as to how the respondent No.4 had determined the market value. The order is sans requisite inquiry by following principles of natural justice.

3. The learned AGP would submit that the order itself has been passed under Section 32A which is appealable under Section 32B.

4. In view of the dispute it is necessary to understand the relevant provisions.

> "**32A. Instrument of conveyance, etc. under valued how to be dealt with. -** (1) Every instrument of conveyance, exchange, gift, certificate of sale, deed of partition or power of attorney to sell immovable property when given for consideration, deed of settlement or transfer of lease by way of assignment, [and also any other instruments mentioned in SCHEDULE I chargeable with duty on the basis of market value of the property] presented for registration under the provisions of Registration Act, 1908 (XVI of 1908), shall be accompanied by a true copy thereof:
>
> Provided that, in case of such instruments executed on or after the 4th July 1980 ……………………..

(2) Any registering officer receiving such instrument for registration has reason to believe, on the basis of the information available with him in this behalf, …………………………………..

Provided that, in respect of the instrument presented for registration before the date of commencement of the Maharashtra Tax Laws (Levy, Second Amendment and Validation) Act, 1996 (Mah. IX of 1997) where,………………………..

Provided further that, on the receipt of such notice, if the person liable to pay deficit amount of stamp duty and the penalty, pays within one month from the date of receipt of such notice, ………………………..

(3) If any person referred to in section 33, before whom any such instrument is produced or comes in the performance of his functions, has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been truly set forth therein, he may, after performing his function in respect of such instrument, refer the instrument alongwith a true copy of such instrument to the Collector of the District for determination of the true market value of such property and the proper duty payable on the instrument :

Provided that if the person, before whom any such instrument is produced or comes in performance of his functions, is an officer appointed as the Collector under clause (f) of section 2, and he has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been truly set-forth therein, ……………..

(4) On receipt of the instrument or the true copy of the instrument as the case may be, under sub-section (2) or (3), the Collector of the District shall, after giving the parties concerned a reasonable opportunity of being heard and in accordance with the rules made by the State Government in that behalf, determine the true market value of the immovable property which is the subject matter of the instrument and the proper duty payable thereon. Upon such determination, the Collector of the District shall require the party liable to pay the duty, to make the payment of the amount required to make up the difference between the amount of duty determined under this sub-section and the amount of duty already paid by him and shall also require such party to pay in addition, [a penalty [of 2 per cent., for every month or part thereof] from the date of execution of the instrument on differential amount of stamp duty];

and on such payment, the instrument received under sub-section (2) or (3) shall be returned to the officer or person referred to therein:

Provided that, no such party shall be required to pay any amount to make up the difference or to pay any penalty under this sub-section, if the difference between the amount of the market value as set-forth in the instrument and the market value as determined by the Collector of the District does not exceed ten per cent, of the market value determined by the Collector of the District:

Provided also that, in no case, the amount of the penalty shall exceed (four times) the deficient portion of the stamp duty.

(5) The Collector of the District, may, suo motu or on receipt of information from any source, within [ten years] from the date of registration of any instrument referred to in sub-section (1), (not being the instrument upon which an endorsement has been made under section 32 or the instrument or the instruments in respect of which the proper duty has been determined by him under sub-section (4) or an instrument executed before the 4th July 1980), call for the true copy or an abstract of the instrument from the registering officer and examine it for the purpose of satisfying himself as to the correctness of the market value of the immovable property which is the subject matter of such instrument and the duty payable thereon; and if, after such examination, he has reason to believe that the market value of such property has not been truly and fully set forth in the instrument he shall proceed as provided in sub-section (4).

(6) It shall be lawful for the Chief Controlling Revenue Authority or the Collector of the District to transfer to any other Officer, any reference received by the Collector of the District under this section, for disposal in accordance with the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995.

