

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12021 OF 2025

Shweta Aditya Malhotra ...Petitioner

Versus

The Collector of Stamps, Andheri Division ...Respondent

Mr. Saurish Shetye, a/w Pavan Pandey and Devendra
Agarwal, i/b Prem Kumar Pandey, for the Petitioner.
Mr. J. P. Patil, AGP for the State.

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CORAM: N. J. JAMADAR, J.
Reserved On: 3rd DECEMBER, 2025
Pronounced On: 28th JANUARY, 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner takes exception to an order dated 29th May, 2025 passed by the Collector of Stamps, Andheri Division, Mumbai, whereby the Collector has determined the duty on the sale certificate at the market value of the subject property (Rs.8,34,91,500/-) instead of the consideration paid at the auction sale (Rs.2,01,31,000/-).

3. Shorn of unnecessary details, the background facts leading to this petition can be stated as under:

3.1 The property bearing Survey No.C/1112 admeasuring 142.97 sq. mtrs., with a building standing thereon, situated at H-Ward No.1976(2), street No.40A, Sherly Rajan Road, Bandra West, Mumbai, was the secured asset. In Original Application No.42/2001, the Debt Recovery Tribunal-1, Mumbai, ('the DRT-1') had drawn up a recovery certificate in favour of Central Bank of India, the certificate holder, towards recovery of the certificated amount alongwith further interest and charges, thereunder. The Recovery Officer, DRT-1, Mumbai, had ordered the sale of the subject property. A sale proclamation was issued on 30th September, 2021. The petitioner was the successful purchaser in the auction held on 29th October, 2021. Accordingly, a sale certificate evidencing the purchase of the subject property by the petitioner for the consideration of Rs.2,01,31,000/- was issued by the Recovery Officer, on 24th December, 2021.

3.2 After rectification of the sale certificate, the petitioner filed an application before the Collector of Stamps – the respondent, for adjudication of the stamp-duty on the corrected sale certificate. The petitioner claimed that, the stamp-duty be calculated on the consideration of Rs.2,01,31,000/- as paid under the court monitored auction

process. Eventually, by an interim order dated 5th March, 2025, the respondent determined the stamp-duty on the value of Rs.8,34,91,500/- on the basis of an independent market valuation. The petitioner filed objections to the said interim determination of the duty. Ultimately, after hearing the petitioner, the respondent passed an order dated 29th May, 2025 under Section 31 of the Maharashtra Stamps Act, 1958 ("the Stamp Act, 1958") adjudicating the stamp-duty on the sale certificate on the basis of the market value of the subject property i.e. Rs.8,34,91,500/-. Thus, the stamp-duty under Section 25(b) was determined at Rs.50,09,490/- and the penalty under Section 34(a)(ii) at Rs.12,02,278/-.

4. Being aggrieved, the petitioner has invoked the writ jurisdiction. The determination of the stamp-duty on the basis of the market value in the face of the sale of the subject property in an e-auction is stated to be illegal, arbitrary and in violation of the settled legal principle that, in such cases, the stamp-duty is to be paid on the value of the property as discovered in the auction sale. The petitioner asserts, the sale price fetched in a transparent auction process represents the market value for the determination of the stamp-duty.

5. An affidavit-in-reply is filed on behalf of the respondent. At the outset, the tenability of the petition is assailed on the ground of availability of an alternate efficacious statutory remedy of an appeal under Section 32B and Section 53(1A) of the Stamp Act, 1958.

6. On the merits of the matter, the respondent contends, the sale of the subject property in an auction conducted by DRT does not fall within the ambit of Rule 4(6) of the Maharashtra Stamp (Determination of True Market Value Property) Rules, 1965. In view of the Circular dated 15th December, 2021, issued by the Inspector General of Registration and Controller of Stamps, Maharashtra State, the stamp-duty on the sale of the property under the aegis of the DRT is to be determined on the market value of the property. Thus, the determination of the stamp-duty by the respondent is in consonance with the Rules, 1965 and, therefore, the writ petition does not deserve to be entertained.

7. I have heard Mr. Saurish Shetye, the learned Counsel for the petitioner, and Ms. Aloka Nadkarni, the learned AGP for the State, at some length. With the assistance of the learned Counsel for the parties, I have also perused the pleadings, impugned order and the material on record.

8. At the outset, Mr. Shetye, the learned Counsel for the petitioner, would urge that the challenge to the maintainability of the petition in the face of the availability of a statutory remedy of appeal, sought to be raised on behalf of the respondent, need not detain the Court. Mr. Shetye made an endeavour to draw home the point that, the controversy in this petition revolves around the correct application of legal principles and does not involve any disputed questions of facts. Thus, as the core question to be decided is that of correct application of law, the High Court can decide the issue in controversy without relegating a party to the forum created under the Stamp Act, 1958.

