(2013) 04 GUJ CK 0106

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1332 of 2012 in Spl. C.A. No. 11476 of 2012 with C.A. No. 12016 of 2012 in L.P.A. No. 1332 of 2012

Bileshwar Industrial Estate Developers Pvt. Ltd. APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 24-04-2013

Acts Referred:
Bombay Stamp Act, 1958 — Section 39(1)(b), 39(1)(b)

Citation : (2013) 2 GLR 1435

Hon'ble Judges : V.M. Sahai, J;S.G. Shah, J

Bench : Division Bench

Advocate : M.I. Hava, for the Appellant; Krina Calla, A.G.P. for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Disposed Off

Judgement

V.M. Sahai, J.—We have heard Mr. M.I. Hava, learned Counsel for the appellant and Ms. Krina Calla, learned A.G.P. for the respondents. The short question which arises for consideration in this Letters Patent Appeal is whether the Deputy Collector, Stamp Duty Valuation, Ahmedabad, respondent No. 2 herein, has power under Sec. 39(1)(b) of the Bombay Stamp Act, 1958 (hereinafter referred to as the Act) to issue notice on 2/11-4-2012 demanding deficit stamp duty when the deed of sale has been duly registered by the Sub-Registrar of Assurances on 15-4-2008 and has been returned back to the appellant?

2. The facts in brief, are that the appellant purchased the right, title and interest in all the piece and parcels of vacant land bearing Survey Nos. 36, 37, 38, 39, 40, 41 and 42 (part) of Village Odhav and Survey Nos. 74, 75/1, 75/2, 79/1, 79/2 and 80 of Village Nikol, Taluka City, District Ahmedabad, in Court Auction (Debt Recovery Tribunal). The sale certificate was also issued to the appellant on 29-11-2004. The appellant made payment of full consideration of Rs. 4.51 crore. The Debt Recovery Tribunal, (hereinafter referred to as ''the D.R.T.''), has by its letter 23-3-2005 conveyed the Sub-Registrar of Assurances about confirmation of

such sale.

3. On 28-2-2008, the appellant made an application under Sec. 31 of the Bombay before the Deputy Collector, Stamp Duty Valuation, Ahmedabad for determining the fair market value of the land in question. In pursuance of the application of the appellant, the Deputy Collector, respondent No. 2 issued certificate on 1-3-2008, copy of which has been filed as Annexure-J with original writ petition, which shows that the Deputy Collector, respondent No. 2 has determined market value at Rs. 5.49 crore and evaluated stamp duty payable by the appellant at Rs. 26,90,300/-. Thus, though the appellant has paid Rs. 4.51 crore as value of the land in question in auction before the D.R.T., considering the valuation of the property at Rs. 5.49 crore by the Deputy Collector, Stamp Duty Valuation, stamp duty was paid on such valuation.

4. After receiving the certificate of the Deputy Collector, Stamp Duty Valuation Cell, the Debt Recovery Tribunal directed the Recovery Inspector to execute the sale-deed in favour of the appellant by order dated 11-4-2008. Accordingly, the sale-deed was executed on 15-4-2008 and registered on the same day bearing registration No. 5033 by paying stamp duty of Rs. 26,90,300/-. The sale-deed was mentioned as "deed of sale". The sale-deed or the deed of sale was executed on 15-4-2008.

5. Thereafter, the appellant got the plan approved from the Ahmedabad Urban Development Authority, (hereinafter referred to as "the A.U.D.A.") and sold some plots for industrial purposes to more than 600 buyers and executed sale-deeds, which were registered and industries are being run on the land sold by the appellant to the various purchasers.

6. The appellant received the show-cause notice dated 2/11-4-2012 issued by the Deputy Collector, Stamp Duty Valuation, Ahmedabad, respondent No. 2 hereinunder Sec. 39(1)(b) of the Act, demanding deficit stamp duty and to show-cause as to why penalty should not be levied. In such notice, the Deputy Collector, Stamp Duty Valuation, stated that the document is retained under Sec. 33 of the Act on the ground that the deficit amount of stamp duty is determined on the basis of Auditor Generals report, but copy of such report was not supplied to the appellant while directing to pay the deficit amount of stamp duty being Rs. 3,67,84,590/- after adjusting Rs. 26,90,300/- paid by the appellant.

7. Provisions of Sections 33 and 39 of the Act read as under:

Sec. 33. Examination and impounding of instruments:

(1) Subject to the provisions of Sec. 32A, every person having, by law or consent of parties, authority to receive evidence and every person in charge of a public office, except an officer of police or any other officer, empowered by law to investigate offences under any law for the time-being in force, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is

not duly stamped, impound the same irrespective whether the instrument is or is not valid in law.

(2) For that purpose, every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time-being in force in the State when such instrument was executed or first executed;

Sec. 39. Collector''s power to stamp instruments impounded.-

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

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

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the property duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion therefore, whether such amount exceeds or falls short of five rupees.......

