IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5404 OF 2023
(M/s Nirbhaya Industries Pvt. Ltd. vs. State of Maharashtra through its Secretory and Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri C.S. Kaptan, Sr.Advocate a/b Shri Palash Mohta, Adv. for Petitioner
Shri A.S. Fulzele, Addl.G.P. for the Respondent Nos.1 to 4/State
Shri P.M. Dahake, Advocate for the intervenor

CORAM : ANIL S. KILOR AND SMT.M.S. JAWALKAR, JJ.
DATE OF RESERVING THE ORDER : 26/03/2024
DATE OF PRONOUNCING THE ORDER : 28/06/2024

1. Heard.

2. This petition takes exception to the order dated 18.07.2023 passed by the respondent No.3, upholding the order dated 28.02.2023 passed by the respondent No.4, assessing the stamp duty at Rs.1,01,76,300/-.

3. The petitioner has also raised a challenge to the circular dated 15.12.2021 issued by the respondent No.2 as being contrary to the judgment of the Hon'ble Supreme Court of India in the case of *Registrar of Assurance and another Vs. ASL Vyapar Private Ltd. and another*[1].

4. The brief facts of the present case are as under:

The petitioner is a successful bidder in the auction conducted by the Insolvency Professionals, who were appointed

1 2022 SCC OnLine SC 1554

by the National Company Law Tribunal (NCLT), Hyderabad under the provisions of the Insolvency and Bankruptcy Code 2016 (in short “the Code of 2016”) in relation to the property in question which is entire 10 M.W. Biomass Power Plant including all machinery, building and associated power distribution structures situated on a leasehold land at Plot No.A/20, and A/20P in Bhandara Industrial Area, Rajegaon and Chikhli Hamesha village, Bhandara District.

5. In a liquidation proceeding of Varam Bio-energy Private Limited under the provisions of the Code of 2016, a liquidator appointed, published E-auction for the sale of land in question, vide public notice dated 28.02.2022.

6. Thereupon, the auction was held, in which the petitioner was declared as the successful bidder and accordingly, the said land was sold to the petitioner for a total consideration of Rs.9,02,05,866/-. It may be noted that, the bid offered by the petitioner was more than up set price fixed for the public auction.

7. After execution of the sale certificate in favour of the petitioner to get the sale certificate registered, the Sub-Registrar Bhandara, a liquidator on 19/23.01.2023, made an application for assessing the stamp duty on the said sale certificate dated 05.07.2022.

8. Whereupon, the respondent No.4 passed the final order dated 28.02.2023, assessing the value and stamp duty at Rs.1,01,76,300/- and imposed penalty of Rs.16,28,280/- on the said land. The said order was confirmed by respondent No.3 vide order dated 18.07.2023. Hence, this petition.

9. We have heard the learned counsel for the parties.

10. Shri Kaptan, learned Senior Advocate for the petitioner, submits that the NCLT is a quasi-judicial authority and it is chaired by the judicial member who is supposed to be retired or serving High Court Judge. Therefore, the auction held in the present matter by the NCLT through liquidator would be an auction done in pursuance to the quasi-judicial authority and the amount received is true market price of transaction. Therefore, assessing any land value contrary to the amount received in the auction is impermissible. For this purpose, he has relied upon a judgment of the Hon'ble Supreme Court of India, in the case of *Registrar of Assurance and Another Vs. ASL Vyapar Private Ltd. and another* (supra), the judgments of the Co-ordinate Bench of this Court in the cases of *Crystal Construction Company vs Additional Controller of Stamps and others*[2] and *Crystal Construction Company and Anr. Vs. State of Maharashtra & Ors.*[3].

11. It is further submitted that the circular dated 15.12.2021 is contrary to the judicial pronouncement on this issue, since it is a settled law that the judgment of the High Court or the Supreme Court of India will prevail over any circular or any instructions issued by the Government.

2 Writ Petition No.714 of 2018 dt. 22.05.2020
3 Writ Petition No.2540 of 2023 dt.04.03.2024

12. On the other hand, the learned Addl.G.P. Shri Fulzele opposed the present writ petition and submits that assessment made by the respondent No.4 are just and proper and as per the provision of the Maharashtra Stamp Act, 1958. It is submitted that as per the circular dated 15.12.2021, in case of auction held by the Charity commissioner/DRT or similar authorities, a purchase price would be considered as land value for assessment of the stamp duty and since the NCLT is not included in the said circular, the respondent Nos.3 and 4 have rightly made the assessment of stamps. He accordingly, prays for dismissal of the present writ petition.

