

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 772 OF 2022

Axayraj Buildwell Pvt. Llted.)
(Presently known as Moongipa Realty)
Pvt. Ltd.) **..Petitioner**

V/s.

1. State of Maharashtra)

2. Collector of Stamps, Andheri Mumbai)
Metropolitan Regional Development)
Authorities Building, 1st floor, Bandra Kurla)
Complex, Mumbai-400 051.) **..Respondents**

Mr. S.R. Nargolkar with Mr. Arjun Kadam and Ms. Neeta Patil, *for the Petitioner.*

Mr. Abhay L. Patki Addl. Govt. Pleader with Mr. Himanshu B. Takke, *A GP for State-Respondent Nos.1 and 2.*

Coram : Sandeep V. Marne, J.

Date : 31 January 2024.

JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. With the consent of the parties, petition is taken up for hearing.

2. By this petition, Petitioner has challenged the Notice dated 3 September 2015 issued by Sub-Registrar and Order

dated 31 May 2021 and Demand Notice dated 13 October 2021 issued by the Collector of Stamps, Andheri demanding deficit stamp duty of Rs.22,56,010/- and penalty of Rs.87,08,200/-.

3. Briefly stated, facts of the case are that Petitioner is a Developer and entered into Development Agreement with 'D.N. Nagar Shree Ashtavinayak Co-operative Housing Society Limited' on 6 September 2005, under which, he agreed to carry out redevelopment of the Society's building on terms and conditions more particularly described in the Development Agreement. It is Petitioner's case that the Development Agreement was lodged for registration and Petitioner was called upon to pay stamp duty of Rs.8,42,000/- thereon. Petitioner accordingly paid stamp duty of Rs.8,42,000/- and the Agreement came to be registered in the office of the Sub-Registrar, Andheri-3 on 7 October 2005. It is Petitioner's case that in pursuance of the Development Agreement, it has completed the redevelopment of society's building by constructing a new building and has already sold flats/shops/offices coming to its share in the sale component of the reconstructed building.

4. On 26 October 2015, Petitioner received notice dated 3 September 2015 issued by Sub-Registrar of Assurances for initiation of proceedings under Section 33A of the Maharashtra Stamp Act, 1958 (**Stamp Act**). The notice stated that the office

31 January 2024

of the Inspector General of Registration and Controller of Stamps (**IGR**), Maharashtra State, Pune had carried out an audit, in which it was observed that in the document registered at Serial No. 9752/2005, the market value ought to be Rs.30,97,91,000/- and there is deficit stamp duty of Rs.22,56,010/-. Petitioner was therefore called upon to deposit the original document for the purpose of recovery of deficit stamp duty. Petitioner contends that though the Notice bears the date 3 September 2015, the same was dispatched by Registered Post A.D. on 21 October 2015 and was received on 26 October 2015. Petitioner replied the notice on 27 October 2015 contending that the stamp duty has been correctly paid as per the adjudication and that no claim can be made after expiry of 10 years from the date of execution of the document. Nothing happened thereafter for about two years. On 14 September 2017 Notice was issued by the Collector of Stamps, Andheri calling upon Petitioner to remain present for hearing in the proceedings initiated under Section 33A of the Stamp Act for recovery of deficit stamp duty out of Rs.22,56,010/-. Petitioner filed its reply on 11 October 2017. The Collector of Stamps thereafter passed Order dated 31 May 2021 rejecting Petitioner's contention about the proceedings being barred after lapse of period of ten years observing that the proceedings are initiated under Section 33A for which there is no period of limitation. Petitioner's objection was therefore rejected, and Petitioner was directed to pay deficit stamp duty of Rs.22,56,010/- within 30 days failing which

penalty at the rate of 2% was to be levied from the date of registration of the document. Petitioner did not pay the deficit stamp duty. Consequent to the Order dated 31 May 2021, Demand Notice dated 13 October 2021 is issued by the Collector of Stamps calling upon the Petitioner to pay deficit stamp duty of Rs.22,56,010/- and penalty of Rs.87,08,200/-. Petitioner is aggrieved by Notice dated 3 September 2015, Order dated 31 May 2021 and Demand Notice dated 13 October 2021 and has filed the present petition.

