IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11102 OF 2016

Sanguine Holding Pvt. Ltd., a company Incorporated under the Companies Act, 1956 and having its registered office at Shed A2/1, GIDC Estate, Vapi, Gujarat-396 195 and its Corporate Office at Flat No.1, Kanta Nivas, 1st Road, Opp. Madhu Park, Khar (W), Mumbai – 400 052. ....Petitioner

vs.

1. The State of Maharashtra, through the Government Pleader, High Court, Mumbai.

2. The Collector of Stamp (Enforcement-I), Mumbai, having its Office at General Stamp Office, Town Hall, Fort, Mumbai-400 001.

3. The Chief Controlling Revenue Authority, Maharashtra State, Pune New Administrative Building, Opp. Council Hall, Pune-411 001.

4. The Inspector General of Registration And Controller of Stamps, Maharashtra State, Pune, Ground Floor, New Administrative Building, Opp. Council Hall, Pune-411 001. ...Respondents

WITH

INTERIM APPLICATION (STAMP) NO.21623 OF 2021
IN
WRIT PETITION NO.11102 OF 2016

Collector of Stamps Enforcement 1
General Stamp Office, Town Hall,
Fort, Mumbai – 400 001. ....Applicant

In the matter between:

Sanguine Holding Pvt. Ltd. ....Petitioner
vs.
The State of Maharashtra & Ors. ...Respondents

....

Mr. Jas Sanghavi, a/w. Mr. Prakash Shah, i/b. PDS Legal, for the Petitioner.

Mr. A.P. Vanarase, AGP, for State.

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CORAM : JITENDRA JAIN, J.

RESERVED ON : 7th OCTOBER, 2023

PRONOUNCED ON : 12th OCTOBER, 2023

JUDGMENT:

By this petition under Article 226 of the Constitution of India, the Petitioner has challenged an order dated 6th August 2016 in Revision Case No.38 of 2014 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune whereby an order is passed under Section 53A of the Maharashtra Stamp Act, 1958 ('Stamp Act') for recovery of short levy of stamp duty of Rs.32,02,250/-.

2. **Narrative of Events**:

(i) On 17th November 2008, a Lease Deed was executed between Mumbai Metropolitan Region Development Authority ('MMRDA') and Shri Barkya Laxman Kor and others (lessee) for lease of 6364.50 sq. mtrs. of land at Borivali for a consideration of lease premium of Rs.65,85,030/-.

(ii) The lease of premium of Rs.65,85,030/- was calculated at the rate of Rs.750/- per sq. mtr. on built-up area of 8780.04 and the stamp duty of 5% on said lease premium was worked out at Rs.3,29,300/- which was duly paid on 5th November 2008 by Shri Kor and others.

(iii) On 23rd December 2008, MMRDA gave permission to the lessee for assignment of the said lease on terms and conditions mentioned therein.

(iv) Pursuant to above, on 24th December 2008, the aforesaid land was assigned to the Petitioner by Shri Barkya Laxman Kor and others. The Respondents calculated market value of the assignment document at Rs.20,11,12,500/- and calculated stamp duty of Rs.1,00,55,625/-. The Respondents issued certificate under Section 32 (1)(b) of the Stamp Act. The Petitioner made the payment of amount of Rs.1,00,55,625/- on 5th January 2009. The Schedule to this assignment agreement specifically states that the land which is assigned is admeasuring 6364.50 sq. mtrs. and the built-up area is 8780.04 sq.mtrs.

(v) On 10th December 2013, i.e. after almost 5 years of the assignment agreement, the Respondents issued a letter to the Petitioner demanding Rs.12,13,575/- being short levy of stamp duty on the aforesaid assignment agreement executed by the Petitioner. The said letter refers to an objection by audit office with respect to short levy. The said letter also states that the assignment is of land admeasuring 8780.04 sq.mtrs., which is the built-up area as stated above.

(vi) On 29th December 2013, the Petitioner replied to the aforesaid demand notice requesting for personal hearing after narrating the fact in brief with respect to the lease agreement and assignment agreement. In the said letter, the Petitioner specifically stated that the area sought to be assigned is 6364.50 sq. mtrs.

(vii) On 13th June 2014, a show cause notice was issued by the Respondents to the Petitioner proposing to initiate revision proceedings under Section 53A of the Stamp Act for short levy of stamp duty amounting to Rs.32,02,235/- by estimating the market value at Rs.26,51,57,208/- as compared to the market value adjudicated of Rs.20,11,12,500/-. The said show cause notice was made returnable on 30th June 2014.

(viii) On 13th August 2014, the Petitioner made a detailed written submissions to the aforesaid show cause notice wherein the Petitioner stated that the area handed over is 6364.50 sq.mtrs. and the stamp duty has to be calculated on this area and not on built-up area. The Petitioner also objected that the notice dated 10th December 2013 alleged short-fall of stamp duty of Rs.12,13,575/- whereas the present notice alleges short-fall of Rs.32,02,235/- and no reason is given in the show cause notice for the difference. The Petitioner stated that what is assigned is the open land and not the developed land and, therefore, the concept of built-up area is not applicable. The Petitioner, therefore, submitted that the notice be dropped.

