IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 164 OF 2024
IN
WRIT PETITION NO. 10675 OF 2019

Kolte Patil Developers Ltd. ...Petitioner.
Versus
Chief Controller Revenue
Authority and Others. ...Respondents.

Mr. G. S. Godbole, Senior Advocate along with Mr. S.S. Kanetkar for the Petitioner.

Coram : Sharmila U. Deshmukh, J.
Date : February 17, 2025.

P. C. :

1. Review Petition seeks review of the judgment and order dated 11th November 2024 passed by this Court in Writ Petition No. 10675 of 2019.

2. Writ Petition No.10675 of 2019 was preferred by the Review Petitioner challenging the order dated 3rd April 2019 passed by the Deputy Inspector General and Controller of Stamps dismissing Appeal No.26 of 2018 thereby upholding the order dated 21st April 2018 issued by the Joint District Registrar.

3. The facts are that on 14th October 2013 the Petitioner executed an Indenture styled as “Development Agreement” with the owners under which the Petitioners were granted development rights in respect of land admeasuring 74321.81 sq. mtrs. located at village Bavdhan Budruk, District Pune. The property was valued as per the market value and stamp duty was calculated and paid accordingly by the Petitioners. On 19th March 2016, the Collector of Stamps issued a communication to the Petitioner calling upon them to pay the deficit stamp duty of Rs.3,21,15,525/-. By order of 21st April 2018, the Petitioner was directed to pay deficit stamp duty of Rs.2,44,39,280/- along with penalty @ 2% per annum. This order came to be challenged by way of an Appeal which was dismissed by order dated 3rd April 2019 leading to filing of Writ Petition.

4. After considering the submissions of parties, this Court in paragraphs 23, 24 and 25 held as under :

> "23. The revenue sharing of the gross sale proceeds though deferred to a later date constitutes the consideration for the transfer of Development rights. Consideration is the price that the Owners receive in exchange for grant of right to develop the property. Consideration may take any form either a crystallised amount of money or in form of constructed tenements or revenue sharing. If the consideration is a specific amount mentioned in the agreement, it presents no difficulty. If, in the form of constructed tenements, the cost of construction as per the ASR would be the consideration and if revenue sharing as in the instant case, the consideration in form of gross sale proceeds on date of execution of agreement will have to be computed by considering the available FSI and ASR of land and the constructed tenements. Section 2 (na) defines market value at higher of the price of the property if sold in the open market or the consideration. The consideration in the present case being the gross sale proceeds receivable from the sale of the constructed tenements, the development potential of the subject property

> on the date of execution of the instrument would form the basis of the valuation of the consideration. The Authorities have rightly considered the Annual statement of Rate for the land and the residential tenements on the basis of the available FSI as the development potential of the plot and as the consideration was higher of the market value, the short levy of stamp duty has been determined accordingly.
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> 24. The absence of valuation guidelines in the year 2013 as regards the revenue sharing for determining market value is irrelevant as Section 2 (na) mandates the authority to compute the market value based on the rate of property as per the ASR or the consideration stated in the instrument whichever is higher. The consideration stated in the instrument is thus required to be computed which was not done in the present case.
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> 25. The Development Agreement cannot be stated to be devoid of consideration. If the submission is accepted, then transfer of Development rights for crystallised amount will be stamped by factoring in the crystallised amount as consideration and if deferred to a later date by way of revenue sharing would be stamped only as per ASR of land resulting in differential treatment to the same nature of document under Article 5(ga), which is impermissible. It is perhaps for this reason that in the year 2015, the guidelines for market valuation took into account the revenue sharing. Though not set out in so many words in the valuation guidelines of 2013, the same principles will apply for computation where the consideration is based on revenue sharing. The submission of Mr. Godbole that the order is vulnerable as the valuation is on a hypothecated future construction and the imponderables militates against the assessment of consideration based on the future gross sale proceeds is not acceptable, as it overlooks the fact that the parties themselves had agreed for the Consideration to constitute a percentage of the sale proceeds which would be received from sale of constructed units. The order cannot be faulted as the Consideration is computed on the date of instrument as per Section 2 (na) of Stamp Act. The statutory provisions of Stamp Act also provides for allowances of stamps in certain cases which includes allowance for the reason of refusal of any person to act under the instrument and totally fails of the intended purpose and therefore the imponderables will not affect the computation of Consideration of revenue sharing."

5. In paragraph 32, this Court concluded that under Section 2(na) of the Stamp Act, it is higher of either the price which property would fetch if sold in market or the consideration which forms the basis for stamping the instrument. This Court held that in the present case, consideration for the purpose of Section 2(na) of Stamp Act is the owner's share of the gross sale proceeds, which consideration on the date of execution of instrument is required to be computed based on the available FSI on the subject property by considering the ASR of land and the constructed tenement and dismissed the Petition.

