IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13807 OF 2022

Kruti Constructions. ...Petitioner.

Versus

The Chief Controlling Revenue
and Others. ...Respondents.

Mr. Sachin S. Punde and Mr. Suraj Jadhav for the Petitioner.
Mr. R. S. Pawar, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.
Date : November 25, 2024.

P. C. :

1. Heard.

2. By this petition, the challenge is to the judgment and order dated 13th September 2022 passed by the Respondent No.1, i.e, the Chief Controlling Revenue Authority, in Revision Application No. 136 of 2021 levying the deficit stamp duty of Rs.16,94,441/- on the development agreement executed in the year 2017.

3. Facts of the case, as pleaded in the petition, are that the development agreement came to be executed between the Petitioner and the owners in respect of certain survey numbers situated at village Degaon, Taluka North Solapur, District Solapur. The development agreement was lodged for adjudication under Section 31 of the

Maharashtra Stamp Act [for short ***"Stamp Act"***] and upon adjudication, the relevant stamp duty as adjudicated and paid by the Petitioner on 30th August 2017, was Rs.30,32,000/-. At the time of registration, further deficit stamp duty of Rs.2,44,000/- was demanded from the Petitioner and was paid on 31st August 2021 and thus, the Petitioner has paid a stamp duty of Rs.32,76,000/- on the development agreement. Subsequently, the Respondent No.1 invoked the powers under Section 53A of Stamp Act seeking payment of deficit stamp duty pursuant to the audit objection raised by the office of Accountant General. By the impugned order dated 13th September 2022, the deficit stamp was calculated by taking into consideration the area of internal roads and open area as part of the development agreement.

4. Learned counsel appearing for the Petitioner would point out the development agreement and would submit that the area which is subject matter of development agreement was 73,774.51 sq. meters. Pointing out the sanctioned layout, he submits that the internal roads as well as the open space in the sanctioned layout were mandated to be handed over to the Corporation and, therefore, the said area could not have been taken into consideration while levying the deficit stamp duty. He would further submit that the Respondent No.1 has not taken into consideration the amount of Rs.2,44,000/- paid by the Petitioner at the time of registration and therefore demand is vitiated.

5. Learned AGP would submit that Clause 14 of the development agreement provides for revenue sharing in respect of the compensation which would be received in respect of the internal roads and therefore the same forms part of consideration. He would further point out the calculations and would submit that the area of DP road has been deducted, however, as there was an agreement for revenue sharing in respect of the internal roads and open spaces, the same has been taken into consideration and accordingly valuation has been arrived at as per Clause 16(c) of the Valuation Guidelines of the year 2017.

6. Considered the submissions and perused the records.

7. The challenge is to the order of Respondent No.1 levying the deficit stamp duty by inclusion of area of internal roads and open spaces while ascertaining the market value. Section 2(na) of Stamp Act defines the expression "market value" in relation to any property which is the subject matter of an instrument to mean the price which such property would have fetched if sold in open market on the date of execution of such instrument of the consideration stated in the instrument whichever is higher.

8. For the purpose of calculating the market value, the Valuation Guidelines have been laid down and as per Clause 16(c) of the said Guidelines, which are admittedly applicable to the present case, for the purpose of calculating the market value, the entire area forming part of the sanctioned layout including the roads and open spaces and amenity spaces, etc., if sold, is required to be taken into consideration. There is no challenge in the petition to the valuation guidelines.

9. The contention of learned counsel appearing for the Petitioner that the said area as per the sanctioned layout required to be handed over to the Corporation cannot deviate from the fact that the said area forms part of the development agreement, as has been rightly pointed by learned AGP. Clause 14 of the development agreement provides for revenue sharing in respect of the compensation which would be received for handing over area to the Corporation and thus the same forms consideration which is required to be factored in for the purpose of Section 2(na) of the Stamp Act.

10. The only other submission advanced, apart from the above, is that the credit for Rs.2,44,000/- which was paid at the time of registration, has not been given.

11. Considering the Valuation Guidelines read with Clause in the development agreement, it is clear that the area which was subject matter of development included the area of open space and internal roads and merely because the same was required to be handed over to the Corporation, the area cannot be excluded from calculating the market value in view of the revenue sharing clause.

12. As far as the issue of payment of Rs.2,44,000/- at the time of registration is concerned, the matter is required to be remitted to the Respondent No.1 for the limited extent of issuing a fresh order after giving credit of the sum of Rs.2,44,000/-. Necessary documents in that behalf to be produced by the Petitioner before the Respondent No. 1 within period of four weeks and after satisfaction that the said amount has been paid by the Petitioner, the Respondent No.1 is directed to give credit for the said amount.

13. Let an application be made by the Petitioner to the Respondent No.1 along with copy of this order and copy of the Challan evidencing the payment of Rs.2,44,000/- and after verification, the Respondent No.1 to issue fresh order after giving credit for the sum of Rs.2,44,000/-.

14. Petition is dismissed with the above directions.

[Sharmila U. Deshmukh, J.]