
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3651 OF 2024

- 1] Trident Estate Private Limited
2] Ms.Sanjana Goenka .. Petitioners

Versus

- 1] The Office of Joint District
Registrar-Class-1, Collector of stamps
Pune-Rural.
2] State of Maharashtra,
through Revenue Department
3] The Sub Registrar, Lonavala .. Respondents

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Mr. Rohaan Cama *a/w Hasan Mushabber, Shreya Bhagnari
i/b Negandhi Shah & Himayatullah, Advocates for the
Petitioners.*

Mr. A.I. Patel, Addl. G.P. *a/w S. S. Bhende, AGP Advocates
for State/Respondents.*

**CORAM :B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

RESERVED ON: SEPTEMBER 26, 2024

PRONOUNCED ON: OCTOBER 23, 2024

JUDGMENT: [Per B. P. COLABAWALLA,J.]

1. The above Writ Petition is filed seeking to quash and set aside the impugned demand notice dated 7th February 2024 issued by the Office of Respondent No.1. By the impugned demand notice, the Petitioner is called upon to pay the deficit stamp duty of Rs.83,60,550/- and a penalty of Rs.23,41,000/-. This stamp duty and penalty is levied on the basis that the value of the property purchased by Petitioner No.1 under an auction conducted by Sale-cum-Monitoring Committee constituted by the Hon'ble Supreme Court is Rs.16,72,11,000/- [as per the valuation of the Stamp Authorities]. According to the Petitioners, the principles on which the market value of the property is determined itself is bad because the sale was conducted by the Sale-cum-Monitoring Committee constituted by the Hon'ble Supreme Court and therefore the true market value of the property has to be the value at which the property was sold to Petitioner No.1. The property in question *is land together with the building thereon comprising of plots collectively admeasuring about 2160 sq.mtrs. bearing Gat No.107, 108 and 109 having plinth/Plot No.229 in Ambey Valley City, Pune, Maharashtra* [for short the “**said property**”]. This, in effect, is the controversy in the present Petition.

2. Before we delve into the rival contentions it would only be appropriate to set out very brief facts. By an order dated 10th May 2018 passed in Civil Appeal No.20971 of 2017, the Hon'ble Supreme Court inter alia (i) constituted a Sale-cum-Monitoring Committee to deal with and conduct the sale of the assets of one *Citrus Check Inn Ltd.* (“**CCIL**”), and *Royal Twinkle Star Club Limited* (“**RTSCL**”), and all their associate/sister concerns; (ii) directed the Sale-cum-Monitoring Committee to appoint registered valuers to value the properties unearthed during insolvency process of CCIL and RTSCL and all their associate/sister concerns; (iii) directed that the Sale-cum-Monitoring Committee would comprise of the Resolution Professional, one SEBI Representative, one Investor Representative and one Representative of CCIL and RTSCL and their associate/sister concerns; and (iv) directed that all properties of CCIL, RTSCL as well as assets and other properties of their associate/sister concerns were to be attached. Pursuant to this attachment, it was directed that after the valuation of each of the properties was done, the sale of each of these properties would take place under aegis of the Hon'ble NCLT. There were also subsequent orders passed wherein it was inter alia clarified that in selling properties under the aegis of the Supreme Court, the Sale-cum-Monitoring

Committee was to follow the procedure laid down by the *Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016*.

3. Pursuant to these directions, the Sale-cum-Monitoring Committee, from time to time, issued tenders and sold some of the properties belonging to CCIL and RTSCL and all its associate/sister concerns. One such tender was issued by the Sale-cum-Monitoring Committee on 8th March 2022 for e-auction of various properties of CCIL, RTSCL and its associate and/or sister concerns. The said e-auction was to take place on 6th April 2022 and one of the properties in this e-auction was the *said property*. Petitioner No.1 participated in the said e-auction and tendered its bid for the *said property* [listed at serial No.45 of the tender document] for a lump sum consideration of Rs.2,51,00,000/-. For the *said property*, Petitioner No.1 emerged as the highest bidder in the said e-auction. Accordingly, the Sale-cum-Monitoring Committee, under Regulation 33 of the 2016 Regulations, read with Rule 63(1) of the Second Schedule to the Income Tax Act, 1961, issued a Sale Certificate dated 9th June 2022 in favour of Petitioner No.1 and which was duly signed and accepted by it.