5. Appearing for the Petitioner, Mr. Nargolkar, the learned counsel would submit that initiation of proceedings for recovery of alleged deficit stamp duty is barred under the provisions of sub-section (5) of Section 32A of the Stamps Act. That the impugned action is premised on the allegation of undervaluation of the instrument and therefore Section 32A is applicable to the facts and circumstances of the present case. He would submit that the proceedings are actually initiated after expiry of period of 10 years as the date of execution of the document is 6 September 2005 whereas the Notice (though dated 3 September 2015) is actually dispatched for service on 21 October 2015. He would therefore submit that the impugned proceedings are clearly barred under the provisions of Section 32A(5) and are therefore liable to be set aside. He would submit that the date on the Notice is deliberately backdated with a view to bring proceedings under the period of 10 years, which again

contains an implied acceptance that provisions of Section 32A(5) are applicable. He would submit that Petitioner has not suppressed any material information and has paid stamp duty as demanded at the time of registration of the instrument. That therefore belated action after more than 10 years could not have been initiated for levy of additional stamp duty based on the valuation done by the Auditor without hearing the Petitioner. That the impugned order is passed by Respondent No.2 on dictum of the Inspector General of Registration and Controller of Stamps and Respondent No.2 has not applied its independent mind to the facts and circumstances of the present case. That even otherwise, the valuation suggested in the impugned order is *ex-facie* erroneous. He would pray for setting aside the impugned Order and the impugned Demand Notice.

6. *Per-contra*, Mr. Patki, the learned Additional Government Pleader would oppose the petition submitting that the proceedings have been initiated under section 33A of the Stamp Act which does not specify any period of limitation. That Respondent No.2 is authorised to initiate action for recovery of deficit stamp duty at any point of time by resorting to action under Section 33A of the Act. That in the present case, the instrument dated 6 September 2005 was registered on 7 October 2010 on payment of stamp duty of Rs.8,42,000/-. That IGR, Maharashtra directed its Special Audit Team to conduct audit of the office of the Sub-Registrar, Andheri-3 in respect of the

documents registered in that office. That after conduct of said audit, Notice dated 3 September 2015 was issued to the Petitioner for initiation of proceedings under Section 33A which was replied by the Petitioner on 27 October 2015. That based on photocopy of the document, the Audit Team conducted revaluation of the document and found gross evasion of stamp duty worth Rs.22,56,010/-. Accordingly, the case was forwarded to the Collector of Stamps, Andheri for recovery of deficit stamp duty. That Petitioner was granted an opportunity of hearing which he did not avail but filed reply/written submissions raising only the ground of limitation. After considering Petitioner's reply, the Order dated 31 May 2021 was passed. Mr. Patki, would specifically assert that the impugned proceedings have been initiated under Section 33A and that provisions of Section 32A(5) are not attracted in the present case. He would pray for dismissal of the petition.

7. Rival contentions of the parties now fall for my consideration.

8. In the present case, the Development Agreement has been executed on 6 September 2005 and the same has been registered on 7 October 2005. It appears that while registering the document, the market value of the property is considered as Rs. 8,41,10,500/- and consideration is shown as Rs.5 crores. Based on the market value of Rs. 8,41,10,500/-, stamp duty of

Rs. 8,42,000/- was paid. Respondents are of the view that valuation shown at the time of registration is erroneous and the instrument ought to have been valued at Rs. 30,97,91,000/-. Before I proceed to examine the statutory framework empowering the Respondents to recover deficit stamp duty, it would be necessary to examine the factual position in which the proceedings are initiated.

9. After execution of the Development Agreement on 6 September 2005 and its registration on 7 October 2005, no steps were taken by the Respondents to raise the claim of incorrect valuation of deficit stamp duty. For the first time, Notice dated 3 September 2015 was issued by the Sub-Registrar, Andheri referring to the provisions of Section 33A and informing the Petitioner that the audit team deputed by the IGR has fixed the market value of the instrument at Rs.30,97,91,000/- and determined the deficit amount of stamp duty of Rs.22,56,010/-. Petitioner was called upon to deposit the original Development Deed for the purpose of recovery of deficit stamp duty. Thus the Notice dated 3 September 2015 merely called upon the Petitioner to deposit the original Development Deed for taking action of recovery.