6. By way of present Review Petition, the judgment is sought to be reviewed on the ground of error apparent on the face of record.

7. Mr. Godbole, learned Senior Advocate appearing for Review Petitioner would submit that though the audit objection took into consideration FSI of 1 for the purpose of calculating the stamp duty on total area of 74,321.81 sq. mtrs, the Collector of Stamps while computing the deficit stamp duty has taken into consideration the Valuation Guidelines of 2015 which were not applicable and has not considered the issue of FSI. He points out page 112 of the impugned order dated 21st April 2018 in which the Collector of Stamps has computed the consideration value at 74,321.81 X 0.38 X 45,300 X 0.85 to arrive at the total consideration of Rs.108,74,69,500/- and has calculated the deficit stamp duty at Rs.2,44,39,280/-. He would further submit that firstly the exercise to determine the available FSI was not carried out by the authorities as the impugned order of Collector of

Stamps is at variance with the computation in the audit objection which is based on the FSI of 1. He would further submit that the error apparent on the face of record is that though this Court upholds that market value has to be determined on the basis of FSI, considering that the order of Collector of Stamps does not compute the consideration based on the available FSI of the subject property, the matter will have to be remanded to Collector of Stamps to be decided afresh by taking into consideration the observations made in the order. He fairly submits that this Court, however, has taken a view that the absence of Valuation Guidelines of 2013 is irrelevant in view of Section 2(na) of the Stamp Act.

8. Despite the matter being adjourned on various occasions, learned AGP has failed to appear in the matter and therefore this Court has proceeded with the hearing of review Petition.

9. During the initial hearing of the Petition, this Court had considered the submissions of Mr. Godbole that the audit objection was based on the consideration which was calculated by taking into account the ASR of land and residential tenements based on available FSI. This Court, as noted in paragraph No.23 which is reproduced above, has taken a view that consideration in the form of gross sale proceeds on the date of execution of agreement will have to be computed by considering the available FSI and ASR of land and constructed tenements. Mr. Godbole is right in submitting that though the audit objection was in respect of deficit stamp duty based on the FSI of 1, none of the authorities have determined the FSI which is available on the date of execution of instrument. He supports the said submission by pointing out the applicable planning regulations caps the FSI at 1/3rd to 1/2 of the area of land. Mr. Godbole is also right in submitting that though the audit objection was based on available FSI, the Collector of Stamps while passing order of 21st April 2018 has considered the Valuation Guidelines of 2015 and has not taken into consideration the available FSI for the purpose of computation of the market value under Section 2(na) of the Stamp Act.

10. As this Court has held that the consideration for the purpose of computing the market value under Section 2(na) of Stamp Act, in present case, is required to be computed based on available FSI on subject property by considering the ASR of land and construction which is not the basis of the Collector's order dated 21st April 2018 despite the audit objection of deficit stamp duty being based on the available FSI, the only option is to remand the matter to Collector of Stamps for consideration afresh. The view taken by this Court approves the basis of audit objection, which computes the short levy of stamp duty at Rs. 3,21,15,525/-. The Collector of Stamps computes the short levy of stamp duty at Rs.2,44,39,280/- which is not in accordance with the view taken by this Court. Without noticing the basis on which Collector of Stamps has computed the deficit stamp duty, this Court dismissed the Petition which resulted in upholding the computation of market value by the Collector of Stamps in contradiction to view taken by this Court. There is, thus, error apparent on the face of record which is required to be corrected by exercising review jurisdiction. As the judgment under review has taken a specific view that the consideration will have to be computed by considering the available FSI and ASI of land and constructed tenements, Collector of Stamps to ascertain the available FSI as on the date on which the instrument was executed and carry out the exercise afresh for determining the deficit stamp duty.

11. In the light of above, a case for review is made out. Consequently, paragraph No.33 of the judgment under review is recalled and is modified to read as under :

> **"In view of above discussion, the matter is remanded to the Collector of Stamps to be considered afresh in the light of observations which are made hereinabove. As the matter is remanded for fresh consideration, the impugned orders dated 3rd April 2019 and 21st April 2018 are quashed and set aside."**

12. Needless to clarify that in event it is found that subsequent to the passing of impugned orders, excess amount has been paid by the

Review Petitioner, the same is liable to be refunded to the Petitioner. Let this exercise be carried out within a period of three months from today.

13. Review Petition is partly allowed to the above extent.

[Sharmila U. Deshmukh, J.]