9. To this end, Mr. Shetye placed a very strong reliance on the judgment of the Supreme Court in the case of *Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and others*¹, wherein the Supreme Court elucidated the distinction between the ‘maintainability’ and ‘entertainability’ of a writ petition. It was, *inter alia*, enunciated that availability of an alternative remedy does not operate as an absolute bar to the ‘maintainability’ of a writ petition and that the rule, which requires a party to pursue

¹ 2023 SCC OnLine SC 95.

alternative remedy provided by a statute is a rule of policy, convenience and discretion rather than a “rule of law”.

10. On the aspect of the determination of the stamp-duty in a case of the present nature, Mr. Shetye would urge, the controversy is no long *res integra* and the field is covered by the judgments of the Supreme Court and this Court. Mr. Shetye would urge, if the Collector of Stamps has the power to determine the value on which the stamp-duty is to be paid, even in a case of transparent court monitored auction, it would amount to the Collector of Stamps sitting in appeal over the orders passed by the Court and Tribunals. Such an interpretation cannot be countenanced.

11. A very strong reliance was placed by Mr. Shetye on a judgment of the Supreme Court in the case of *Registrar of Assurance and another vs. ASL Vyapar Private Ltd. and another*², wherein a three-Judge Bench of the Supreme Court enunciated that, Court monitored auction is possibly one of the most transparent methods by which the property can be sold.

12. Reliance was also placed on the Division Bench judgments of this Court in the cases of *Trident Estate Private*

² 2022 SCC OnLine SC 1554.

Limited and another vs. Office of Joint District Registrar-Class-1 and others³, Collector of Stamps, Mumbai City, Government of Maharashtra vs. Pinak Bharat & Company and others⁴, and Dr. Prince John Edavazhikai vs. Collector of Stamps and Joint District Registrar and others⁵.

13. Mr. Shetye would urge, in the backdrop of the consistent view that, where the property is sold in a court monitored auction, the stamp-duty has to be determined on the basis of the price discovered in such auction sale, the impugned order being wholly unsustainable, an exceptional case is made out for exercising the writ jurisdiction.

14. In opposition to this, Ms. Nadkarni, the learned AGP, stoutly countered the submissions on behalf of the petitioner. An endeavour was made by Ms. Nadkarni to draw home the point that the sale by the Recovery Officer cannot be equated with the Court sale. It was submitted that from the perusal of the record it does not appear that DRT had obtained a valuation report before putting the property for public auction. At any rate, the valuation report has not been annexed to the record which evidences the sale of the subject

3 2024 SCC OnLine Bom 3423.

4 2025 SCC OnLine Bom 656.

5 2025 SCC OnLine Bom 3872.

property in an auction. In the absence of such material, and especially the circular dated 15th December, 2021, which has been issued to avoid loss of revenue by acquiring the property at the value which is much below the market value, the impugned order cannot be said to be suffering from such infirmity or perversity as to warrant interference in exercise of the writ jurisdiction, especially when the petitioner has an efficacious remedy of statutory appeal before the Appellate Authority. It was urged that the petitioner be, therefore, relegated to the remedy of statutory appeal.

15. The aforesaid rival submissions now fall for consideration.

16. To start with, the objection raised on behalf of the respondent to the entertainability of the petition in view of the statutory remedy of appeal under the provisions contained in Section 32B of the Stamp Act, 1958. As the Writ Court exercises plenary powers, mere availability of an alternate remedy does not preclude the High Court from entertaining a petition. The availability of an alternate efficacious remedy has been construed to be a self-imposed restraint on the exercise of the writ jurisdiction. In case of availability of statutory remedy of appeal against an order

assailed in writ petition, ordinarily, the aggrieved party must be relegated to exhaust the statutory remedy. A useful reference in this context can be made to the judgment of the Supreme Court in the case of *Radha Krishnan Industries vs. State of Himachal Pradesh and ors.*⁶

17. A slightly different consideration, however, comes into play where the issue to be decided in writ petition against an order passed by the Statutory Authority, involves a pure question of law and does not warrant investigation into facts. In such cases, the High Court may examine the issue without relegating the party to the alternate remedy.

18. In the case of *Godrej Sara Lee Ltd.* (supra), the Supreme Court after adverting to the previous pronouncements, including the judgments in the cases of *Whirlpool Corporation vs. Registration of Trademarks*⁷ and *The State Of Uttar Pradesh vs Mohammad Nooh*⁸, elucidated the distinction between the ‘maintainability’ and ‘entertainability’ of the writ petition. The following observations in paragraphs 4 and 8 of the judgment are instructive:

6 (2021) 6 SCC 771.