10. After the Petitioner submitted reply dated 27 October 2015, there was quietus for a period of two years. On 14 September 2017, the Collector of Stamps, Andheri issued Notice

to the Petitioner calling upon it to remain present for hearing scheduled to be held on 7 October 2017. The said notice stated that the Development Agreement was being impounded under Section 33A of the Stamp Act by the Sub-Registrar, Andheri as he had reason to believe that the instrument is not properly stamped with stamp duty. Though Section 33A is referred in the Stamp Act for proposed impounding, the Collector of Stamps further stated that his office had initiated action 'in accordance to the provisions laid down under the Act'. Thus, no specific provision is referred for initiation of proceedings for recovery of alleged deficit stamp duty. The amount of Rs.22,56,010/- was shown as '*prima facie*'.

11. After receipt of Petitioner's reply, Order dated 31 May 2021 is passed by the Collector which makes an interesting reading. The Order states that all documents registered during the years 2006-2009 during the tenure of Shri. A.P. Parkhe, Sub-Registrar were checked by the team deputed by the Office of IGR. The checking team found that the instrument is Development Agreement, and the Sub-Registrar has correctly fixed the market value of the property. However, the consideration has not been fixed in accordance with the terms and conditions of the instrument and since the amount of consideration is higher than the market value, it was necessary to levy stamp duty on consideration. On this ground, conclusion is arrived that there is deficit stamp duty of Rs.22,56,010/-. So far

as Petitioner's objection about limitation is concerned, the Collector of Stamps has stated in the order that guidelines from the office of IGR were sought on Petitioner's objection of limitation under Section 33A which was received on 4 January 2017 and that there is no period of limitation for recovery of deficit stamp duty under Section 33A.

12. Thus, from the date of receipt of guidelines from the office of IGR on 4 January 2017 would indicate that a reference was apparently made to the office of the IGR during the period from first notice of Sub-Registrar dated 3 September 2015 and the second notice of Collector of Stamps dated 14 September 2017.

13. Mr. Nargolkar has placed on record the relevant audit objection raised by the inspection team who has determined the market value of the property. The said audit objection also states that the Sub-Registrar has correctly fixed the market value of the property but has failed to fix the consideration amount as per the terms and conditions of the Agreement. The audit team accordingly undertook the exercise of fixing the consideration amount and has arrived at the conclusion that the consideration value ought to be Rs.33,97,91,000/-. The audit team has concluded that since the consideration amount is higher than the market value, stamp duty was required to be levied on the

consideration amount of Rs.33,97,91,000/- and this is how it recommended recovery of deficit stamp duty of Rs.22,56,010/-.

14. Having examined the factual position of the present case, it would be necessary to consider the statutory framework under the Stamp Act empowering the Respondents to levy and recover deficit stamp duty. Section 2(na) defines the term ‘*market value*’ as under :

S.2(na)- “market value”, in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument whichever is higher:

15. Thus, for the purpose of Stamp Act, the market value also comprises of consideration stated in the instrument in the event, the same is higher than the price that the property would have fetched. Thus, the term ‘market value’ is not confined only to the price of the property but in the event of consideration amount exceeding the price of the property, such consideration amount becomes the market value under the provisions of Section 2(na). Chapter-III of the Stamp Act deals with “Adjudication as to Stamps”. Section 32A provides for dealing with instruments of conveyance etc. which are undervalued and provides thus :

32A. Instrument of conveyance, etc. undervalued how to be dealt with

(1) Every instrument of conveyance, exchange, gift, certificate of sale, deed of partition or power of attorney to sell immovable property when given for consideration, deed of settlement or transfer of lease by way of

31 January 2024

assignment, and also any other instruments mentioned in SCHEDULE I chargeable with duty on the basis of market value of the property presented for registration under the provisions of Registration Act, 1908, shall be accompanied by a true copy thereof:

Provided that, in case of such instruments executed on or after the 4th July 1980, to the date of commencement of the Bombay Stamp (Amendment) Act, 1985, an extract of the instrument to be taken from the registration record shall be deemed to be the true copy accompanying the instrument, presented for registration for the purposes of sub-section (1).