8. The plain reading of above two Sections make it clear that the powers under Sec. 39(a) comes in picture only when document is impounded as provided in Sec. 33 read with Sec. 32A of the Act. Sec. 32A is part of Chapter 3 of the Act, which deals with adjudication as to stamp; whereas Secs. 33 and 39 are part of Chapter 4 of the Act, which deals with instruments not duly stamped. But when reference of Sec. 32 is in Sec. 33, and reference, of Sec. 33 is in Sec. 39, all such provisions practically speak and deal with the documents which are otherwise produced before any authority as an evidence and empowers such authority to impound such document if it appears to it in the performance of its functions that such instrument is not duly stamped. Though such provision of Sec. 33 is subject to provision of Sec. 32A, which empowers the Registrar at the time of registration itself to initiate proceedings under such Sections; as such provision was added only in the year 1982; it is certain and clear that the Deputy Collector, Stamp Duty Valuation, can impound the document only if it appears to him mat such instrument is not duly stamped. Whereas in the present case, unfortunately, the Deputy Collector, Stamp Duty Valuation, has while issuing impugned show-cause notice dated 2/11-4-2012 failed to appreciate that in fact the appellant has applied to him under Sec. 31 calling upon him to determine the stamp duty and only after determination of the stamp duty by the Competent Authority, which is for higher amount than the actual sale price, the appellant has already paid such stamp duty.

9. Thus, it appears that the show-cause notice was issued by the Deputy Collector, Stamp Duty Valuation, Ahmedabad, under the impression that the sale-deed dated 15-4-2008 had been impounded by the respondents. Though, there is no scope to impound the document when it was presented for registration on the ground that it was not duly stamped. In the affidavit-in-reply, it has not been disputed that after registration, the sale-deed or deed of sale has been returned back to the appellant. It was never required to be impounded by the respondents or the authorities concerned, since stamp duty was paid after obtaining certificate under Sec. 31 of the Act. Such restriction is confirmed in Sec. 32A itself. Therefore, provision of Sec. 39(1)(b) would only come into play where the instrument has been impounded under Sec. 33 or required to be impounded under Sec. 32A of the Act and only then the Deputy Collector, Stamp Duty Valuation, Ahmedabad, shall have power to demand stamp duty or penalty. The Act does not provide or grant any power to the Deputy Collector, Stamp Duty Valuation, to impound the document where the instrument is found sufficiently stamped and has been registered. In such a situation, there is no provision in the Act under which the Deputy Collector, Stamp Duty Valuation, Ahmedabad, could issue show-cause notice to the concerned party under Sec. 39(1)(b). The provisions of the Act are crystal clear, wherein though powers are vested in the competent authority to impound the instruments which are not duly stamped and to penalize the person who executes any instrument chargeable with duty without the same being duly stamped, the competent authority can take steps in only accordance with law and any action under law shall be restricted to the applicable law and the rules with reference to the instrument in question. Thereby, when the competent authority has selected wrong provision to initiate any proceedings, such act cannot be considered legal and within powers and jurisdiction of the competent authority.

10. In the present case, at the cost of repetition it is to be recollected that the appellant has purchased the property in the auction from the D.R.T. and even after issuance of sale certificate by D.R.T. mentioning the sale price as Rs. 4.51 crore, the appellant has paid stamp duty on the market value being Rs. 5.49 crore as determined by the competent authority and present respondents themselves. Therefore, at later stage, after four years, the respondents are not permitted to reopen the issue only by making reference of some internal audit. It is also necessary to consider here that by passage of time, value of immovable property increases, and therefore, the value of the property at the time of audit cannot be considered, but market value and price of the property is to be considered as on the date of the auction and sale. Therefore, we are of the considered opinion that the Deputy Collector, Stamp Duty Valuation, has no power to issue impugned notice under Sec. 39(1)(b) of the Act, and the notice issued by him is without jurisdiction.

11. The appellant has relied upon the judgment rendered in Special Civil Application No. 18319 of 2007 dated 23-2-2010 as well as reported judgment in the case of Nandadevi Dineshkumar Sharma Vs. Chief Controlling Revenue

Authority and Others . Both the judgments are though of the learned Single Judge, specifically confirmed that the respondents have no authority either to impound the document or to reopen the valuation only upon the report of the auditor, under Sec. 39 and that burden of proof to determine the market value is upon the Stamp Duty Valuation Authority and they have to justify fixation of higher market value. Therefore, in the present case, once certificate under Sec. 31 was issued by the respondents, they should not be allowed to reopen their own valuation after four years to say that valuation of the property is higher, relying only upon the auditor''s report. Whereas the judgment rendered by the Hon''ble Apex Court in V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Ins. and Others, (Civil Appeal No. 3411 of 2009 decided on 8-5-2009) specifically confirmed and held that when any property has been purchased as per open offer, question of under valuation does not arise. In the given case, when property was purchased under the directions of B.I.F.R. and A.A.I.F.R., the Hon''ble Apex Court has held that the market value is price of the property which can be fetched if sold in open market on the date of execution of instrument, and therefore, stamp duty is payable on such sale price when the Stamping Authority had issued a notice to the purchaser in that case, to pay the stamp duty as per market value. In the result, this Letters Patent Appeal succeeds and is allowed. Judgment and order passed by the learned Single Judge dated 24-9-2012 in Special Civil Application No. 11476 of 2012 as well as the show-cause notice issued by the Deputy Collector, Stamp Duty Valuation, Ahmedabad, on 2/11-4-2012 Annexure-J to the original writ petition, are quashed. Parties shall bear their own costs.

Civil Application stands disposed of accordingly.