13. In light of the rival contentions of the parties, it is evident that the principal question involved in the present writ petition is, whether in the auction held by the liquidator appointed by the NCLT, the land value received in the auction can be considered as a market price of the land for assessment of the stamp duty ?

14. To answer the said question, we have perused the authorities, record, impugned orders and the circular.

15. Before considering the matter on merit, it would be appropriate and profitable to consider and appreciate the law in this regard.

16. The Hon'ble Supreme Court of India, in the case of *Registrar of Assurance and another* (supra) had an occasion to deal with the similar issue. The Hon'ble Supreme Court of India in the said matter recorded the conclusion as under:

"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 mariner 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 Devils 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. Devadossis 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. ...

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. & 32. (***)

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."

17. The Coordinate Bench of this Court in the case of *Crystal Construction Company vs Additional Controller of Stamps and others* (supra), has relied upon the case of *Pinak Bharat and Company vs. Bina V. Adani vs. Anil Ramrao Naik*[4], and has observed thus:

> *"17. A useful reference at this juncture can be made to the judgment of the learned Single Judge of this court in the case of Pinak Bharat and Co. (supra). In the said case this Court in execution of the decree had confirmed the sale of the trust property for the consideration of Rs.15.30 Crores. When the sale certificate was issued by the Prothonotary and Senior Master and was lodged with the Collector of Stamps, the later valued the property at Rs.155 Crores. It was later on submitted that the authorities after taking into consideration the fact that there were tenants on the said property, re-determined the market value at about Rs.35 Crores approximately. In the context of the aforesaid facts, the learned Single Judge considered the question as to whether the determination of the price in a sale by Court would fall within the ambit of the proviso to sub-rule (6) of Rule 4 of the Rules, 1995. Sub-rule (6) with which we are primarily concerned reads as under:*
>
> > *"(6) Every registering officer shall, when the instrument is produced before him for registration, verify in each case the market value of land and buildings, etc. as the case may be, determined in accordance with the above statement and Valuation Guidelines issued from time to time and if he finds the market value as stated in the instrument, less than the market value, determined as above, he shall refer the same to the Collector of the District for determination of the true market value of the property which is the subject matter of the instrument and the proper duty payable thereon:*
> >
> > *Provided that, if a property is sold or allotted by Government or Semi Government body or a Government Undertaking or a Local Authority on the*

4 2019 SCC OnLine Bom 527

basis of a predetermined price, then value determined by said bodies, shall be the true market value of the subject matter property:

Provided further that, where the property is purchased or acquired or taken over by the Government, Semi-Government Body or a Government Undertaking or Local Authority, then the actual value determined as consideration by the said bodies as mentioned in the deed, shall be considered to be the true market value of the subject matter property

Provided also that where the market value has been stated in accordance with or more than that prescribed in the statement issued by the Chief Controlling Revenue Authority, but the Registering Officer has reason to believe that the true valuation of the immoveable property cannot be arrived at without having recourse to local enquiry or extraneous evidence he may, before registering such instrument, refer the same to the Collector of the District for determination of true market value of property and the proper duty payable thereon."

18. The Court considered the omission of the sale through Court in the first proviso to sub-rule (6) and observed as under:

"12 The wording of the first proviso is also important in what it leaves out. It makes no mention of a sale through Court although Article 16, as we have seen, specifically deals with public auctions by Civil or Revenue Courts. In other words, we are told that if the Government, in any one of its very many manifestations or avatars, sells a property, and the document mentions that price, then the Collector or the adjudicating authority is required by law, on account of this proviso, to accept that stated value as the true market value without further enquiry. Once these two conditions are met, therefore, the adjudicating authority does not need to make any further enquiry. Indeed, the adjudicating authority cannot make any further enquiry.

