(2010) 09 GUJ CK 0127

In the Gujarat High Court

Case No : Special Civil Application No. 11036 of 2010

Bajaj Col Chem APPELLANT

Vs

Deputy Superintendent of Stamp and Another RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Bombay Stamp Act, 1958 — Section 32A, 32A, 53(1)
Constitution of India, 1950 — Article 226, 227

Citation : (2011) 1 GLH 243

Hon'ble Judges : H. K. Rathod, J

Bench : Single Bench

Advocate : Alpesh G Dodia, for the Appellant; Jirga Jhaveri, AGP, for the Respondent

Final Decision : Dismissed

Judgement

MR. H. K. Rathod, J.—Heard learned Advocate Mr. Alpesh G. Dodia for petitioner and learned AGP Ms. Jirga Jhaveri for respondent No. 1.

2. Brief facts of present petition are that on 28.9.2004, GSFC published one public advertisement for auction of property being land, building and machinery of M/s. Atlanta Pigments Pvt. Ltd. On 22.8.2005. petitioner was the highest bidder in auction therefore sale deed was executed between M/ s. Atlanta Pigments and petitioner. The sale deed was registered as registration No.3578 before concerned authority. On 4.1.2006, respondent No.2 issued notice calling upon petitioner to pay deficit stamp duty to the extent of Rs.2,38,120/-. Against that order, petitioner has preferred appeal before respondent No.1 - Chief Controlling Revenue Authority challenging notice dated 4.1.2006 of respondent No.2 and appeal filed by petitioner was rejected on the ground of delay on 21.11.2006. Thereafter petitioner''s Advocate has made representation to respondent No.2 for returning of original sale deed by legal notice dated 4.11.2008. Thereafter, petitioner has preferred SCA (St.) No. 1885 of 2009 before this Court but. this Court has disposed of the same for non removal of

office objections with a liberty to file fresh petition(er) on 18.6.2009. Thereafter, again petitioner preferred petition before this Court being SCA No. 11509 of 2009 and this Court has remanded back matter to respondents by order dated 22.12.2009. Then, again petitioner preferred appeal before respondent No.1 - Chief Controlling Revenue Authority with requisite stamp duty and respondent No.1 was pleased to reject appeal filed by petitioner on 21.7.2010 on the ground that stamp duty should be calculated according to jantri and not according to price fixed by authority in auction. Therefore, in present petition, petitioner has challenged order passed by respondent No.1 dated 21.7.2010.

3. Learned Advocate Mr. Dodiya appearing on behalf of petitioner submitted that when property is purchased by petitioner in public auction, then whatever the price fixed in public auction should not have to be disturbed by Dy. Collector and it should be treated as market value for purpose of stamp duty. He relied upon a decision of this Court in case of Metro Hospital and Research Institute Vs. State of Gujarat and Others, He relied upon Para. 20 and 21 of aforesaid decision which is quoted as under :-

20. If one considers the merits of the matter there is no dispute about the fact that the property was acquired by the petitioner through an auction sale conducted before the Court at the behest of the Official Liquidator as the property was originally belonging to Mayo Hospital, a Company in liquidation. Since the petitioner stood the highest bidder before the Court, the sale was confirmed in its favour. Hence there is no question of any under estimate of the value of the properties. The valuer has estimated the value of properties at Rs. 17,53,44,000/- whereas the sale was confirmed in favour of the petitioner for Rs.24.20 crores. The value of the land and building has been fixed at Rs. 15,48,81,000/- and Rs.5,88,53,400/-. While determining the market value of the property at Rs.31,52,69,600/-. the Dy. Collector has not cited any comparative sale instance nor referred to any documentary evidence. Though in the order it is mentioned that vide letter dated 11.3.2008 certain documentary evidence with regard to property in question for the purpose of determination of the market value of the property was called for, there is no reference of this letter in the show cause notice issued by the Dy. Collector on 26.3.2008. It is the specific case of the petitioner that such letter was never issued by the petitioner. Moreover in the show cause notice it is observed that while temporarily determining the fair market value of the property in question at Rs.31,52,69,600/- the Dy. Collector has taken into consideration the fair market value of other properties, which are registered with the Sub Registrar. However, not a single instance has been pointed out by the Dy. Collector in his order dated 26.3.2008. The Dy. Collector has also not taken into consideration the fact that the property was acquired by the petitioner under the Court auction and hence unless some cogent, clear and unequivocal evidence is brought on record showing the higher value then the price at which the said property was acquired by the petitioner under Court auction, the said price should not be disturbed.