32B. Appeal. - (1) Any person aggrieved by any order determining the market value under sub-section (3) of section 31 or under section 32A or any order imposing any penalty under section 32A may, within sixty days from the date of receipt of such order, by an application in writing (accompanied by such fee not exceeding three hundred rupees as the State Government may, from time to time, by notification in the Official Gazette, specify; and different rates of fees may be specified for different areas), file an appeal against such order, to the [Additional Controller of Stamps, Mumbai in respect of the property, which is the subject matter of

> the instrument, is situated in Mumbai City and Mumbai Suburban Districts and in respect of the properties situated in the other parts to the] Deputy Inspector General of Registration and Deputy Controller of Stamps, who shall after considering the same, pass such order thereon as he thinks just and proper; and the order so passed shall, subject to the provisions of section 32C, be final and shall not be questioned in any Court or before any authority:
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> Provided that, all applications made and pending with the Collector immediately before the commencement of the Bombay Stamp (Amendment) Act, 1989 (Mah. XVIII of 1989) (hereinafter, in this section, referred to as "the Amendment Act"), for being referred to Courts for decision under section 32B as it existed immediately before the coming into force of the Amendment Act, shall, on the coming into force of the Amendment Act be transferred by the Collector to the Deputy Inspector General of Registration and Deputy Controller of Stamps and the applications so transferred shall be deemed to be the appeals filed and pending before the Deputy Inspector General of Registration and Deputy Controller of Stamps who shall dispose off the same in accordance with this section :
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> Provided further that, nothing contained in sub-section (1) and the first proviso shall affect the references already made by the Collector to the Courts and pending before the Courts immediately before the commencement of the Amendment Act; and such references shall be disposed off by the concerned Courts as if the Amendment Act has not been passed.
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> (2) No appeal and no application for revision shall lie against the order of [Additional Controller of Stamps, Mumbai or the] Deputy Inspector General of Registration and Deputy Controller of Stamps, passed under sub-section (1)."

5. A bare look at the provision would indicate that the power under that provision is exercisable by the Collector, whereas, the order under challenge stated to have been passed under that provision has been passed by the respondent No.4 who is a Sub-Registrar.

6. As can be seen, if at all there was any dispute or doubt being entertained by the Sub-Registrar respondent No.4 regarding incorrect

valuation the course that was expected to be followed by him was to approach the Collector and solicit an order.

7. Pertinently, when admittedly the instrument which was presented by the petitioner was already registered about a six months back, apparently the only course available was to resort to Sub-Section 5 of Section 32A whereunder the Collector either *suo motu* or on a receipt of information within 10 years of registration can call upon the true copy or extract of the instrument and examine it for the purpose of satisfying himself as to the correctness of the market value of the immovable property which is subject matter of the instrument. Sub-Sections 1 and 2 contemplate situations where the objection as to the market value is raised or entertained at the time of registration of the document. These provisions are not applicable to a document or instrument which is already registered. Even in respect of other contingencies covered under Sub-Section 3 and 4 only Collector is the authority who is empowered to pass appropriate orders. If for whatever reason the respondent No.4 Sub-Registrar had a doubt about the market value of the property, he should have approached the Collector and solicited an order which thereafter was susceptible to a challenge in an appeal under Section 32B.

8. In short, the respondent No.4 in purported exercise of the power under Section 32A which does not vest in him, by the impugned communication has assessed the deficit stamp duty and the penalty and has called upon the petitioner to pay it and has even threatened of a

consequence in the form of action under Section 46.

9. We are of the firm view that the respondent No.4 Sub-Registrar had no jurisdiction or power under Section 32A to pass any order. The jurisdiction to pass any order under it vests with the Collector.

10. We allow the Writ Petition. Quash and set aside the impugned communication by making it clear that if the respondent No.4 intends to take any step, he shall approach the Collector under Section 32A of the Maharashtra Stamp Act.

11. The Rule is made absolute.

(SANDEEP V. MARNE, J.) **(MANGESH S. PATIL, J.)**

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