7 (1998) 8 SCC 1.

8 1958 SCR 595.

“4. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (*State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.*) and (2000) 10 SCC 482 (*Union of India vs. State of Haryana*). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available.”

(emphasis supplied)

19. Applying the aforesaid principles to the facts of the case at hand, it appears that the core controversy that wrenches to the fore is, whether the respondent correctly applied the law in the matter of determination of the stamp-duty. To put it in other words, the legal question that crops up for consideration is, if a property is purchased in an auction sale conducted through the aegis of DRT, whether the stamp-duty should be determined on the consideration at which the property was purchased or on the market value as may be determined by the Collector of Stamps? In a sense, the aforesaid question appears to be a question of law and much investigation into the facts is not warranted. In this view of the matter, this Court is persuaded to entertain the petition despite availability of a statutory remedy of appeal, as the core controversy can be resolved by applying the principles of law.

20. Article 16 of Schedule-I appended to the Stamp Act, 1958 prescribes that the stamp-duty on a certificate of sale, granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer or any other officer empowered by law to sell property by public auction, shall be the same as is leviable on

a Conveyance under clause (a), (b) or (c), as the case may be, of Article 25 on the market value of the property. Article 25, in turn, provides that on a Conveyance, not being transfer charged or exempted under Article 59, the stamp-duty be levied on the true market value of the property which is the subject matter of Conveyance; at 5% of the market value of the property.

21. To determine the market value of the property, in exercise of the powers conferred by Section 69 and 32A of the Stamp Act, 1958, the State Government has framed the rules, “the Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995”. Under clause (f1) of Rule 2, “valuation guidelines” mean the guidelines issued by the Chief Controlling Revenue Authority from time to time for determination of the market value of a property on the basis of annual statement of rates. Rule 4(3) enjoins the Chief Controlling Revenue Authority to issue annual statement of rates showing average rates of lands and buildings situated in a particular area.

22. Sub-rule (6) of Rule 4, which bears upon the determination of the controversy at hand, reads as under:

“Rule 4(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, from the above statement and if he finds the market value as stated in the instrument, less than the minimum value, prescribed by the statement, 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 basis of the 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 immovable 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.

23. Under the first proviso to sub-rule (6) of Rule 4 if a property is sold or allotted by Government or Semi Government body or a Government Undertaking or a Local Authority on the basis of the predetermined price, then value determined by said bodies, shall be the true market value of the subject matter property. In contrast, under the second proviso, if the property is purchased or acquired by the

Government or its enterprises or Local Authority, then the actual consideration paid, shall be considered as true market value of the subject property.

24. The sale of the property by Court or Tribunal which is statutorily empowered to sale the property in execution of the decree/award/recovery certificate does not find mention in the first proviso to sub-rule (6). Under a circular issued by the Chief Controlling Revenue Authority dated 13th October, 2006, certain guidelines were issued to ascertain whether the sale by the authorities like DRT and Charity Commissioner was in a transparent manner. By a subsequent circular dated 15th December, 2021, the earlier circulars have been withdrawn and it has been directed that the true market value would be determined as per the guidelines for the determination of the market value of the property considering the rate as per Annual Statement of Rates (ASR) in relation to the concerned property. In the affidavit-in-reply filed on behalf of the respondent, an endeavour has been made to justify the impugned order on the basis of the aforesaid provisions of Rule 4(6) and the circular dated 15th December, 2021.

25. Can a situation be countenanced, even where the Court or Tribunal sells the property, in accordance with the provisions governing the sale of the property and in a transparent manner with a view to achieve the optimum price, the stamp-duty on the sale certificate be determined by the Collector of Stamps, *de hors* the consideration at which the sale takes effect? If a property is sold in a Court auction, after following a rigorous process aimed at discovery of the optimum price, such price, in effect, represents the price of the property at which a willing buyer was prepared to purchase the subject property, with all its advantages and disadvantages, in a competitive bidding. Secondly, such a sale has the imprimatur of the Court. An order of acceptance of the bid implies that, in the given situation, the bid at which the property was sold, in the view of the Court, represented the true market value of the property. In such circumstances, can the Collector of Stamps be permitted to sit in judgment over the value of the property at which the sale takes effect, is the moot question.