21. Taking any view of the matter the impugned order passed by the authorities below cannot be held to be justified and hence the same are quashed and set aside with a direction to the Dy. Collector to decide and determine the market value of the property in question afresh after giving an adequate opportunity of being heard to the petitioner and ultimately if the sale price indicated by the petitioner in the sale deed which is based on the auction price, is sought to be disturbed, he should have brought some independent and convincing material on record and, thereafter, decided the fair market value of the properties in question. Since the matter is remanded to the Dy. Collector and issue regarding fair market value is yet to be adjudicated pursuant to the direction of this Court, the amount already deposited by the petitioner shall remain with the authorities and if the value that may be determined comes to less than the value earlier determined by the Dy. Collector and if the petitioner is entitled to refund on such redetermination, the excess amount should be returned to the petitioner with interest at the rate of 10% per annum.

4. Learned Advocate Mr. Dodiya also relied upon a decision of this Court in case of Patel Precision Machinery v. State of Gujarat and Others in SCA No.17916 of 2003, decided on 27.10.2005 where subject property which was purchased from GSFC was to the value of over Rs.27 lakhs fixed by respondent No.2 while issuing letter dated 18.11.1998. He submitted that this being an identical case as property in question has been purchased in auction conducted by State Financial Corporation at price of Rs.2,41,000/-and necessary stamp duty has also been paid by petitioner as per calculation made by respondent Corporation and therefore, there is no justification for fixation of higher amount of Rs.27 lakhs being a market price of same land in question and also relying upon proviso to Section 32A of the Act, he submitted that value determined by Corporation shall be deemed to be the true market value. However, the relevant observations of aforesaid decision are in Para 6, 7 and 8 which are quoted as under, as relied by learned Advocate Mr. Dodia :-

6. As a result of the hearing, I am of the opinion that the authority cannot refix the sale consideration and demand deficit stamp duty on the basis of such refixation when the Respondent Corporation has sold the property in auction. Proviso to Section 32A of the Bombay Stamp Act, 1958 reads as under:-

Provided that for the purpose of this sub-Section, the consideration set forth in an instrument executed by the State Government, the Central Government, a local authority, Gujarat Housing Board, Gujarat Slum Clearance Board or Gujarat Industrial Development Corporation, shall be deemed to be the true market value of the property which is the subject matter of such instrument.

7. Though the above proviso has come into effect after the transaction in question the principle has been accepted by the State Government that the value fixed by the Government Corporation is required to be accepted. In case the authority is of the opinion that the auction value is much lower than the market price, then in the notice itself the authority has to refer the same and a copy of

the same is required to be sent to the Corporation. This is not done in the present case. In any case the basis for fixation should have been for the relevant year and not any other period.

8. I am of the opinion that in view of the aforesaid position when the property was purchased in an auction and the respondent Corporation, which is a Government Corporation, has fixed the upset price of the property and accepted the highest bid as the consideration of the property, the respondent authority ought not to have proceeded as if the property has been purchased at a lesser value. The Government Corporation has disposed of the property in public auction more than the price fixed by the respondent Corporation. I am of the view that such a price cannot be disputed by the respondent authorities. Therefore, the impugned orders are required to be quashed and set aside.

4.1. Except that, learned Advocate Mr. Dodiya has not made any other submissions before this Court and not relied upon any other decision.