(ix) On 6th August 2016, the revisional authority passed an order under Section 53A of the Stamp Act and arrived at short levy of stamp duty amounting to Rs.32,02,235/-. The said figure was arrived at by taking the area of the lease of the assigned property at 8780.04 sq.mtrs. which is the built-up area and after applying rate of Rs.30,200/-, the market value was arrived at 26,52,57,208/-. The revisional authority reproduced the valuation report obtained from Joint Director of Town Planning (Valuation), M.S., Pune for arriving at the market value of the property.

(x) It is on this backdrop that the present petition is filed challenging the demand of Rs.32,02,250/- raised in the revisional proceedings.

3. Heard learned Counsel for the Petitioner and learned Counsel for the Respondents and, with their assistance, perused the papers and proceedings, the documents annexed to the proceedings, including reply affidavit on behalf of the Respondents.

4. **Submissions of the Petitioner**: At the outset, the Petitioner submitted that the impugned order does not deal with any of its submissions. The Petitioner further submits that the stamp duty is on the instrument and not on the development potential of the land and, therefore, the market value has to be calculated based on area of land 6364.50 sq.mtrs. and not the built-up area 8780.84. The subject matter of the assignment is the open land and not the developed land and, therefore, the arrived at market value by calculating built-up area of an open land is erroneous. The Petitioner also submitted that valuation report dated 6th October 2015, reproduced in the impugned order, has not been furnished and, therefore, the impugned order is contrary to the principle of natural justice. The Petitioner submits that the same land when leased by MMRDA to Shri Barkya Laxman Kor and others on 17th November 2008, was valued at Rs.65,85,030/- (Rs.750/- per sq.mtr. X 8780.04). The very same land was assigned to the Petitioner by Shri Laxman Kor and others within a period of one month, i.e. on 24th December 2008 and, therefore, the market value applied of Rs.30,200/- in the impugned order is erroneous, in as much as within a period of one month, the rate cannot go up by 40 times. The Petitioner also stated that vide notice dated 10th December 2013, the levy of

Rs.12,13,575/- was alleged whereas in the impugned order the short levy is worked out at Rs.32,03,235/- and, therefore, on this count also, the revisional proceedings are bad in law. The Petitioner, therefore, submitted that the impugned revision order be quashed.

5. Submissions of the Respondents: The Respondents supported the order of the revisional authority and stated that for calculating the area of the land it is the built-up area which is to be considered since the assignment agreement empowers the Petitioner to develop the land. **The Respondents also stated that it is their policy to take the built-up area for arriving at the total market value. The Respondents, therefore, prayed for dismissal of the present petition.**

Analysis and conclusion:

6. In my view, the present petition can be disposed of on the limited ground of violation of principle of natural justice. In the written submissions dated 13th August 2014, the Petitioner had raised various issues in support of its contention as to why the Respondents are not justified in raising a demand of short levy of stamp duty of Rs.32,02,235/-. The Petitioner *inter alia* contended in the said submission that the area for the purpose of calculation should be taken as 6364 sq.mtrs. and not 8780 sq.mtrs. The Petitioner also contended that in the notice dated 10th December 2013, the short-fall of stamp duty alleged was Rs.12,13,575/- whereas the demand now raised is of

Rs.32,02,235/- and the difference is not explained in the show cause notice. The Petitioner also submitted as to why the built-up area should not be considered for the purpose of calculation of stamp duty since what is transferred is the barren land and not the developed land. The impugned order has not dealt with any of these submissions raised by the Petitioner and, therefore, the said order is illegal and in violation of principle of natural justice. Furthermore, in the impugned order the authority has reproduced a valuation report dated 6th August 2015 obtained from Joint Director, Town Planning (Valuation), M.S., Pune. However, the said report was never furnished to the Petitioner and, therefore, the Petitioner was denied its say on said report. In the impugned order, there is no basis provided as to the adoption of rate of Rs.30,200/- except by reproducing the Audit Team's objection. In the light of the infirmity in the impugned order, I have no alternative but to set aside the judgment dated 6th August 2016 passed under Section 53A of the Stamp Act.

7. I, therefore, pass the following order:-

ORDER

(i) The impugned order dated 6th August 2016 passed under Section 53A of the Stamp Act is quashed and set aside;

(ii) The Respondents are directed to decide the issue afresh by following the principle of natural justice and by confronting all the documents to the Petitioner on which the authority seeks to rely upon for adjudication of the issue;

(iii) The Respondents would give an opportunity of personal hearing and after considering all the submissions, pass a detailed speaking order dealing with all the objections of the Petitioner;

(iv) Petition is disposed of in terms of above order. No costs;

(v) All contentions of the parties on merits are expressly kept open;

(vi) Since the petition is disposed of, nothing survives in the interim application and the same stands disposed of accordingly.

(JITENDRA JAIN, J.)