(2) Any registering officer receiving such instrument for registration has reason to believe, on the basis of the information available with him in this behalf, that the market value of immovable property which is the subject matter of such instrument has not been truly set forth therein, he shall, immediately after receiving of such instrument, refer it to the Collector for determination of the true market value of such property:

Provided that, in respect of the instrument presented for registration before the date of commencement of the Maharashtra Tax Laws (Levy, Second Amendment and Validation) Act, 1996 where, in the opinion of the registering officer, the true market value of the immovable property, which is the subject matter of the said instrument, has not been determined by the Collector of the District, it shall be lawful for the registering officer to verify the true market value of such property as per the annual statement of rates of immovable property determined under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 and issue notice to the person, who is liable to pay stamp duty under section 30 calling upon such person to pay the deficit amount of stamp duty and penalty at the rate of 2 per cent. of the deficient portion of the stamp duty, for every month or part thereof from the date of execution of such instrument:

Provided further that, on the receipt of such notice, if the person liable to pay deficit amount of stamp duty and the penalty, pays within one month from the date of receipt of such notice, the deficient amount of stamp duty and also pays the fixed penalty of rupees two hundred fifty, he shall not be liable to make payment of penalty at the rate of 2 per cent., as provided in the first proviso; and the reference already made to the Collector of the District shall abate:

Provided also that, in no case, the amount of the penalty to be charged under the proviso shall exceed four times] the deficit portion of the stamp duty.]

(3) If any person referred to in section 33, before whom any such instrument is produced or comes in the performance of his functions, has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been truly set forth therein, he may, after performing his function in respect of such instrument, refer the instrument alongwith a true copy of such instrument to the Collector of the District for determination of the true

31 January 2024

market value of such property and the proper duty payable on the instrument.

Provided that if the person, before whom any such instrument is produced or comes in performance of his functions, is an officer appointed as the Collector under clause 10 of section 2, and he has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been truly set-forth therein, he shall, for the purpose of assessing the stamp duty, determine the true market value of such property in the manner laid down in the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995);

(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 moto 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 (1) 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).

*[(6) It shall be lawful for the Chief Controlling Revenue Authority or the Collector of the District to transfer to any other Officer, any reference received by the Collector of the District under this section, for disposal in accordance with the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995.]

16. Thus, under Section 32A, if registering officer receiving the instrument relating to immovable property has a reason to believe that market value of immovable property has not been truly set forth in the instrument, he is required to refer the same to the Collector for determination of the true market value of the property. Under sub-section (3) of section 32A, every person empowered under Section 33 to receive evidence who has reason to believe that the market value of the immovable property has not been truly set forth in the instrument, can refer the instrument to the Collector for determination of true market value of the property. After receipt of instrument under sub-sections (2) or (3), Collector, after giving hearing to all the concerned parties, determines the true market value of the immovable property under Sub-section (4). Under sub-section (5) of Section 32A, Collector has been conferred with power either *suo-moto* or on receipt of information from any source to call for true copy or abstract of 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 and if he has reason to believe that the same has not been truly set forth in the instrument, he can proceed under section (4) to determine the correct market value. However, under sub-section (5) such power is to be exercised by the Collector within 10 years from the date of registration of the instrument.

17. Chapter-IV of the Stamp Act deals with 'Instruments not duly Stamped'. Section 33 provides for examination and impounding of instruments not duly stamped by any person authorised to receive evidence. The instrument so impounded under Section 33 is required to be forwarded to the Collector for determination of true market value of the immovable property under the provisions of Sections (3) and (4) of Section 32A.