4. After the Sale Certificate was issued, the Petitioners approached Respondent No.3 for registration of the said Sale Certificate under the provisions of the Registration Act, 1908. At this time, Respondent No.3 orally declined to register the Sale Certificate in absence of adjudication and payment of stamp duty on the said Sale Certificate. This was despite the fact that Petitioner No.1 expressed its willingness to pay 5% stamp duty on the amount reflected in the Sale Certificate which was issued by the Sale-cum-Monitoring Committee appointed by the Hon'ble Supreme Court.

5. In these circumstances, Petitioner No.1 was constrained to make an Application to the Office of the Joint District Registrar & Collector of Stamps (Rural), Pune, Maharashtra on 28th July 2022 for adjudication of the stamp duty. Since the Petitioners received no response, they addressed two more communications to the concerned authorities on 17th November 2022 and 10th July 2023. After repeated follow ups for about 18 months, Petitioner No.1 ultimately received the impugned demand notice dated 7th February 2024, inter alia, demanding stamp duty @ 5% on the alleged market value of the *said property*, which according to the Stamp Authorities, was Rs.16,72,11,000/-. In other words, the stamp duty demanded was

Rs.83,60,550/- and a penalty was also imposed in the sum of Rs.23,41,000/-. It is being aggrieved by this impugned demand notice that the present Petition is filed.

6. We must mention here that the above Writ Petition was urgently moved before us on an earlier occasion, namely, on 7th August 2024. On that date it was pointed out to us that the period for registering the Sale Certificate would expire on 17th August 2024, after which there is no provision in the Registration Act, 1908 for registering the said Sale Certificate. Since there was urgency in the matter, we, on 7th August 2024, without prejudice to the rights and contentions of the parties, directed that the Petitioner shall pay the stamp duty as per the value/consideration mentioned in the Sale Certificate. Once that stamp duty was paid, we had also directed that the Sale Certificate be registered by the concerned authority. We had also recorded an undertaking on behalf of the Petitioner that in the event the Petitioner fails in the above Petition, the balance amount of stamp duty with penalty, if any, shall also be paid by the Petitioners, subject to any right of appeal that the Petitioners may have in that regard. Pursuant to these directions, on the basis of sale price mentioned in the Sale Certificate, the stamp duty was paid by the Petitioners and the Sale Certificate

issued by the Sale-cum-Monitoring Committee in relation to the *said property*, has been duly registered. For completeness we may also mention that on 29th August 2024 we had directed that the valuation done for the *said property* [by the Sale-cum-Monitoring Committee] be also placed on the record of this Court. We passed these directions because we were of the opinion that the valuation would also throw light on whether the *said property* is purchased for a price which is commensurate, at least with the valuation done by the Valuers appointed by the said Sale-cum-Monitoring Committee. Today, Mr. Cama, the learned counsel appearing on behalf of the Petitioner, has tendered an additional affidavit bringing the valuation of the Sale-cum-Monitoring Committee on the record of this Court.

