

(1964) 03 GUJ CK 0003
In the Gujarat High Court
Case No : Stamp Ref. No. 1 of 1961

Collector of Mehsana

APPELLANT

Vs

Bharat Vijay Mills Ltd. and Another

RESPONDENT

Date of Decision : 02-03-1964

Acts Referred:

Bombay Stamp Act, 1958 — Article 25, 28 , 34

Citation : AIR 1965 Guj 1 : (1964) GLR 671

Hon'ble Judges : J.M. Shelat, C.J.;P.N. Bhagwati, J;J.B. Metha, J

Bench : Full Bench

Advocate : H.M.Choksi, Govt. Pleader and J.R. Nanavati, Asst. Govt. Pleader, for the Appellant; I.M. Nanavaty, R.J. Kolah and A.H. Metha, for the Respondent

Judgement

Shelat, C.J.

(1) By his letter dated May 31 1961, the Inspector General of Registration, without framing any specific questions, has made to us the present Reference. Though specific questions have not been raised, the learned Government Pleader appearing for the Revenue has agreed that in substance the following question would arise from this Reference. The question which can be culled out from the reference is whether the Collector is entitled, for the purpose of ascertaining the adequacy or other wise of the amount of stamp duty paid on the deed of conveyance in question submitted for registration, to go behind the consideration set out therein and ascertain the true amount or the value of consideration on which the stamp duty is payable.

(2) The Reference arise from the following facts: By an agreement dated April 22, 1959 made between Bharat Vijay Mills Ltd .,of the one part and The Ahmadabad Manufacturing and Calico Printing Co. Ltd of the other part ,the Bharat Vijay Mills Ltd., agreed to sell and The Ahmedabad Manufacturing and Calico Printing Co. Ltd agreed to purchase lands, buildings,plants, machinery ,furniture,fixtures and accessories therein setout , for the price of Rs.11,50,000/-, the purchaser company should pay Rs.1,00,000/-on the

execution of the agreement and the remainder on the completion of the purchase .By clause 8,the parties agreed to apportion the sale price of Rs.11,50,000/- as follows:

Rs.5,000/- as the value of the lands;

Rs.1,00,000/- as the value of buildings;

Rs.5,000/-as the value of the furniture;

Rs.90,000/-as the value of the stores, spares and accessories for the machinery in use; and

Rs.9,50,000/- as the value of the plant machinery, fixtures ,fittings and accessories.

Clause 9 of the agreement provided that for the purpose of stamp duty on the conveyance, the sum of Rs.1,50,000/- should be taken to be the value of the lands, buildings, plants and machinery in the nature of immovable property, and the balance of Rs.10,00,000/-for the value of machinery ,furniture, fixtures, fittings and accessories as transferable by delivery of possession. The result ,therefore, was that out of Rs.1,50,000/-,Rs.1,05,000/-were allocated for the lands and buildings and the balance of Rs.45,000/-was allocated for the machinery and the plant in the nature of immovable property. The schedule to the agreement set out the various lands and the structures standing thereupon as also the different machineries and certain quotas and licences agreed to be assigned or the transferred to the purchaser company. It appears that under the powers reserved under clause 10 of the said agreement, the purchaser company appointed the Kalol Mills Private Limited Kalol as their nominees and under the provisions of that clause called upon the vendor company to execute the deed of conveyance in favour of the said nominees. In pursuance of the said agreement, by an indenture of conveyance dated May 25, 1959, the vendor company, in consideration of the said sum of Rs.1,50,000/- granted, assigned and transferred unto the purchaser company the leasehold lands,hereditaments and premises more particularly described in the first part of the first schedule thereto, together with factories, buildings, bungalows, residential blocks, chawls and other structures and works constructed, erected or standing on the lands, plant, machinery and installations in the nature of immovable property as also certain freehold lands more particularly described in the second part of the said schedule together with structures standing thereupon and plants,machinery and installations in the nature of immovable properties. Though the deed of conveyance stated that the vendor company thereby conveyed assigned and transferred plant, machinery and installations in the nature of immovable property, the schedule attached to the said indenture of conveyance did not specify what were the plant, machinery and installations regarded by the parties as in the nature of immovable properties. The deed of conveyance was thereafter submitted to the Sub-Registrar, Kalol, for registration who registered the same and thereafter sent to the Photo Registry at Poona. It was then that an objection