13. Why should a sale through a Court by public auction on the basis of a valuation obtained, i.e. by *following a completely open and transparent process, be placed at any different or lower level than the government entities covered by the first proviso? Indeed the process that we follow in Courts is perhaps much more rigorous than what the proviso contemplates, because the first proviso itself does not require a public auction at all but only that the Government body should fix "a predetermined price".*

14. In our present system, a sale through the Sheriff's Office, i.e. a sale in execution is always necessarily by public auction. If it is by private treaty, it requires a special order. A sale effected by a Receiver in execution is not, technically, a sale by the Court. It is a sale by the Receiver appointed in execution and the Receiver may, of course, with leave of the Court sell either by public auction or by private treaty. Wherever a sale by public auction, there is an assurance of an open bidding process and very often that bidding process takes place in Court itself (as in the present case). Courts always obtain a valuation. They need to do this so that they can set a reserve price to ensure that properties are not sold at an undervaluation and to avoid cartelization and an artificial hammering down of prices. The reserve price is at or close to a true market value. Usually, the price realized approximates the market value. Sometimes the valuation is high and no bids are at all received. The Decree Holders cannot be left totally without recovery at all and it is for this reason that Courts sometimes permit, after maintaining the necessary checks and balances, a saleat a price below the market value even by public auction. There are, equally, times when after a competitive bid-improvement process in open court, the sale is knocked down at a price much higher than even the highest valuation.

15. ...

16. I have no manner of doubt and I have absolutely no hesitation in saying that if the sale either by the Deputy Sheriff with permission of the Court, or by the Court Receiver with leave of the Court, is by private treaty, then it is for the adjudicating authority to certainly determine the true market value.

> *17. Very different considerations will, however, arise where there is a sale by public auction through a Court, and this sale is preceded by a valuation obtained by the Court as part of that public auction process. In a situation like that, I do not see why such a sale or transaction should stand on any different footing from those that are part of the proviso to sub-rule (6) of Rule 4. I emphatically do not suggest that the sale certificate amount should be accepted as the true market value. The correct course in such a situation would be for the adjudicating authority to accept the valuation on the basis of which public auction was conducted as fair market value; or, if the sale is confirmed at a rate higher than the valuation, then to accept the higher value, i.e. the sale amount accepted. If more than one valuation has been obtained, then the highest of the most recent of the valuations is to be accepted as the true market value. This approach is consistent with sub-rule (6), its first proviso and ensures that there is consistency both between the stamp adjudication process and the basis on which the sale is conducted in the first place. There cannot be an inconsistency between the Court order and a Court supervised sale on the one hand and the adjudication for stamp on the other. This is the only method by which complete synchronicity can be maintained between the two. …*

19. Finally, if this Court in execution is satisfied with the valuation and accepts it, then it is not open to the adjudicating authority to question that valuation. In another manner of speaking, it is never open to the adjudicating party to hold, even by implication, that when a court sold the property through a auction by following this process, it did so at an undervaluation. The imprimatur of the court on the sale, i.e. its confirmation of the sale, carries great sanctity. If the validity or very basis of the sale was allowed to be brought into question by an executive or administrative authority, it would result in the stamp authority calling into question judicial orders of this court. That is impermissible and entirely beyond the remit of the adjudicating authority. In this, the purpose of the Stamp Act must be kept in mind. This is not an Act that validates, permits or regulates sales of property. It only assesses the transactions for payment of a levy to the exchequer. Therefore, it follows that it is not open *to the adjudicating authority to suggest, directly or indirectly, that a sale that carries the imprimatur of the court, one that is confirmed by the court, is liable to be set aside or not given effect to. When it confirms a sale, the court never determines the stamp duty payable. It always leaves that to the stamp adjudicating authority, and that is the only thing the stamp adjudicating authority can do, nothing more and nothing less. It cannot, therefore, question the sale in any manner. The only issue before the adjudicating authority is the determination of the market value for the purposes of computing the stamp payable. That basis cannot be different from the one on which the court proceeded, i.e. the highest valuation obtained or the actual sale price, whichever is higher." (emphasis supplied)*

20. The learned Single Judge proceeded to delineate the general practice as well in paragraph no.23, which reads as under:

> *"23. Hence, as a general practice:*
>
> *(a) Where there is a sale by private treaty, the usual course stipulated in the Maharashtra Stamp Act will apply;*
>
> *(b) Where the sale is by the Court, i.e. through the office of the Sheriff, or by the Court Receiver in execution, and is by public auction pursuant to a valuation having been previously obtained, then –*
>
> *(i) If the sale price is at or below the valuation obtained, then the valuation will serve as the current market value;*
>
> *(ii)If the final sale price, i.e. the final bid, is higher than the valuation, then the final bid amount and the not the valuation will be taken as the current market value for the purposes of stamp;*
>
> *(iii) Where there are multiple valuations obtained, then the highest of the valuations most recent, i.e. most proximate in time to the actual sale, should be taken as the current market value."*

21. The aforesaid pronouncements indicates as to how a sale through Court stands even on a higher pedestal than the sale by the authorities envisaged by the first proviso to sub-rule

(6), namely, sale or allotment by the Government or Semi-government Body or a Government undertaking or a local authority on the basis of the predetermined price, when the method of auction sale is resorted to, which in itself provides for an open competitive bidding. In the event the process of sale through auction is preceded by obtaining a valuation certificate from an approved valuer and thereafter the open competitive bids are invited then the said process has all the trappings of a process which ensures the objective of fetching of a true market value of the property. The aforesaid pronouncement governs the sale of the trust property by the Charity Commissioner under section 36 of the Trust Act, 1950, provided the elements of prior valuation of the trust property and the sale of the trust property through auction process are adhered to.

22. to 24. (***)

25. The upshot of aforesaid consideration is that the Collector of Stamps committed a manifest error in not at all adverting to the fact that the learned Charity Commissioner had determined the value of the trust property by following requisite process to ensure the best value, and determining the market value of the trust property on the sole premise that there was vast difference in the value determined by the Deputy Director, Town Planning and the value at which the learned Charity Commissioner accorded sanction for sale. The appellate authority also fell in error in opining that the sale by the order of the Charity Commissioner did not fall within the ambit of the first proviso to sub-rule (6) of Rule 4. The authorities have singularly missed to take into account the fact that there were 36 unauthorised occupants over the trust property and they were stated to be in occupation of the trust property since 1980, and, thereby the value of the trust property was considerably diminished. It is trite that the property occupied by the encroachers / hutment dwellers does not get the expected price. Indubitaly, the fact that the property is under encroachment since decades affects its price considerably. There is no consideration at all on these aspects of the matter as well."

18. From the above referred authorities, it is evident that the correct value of the property is 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 auction held through the Court and in such matter, the discretion would not be available to the registering authority to re-assess the value of the land and the stamp duty.

19. In the teeth of the above referred observations of the Hon'ble Supreme Court of India, we revert back to the facts of the present case.

20. In the matter at hand, admittedly, in a liquidation proceeding before the NCLT, the liquidator was appointed who put the land in question for auction and on receiving the highest bid which was indisputably higher than the up set price fixed.

21. The Hon'ble Supreme Court of India in the case of *Rojer Mathew ..vs.. South Indian Bank Limited*[5], had an occasion to understand functioning of the Tribunal. In the said judgment it is held thus:

> *"13. Evidently, there is a desperate need to overcome these hurdles of delay in administration of justice. Creation of tribunals has evolved as one solution in the ever-constant strive to increase access to justice. A "tribunal" can be understood as a body tasked with discharging quasi -Judicial functions with the primary objective of providing a special forum for specific type of disputes and for faster and more efficacious adjudication of issues. In Jaswant Sugar Mills Ltd. v. Lakshmi Chand*[8]*, a test was laid down whereunder it is to be examined whether the authority has the trappings of a court, facets of which include the authority to make determinations, evidentiary and procedural powers and ability to impose*

5 (2020) 6 SCC 1

sanctions. However, as per a five-Judge Bench in Associated Cement Companies Ltd. v. P.N. Sharma[9], tribunals were vested with a primarily judicial character for it was observed that: (AIR p. 1599, para 9)

"9. Special matters and questions are entrusted to them for their decision and in that sense, they share with the courts one common characteristic; both the courts and the tribunals are 'constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions' (vide Durga Shankar Mehta v. Raghuraj Singht[10] SCR at p. 272). They are both adjudicating bodies and they deal with and finally determine disputes between parties which are entrusted to their jurisdiction. The procedure followed by the courts is regularly prescribed and in discharging their functions and exercising their powers, the courts have to conform to that procedure. The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State."