18. Section 33A provides for impounding of instruments after registration and reads thus :

33A. Impounding of instruments after registration – *When through mistake or otherwise any instrument which is not duly stamped is registered under the Registration Act, 1908, the registering officer may call for the original instrument from the party and, after giving the party an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it. On failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be the original of such instrument.*

19. Thus, under Section 33A, in the event of registration of an instrument which is not duly stamped due to mistake or otherwise, the Registering authority is empowered to call for original instrument from the party and after giving opportunity of hearing and after recording of reasons, impound the same. On failure of the parties to produce the original instrument, true copy thereof taken out from the registration records is to be treated as original of such instrument.

20. The documents so impounded by the Sub-Registrar under the provisions of Section 33A is further dealt with by the Collector of Stamps under Section 37 which provides thus :-

37. Instruments impounded how dealt with.

(1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34 or of duty as provided by section 36, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, a person so impounding the original instrument shall prepare an authentic copy of such instrument and where it is a true copy or an abstract referred to in section 31 or true copy referred to in section 33A, he shall send such authentic copy or, true copy or, as the case may be, an abstract to the Collector, for the purpose of taking action on the authentic copy or a true copy or, as the case may be, an abstract as if it were the original instrument and endorsing thereon a certificate with reference to the instrument under clause (a) of sub-section (J) of section 39 or under sub-section (1) of section 41, as the case may be. On receipt of the authentic copy, the true copy or, as the case may be, an abstract with the certificate as aforesaid endorsed thereon, the person who had impounded the original instrument shall copy on the original instrument the certificate endorsed on the authentic copy and shall authenticate such certificate; and where it is a true copy or an abstract on which the certificate as aforesaid is endorsed, the registering officer who had forwarded the true copy or an abstract shall make appropriate entries in respect of the instrument of which it was a true copy or an abstract, in the relevant register maintained by him and on an application made in this behalf issue under his signature a certificate to the effect that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect of that instrument, and the name and residence of the person paying such duty and penalty.

21. Thus, in respect of an impounded instrument under Section 33A, the same or an abstract thereof is required to be sent to the Collector for purpose of making an endorsement thereon as if it is an original instrument.

22. Under Section 39, the Collector is empowered to require the payment of proper stamp duty together with penalty.

Section 39 provides thus :

39. Collector's power to stamp instruments impounded

(1) When the Collector impounds any instrument under section 33, or received any instrument sent to him under sub-section (2) of section 37, not being an instrument chargeable with a duty of twenty naye paise, or less, he shall adopt the following procedure :-

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of an amount equal to 12 per cent of the deficient portion of the stamp duty, for every month or part thereof) from the date of execution of the instrument subject to the payment of a minimum penalty of rupees one hundred];

Provided that, duty for which reduction or remission is granted by the Government under clause (a) of section 9 under any prevailing policy shall not be treated as deficient portion of duty for the purposes of calculation of penalty, if the beneficiary of such reduction or remission in duty surrenders or forgoes or has surrendered or forgone such benefit with prior approval or with no objection from the Government:]

[Provided further that), in no case, the amount of the penalty shall exceed [four times] the deficient portion of the stamp duty:]

[Provided also that), when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

*(2) *Subject to the provisions of section 53A, every certificate) under clause (a), of sub-section (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.*

(3) Where an instrument has been sent to the Collector under sub-section (2) of section 37 the Collector shall, when he has dealt with it as provided by this section return it to the impounding officer.

23. Thus, there are two separate proceedings prescribed under Section 32A on one hand and under Sections 33A, 37 and

39 on the other, to deal with instruments which are not properly stamped. In the initial reading of both sets of provisions, it may appear that the power is conferred for same purpose and can be parallelly exercised. However, on deeper scrutiny, distinction between the two set of provisions is apparent. Section 32A essentially deals with a situation where the market value has not been truly set forth in the instrument. As observed above, market value also comprises of the amount of consideration, if the same is higher than the price of the property. Thus, if the Collector is of the opinion that the market value of the immovable property has not been truly set forth in an instrument, he is empowered to initiate action under sub-section (5) of Section 32A. He can call for true copy or abstract of such instrument from the registering officer and examine the same for the purpose of satisfying himself as for the correctness of the market value. If he has a reason to believe that the market value has not been truly and fully set forth in the instrument, he has to follow the procedure under sub-section (4) of Section 32A under which he has to give parties concerned a reasonable opportunity of being heard before determining the true market value of the immovable property as well as the proper stamp duty payable thereon. Upon such determination, the Collector can require the party to make payment of the amount required to make up the difference of the amount of duty determined under sub-section (4) and the amount of duty already paid by the party in addition to penalty

at the rate of 2% per month or part thereof from the date of execution of the instrument.

