(2009) 04 GUJ CK 0039

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1275 of 2006 in Special Civil Application No. 5356 of 2006 and Civil Application No. 11687 of 2006 in Letters Patent Appeal No. 1275 of 2006

Chief Controlling Revenue Authority and Others APPELLANT

Vs

Nandadevi Dineshkumar Sharma RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Bombay Stamp Act, 1958 — Section 32A, 32A(1), 32A(4), 33

Citation : (2009) 04 GUJ CK 0039

Hon'ble Judges : K.S. Radhakrishnan, C.J;Akil Kureshi, J

Bench : Division Bench

Advocate : Mini Nair, AGP Nos. 1 - 3, for the Appellant; GC Ray, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—This appeal filed by the State Authorities is directed against the decision of the Learned Single Judge dated 20.6.2006 passed in Special Civil Application No. 5356/2006. By the said decision, Learned Single Judge was pleased to allow the petition of the respondent herein and was pleased to quash an order dated 14.2.2005 passed by the Collector of Stamp. Learned Single Judge also quashed the communication dated 22.12.2005 by which it was conveyed to the original petitioner that appeal against order dated 14.2.2005 was not entertained as being delayed.

2. Shortly stated facts of the case are that the respondent herein original petitioner had entered into a sale deed dated 3.8.1994 for purchasing certain immovable property admeasuring 417 sq. yards forming part of Amar Society in Vejalpur, Ahmedabad. The said sale deed was registered on 3.8.94 before the Sub-Registrar (Odhav) Ahmedabad. Sale deed reflected a consideration of Rs. 7,00,000/- and accordingly corresponding stamp duty was affixed thereon.

2.1 Before the Learned Single Judge, it was the case of the petitioner that many years after the registration of the said document, the Stamp Duty Authorities passed an ex-parte and illegal order dated 14.2.2005 demanding an additional stamp duty of Rs. 70,000/- and penalty of Rs. 250/- from the original petitioner. This was under the premise that according to the Collector of Stamp, the correct valuation of the property at the relevant time was Rs. 14,00,000/- and therefore, the stamp duty of Rs. 70,000/- affixed by the petitioner thereon was deficient.

2.2 The petitioner appealed against the said order passed by the Collector of stamp. However, the same was treated as delayed and appeal was dismissed on the ground of delay.

2.3 The petitioner thereupon approached this Court by filing Special Civil Application No. 5356/2006 and challenged the demand for additional stamp duty on several grounds. Learned Single Judge by impugned order dated 20.6.2006 allowed the petition. The State Authorities are therefore, in appeal before us.

3. Learned AGP Ms. Mini Nair appearing for the appellants submitted that the document was not sufficiently stamped. The Stamp Authorities therefore, were justified in demanding additional stamp duty. It was contended that the Learned Single Judge erred in allowing the petition on the ground that action of the Collector was barred by limitation.

3.1 She drew our attention to the provisions contained in Section 32A of the Bombay Stamp Act and in particular Sub-sections (1) and (4) thereof to contend that the action taken by the Collector was on reference and therefore, period of limitation prescribed under Sub-section (4) of Section 32A would not apply.

3.2 She relied on the averments made in Civil Application No. 11687/2006 along with certain documents produced on record to contend that the proceedings initiated by the Collector were on a reference made by the Sub-registrar of Stamp. In particular, our attention was drawn to a letter dated 8.1.1999 from the Sub Registrar, Odhav to the District Collector, Stamp Duty Valuation Department, Division-1, Ahmedabad along with which certain documents including the present sale deed were sent by way of Reference under the Bombay Stamp Act.

3.3 Reliance was placed on the decision of the Apex Court in the case of State of Punjab and others Vs. M/s. Mahajan Sabha, Gurdaspur and others, , wherein the Apex Court examining the provisions of Section 47-A of the Indian Stamp(Punjab Amendment) Act, 1982 which has similar provisions as those contained in Section 32A of the Bombay Stamp Act opined that period of limitation prescribed for the Collector to take suo motu action cannot be applied when the Collector is exercising powers upon reference made to him.

4. On the other hand, learned Counsel Shri Mehul Suresh Shah for learned advocate Shri G.C. Ray for the respondent opposed the appeal and supported the decision of the Learned Single Judge. He contended that the documents and correspondence produced along with the Civil Application No. 11687/2006 were not produced before the Learned Single Judge. No reliance therefore, should be

permitted on such documents. In the alternative he submitted that even if the present case, is treated to be one of reference under Sub-section(1) of Section 32A of the Bombay Stamp Act, the Collector could not have exercised such powers after inordinate delay without any explanation for the same. He pointed out that the Learned Single Judge has based his decision on several grounds and not only on delay.

4.1 He contended that from the order passed by the Deputy Collector dated 14.2.2005 itself, it is clear that for the document which was registered on 3.8.94, notice for re-verification of the stamp duty was issued for the first time on 12.10.2004. For this gross delay of nearly 10 years, there was no explanation at all.