7. In this factual backdrop, Mr. Cama submitted that Chapter III of the Maharashtra Stamp Act, 1958 deals with adjudication of stamps. Section 31, the first Section in that Chapter, relates to adjudication of proper stamps. For our limited purposes, he submitted that it is sufficient to note that sub-section (1) requires the Collector to determine the duty with which the instrument presented to him is chargeable. Sub-section (2) speaks of material and evidence that may be required to be given to the Collector to enable him to arrive at his

determination. It also stipulates that the Collector may refuse to process any such application unless that material has been given to him. Then sub-section (3) speaks of a situation where the Collector has *reason to believe* that the market value of the property that is the subject matter of the instrument has not been truly set forth in the instrument, he must determine ‘the true market value of such property’ as laid down in the *Bombay [now Maharashtra] Stamp (Determination of True Market Value of the Property) Rules, 1995* (for short the “**1995 Rules**”). This would indicate that the Collector is not bound to accept as correct any value or consideration stated in the instrument itself. Should he have *reason to believe* that it is incorrect, he is to determine the true market value. He is to be guided by the 1995 Rules in doing so, was the submission. Mr. Cama thereafter pointed out that these 1995 Rules provide for various circumstances. Rule 3 requires certain particulars to be stated in the instrument as prescribed in Section 28 of the Stamp Act. Rule 4 deals with Annual Statements of Rates (also colloquially referred to as the Ready Reckoner) of the immovable property. He submitted that in the present case we are not concerned with sub-rules (1) to (5) of Rule 4, but we are concerned with the interpretation of sub-rule (6) and its various provisos.

8. Relying upon Rule 4(6), and more particularly the first proviso thereto, it was the submission of Mr. Cama that sale conducted under the aegis of the Court are done on the basis of a valuation obtained by it and by following a completely open and transparent process. He submitted that the process that the Court follows is perhaps far more rigorous than the first proviso to sub-rule (6) of Rule 4 contemplates. He submitted that an auction of a property conducted by a Court is possibly one of the most transparent methods by which the property can be sold. Thus, to say that even in a Court monitored auction, the stamp authorities would have a say on what is the market price, would amount to those authorities sitting in appeal over the decision of the Court permitting sale at a particular price. He submitted that it is not as if a public auction is carried out without any application of mind. The necessary pre-requisites require fixation of minimum price and other aspects to be taken care of so that the bidding process is transparent. Even after the bidding process is completed, the Court has a right to cancel the bid and such bids are subject to confirmation by the Court. Once the Court is satisfied that the bid price is the appropriate price [on the basis of the material before it] and gives its imprimatur to it, any interference by the Stamping Authorities on the aspect of price would be wholly unjustified.

9. He submitted that in the facts of the present case, a valuation was done [of the *said property*] which showed the fair market value as Rs.4,32,00,000/- and the liquidation value as Rs.3,45,60,000/-. Despite this valuation, the property could not be sold as there were no takers. Ultimately, the Sale-cum-Monitoring Committee received an offer of Rs.2,50,00,000/- from a prospective buyer and the said offer was placed before the 26th Committee Meeting of the said Sale-cum-Monitoring Committee held on 20th February 2022. At this meeting the Committee decided that the *said property* would be sold by public auction by keeping the reserve price of Rs.2,50,00,000/-. It is pursuant to this that an e-auction notice was issued on 8th March 2022 wherein the *said property* was listed at serial No.45 and the reserve price was fixed at Rs.2,50,00,000/- It is in this e-auction, and which was conducted on 6th April 2022 that Petitioner No.1 was the successful bidder who purchased the said property for Rs.2,51,00,000/-. Once this is the case, the Stamp Authorities could not embark upon a journey to determine the true market value themselves and come to the conclusion that the property was valued at Rs.16,72,00,000/-, and levy stamp duty on that basis. In support of his submissions Mr. Cama relied upon a Division Bench decision of this Court in the case of ***Spectrum***

Constructions and Developers LLP V/S State of Maharashtra, through Joint District Registrar [2022 SCC Online Bom 3693] as well as the judgment of the Hon'ble Supreme Court in the case of ***Registrar of Assurances & Another V/S ASL Vyapar Pvt Ltd & Another [2022 SCC Online SC 1554]***. For all the aforesaid reasons, Mr. Cama submitted that the impugned demand notice dated 7th February 2024 is unsustainable and ought to be quashed and set aside.

