(2004) 12 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No. 7457 of 2004

Buthabhai Merabhai Bharwad APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 22-12-2004

Acts Referred:

Bombay Stamp (Determination of Market Value of Property) Rules, 1984 — Rule 4, 4(1), 4(2), 8
Bombay Stamp Act, 1958 — Section 30, 31(3), 32A, 32A(1), 32B
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 2 GLR 1792

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Prashant G. Desai, for the Appellant; Pradip Bhate, A.G.P. for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the appellate-authority i.e. Chief Controlling Revenue Authority dated 3-5-2004 in Appeal No. 975 of 2001 in dismissing the appeal and confirming the order passed by the Dy. Collector, Stamp Duty Valuation, Vadodara dated 26-7-2001, by which the Dy. Collector, Stamp Duty Valuation, Vadodara, in exercise of the powers u/s 32A of the Bombay Stamp Act, 1958 (''the Act'' for short) has passed the order directing the petitioner to pay the amount of Rs. 1,11,434/- being the deficit stamp duty and Rs. 250/- by way of penalty determining the market value of the property in question at Rs. 10,90,900/-.

2. The property in question came to be purchased by the petitioner by registered sale-deed dated 29-11-2000 which was presented before the Sub-Registrar, Vadodara on 29-11-2000 itself which was registered as document Registration No. 7891. It appears that Sub-Registrar, Vadodara was of the opinion that the property is under-valued and the proper stamp duty is not paid, he referred the

document to the Dy. Collector, Stamp Duty, Vadodara for determining the correct market value u/s 32A of the Act. Notice under Rule 4 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 (''the Rules'' for short) came to be issued on 22-2-2001, by which, the Dy. Collector has fixed the provisional market value at Rs. 15,27,300/- and directed the petitioner to produce the necessary evidence on 14-3-2001. It appears that the petitioner has filed reply to the said notice and submitted that the market value which is fixed by the petitioner on the basis of which the stamp duty is paid is considering the situation and property in question, and therefore, requested to withdraw the notice. The Dy. Collector, Stamp Duty Valuation, Vadodara, by order dated 26-7-2001 passed the order determining the market value of the property in question at Rs. 10,90,900/-, thereby directing the petitioner to pay the amount of Rs. 1,11,434/- by way of deficit stamp duty and Rs. 50/- by way of penalty.

3. Being aggrieved by and dissatisfied with the order passed by the Dy. Collector, Stamp Duty Valuation, Vadodara dated 26-7-2001, the petitioner preferred the appeal before the Chief Controlling Authority, State of Gujarat u/s 32B of the Act being Appeal No. 975 of 2001. The appellate-authority, by its judgment and order dated 3-5-2004 dismissed the said appeal confirming the order passed by the Dy. Collector, Stamp Duty Valuation, Vadodara dated 26-7-2001. Being aggrieved and dissatisfied with both the aforesaid orders, the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

4. Mr. Prashant G. Desai, learned Advocate appearing for the petitioner, has submitted that the impugned order passed by the Dy. Collector dated 26-7-2001 is as such based upon the notice issued under Rule 4 of the Rules which itself was illegal and contrary to Rule 4 of the Rules. He submitted that as such under Rule 4 of the Rules, the authority is required to submit and inform the petitioner the basis upon which the provisional market value is fixed and the Dy. Collector has in fact called upon the petitioner to produce necessary evidence with regard to the market value. He further submitted that, in fact, it is the duty and it was incumbent on the part of the Dy. Collector to supply the basis on which the provisional market value is fixed and in spite of that he has shifted the onus upon the petitioner to produce necessary evidence. He submitted that apart from that in the impugned order dated 26-7-2001 no particulars and/or basis are mentioned, on the basis of which respondent No. 2 has determined the market value of the property in question at Rs. 10,90,900/-. He submitted that in fact nothing has been mentioned in the order with regard to the submissions and/or reply given by the petitioner. There is no discussion whatsoever and the order dated 26-7-2001 is non-speaking order.

