IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2309 OF 2017

1. Surjeetsing Chandansing Mann, Aged about 68 years, occ. business, R/o.Flat No.602, Ridhi Sidhi Apartment, Hindustan Colony, Amravati Road, Nagpur.

2. Smt. Sukhwinder Kaur w/o Rashpalsing Dhillon (since dead through Lrs)

2a. Jagmohansingh Rashpalsingh Dhillon, Aged about 34 years, Occup. Business, R/o 107, Baba Deepsingh Nagar, Uppalwadi, Nagpur.

2b Smt.Manpreet Kaur Preetsingh Nijjar Aged about 31 years, occup. Household, R/o Rajendra Nagar, Dhamangaon Road, Yavatmal. **Petitioners**

-**Versus**-

1. The State of Maharashtra, through the Collector, Nagpur District Nagpur.

2. The Deputy Inspector General of Registration and Deputy Controller of Stamps, Nagpur Division, Nagpur (Appellate Authority u/s.32-B of Maharashtra Stamps Act, 1958

3. The District Collector of Stamps Nagpur and Joint District Registrar Class-I (Higher Grade), Nagpur City. Nagpur.

Both Wing A, Third Floor, New Administrative Building No.2, Civil Lines, Nagpur 440001. **Respondents**

Mr.S.B.Mohta, counsel for the petitioners.
Mr.A.S.Fulzele, Addl.GP for the respondents.

CORAM : A.S.CHANDURKAR AND VRUSHALI V. JOSHI, JJ.

DATE : 24th AUGUST , 2023

ORAL JUDGMENT (Per : Vrushali V.Joshi, J.)

Heard.

2. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

3. The petitioners seek to challenge the action of respondent Nos.2 and 3 assessing the market value of the property. The dispute arose between the parties about the agreement to sale. It was referred under Section 11 of Arbitration and Conciliation Act 1996 in Misc.Civil Application No.791 of 2011 for appointing an arbitrator in the matter. This Court while, deciding the said application has appointed the Commissioner to record the

evidence and at that time while recording of the evidence the objection was taken for exhibiting the agreement being not admissible, being insufficiently stamped. This Court has by an order dated 17.02.2014 ordered the impounding the agreement dated 10.05.2007 and direct the Registrar (Judicial) to proceed to follow the procedure under Section 33 to 37 of the Stamp Act and directed the Collector to decide the value of the stamp duty and submit report to this Court.

4. Pursuant to the aforesaid order passed by this Court on 17.02.2014, the petitioners appeared before Collector of Stamp i.e. respondent No.3 on 18.06.2014 and submitted their submissions on 21.06.2014. the petitioners have pointed out that in the year 2006 Ready Reckoner was valued Rs.2520/- per sq.ft. and in the year 2009 it was 3000 per sq.ft. For 2007 Ready Reckoner value would be in between above. The petitioners were served with communication dated 24.07.2014 from respondent No.3 along with calculations of valuation made by Assistant Town Planner.

5. On receiving the communication dated 24.07.2014,

with documents therewith the Petitioners submitted their reply/objection to value arrived by authorities and submitted that these value appears to have been arrived at on basis of Ready Reckoner which are merely guidelines and can not be said to be market value as contemplated under the Act. It was specifically pointed out market value has to be determined on the basis of sale transactions entered between seller and purchaser. The respondent No.3 passed order on 11.09.2014 in Shodh Prakaran No.117 of 2004 fixing market value of property involved in agreement at Rs. 62,75,000/- and on that value assessed stamp duty at rate of 5.5.% amounting to Rs. 34,51,250/-inclusive of ½% N.I.T cess leviable under Section 77 of the Nagpur Improvement Trust Act and after deducting Rs.100/- paid on agreement fixed stamp duty of Rs.34,51,150/- payable and fixed penalty of 2% from 10.05.2007 for 83 months Rs.57, 28,909/-

6. Petitioners being aggrieved by order dated 11.09.2014 passed by respondent No.3 on 13.10.2014 challenged in appeal under Section 32(B) of the Bombay Stamp Act, 1958 before respondent No.2.

7. That on 10.02.2016 the petitioners moved the respondent No.2 requesting for inspection of spot before hearing. Spot was inspected on 24.01.2017 by Shri.Awale and vide communication dated 08.02.2017 appeal was fixed for hearing on 15.02.2017. Inspite of request by petitioners in writing on 09.02.2017 for supply of spot inspection report it was not supplied. The matter was heard by Appellate Authority on 28.02.2017 and order was passed on 02.03.2017. By aforesaid order, the respondent No.2 and 3 fixed the market value as above mentioned and therefore, the petitioners have filed this writ petition challenging both the orders.