10. On the other hand, Mr. Patel, the learned AGP appearing on behalf of the Respondents, submitted that by the present Petition what the Petitioner challenges is the demand notice dated 7th February 2024. This demand notice is issued by Respondent No.1 in exercise of powers conferred under Section 33 read with Section 32A of the Maharashtra Stamp Act. As per the guidelines issued by the Inspector General of Registration, Maharashtra State, Pune, it is clarified that only if the owner of the property is the government, or semi government undertakings and/or a local authority, and it is these authorities that are selling the property, then first proviso to Rule 4(6) would apply. If a private property sold in an auction even by the DRT or such other institutions, then the first proviso to Rule 4(6) would have no

application. He submitted that this logic would also be applicable to the any sale conducted by Sale-cum-Monitoring Committee setup by the Hon'ble Supreme Court. He, therefore, submitted that there was absolutely nothing incorrect on the part of the 1st Respondent in independently determining the true market value of the *said property* and thereafter levy stamp duty thereon. Consequently, Mr. Patel submitted that there was no merit in the above Petition and the same ought to be dismissed.

11. We have heard the learned counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. As mentioned earlier, the controversy in the present Petition lies within a very narrow compass. The only question to be decided is whether in a case where a sale is conducted by a Court or under the aegis of Court (like in the present case), the stamp authorities can embark upon a journey to determine the true market value of the property [sold in an auction conducted by the Court or under the aegis of the Court] and levy stamp duty thereon. We find that the issue raised in the present Petition is squarely covered by a decision of a Division Bench of this Court in the case of ***Spectrum Constructions and Developers LLP (supra)*** as well as a decision of the Hon'ble

Supreme Court in the case of ***ASL Vyapar Pvt Ltd (supra)***. In the case of ***Spectrum Constructions*** also the Petitioner was a successful bidder for purchase of certain immovable property for an amount of Rs.1,66,57,920/-. This property was purchased by *Spectrum Constructions* pursuant to a sale conducted by a Committee constituted by the Hon'ble Supreme Court under the Chairmanship of the Hon'ble Mr. Justice R. M. Lodha (former Chief Justice of India), to oversee the disposal of lands held by a company called PACL Ltd. The reserve price fixed for the property was Rs.83,28,960/- and the bid of the Petitioner was higher than that. The Petitioner also paid full stamp duty on the consideration paid for purchasing the property in question. Thereafter, the Petitioner (i.e. *Spectrum Constructions*) received a demand notice from the Stamp Authorities for payment of deficit stamp duty and penalty. This was challenged before this Court by *Spectrum Constructions*. It is in these facts that a Division Bench of this Court held as under:-

“(6) We are in agreement with Mr. Vashi, learned Senior Counsel for the Petitioners, that in the facts and circumstances of the case, there is no question of the stamp authorities independently reassessing the market value of the land and building. The issue at law is covered by the decision in *Pinak Bharat and Co v. Anil Ramrao Naik* delivered by one of us sitting singly (GS Patel, J). This points out that where the land is sold or allotted by the government or a semi-government body, government

undertaking or a local authority on the basis of predetermined price, then the value as determined by such body is to be taken as the true market value of the subject matter property.

- (7) There is no doubt in this case that the market value was the bid of the Petitioner as accepted by the Justice Lodha Committee and that the sale was confirmed at the amount of the Petitioner's bid by SEBI. In this view of the matter, there is no question of the stamp authorities determining any other value. The only value to be accepted is Rs.1,66,57,920/-. The stamp duty on this is Rs.9,99,475/-. There is no question therefore of allowing the stamp authorities to demand any other amount. There is certainly no question of a penalty.
- (8) Rule is accordingly made absolute in terms of prayer clauses (a) and (b) which read as under:
- “a. That a writ of mandamus or any other writ, order or direction be issued ordering and directing the Respondent to accept Rs.9,99,475/- (Rupees Nine Lakhs Ninety Nine Thousand Four Hundred and Seventy Five Only) as stamp duty on the basis of the auction value i.e. Rs.1,66,57,920/- as a market value of the said land and complete all the registration of Certificate of Sale formalities and execute the transfer of plots in favour of the Petitioner.
- b. That a writ of certiorari or any other writ, order or direction be issued calling for the records and files of the case and after going into the legality and validity of the impugned order/demand notice dated 7th October, 2021 (Exhibit I) quash and set aside the same.”
- (9) The Stamp duty calculated as per prayer clause (a) will be paid by the Petitioner within two weeks from today. We accept the statement to this effect by Mr.Vashi made on instructions as an undertaking made to the Court.”