26. In a series of judgments, *albeit* in different facts-situations, the aforesaid question has been consistently answered in the negative. In the case of *ASL Vyapar* (supra),

in the context of the provisions contained in Section 47A of the Indian Stamp (West Bengal Amendment) Act, 1919, which contains provisions for determination of the market value of the property, the Supreme Court enunciated that the said provisions 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. The observations of the Supreme Court in paragraphs 24 to 26 are material and hence extracted below:

“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."

(emphasis supplied)

27. The Supreme Court has, thus, in terms held that to concede the power to Registering Authority, even in a court monitored auction, to say 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.

28. Following the aforesaid pronouncement, in the case of ***Pinak Bharat*** (supra), the Division Bench of this Court held that due deference and sanctity has to be attached to a Court monitored auction as such an auction of a property is possibly one of the most transparent methods by which the property can be sold. In the facts of the said case, it was held, it would not be permissible for the Registering Authority

to sit in appeal over the price fixed by the court. Such a course in no manner has the effect of making the powers of the Registering Authority under the Act or the Rules redundant as, in all other cases, the authority can always determine the market value in accordance with the provisions of the Act and the Rules.

29. In the case of *Spectrum Constructions and Developers LLP vs. State of Maharashtra, through Joint District Registrar⁹*, the question arose in the context of sale of the property in an auction which was accepted by Justice Lodha Committee, which was appointed by the Supreme Court for disposal of the property of a defaulting company. In that context, the Division Bench held that there was no question of the Stamp Authorities determining any other value as the market value of the property. The only value to be accepted was the bid amount accepted by the Committee.

30. In the case of *Dr. Prince John Edavazhikai* (supra) the sale by public auction conducted by Bank of India, the secured creditor. When the Authorities under the Stamp Act, 1958 disputed the consideration being the true market value of the property, a Division Bench of this Court repelled the

9 2022 SCC OnLine Bom 3693.

objection on two counts. First, Bank of India being a Government undertaking, the sale was covered by the first proviso to Rule 4(6). Second, the sale of the property in a SARFAESI auction is one of the most transparent methods by which the property can be sold. It was, *inter alia*, observed that, in fact, the SARFAESI Act, 2002 puts strict rules into place on price discovery and ensures that the secured creditor follows those rules scrupulously. In such a scenario, without anything more being brought on record, it can hardly be contended that the declared price in the sale certificate issued under the provisions of SARFAESI Act, 2002 is not the correct market value. Support was sought to be drawn from the decision of the Supreme Court in the case of ***ASL Vyapar*** (supra).

31. In view of the aforesaid exposition of law, the contention of the respondent that, the consideration at which the subject property was sold in an auction conducted by the Recovery Officer, towards the satisfaction of the recovery certificate, does not represent the true market value of the subject property, cannot be countenanced. The material on record indicates that the Recovery Officer had initially published a sale proclamation. The property was offered to be

sold by e-auction. Secondly, property was to be sold on “as is where is” and “as is what is basis”. Thirdly, the reserve price was indicated. It would be contextually relevant to note that under the provisions of Rule 8(5) of the Security Interest (Enforcement) Rule, 2002 before effecting the sale of immovable property, the Authorized Officer is enjoined to obtain the valuation of the property from a approved valuer and fix the reserve price of the property. The Authorized Officer is empowered to sale the secured asset by obtaining quotations, inviting tenders, by private treaty and by holding public auction including through e-auction mode. In the case at hand, the Recovery Officer has resorted to the sale of the property by holding public auction through online electronic bidding.

32. As the property was sold in a public auction through online bidding and the bid of the petitioner, which matched the reserve price, was accepted, it would not be permissible for the Authorities under the Stamp Act, 1958 to contend that the market value of the property would be determined in accordance with the Rule 4(6) and not on the basis of the consideration so fetched in the public auction.

33. The upshot of the aforesaid consideration is that, the procedure of sale adopted by the Recovery Officer to sell the subject property towards satisfaction of the recovery certificate issued by DRT, was conducive for discovery of the fair market value of the property. Therefore, the impugned order determining the stamp-duty on the basis of the market value, as determined by the Collector of Stamps, and not on the basis of the consideration at which the subject property was purchased, cannot be legally sustained. The petition, therefore, deserves to be allowed.

34. Hence, the following order:

: O R D E R :

- (i)** The petition stands allowed.
- (ii)** The impugned order stands quashed and set aside.
- (iii)** The respondent is directed to adjudicate the stamp-duty on the sale certificate on the basis of the sale consideration of Rs.2,01,31,000/-.
- (iv)** Necessary order for the adjudication of the stamp-duty be passed within a period of four weeks from the date of communication of this order.
- (v)** Rule made absolute in the aforesaid terms.
- (vi)** No costs.

[N. J. JAMADAR, J.]