5. Learned AGP Ms. Jirga Jhaveri appearing on behalf of respondent No. 1 submitted that Dy. Collector while examining issue, a document registered with Sub-Registrar. Narol on 1.9.2005 bearing registration No.3518 dated 22.8.2005 has been taken into consideration while exercising power u/s 33 by Dy. Collector and this document has been executed by Dy. General Manager, GSFC, Ahmedabad and purchaser is Shri Anand Swaroop D. Bajaj, a partner of M/s. Bajaj Col-Chem. According to sale deed, due to public auction total price has been fixed for land and building at Rs.11,71,000/-and price for machinery has been fixed at Rs.21,80,000/- and in all, it comes to Rs.33,51,000/-. The stamp duty which has been used or paid on machinery being a movable property at 2% and on the basis of contention raised by petitioner that machinery cannot consider to be a part and parcel of land and building. However, according to Dy. Collector, the entire premises along with land, building and machinery, it has been purchased in public auction from GSFC by petitioner and therefore, on total amount of Rs.33,51,000/- stamp duty is required to be paid at 8.4% and therefore, document has been taken into account for scrutiny. The notice was issued by Dy. Collector to petitioner. Same contention was raised that for movable property of machinery, 2% stamp duty is proper and this property was purchased in public auction. Therefore, as per Government Resolution dated 11.6.2004, whatever price has been mentioned in sale deed in public auction, that price is to be considered to be a market price. The opinion has been given by Sub-Registrar and considering submissions made by petitioner and also keeping in mind nature of documents, the Dy. Collector has come to conclusion that in Government Resolution dated 11.6.2004, GSFC has not been included as a part of State Government and before Sub-Registrar. Form No.1 was also not produced and therefore, petitioner has produced Form No.1 before Dy. Collector and in light of this background real market price of such land, building and machinery is required to be decided by Dy. Collector under provisions of Bombay Stamp Act, 1958. Therefore, Dy. Collector, Stamp Duty Valuation, City Vibhag-1,

Ahmedabad has come to conclusion that machinery being a part and parcel of immovable property attached with movable property and also purchased in public auction. No documents or any decision or details have been produced by petitioner before Dy. Collector that machinery which has been attached to land and building is considered to be a movable property. For that, nothing has been produced on record by petitioner. Therefore, Dy. Collector has considered market price of land and building which comes to Rs.23,36,900/- and price of machinery comes to Rs.21,80,000/-, total amount comes to Rs.45,16,900/-and for that Rs.3,79,420/- stamp duty is required to be paid by petitioner and after deducting amount of stamp duty paid deficit stamp duty comes to Rs.2,37,370/- with fine of Rs.700/-which comes to Rs.23,08,120/- is required to be recovered from petitioner and on that basis u/s 41 of the Act, original documents have been sent back to Sub-Registrar. This amount is required to be paid by petitioner within 90 days.

6. This Court has passed an order dated 22.12.2009 in SCA No.11609 of 2009 where direction has been issued to respondent authorities to decide appeal on merits in accordance with law. Thereafter, appeal has been decided by Chief Controlling Revenue Authority against the decision of Dy. Collector taken in January, 2006. The Chief Controlling Revenue Authority has decided revision application while exercising power u/s 53(1) of Bombay Stamp Act. The 25% amount has been deposited by petitioner as per order passed by this Court on 20.3.2010 and thereafter on 18.3.2010 appeal/revision which was preferred has been examined after giving reasonable opportunity of hearing to petitioner on 15.6.2010. Same submission has been made by petitioner before Chief Controlling Revenue Authority that because of property has been purchased in public auction from GSFC, whatever price has been fixed in public auction that has to be considered as market price of the property and according to that authority has no jurisdiction to determine higher market price of the same property. This submission has been considered by Chief Controlling Revenue Authority as per Page-12. The Chief Controlling Revenue Authority has come to conclusion that stamp duty under provisions of Bombay Stamp Act is required to be paid by petitioner not on the basis of price fixed by GSFC in public auction but, it required to be paid under the provisions of Bombay Stamp Act. A specific question was asked to petitioner by Chief Controlling Revenue Authority that in case if price in public auction is found to be less in comparison to market price of the land in question, then on what basis stamp duty is required to be paid by petitioner. Therefore, petitioner is not able to justify the stand taken in present petition that in public auction it may happen that price which can be fixed may not be tallied with market price of the property in question. Therefore, Chief Controlling Revenue Authority has come to conclusion that under provisions of Bombay Stamp Act, whatever the market price of the property in question is required to be considered on the basis of jantri which has been decided by State Government and on that basis, whatever the market price is fixed on that basis stamp duty is required to be paid by petitioner. Therefore, petitioner has failed