12. As laid down by the Division Bench in *Spectrum Constructions*, once the bid of the Petitioner was accepted by the Justice Lodha Committee, and the sale was confirmed at a price bid by the Petitioner, and which was above the reserve price, there was no question of the Stamp Authorities determining any other value. That would be taken as the market value.

13. This does not stop here. This issue has now been conclusively settled by the Hon'ble Supreme Court in the case of ***ASL Vyapar Pvt Ltd (supra)***. A three Judge Bench of the Hon'ble Supreme Court has clearly opined that in a Court auction, often the price obtainable may be slightly less as any bidder has to take care of a scenario where the auction may be challenged which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned. But that is the price obtainable as a result of the process by which the property is disposed of and the Stamp Authorities cannot sit in appeal over the decision of the Court permitting sale at a particular price. The logic is that an auction of a property by the Court is possibly one of the most transparent methods by which the property can be sold. Thus, to say that even in a Court monitored auction, the

Registering Authority would have a say on what is the market price, would amount to the Registering Authority sitting in appeal over the decision of the Court permitting sale at a particular price. Though we are conscious of the fact that in the said decision, the Hon'ble Supreme Court was considering the provisions of Section 47A of the Indian Stamp (West Bengal Amendment) Act, 1990, but the ratio laid down therein would, on all fours, also apply here. The relevant portion of the decision of the Hon'ble Supreme Court in the case of ***ASL Vyapar Pvt Ltd (supra)*** reads thus:-

"24. On the conspectus of the matter, we have not the slightest hesitation in upholding the view that the provision of Section 47A of the Act cannot be said to have any application to a public auction carried out through court process/receiver as that is the most transparent manner of obtaining the correct market value of the property.

25. It is no doubt true that in a court auction, the price obtainable may be slightly less as any bidder has to take care of a scenario where the auction may be challenged which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned. But then that is a price obtainable as a result of the process by which the property has to be disposed of. We cannot lose sight of the very objective of the introduction of the Section whether under the West Bengal Amendment Act or in any other State, i.e., that in case of under valuation of property, an aspect not uncommon in our country, where consideration may be passing through two modes – one the declared price and the other undeclared component, the State should not be deprived of the revenue. Such transactions do not reflect the correct price in the document as something more has been paid through a different method. The objective is to take care of such a scenario so that the State revenue is not affected and the price actually obtainable in a free market should be

capable of being stamped. If one may say, it is, in fact, a reflection on the manner in which the transfer of an immovable property takes place as the price obtainable in a transparent manner would be different. An auction of a property is possibly one of the most transparent methods by which the property can be sold. Thus, to say that even in a court monitored auction, the Registering Authority would have a say on what is the market price, would amount to the Registering Authority sitting in appeal over the decision of the Court permitting sale at a particular price.

26. It is not as if a public auction is carried out just like that. The necessary pre-requisites require fixation of a minimum price and other aspects to be taken care of so that the bidding process is transparent. Even after the bidding process is completed the court has a right to cancel the bid and such bids are subject to confirmation by the court. Once the court is satisfied that the bid price is the appropriate price on the basis of the material before it and gives its imprimatur to it, any interference by the Registering Authority on the aspect of price of transaction would be wholly unjustified.