4.2 He relied on the decision of larger Bench of this Court in case of Shailesh Jadavji Varia Vs. Sub-registrar and Others, to urge that powers u/s 32A(1) cannot be exercised after indefinite period of time.

5. Section 32A of the Bombay Stamp Act insofar as same is relevant for our purpose reads as follows:

(1) Every instrument of conveyance, exchange, gift, certificate of sale, partition, partnership, settlement, power of attorney to sell immovable property when given for consideration or transfer of lease by way of assignment, presented fro registration under provisions of the Registration Act, 1908[XVI of 1908] shall be accompanied by a true copy thereof; and the Statement in such form as may be prescribed by rules and if an officer registering such instrument under the aforesaid Act or any person referred to in Section 33 before whom such instrument is produced or comes in the performance of his functions, has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject matter of such instrument or as the case may be the market value of the property which is the subject matter of such instrument, has not been truly set forth therein, he [shall before]registering the instrument or, as the case may be, performing his functions in respect of such instrument, refer the instrument or true copy thereof to the Collector of such district in which either the whole or any part of the property is situated for determining the true marker value of such property and the property duty payable on the instrument under this section.

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.

(4) The Collector of the district may, suo motu or on receipt of information from any source, within (six years) from the date of registration of any instrument referred to in Sub-section(1), not being the instrument upon which an endorsement has been made u/s 32 or the instrument in respect of which the

proper duty has been determined by him under Sub-section (3) or an instrument executed before the date of the commencement of the Bombay Stamp(Gujarat amendment Act, 1982) call for and examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the property which is the subject matter of such instrument and the duty payable thereon; and if on such examination, he has reason to believe that the consideration does not approximate to the market value of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in Sub-sections(2) and (3).

6. From the above provisions, we may notice that Sub-section (4) of Section 32A pertains to the Collector''s suo motu powers to demand payment of deficient stamp duty and penalty thereon on an instrument for which he has reason to believe that the consideration does not approximate to the market value of the property or as the case may be the market value of such property has not been truly and fully set forth in the instrument. The Statute however, has prescribed the period of six years for exercise of such powers. In comparison, Sub-section (1) of Section 32A, empowers the Collector inter-alia to proceed under Sub-section (2) and Sub-section (3) i.e. to levy deficient stamp duty and penalty thereon on a reference made to him by any person referred to in Section 33. Significantly no period of limitation is prescribed under this Sub-section for exercise of such powers. Learned AGP would therefore, be justified in contending that period of limitation prescribed in Sub-section (4) of Section 32-A therefore, would not ipso facto apply in the Collector exercising power on reference under Sub-section (1) of Section 32A as held by the Apex Court in case of State of Punjab and Ors. v. Mahajan Sabha, Gurdaspur and Ors. (supra).

7. As pointed out by learned advocate Shri Mehul Suresh Shah, however, larger Bench of this Court in case of Shailesh Jadavji Varia v. Sub-Registrar, Vadodara and Ors. (supra), held that Registering Officer under Sub-section (1) of Section 32-A can exercise powers beyond two years (which was the period of limitation prescribed earlier under Sub-section (4) Section 32A which is now being substituted by six years) on facts justifying delay. It was observed in paragraph 46 of the judgement as follows:

46. From the aforesaid decisions, there is no doubt in our minds that the power under Sub-section (1) of Section 32-A of the Act can be exercised within reasonable period and no outer limit can be fixed for exercise of such power. The decision in Patel Raghav Natha(supra), in our considered opinion, cannot be read as laying down universal rule applicable to all statutes, at all times and under all circumstances without reference to the scheme of the Act, underlying object to grant revisional power and consequences which may ensure therefrom that revisional powers must be exercised within a particular period. Their Lordships also, were conscious and mindful of all such situation which is reflected from the observations to the effect that ''the length of reasonable time must be

determined by the facts of the case and the nature of the order which is being revised.

8. It was further held in paragraph-94 that:

Question No. 1

First part of Question No. 1 is replied in the affirmative, namely, the Registering Officer under Sub-section (1)of Section 32A can exercise powers beyond two years on facts justifying delay.

9. In the present case, admittedly, the document in question was registered before the Sub-Registrar on 3.8.94. As per the stand of the State itself, reference was made for reexamination of the stamp duty affixed thereon on 8.1.1999. From the record, it also emerges that the authorities issued show cause notice to the petitioner in this regard for the first time on 12.10.2005. Thus more than 10 years after the registration of the document, its valuation was sought to be questioned. At any rate, the Stamp Authorities were alive to the possibility of deficient stamp being affixed thereon from January 1999. More than five years were spent in issuing even the first show cause notice. No explanation whatsoever has been placed on record to ignore such inordinate delay. Only on this short ground of gross inordinate and unexplained delay in initiation of the proceedings, we find that the decision of the Learned Single Judge calls for no interference.

10. The appeal is dismissed. Civil Application also stands dismissed accordingly.