8. The respondent Nos. 2 and 3 appeared and filed their reply and opposed the petition stating that the concerned property is situated at Mouza Wanjri, Khasra No.6/1 and 7/2,City Survey No.16, admeasuring 2.31 H, Sheet No.422/10, Ward No.43 (old) Kamptee Road,Tah. And Distt.Nagpur and stated that after perusal of boundaries as mentioned in the agreement dated 10.05.2007 the said property is situated on the western side of Kamptee Road (National Highway). As the said land has direct

frontage to the Kamptee main road (National Highway), it has high potentiality in comparison with other lands in vicinity which are situated in internal areas. The respondents have considered this fact and as per the Ready Reckoner rate of year 2007 levied stamp duty considering the rate of land at Rs.5,000/- per square meter. It is also significant to note that even as per the Ready Reckoner of year 2006, the rate in respect of the said land appears to be Rs.5,000/- per square meter. Hence, it is seen that no rise/change in respect of the rate of said land has taken place in the year 2007.

9. In the present case, the year of valuation is 2007, as the date of agreement is 10.05.2007. As per the established methods and procedure for assessing market value of the property, such sales which are executed after the date of valuation cannot be taken into consideration as comparative sale for the computation of land value.

10. It is submitted as per the Ready Reckoner for the year 2006, the rates shown for land mentioned in sale instances No.(i) and (ii) is Ra.5000/- per square meter. However, it seems that

while assessing market value of the said properties some hypothetical lower rates have been taken into consideration and a lower market value of Rs. 37,80,000/- is mentioned in the both sale deeds. As the market value shown in the sale-deeds are much lower compared to the actual market value, the sale instances No. (i) and (ii) cannot be taken into consideration while calculating the market value of the land in question. The petitioners have not been supplied the report of spot inspection and hence they are aggrieved by the same. Spot inspection was made only to confirm whether the said land is situated adjacent to Kamptee Road (National Highway) and it has been confirmed that the said land is situated at Western side of Kamptee Road (National Highway). The valuation in respect of the said property is in relation to the year 2007 and therefore it would not relevant to give much emphasis on the developments which have occurred on the said land in the year 2017. The respondent No.3 has assessed the market value of the said property as per the established methods and procedure of valuation. After going through all the facts mentioned above the respondent found that the order dated 11.09.2014 passed by the respondent No.3 is just and proper and hence upheld the same vide order dated 02.03.2017. Hence, prayed to dismiss the writ petition.

11. The petitioners have challenged the action of the respondent No.3 passing the order of impounding the document as per the Ready Reckoner and respondent No.2 has confirmed the said order. The document i.e. agreement to sale was impounded and this Court has directed in Misc. Civil Application No. 791 of 2011 on 17.02.2014 to the Registrar (Judicial) to follow the procedure mentioned in Section 33 to 37 of Bombay Stamp Act and directed to send the papers to the Collector within a period of 15 days and the Collector to decide the value of the Stamp Duty within a period of 8 weeks from the date of the order after giving an opportunity of hearing to the concerned parties and submit the report to the Court.

12. The specific order was passed by this Court to give an opportunity of being heard by the respondent No.3. On the basis of submissions, the respondent No.3, after perusal of record it appears to have calculated the stamp duty inclusive of N.I.T cess and penalty of 2% from 10.05.2007 for 83 months, total

amounting to Rs.57,28,909/- for the property involved in agreement. On receiving said communication dated 24.07.2014 petitioners objected to value arrived by respondent as the same was done without giving opportunity of being heard.

13. Though an objection was raised by the petitioners, without considering it respondent No.3 passed the order on 11.09.2014.

14. Since, order dated 11.09.2014 passed by the District Collector of Stamps, Nagpur is passed without giving opportunity to the petitioners, same is liable to be set aside. Order dated 02.03.2017 passed by the Deputy Inspector General of Registration-Appellate Authority and the order passed by respondent No.3 are set aside on the ground that the directions contained in the order dated 17.02.2014 passed in Misc. Civil Application No. 791 of 2011 as regards grant of hearing to the petitioners have not been complied with. The matter is remanded back to the respondent No.3-Collector. The respondent No.3 shall re-consider the proceedings in accordance with the aforesaid directions contained in the order dated 17.02.2014 passed in

Misc.Civil Application No.791 of 2011 and decide the same within a period of eight weeks of the petitioners' appearance before the said Authority. The petitioners shall appear before the respondent No.3 on 02/09/2023. All points on merits are kept open.

15. Rule is made absolute in the aforesaid terms with no order as to costs.

(VRUSHALI V. JOSHI, J) **(A.S.CHANDURKAR, J)**

Kavita.