27. We may only note that this Court in P. Laxmi Devi [(2008) 4 SCC 720] case has opined the purpose behind bringing into force Section 47A in the Andhra Pradesh State, i.e., in case of large scale under-valuation of the real value of property in the sale deed, the Government is defrauded of a proper revenue. It was to take care of the absence of any provision in the original Stamp Act empowering revenue authority to make an inquiry about the value of the conveyed property, that the Amendment was brought forth so that the revenue did not suffer. The judgment in V.N. Devadoss [(2009) 7 SCC 438] case albeit in respect of Amendment in Tamil Nadu, opined that it was not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show a lack of bona fides of the parties. There has to be a willful under-valuation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

28. We do not accept the contention that the mere wordings of these different provisions in any way take away the fundamental intent with which the provision was brought into force and specifies so in the same manner though albeit in a different language. In a court auction following its own

procedure, the Registering Officer ***cannot have any reason to believe*** that the market value of the property was not duly set forth – a pre-requisite for a Registering Authority to exercise its power under the said Section.

29. If we see in the factual context of the two scenarios before us in respect of the two cases, the telling aspect in a partition case was the existence of 98 tenants on a land at a monthly rent of Rs. 8,000 for the entire land and 80 vendors occupying the land for hawking business during day time. It is trite to say that the mere existence of tenancy results in a considerable decline in the market value of the property as they may have their statutory rights and even otherwise, the purchaser would be acquiring the property hardly in an ideal scenario and would be left with the burden to take legal processes for the eviction. In such a scenario, there is actually a great depression in the market value of the property as even if a fair transaction without an auction takes place with full reflection of price, the transacted value would be half or less of a vacant property. The tenancy aspect can hardly be said to be an aspect which could be ignored in the determination of the price.

30. In the company matter, repeated auctions were held and it is in the negotiated bid that the higher price was obtained. It was court monitored. There would be no occasion for the court to accept the bid if it was not satisfied with the process and the valuation. A correct value of a property is the one where there is a purchaser and a seller ad idem on the price (the actual price). The market value is, thus, the value which the highest bidder is willing to pay in the facts and prevailing circumstances and not a notional price.

31. We find hardly any rational in adopting the submissions on behalf of the appellant. The provisions are not dissimilar in the different enactments in its fundamentals; the “reason to believe” of a Registering Officer has to be based on ground realities and not some whimsical determination; the Registering Authority cannot be permitted to doubt the liquidation proceedings as having some superior knowledge when it is a court monitored process where the court would take care of aspects such as cartelization; the Registering Authority can hardly be said to be the only authority with knowledge of the subject to the exclusion of the court; the independent determination by a Registering Officer would not

apply to a court sale but to a private transaction; the Stamp Act being a fiscal statute, while being interpreted strictly and literally would not imply some kind of absolute power.

32. The decision of this Court in V.N. Devadoss [(2009) 7 SCC 438] case can hardly be said to be per incuriam. No doubt a court monitored auction is a forced sale, but then it has a competitive element of a public auction to realize the best possible price. In many court cases, this is the process followed by the court to get the best obtainable price taking due precaution.

33. We are, thus, of the view that this reference is required to be answered by opining that in case of a public auction monitored by the court, the discretion would not be available to the Registering Authority under Section 47A of the Act.”

(emphasis supplied)

14. In view of the foregoing discussion, the above Writ Petition is allowed in terms of prayer clause (b) which reads thus:-

“(b) That this Hon’ble Court be pleased to issue writ of Certiorari, or a writ in the nature of certiorari, or any other appropriate writ, order or direction under Article 226 & 227 of the Constitution of India, calling for the entire records and proceeding of the case as pertaining to the impugned demand notice dated 7th February 2024, issued by Respondent No.1 and after going into the legality validity and propriety of the impugned demand notice dated 7th February 2024, this Hon’ble Court be pleased to quash and set aside the same.”

15. As far as prayer clause (c) is concerned, the same does not survive in light of our order dated 7th August 2024 and which has been duly complied with.

16. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

17. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]