before Chief Controlling Revenue Authority to establish the fact that whatever price has been fixed in public auction is being a market price according to jantri decided by State Government. Therefore. Chief Controlling Revenue Authority has compared both prices; one which is fixed in public auction and another which is fixed as per jantri decided by State Government. In facts of this case, this Court has not directed to accept price fixed in public auction is to be considered as market price. For that there is no justification given by this Court in aforesaid petition as referred by this Court. Therefore, when matter has been scrutinized by Dy. Collector while exercising power u/s 33 of Bombay Stamp Act, then authority must have to determine independently a market price of the property in question for which sale deed has been arrived between parties and whether price fixed by GSFC in public auction is considered to be a market price in light of jantri fixed by State Government or not. Therefore, Chief Controlling Revenue Authority come to conclusion that market price which has been fixed in public auction by GSFC cannot be considered to be market price in light of jantri which has been fixed by State Government. So contention raised by learned Advocate Mr. Dodiya that there is no other relevant document on record which can be fixed market price of property in question higher than fixed in public auction. This contention cannot be accepted simply on the ground that there is a difference between two prices in respect to one property; one is fixed in public auction by GSFC and another is fixed by jantri decided by State Government. Therefore, Dy. Collector is entitled to consider jantri for determining market price of the land in question while exercising power under Bombay Stamp Act and comparing both prices of land in question decided in public auction is not being a market price as decided under jantri by State Government. Therefore, Chief Controlling Revenue Authority has examined this matter on the basis of facts that stamp duty which has been paid by petitioner of Rs. 1,42,000/- is less and therefore deficit stamp duty is required to be paid by petitioner while deciding market price on the basis of jantri which decided by State Government. Therefore, contentions raised by learned Advocate Mr. Dodia cannot be accepted because Dy. Collector/Chief Controlling Revenue Authority having positive and substantial evidence with him which suggests real market price of land, building and machinery of property which has been purchased by petitioner in public auction from GSFC. Therefore, circular dated 11.6.2004 relied upon by petitioner is not applicable to the facts of present case because in that circular as per amendment made by State Government, GSFC is not included. Therefore, market price which has been fixed on the basis of jantri while including price for machinery which are attached to the land and building, total amount comes to Rs.33,51,000/-and on that basis. 8.4% stamp duty is required to be paid by petitioner which has been rightly decided and issued has also been rightly examined by both authorities i.e. Dy. Collector as well as Chief Controlling Revenue Authority. Therefore, when respondent authorities having material to decide market price of land in question including machinery which are attached to the land and building on the basis of jantri decide by State Government, then it is not necessary for respondent authorities to accept price fixed in public auction being a market price of property in question. Therefore, decision of this Court as referred above and relied upon by petitioner is not applicable to facts of present case because in present case respondent authorities is having material and cogent evidence as valid base to determine market price on the basis of jantri and not to accept price fixed in public auction being a market price of property.

7. Therefore, according to my opinion, either of authorities i.e. Dy. Collector as well as Chief Controlling Revenue Authority have not committed any error while deciding the issue and also while fixing market price on the basis of jantri decided by State Government and also not committed any error in taking into account the price for machinery which are attached to land and building because public auction was carried out for both land and building as well as machinery which are attached to land and building. Therefore, total price must have to be taken into account because machinery is also considered to be a part and parcel of immovable property which are attached with immovable property. Therefore, total amount comes to Rs.33.51,000/- which has been rightly considered by Dy. Collector which has been rightly examined by Chief Controlling Revenue Authority and while doing so, no error is committed which requires interference by this Court while exercising power under Articles 226/227 of the Constitution of India. Hence, there is no substance in present petition. Accordingly, present petition is dismissed.