24. On the other hand, the other set of provisions, under Sections 33A, 37 and 39, apply to a situation where there is no dispute about the market value of the immovable property. The impounding of document under Section 33A is to be done not in a case where the true market value has not been set forth but in case where the registering authority notices that proper stamp duty has not been affixed on an instrument. Thus, where the market value of the property is correctly set forth, but stamp duty has been erroneously paid, the route under Sections 33A, 37 and 39 is to be taken, for which there is apparently no period of limitation. However, when it comes to a dispute about market value of the immovable property, the only route which can be taken is under sub-section (5) of Section 32A.

25. It is urged on behalf of the State Government that the action in the present case is initiated under Section 33A which does not prescribe any period of limitation. Does it mean that what can be done under sub-section (5) of Section 32A can also be done under Section 33A? If the answer to the question is to be assumed to be in the affirmative, the period of limitation of ten years prescribed in sub-section (5) of Section 32A would become otiose. If the Registering Officer and Collector have unbridled

power of determining correct market value of the property and to recover deficit stamp duty at indefinite point of time by taking route of impounding under Sections 33A, 37 and 39, the entire purpose of prescribing the outer limit of 10 years under sub-section (5) of Section 32A would be rendered futile. In my view, therefore different meaning must be ascribed to the power of the Collector to call for instrument from the registering authority, determine the market value and demand deficit stamp duty under sub-sections (4) and (5) of Section 32A and the power of the registering authority to impound the document under Section 33A and to then forward the same to the Collector under Section 37 and for recovery of deficit stamp duty under Section 39.

26. I am fortified in my view that the application of Section 32A is restricted to an instrument for transfer of immovable property whereas application of Section 33A is not restricted to instrument involved in immovable property alone. In my view, therefore in a case where the market value of the property is disputed and Collector desires to redetermine the same, the procedure under Sections 33A, 37 and 39 cannot be adopted and the correct procedure to be adopted is as per sub-sections (4) and (5) of Section 32A. Such construction would avoid apparent conflict between the two sets of provisions and would save the outer limit of 10 years prescribed in Section 32A(5) from being rendered otiose.

27. In my view, therefore initiation of proceedings under Section 33A in the present case, where the dispute is about the true market value of the property, itself was erroneous. The Collector ought to have initiated proceedings under sub-section (5) of Section 32A and the Registrar ought not to have initiated proceedings for impounding of the document under Section 33A.

28. Apart from the application of two sets of provisions in different scenarios, the factual position in the present case would again indicate that reference to Section 33A is made both by the Registrar as well as by the Collector solely with a view to save application of outer limit of 10 years under Section 32A(5). Perusal of the Notice dated 3 September 2015 making reference to Section 33A would indicate that the Registrar never intended to impound the Development Agreement. The role of the Registrar under Section 33A is restricted only to impounding of the document. The Registrar himself is not supposed to either determine the market value of the property or the deficit amount of stamp duty. In the present case, apart from Notice dated 3 September 2015 determining the market value of the property and deficit amount of stamp duty, the Registrar did not call upon the Petitioner to show cause as to why the document should not be impounded. He merely directed the Petitioner to deposit the original document for the purpose of recovery of deficit stamp

duty. This not the scheme under Section 33A, under which the Registrar is vested with power merely to impound it and on failure of the party to produce the original instrument, to treat the true copy of the instrument taken out from registration records as the original of the document. The Registrar then has to follow the procedure under sub-section (2) of Section 37 by preparing an authentic copy of the original instrument or where it is a true copy thereof, he shall send such authentic copy or true copy to the Collector for the purpose of taking further action under Section 39. In the present case, after issuance of notice dated 3 September 2015, it appears that the Registrar did not impound the document. The Affidavit is silent as to whether the Registrar treated the true copy of the instrument taken out from registration records as the original document and whether he forwarded the same to the Collector under Section 37. Two years after issuance of Notice dated 3 September 2015, Petitioner was called for hearing by the Collector by letter dated 14 September 2017, which did not make any reference to the provisions of Section 37 or Section 39. The Notice dated 14 September 2017, as well as the Order dated 31 May 2021 once again made reference to Section 33A. As a matter of fact, the Collector has no role to play under the provisions of Section 33A. Therefore even on facts, passing of order by the Collector by referring to the provisions of Section 33A is itself an erroneous exercise of power.