He further submitted that in fact on what basis and/or the evidence, the respondent No. 2 has determined the market value of the property in question at Rs. 10,90,900/- is not mentioned in the impugned order and the fixation of the market value of the property by respondent No. 2 at Rs. 10,90,900/- is arbitrary which is required to be quashed and set aside. He further submitted that appellate-authority has also not considered the aforesaid aspect and mechanically confirmed the order passed by the Dy. Collector. He has relied upon the judgment of the Full Bench of this Court in case of Gorva Vibhag Co-Operative Housing Societies Association and Another Vs. State of Gujarat and Others, , by which it is held that procedure which is required to be followed under Rule 4 is mandatory one, and therefore, considering the aforesaid facts, he has requested to allow the present petition.

5. Mr. Bhate learned A.G.P., for the respondents has submitted that in the notice under Rule 4 itself, it is stated that the petitioner was to produce necessary evidence which is mentioned in the notice under Rule 4. He submitted that considering the reply submitted by the petitioner, respondent No. 2 has determined the market value at Rs. 10,90,900/- and considering the position and condition of the land in question and considering the market value prevalent at the relevant time, and therefore, requested to dismiss the petition.

6. Heard the learned Advocates for the parties.

7. Rule 4 of the Rules reads as under :

"4(1) on receipt of the instrument under Sub-section (3) of Section 31 or Sub-section (1) of Section 32A, the Collector of the District, where he thinks fit to do so, may for the purpose of his inquiry :-

(a) call for any information or record having bearing, on the question before him from any public office, officer or authority under the Central Government, State Government or any local authority;

(b) examine and record statements from any member of the public, officer or the authority under the Central Government or State Government or any local authority, and

(c) inspect or empower any officer under him to inspect the property after due notice to the parties concerned.

(2) After examining the said information, records and evidence, if any before him the Collector of the District shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him, to every person to whom according to the provisions of Section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in writing along with all the evidence in support of such representation.

(3) The Collector of the District shall after considering the representation, if any, received by him under Sub-rule (2) pass an order determining the true market value and the proper duty payable on the instrument."

While determining the true market value of the property, the Collector is required to consider so many aspects which are reflected in Rule 8 of the Rules. Rule 8 of the Rules reads as under :

"8. Principles to be taken into consideration for determination of market value :- The Collector of the District shall while determining the true market value of a property which is the subject-matter of an instrument take into consideration primarily the capitalized value of the property i.e., the amount of money whose annual interest at the highest prevailing interest at any given time is its net annual income, and also the following factors, namely :-

(a) in the case of agricultural land,

(i) classification of land under the provisions of the Bombay Land Revenue Code, 1879;

(ii) the rate of the land revenue;

(iii) the nature of crops raised on the land;

(iv) average yield from the land, its nearness to road and market, its distance from village site road to land, facilities available for irrigation and also for transport of produce of such land;

(v) value of adjacent land or land in vicinity;

(vi) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;

(vii) any other factor which the Collector of the District thinks to have a bearing on the valuation of the land;

(b) in the case of non-agricultural land, -

(i) the general value of non-agricultural land in the vicinity;

(ii) facilities such as road, railway station, bus route, shops, market and the like available in the vicinity of the land;

(iii) amenities like public offices, hospitals and educational institutions available in the vicinity of the land;

(iv) development activities including development of industries in the vicinity of the land;

(v) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;

(vi) any other factor which the Collector of the District thinks to have a bearing on the valuation of the non-agricultural land;

(c) in the case of buildings, -

(i) the area of construction;

(ii) the floor space index;

(iii) type and structure;

(iv) year of construction;

(v) kind of material used;

(vi) locality in which constructed;

(vii) rate of depreciation;

(viii) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;

(ix) any other factor which the Collector of the District thinks to have a bearing on the valuation of the building;

(d) in the case of any other property, -

(i) the nature and condition of the property;

(ii) purpose for which the property is being put to use;

(iii) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;