> *14. Further, this Court has in various judgments explicitly held that tribunals are mutually exclusive from administrative or legislative bodies, and although not strictly courts, they nevertheless perform. judicial functions. With the inclusion of Technical Members along with Judicial Members in composition of tribunals, it is ensured that the adjudicatory authority is equipped with the technical knowledge required to comprehend and decide issues involving specialised subjects.*

22. The function and powers of NCLT and NCLAT are discussed by the Hon'ble Supreme Court of India in the case of *Embassy Property Developments Private Limited ..vs.. State of Karnataka and others*[6], wherein it is held thus :

> *"31. NCLT and NCLAT are constituted, not under the IBC, 2016 but under Sections 408 and 410 of the Companies Act, 2013. Without specifically defining the powers and functions of the NCLT, Section 408 of the Companies Act, 2013 simply states that the Central Government shall constitute a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being in force. Insofar as NCLAT IS concerned, Section 410 of the Companies Act merely states that the Central Government shall constitute an Appellate Tribunal for hearing appeals against the orders of the Tribunal. The matters that fall within the jurisdiction of the NCLT, under the Companies Act, 2013, lie scattered all over the Companies Act. Therefore, Sections 420 and 424 of the Companies Act, 2013 indicate in broad terms, merely the procedure to be followed by the NCLT and NCLAT before passing orders. However, there are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT.*

6 (2020) 13 SCC 308

32. In contrast, sub-sections (4) and (5) of Section 60 of the IBC, 2016 give an indication respectively about the powers and jurisdiction of the NCLT. Section 60 in entirety reads as follows:

"60. Adjudicating authority for corporate persons.-(1) The adjudicating authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before the National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the adjudicating authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

(4) The National Company Law Tribunal shall be vested with all the powers of the Debts Recovery Tribunal as contemplated under Part III of this Code for the purpose of sub-section (2).

(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of-

(a) any application or proceeding by or against the corporate debtor or corporate person;

(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

6. Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, In computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

23. From the above referred observations of the Hon'ble Supreme Court of India, we have no hesitation to hold that the NCLT is a quasi judicial authority like Charity Commissioner and Debts Recovery Tribunal. In the circumstances, we are of the opinion that the respondent Nos.3 and 4 have wrongly relied upon the circular dated 15.12.2021, in not accepting the auction price as a market value of the land.

24. It may be appropriate to note that the said circular says that an auction conducted through the Charity Commissioner or DRT or any similar institution, the sale price shall be considered as a market price and in such cases, Rule 4 and 6 of the Maharashtra Stamp Act, 1958, will not apply.

25. Thus, considering the language used i.e. "similar institution, like Charity Commissioner and DRT," in our opinion, having considered the purpose of constitution of NCLT and its quasi-judicial function the circular covers NCLT. too.

26. Even otherwise, the respondent Nos.3 and 4 cannot rely upon the circular dated 15.12.2021 in view of the judgments in the cases of *Registrar of Assurance and Another Vs. ASL Vyapar Private Ltd. and another* (supra), *Crystal Construction Company vs Additional Controller of Stamps and others (supra)* and *Crystal Construction Company and Anr. Vs. State of Maharashtra & Ors.* (supra).

27. In the case of *Commissioner of Central Excise, Bolpur VS. Ratan Melting & Wire Industries*[7], it is held that the Circulars and instructions issued by the Board are binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, the view expressed in the decision of the Supreme Court or the High Court will prevail over such circulars or instructions.

28. In the circumstances, we have no hesitation to hold that the impugned orders issued by the respondent Nos.3 and 4 are contrary to the law laid down by the Hon'ble Supreme Court of India in the case of *Registrar of Assurance and Another Vs. ASL Vyapar Private Ltd. and another* (supra). Accordingly, we pass the following order:

(i) The writ petition is partly **allowed**.

7 (2008) 13 SCC 1

(ii) The order dated 18.07.2023 passed by the respondent No.3 and the order dated 28.02.2023, passed by the respondent No.4, are hereby quashed and set aside.

(iii) The matter is remanded back to the respondent No.4 for re-assessment of stamp duty, in light of the observations made herein above.

(iv) The respondent No.4 shall make such assessment within two months from today, after hearing the petitioner.

Accordingly, the writ petition is **disposed of** in the above terms. No order as to costs.

[SMT. M.S. JAWALKAR, J.] **[ANIL S. KILOR, J.]**