

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5882 OF 2018

M/s. Opal Builders Pvt. Ltd.

..Petitioner

Versus

The State of Maharashtra
Through The Office of the
Government Pleader & Ors.

..Respondents

Mr. Pradip J. Thorat a/w Aditi S. Naikare, for the Petitioner.

Mr. S. L. Babar, AGP for Respondent Nos.1 to 4/State.

CORAM : SANDEEP V. MARNE, J.

DATE : 15th DECEMBER, 2023

PC.

1. By this Petition, Petitioner challenges order dated 23rd December, 2015 passed by the Collector of Stamps, Mumbai under the provisions of Section 31 of the Maharashtra Stamps Act, thereby valuing the property at Rs.65,58,70,000/- and adjudicating the payment of stamp duty at Rs.3,27,93,500/-. The order dated 23rd December, 2015 is passed on the basis of valuation report prepared by the Joint Director, Town Planning *vide* report dated 12th October, 2015. The dispute essentially is about the treatment of Khilla/Tabela for tethering of buffalo as tenancy for the purpose of determining valuation of the land in question. The Joint Director, Town Planning and the Collector of Stamps have refused to treat the Khilla/Tabela as tenancy. Petitioner's Appeal before the Chief Controller of Stamps has been turned down by order dated 31st October, 2017 by refusing

to treat Khilla/Tabela as tenancy. The Petitioner is however offered some solace in the matter of valuation by reducing the value of land to Rs.41,11,96,000/- and adjudicating the stamp duty at Rs.2,05,59,800/-. However, the original grievance of the Petitioner in not granting the benefit of reduced valuation by treating as Khilla/Tabela as tenancy still continues to subsist.

2. It is Petitioner's case that in a similar case of Maredian Realtors Pvt. Ltd., Respondents had treated the Khilla/Tabela as tenancies. During pendency of the present Petition, stamp duty in respect of adjoining plot has been adjudicated by order dated 27th June, 2022 and according to the Petitioner, the Khilla/Tabela have been treated as protected and tolerated tenancies. It is Petitioner's case that in addition to the similar case of Maredian Realtors Pvt. Ltd., the benefit of treating the Khilla/Tabela as protected and tolerated tenant has also been extended to the Petitioner itself in respect of the adjoining plot.

3. In my view, therefore, the orders passed by the Respondents need to be reconsidered in the light of the subsequent development in the form of the order dated 27th June, 2022. For that purpose, the valuation dated 23rd December, 2015, order dated 7th December, 2017 passed by the Collector of Stamps as well as the order dated 31st October, 2017 passed by the Chief Controller of Stamps are required to be set aside and the proceedings are required to be remanded before the Collector of Stamps for being

decided afresh.

4. Accordingly, the Petition partly succeeds. Orders dated 23rd December, 2015 and 7th December, 2017 passed by the Collector of Stamps, Borivali, Mumbai as well as order dated 31st October, 2017 passed by the Chief Controller of Stamps Mumbai are set aside. Also set aside the valuation report dated 23rd December, 2023. The proceedings are remanded before the Collector of Stamps, Borivali, Mumbai for being decided afresh in the light of valuation done *vide* order dated 27th June, 2022.

5. All contentions of parties on merits are kept open. It is clarified that this Court has not determined the merits of the Petition.

6. It appears that the Petitioner has deposited an amount of Rs.60,00,000/- in pursuance of the order passed by the Apex Court on 20th May, 2022. The Petitioner is permitted to withdraw the amount deposited in this Court along with accrued interest. Petitioner undertakes to deposit such amount as would be directed by this Court in the event it fails in the remanded proceedings.

7. The Petition is accordingly disposed of.

[SANDEEP V. MARNE, J.]