(iv) any other factor which the Collector of the District things to have a bearing on the valuation of the property;"

Now, considering Rule 4 of the Rules, on receipt of the instrument under Sub-section (3) of the Section 31 or Sub-section (1) of Section 32A, the Collector of the District may for the purpose of his inquiry call for information or record and examine the record, and thereafter, under Sub-rule (2) of Rule 4, after examining the aforesaid information, record and evidence, if any, before him the Collector of the District shall issue notice showing the basis on which true market value of the property and the proper duty payable thereon has been provisionally determined by him to every person to whom according to provisions of Section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of service of the notice upon such person, his representation in writing along with all the evidence of such representation and considering the representation, if any, the Collector is required to pass appropriate order determining the true market value. As stated above while considering and determining the true market value, the Collector is required to consider the principles which are enumerated in Rule 8. Thus, considering the aforesaid provisions, it is the duty of the Collector to issue notice showing the basis on which provisional market value of the property has been determined by him on inquiry held by him under Rule 4(1) of the Rules. In the present case, no basis have been shown by the Dy. Collector while determining the provisional market value and the onus is shifted on the petitioner to produce evidence which is contrary to Rule 4 of the Rules itself. The petitioner is not made aware of the basis determining the provisional market value of the property in question fixed by him. Thus, no opportunity has been given to the petitioner to meet with the basis or evidence with the Dy. Collector while determining the provisional market value. Thus, the impugned order itself passed by the respondent No. 2 which is based upon the notice under Rule is itself defective and contrary to Rule 4 and is required to be quashed and set aside.

8. There is another aspect of the matter also. That respondent No. 2, while passing the order, is required to consider the representation submitted by the petitioner, and thereafter, is required to pass the final order with regard to determining the market value. Considering the impugned order itself, it appears that respondent No. 2 has, as such, not considered the representation and if considered, then not discussed the same at all. Only what is mentioned in the impugned order is that the petitioner has made the written submission and nothing further and that there is no discussion in the order with regard to the representation made by the petitioner and/or what has weighed with him in determining the market value at Rs. 10,90,900/-. It is required to be noted that provisional market value determined by the Dy. Collector while issuing the notice under Rule 4 of the Rules was Rs. 15,27,600/- and without discussing anything straightaway the Dy. Collector has determined the market value at Rs. 10,90,900/- without any basis. Under the circumstances, fixation of the market value at Rs. 10,90,900/- without any basis. Under the circumstances, fixation of the market value at Rs. 10,90,900/- itself is contrary and without any basis and the impugned order dated 26-7-2001 passed by the Dy. Collector is a non-speaking order which is required to be quashed and set aside. In appeal, respondent No. 1-Chief Controlling Revenue Authority has also not considered the aforesaid aspect and has dismissed the appeal without considering the same which is also to be required to be quashed and set aside.

9. In view of the fact that no basis have been mentioned in the impugned order passed by respondent No. 2 and the said order is non-speaking order and it does not reflect whether any of the submissions made by the petitioner has been considered or not and on what basis the market value of the property in question has been fixed at Rs. 10,90,900/-. While quashing and setting aside the aforesaid orders, the matter is required to be remanded to respondent No. 2 for passing a fresh order on its own merits, and in accordance, with law after giving opportunity to the petitioner.

10. For the reasons stated above, the impugned order passed by the Dy. Collector, Stamp Duty Valuation, Vadodara dated 26-7-2001 and also the order passed by the appellate authority i.e. Chief Controlling Revenue Authority dated 3-5-2004 in Appeal No. 975 of 2001 are hereby quashed and set aside. The matter is remanded to respondent No. 2 for passing a fresh order on its own merits and in accordance with law after issuing the notice under Rule 4 of the Rules and after giving opportunity to the petitioner. It will be open to the petitioner to file a reply and/or adduce the evidence, if any after receipt of the

fresh notice under Rule 4 which may be considered by the Dy. Collector while passing the final order.

11. In view of the above, petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