appears to have been taken that the parties had not disclosed the true consideration and had instead placed a notional or fictional value of Rs. 1,50,000/- in respect of the properties described above for the purposes of stamp duty, and thereupon the Sub-Registrar at Kalol impounded the said indenture of conveyance and transmitted it to the Collector for adjudication. It would seem that the Collector thereafter directed the Mamlatdar to make a panchnama of the movable and immovable properties situate in the said mills and to ascertain the market value thereof. On the purchaser company protesting against the aforesaid action of the Collector and asking for a hearing, a date was fixed when the learned advocate for the purchaser company appeared before the Collector and objected to that officer determining the actual value of the properties sold under the deed of conveyance. On behalf of the Stamp Department, the learned Assistant Government Pleader, Mehsana, appeared. It would appear from a reference made by the Collector to the Inspector General of Registration, that the Collector was of the view that there was a breach of the provisions of Section 27 of the Bombay Stamp Act, 1958, that the said deed of conveyance was in substance and truth the transfer of all properties, which according to him were in the nature of immovable properties for a total consideration of RS. 11,50,000/- upon which the stamp duty chargeable would amount to Rs. 34,492-50np. Under Art. 25 of schedule to the said Act and that as the stamp duty of Rs.4,493-50 np only had been paid by the parties, there was a deficit of Rs. 30,000/- and that as the parties had deliberately given a notional value of the consideration, the executing party was liable to penalty under the provisions of the Act. It is in these circumstances that the Inspector General of Registration has made this Reference to us.

(3) The question that arises for our consideration is whether the Collector, under the provisions of the Bombay Stamp Act, has the authority to go behind the amount of consideration set out in the deed of conveyance submitted for registration and ascertain de hors that deed of conveyance the actual or the market value of the properties which were the subject-matter of the said deed and whether on the basis of such actual or market value so ascertained by him , impose upon the executing party the stamp duty held him to be chargeable and also a penalty. The learned Government Pleader has supported before us the action taken by the Collector and, relying upon the provisions of Sec 28 to which we shall presently come to has argued that it was the duty of the parties to the said deed of conveyance to set fully the consideration and all other facts and circumstances affecting the chargeability of the said instruments with duty. The learned Government Pleader submitted that it was obvious from the said agreement of sale as also the said indenture of conveyance that the parties, instead of setting out the true consideration of the various properties transferred thereunder, had allocated a fictional or nominal value to the several properties set out in the deed of conveyance with a view to avoid payment of the full stamp duty as specified in Art.25 of Schedule I To the Act. He further submitted that in the circumstances, the Collector was justified in taking the action which he took

and was also entitled to have the actual value of the properties transferred taken and levy the stamp duty accordingly. Mr.Kolah who appears for the purchaser company has strenuously argued that under the scheme of Stamp Act, the Collector has not been empowered by any of the provisions in the Act to hold such an enquiry and to ascertain true value of the consideration de hors the deed of conveyance and therefore the act of the Collector was without jurisdiction and invalid.

(4)In order to appreciate these contentions, it will be necessary to examine some of the provisions of the Act. Section 2(g) defines "conveyance" as including a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule 1. Clause (h) of Sec 2 provides that the expression "duly stamped" as applied to an instrument means that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in the State. In order to appreciate the meaning of the expression "proper amount" used in clause (h), one has to have recourse to Section 3 which lays down the liability of instruments to stamp duty. Sec. 3 provides interalia as follows:-

"Subject to the provisions of this Act and the exemptions contained in Schedule 1, the following instruments shall be chargeable with duty of the amount indicated in Schedule 1 as the proper duty therefore respectively, that is to say ---

(a) Every instrument mentioned in Schedule 1, which not having been previously executed by any person, is executed in the State on or after the date of commencement of this Act".

Article 25 (b) of Schedule 1 which, it is agreed between the parties, is applicable in the present case, provides that a conveyance, so far as it relates to immovable properties situate within the cities and urban areas specified in sub columns (1), (2) and (3) in the column opposite to it and the amount or value of the consideration for which exceeds Rs.200/-, where the amount or value of the consideration for such conveyance as set forth therein exceeds Rs.200/-but does not exceeds Rs.300/-, shall be chargeable to duty at the rates mentioned opposite thereto. Then follows a graded scale of duty depending upon the amount or the value of the consideration for such conveyance as set forth therein. Sec. 28 provides that the consideration if any and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. Section 33 empowers certain officers to impound any instrument which is chargeable with stamp duty if such a document is not duly stamped. Sub-section (2) thereof lays down that every such officer 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 .Section 39 empowers the Collector to stamp the instruments impounded by him under the provisions of Section 33 or the documents sent to him under sub-sec (2) of Sec. 37, and provides the procedure to be followed by him in such cases by laying down that 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. But if on the other hand he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with certain penalty. It is clear that by using the expression "proper duty" in this section, the Legislature meant in the case of a deed of conveyance like the one before us, the duty chargeable in accordance with the provisions of Art. 25 of Schedule 1, that is to say, on the amount or the value of the consideration for such conveyance as set forth therein. Section 42 provides for prosecution for offences against stamp laws apart from the right to levy penalty, and Sec. 62 of the Act. lays down penalty for the omission to comply with the provisions inter alia of Sec 28 provided that it is established that the breach of Sec 28 was committed with the intention to defraud the Government . This analysis of the various provisions of the Act would appear to show that the Collector can charge and levy stamp duty in the case of a deed of conveyance relating to immovable property upon the amount or the value or the consideration as set forth document submitted for registration. There does not appear to be any provision in the Stamp Act which empowers the Collector to hold an enquiry or direct a panchanama to be made either by him or any of his subordinates for the purpose of ascertaining the actual or the market value of the properties conveyed and transferred by such a deed of conveyance de hors the deed of conveyance itself. It is possible that there might be cases where the parties to a document, to avoid payment of proper duty and with the intention to defraud the Government of revenue, might commit breach of the provisions of Sec 28, but for such case the Government appears to be amply protected under the very provisions of Sec. 28 which imposes a duty upon the parties to such a document to set out the consideration, meaning thereby the true consideration and all other facts and circumstances affecting the chargeability of the instrument with the duty with which it is chargeable. Another safeguard that appears to have been provided for is to be found in Sec. 34 where under the Legislature has provided that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped. Besides these safeguards Sec 42 read with Sec 62 lays down liability of a penal character for such persons as commit the breach of the provisions of Section 28 if such breach is committed with the intention to defraud the Government of its revenue. The several provisions which we cited above thus clearly indicate that the Act does not provide any power for the Collector to institute an enquiry for the purpose of

