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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10215 OF 2018

Vivek Gopal Joshi … Petitioner

V/s.

The State of Maharashtra, through Principal Secretary & Ors. … Respondents

Mr. Atul Damle, Senior Advocate with Mr. Vikas Somawanshi, Mr. Roshan Chavan and Mr. Shubham Vasekar i/by Mr. Vaibhav V. Ugle for the petitioner.

Mr. P.G. Sawant, AGP for respondent Nos.1 to 5/State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 2, 2024

P.C.:

1. **Rule**. Rule is made returnable forthwith.

2. The petitioner is challenging order dated 3 May 2018 passed by respondent No.3 in an appeal challenging order passed under Section 32A(4) of the Maharashtra Stamp Act, 1958 revising market value of the instrument based on future potential.

3. Survey No.64 Hissa No.32 is the land in question. On 2 August 2014, the petitioner purchased the property. The market value shown in the instrument was Rs.3,55,50,000/-. However, consideration of Rs.4,15,00,000/- was paid. The petitioner, therefore, paid stamp duty on the amount of consideration which was higher.

4. Based on an objection raised in audit, the respondent No.2 issued notice to the petitioner demanding total stamp duty of Rs.43,67,050/-. The petitioner on 27 March 2017 filed reply and pointed out that on the date of execution of the instrument and on the date of issuance of notice under Section 32, the land in question has been shown for the purpose "agricultural and no development". In support of the said contention, certificate issued by the Planning Authority was placed on record.

5. Respondent No.2 based on recitals in the sale deed executed in favour of the vendor of the petitioner stating that the purpose of purchase of land was to lay plots and considering unregistered agreements in relation to such plots recorded a finding that the future potential of land was not considered on the date of execution of the instrument and, therefore, considering the potential of land being converted into non-agricultural held that the instrument would be covered by Entry No.11 of the ready recknor for the year 014 and not Entry No.6 of the said ready recknor.

6. The petitioner is, therefore, challenged the order by way of appeal. The Appellate Authority by the impugned order dismissed the appeal. Hence, present writ petition.

7. Learned Senior Advocate for the petitioner invited my attention to the certificate issued by the Planning Authority, copy of which was produced before respondent No.2, to urge that on the date of execution of the sale deed, the land in question was shown as reserved for "agricultural and no development". The said reservation continues even in the year 2023. Therefore, according to him, getting the property in question under Entry No.11 instead of Entry No.6 was improper.

8. Per contra, learned AGP invited my attention to the order passed by the Collector and affidavit in replies filed by respondent No.2. According to him, the Collector was entitled to charge the instrument based on potential use of land. Such power is available under Section 32A(4) of the Maharashtra Stamp Act, 1958. Based on the recitals in the sale deed of the petitioner's vendor, the Collector has rightly exercised the power.

9. Having considered the submissions on behalf of the parties, it is necessary to consider Collector's power under Section 32A(4) of the Maharashtra Stamp Act, 1958. Sections 32A(4) and (5) reads thus:

> "**32A. Instrument of conveyance, etc. under valued how to be dealt with**.
>
> (*1*) ...
>
> (*2*) ...
>
> (*3*) ...
>
> (*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 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*)."

10. Reading of aforesaid provisions makes it clear that the Collector either *suo motu* or on the basis of receipt of information from any source, within ten years from the date of registration of instrument, had power to call for copy of instrument for the purpose of examining correctness of the market value of the subject matter of the instrument and after conducting such examination, if he has reason to believe that the market value of such property has not been truly and fully set out in the instrument, he can proceed under sub-section (4). Under sub-section (4), the Collector after giving opportunity of hearing to the affected persons has power to determine true market value of the immovable property which is the subject matter of the instrument.

11. In the facts of the case, the audit conducted by the Authority can be termed as receipt of information and based on material in the audit report, the Collector had power to examine the instrument under sub-section (5). Resultantly, he had power to hold an inquiry under sub-section (4) as such inquiry was held within ten years form the date of execution of the instrument.

12. There cannot be dispute about the purpose of the Maharashtra Stamp Act, 1958. The object of the Stamp Act is to collect proper stamp duty on all instruments or conveyance on which duty is imposed. This is to protect the State revenue. Therefore, under the Act an obligation is caste on the Authority to ascertain its true market value for which he is not bound by the market value stated in the instrument. He has to adjudicate real nature of the transaction and market value of such property. The market value of the property may vary from location to location depending on various factors.

13. It is also settled that the rate mentioned in the ready recknor is only a prima facie indicator of the market value and it does not take away right of the Authority to decide market value based on the material available.

14. The true test for determination by the Collector is the market value of the property on the date of instrument as under the provisions of the Act every instrument is required to be stamped before or at the time of execution. While adjudicating on the market value, the Collector is not empowered to conduct a speculative inquiry about the prospective use of the land which may be put to use at an indefinite future date. The market value of the property has to be determined with reference to the use of land capable of reasonably put to immediate or use in proximate future. The possibility of subject matter of instrument becoming available in the immediate future for better use and enjoyment can be considered as potentiality of the land. However, such potentiality has to be assessed with reference to the date of execution of instrument. If the adjoining property has been put to commercial use, it is certainly a relevant factor for the Collector to consider while deciding market value. The exercise of such power by the Collector has to be based on adequate material and cannot be a matter of hypothesis or surmises.

15. In the facts of the case, the potentiality of the land needs to be adjudicated based on use of land capable of being reasonably put to immediate or proximate future. On the date of execution of the sale deed, the land was reserved under draft Development Plan for “agriculture and no development”. Even on the date of holding an inquiry under Section 32A(4), the subject matter of instrument was reserved in draft Development Plan under category "agriculture and no development". Therefore, on the date of execution of the instrument or in proximate future, the subject matter of the land could not have been used for the purpose of non-agricultural activities or use other than agricultural use. Therefore, charging of instrument in the year 2017 based on uncertain future use was not permissible. The certificate issued by the Planning Authority even in 2023 indicates that even as of today the subject matter of the instrument continues to be reserved for "agriculture and no development" under draft Development Plan. Therefore, I am satisfied that there was no possibility of the subject matter of instrument being put to immediate or proximate use for any other purpose than agricultural purpose on the date of execution of instrument, i.e. 2 August 2014. The impugned orders passed by the Appellate Authority and the Collector, therefore, cannot be sustained. Hence, following order:

a) Impugned order dated 3 May 2018 passed by respondent No.3 and order dated 13 April 2017 passed by respondent No.2 are quashed and set aside;

b) Since the impugned orders are quashed and set aside, bank guarantee/s furnished by the petitioner be returned to the petitioner within six weeks from today.

16. Rule is made absolute in above terms. No costs.

(AMIT BORKAR, J.)