29. Thus, there are multiple errors in the Order dated 31 May 2021. The power of redetermining true market value of the property has been erroneously exercised by referring to the provisions of Section 33A when infact such power is traceable only to Section 32A(5). Secondly, in absence of jurisdiction under Section 33A and without making any reference to Section 37 or Section 39, the Collector has erroneously exercised the jurisdiction under Section 33A.

30. As observed above, the impugned proceedings have not been conducted and the impugned order has not been passed under sub-sections (4) and (5) of Section 32A. However, even if the error committed by the Collector in making reference to Section 33A is to be ignored, and even if the proceedings were to be treated as the one initiated and conducted under the provisions of sub-sections (4) and (5) of Section 32A, initiation of proceedings is clearly barred by the outer limit of 10 years. The outer limit of 10 years provided under sub-section (5) of Section 32A applies from the date of registration of the instrument. In the present case, the Development Agreement was registered on 7 October 2005 and therefore 6 October 2015 was the last day before which proceedings under Section 32A(5) could have been initiated. No doubt in *Sheshrao s/o. Balbhim Suryawanshi Vs. State of Maharashtra & Ors.*¹, the learned Single Judge

of this Court (S.V. Gangapurwala, J. as he then was) has held that the period prescribed under Section 32(5) is to be reckoned from the date on which date the notice is issued. However, in the present case, though notice is shown to have been dated 3 September 2015, the same is actually dispatched from the office of the Sub-Registrar on 21 October 2015. Petitioner has produced copy of the envelope by which the Notice was delivered to him on 26 October 2015. The postal receipt affixed on the said envelope indicates that the Notice was dispatched on 21 October 2015. The Petitioner has accused the Sub-Registrar of deliberately backdating the Notice with a view to fit the same within the outer limit of 10 years prescribed under Section 32A(5). Without going into the motive behind mentioning the date of 3 September 2015 on the Notice, it would be suffice to observe that the date of dispatch of Notice would be a relevant date for the purpose of reckoning the outer limit prescribed under Section 32A(5). It is well settled law that the Notice prepared and kept in file does not amount to proper service. Even if the date of service of Notice is to be ignored, the date of dispatch is after expiry of period of 10 years. In this regard, useful reference can be made to the judgment of the Apex Court in *Delhi Development Authority V/s. H.C. Khurana*², in which in the context of service law, the Apex Court has held that the date of dispatch of chargesheet to a Government Servant irrespective of the actual service on him, would be relevant for the purpose of adoption of

² (1993) 3 SCC 196

31 January 2024

Sealed Cover Procedure. The Apex Court has held in para-15 as under :

15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context in which it is used. Meanings of the word 'issue' given in the Shorter Oxford English Dictionary include : 'to give exit to; to send forth, or allow to pass out; to let out; ... to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit, put into circulation'. The issue of a charge-sheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'charge-sheet has already been issued to the employee', in para 17 of the decision in Jankiraman [(1991) 4 SCC 109 : (1993) 23 ATC 322 : 1993 SCC (L&S) 387].

31. Therefore, I have no hesitation in holding that even if the proceedings initiated by the Respondents were to be treated as the one under Section 32A, the same are clearly barred by the outer limit prescribed under sub-section (5).

32. I am therefore of the view that the impugned Order dated 31 May 2021 is unsustainable and is liable to be set aside. The Writ Petition accordingly **succeeds**. The Notice dated 3 September 2015, Order dated 31 May 2021, as well as the Demand Notice dated 13 October 2021 are set aside. Rule is made absolute in the above terms. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

SANDEEP V. MARNE, J.