arriving at the actual or the market value of the properties in question except from the document itself or adjudicate thereafter the true duty payable by the parties on such document. The view which we are to adopt is supported by the decisions of various Highcourts to which our attention was drawn to in the matter of, Muhammad Muzaffar All 339; (AIR1922 All 82 (2 decided by a Full Bench of the High court of Allahabad, though the question thereunder concerned was relating to a deed of gift, there are certain observations which are of considerable assistance. In that case one Muzzafar Ali executed a deed of gift on plain paper in favour of one Hasan Khan. The property gifted was a grove but the value thereof was not in the document. The document was produced by the donee before the Tashildar of Kaiserganj who impounded it and sent it to the Deputy Commissioner for action. The Deputy Commissioner had the value of the grove estimated by the Tashildar. He thereafter submitted the case for the orders of the Board of Revenue as to whether the duty and penalty could be levied from the donor or from the donor. The Chief Revenue controlling Authority felt doubt as to whether the instrument was chargeable with stamp duty or not and thereupon made a reference to the High Court. The High Court in answering the questions referred to it, observed that in a deed of gift the value of the property dealt with was not set forth, the deed would not require any stamp, and further observed that it was not within the competence of the Collector to have the property valued in order to assess the duty payable. The High Court also observed that if the value of the property was intentionally omitted with a view to defraud the revenue, prosecution would lie under Sec 64 of the Indian Stamp Act, 1899. The High Court held that the words "as set forth in such instrument in corresponding entry in that Act referred back the word value and not to the word "property"and since there was no value set forth in the document in question, though that might amount to a contravention of Sec. 27 of the Indian Stamp Act which was equivalent to Sec 28 of the Bombay Act, if it was further found that the omission to state the value of the property conveyed was done with the intention to defraud the Government, a prosecution would lie against the person who executed the instrument under Sec. 64 of that Act. They held that for purpose of stamp duty the value given in the instrument itself would have to be accepted but there was an intentional under-valuation, then a prosecution would protect the Government against the attempted fraud. But there was no provision in the Stamp Act authorising the Collector to do what he did in that case, namely, to ascertain the value of the property with a view to causing the instrument to be stamped with reference to the value thus ascertained. Similarly, in Miran Baksh V. Emperor AIR 1945 Lah 69 (SB) where the document in question was a mortgage deed, the High Court held that if a mortgage deed were to be silent regarding consideration or did not set forth the circumstances from which it could gathered how much stamp duty was to be paid, the Collector had no power to take no evidence to find the consideration and the only thing left for him was to prosecute the executant under Sec. 64 of the Central Stamp Act for not complying with the provisions of Sec. 27 therein. A similar question also arose before the High Court of Madras in Joint Secretary, Board of Revenue, The Joint

Secretary, Board of Revenue Vs. K.R. Venkatarama Ayyar, v and Full Bench of that High Court, agreeing with the view of the Allahabad High court in the matter of Muhammed M UZAFFAR Ali, ILR 44 All 339: (AIR 1922 All 82 (2) (FB) (supra) observed that there was no machinery provided in the Stamp Act for ascertaining the true value of the property or consideration, as the case may be, and that it would clearly be impracticable to cast the burden on the Registrar in each case to ascertain what the true market value was. They also observed that if under the Act the Stamp duty were payable only on market value to be ascertained, then it would have to be definitely stated in the Act who was to ascertain the market value and what rights, if any, an aggrieved party by way of appeal, revision or the like. They then observed even if the matter was *res integra*, they would have no hesitation in holding from an examination of the wording used in the various Articles of the Indian Stamp Act that the stamp fee thereunder had to be collected on the value shown in the document itself. At page 740 of the report, they further said: -

"It seems to us that the principle underlying the provisions of the Stamp Act with regard to valuation and estimation of the duty payable is that the value of the property should be taken from the face of the document, and that the revenue of the Government is protected by requiring the parties to make a true and full disclosure of all facts and circumstances having any bearing on the duty payable, failing which they must suffer the consequences of their false or defective statements."

In *Sitaram Kamalia and Another Vs. State of Bihar*, , which was a writ petition under Art. 227 of the Constitution, a Division Bench of that High Court held that where a deed of settlement was impounded u/s 33 and a proceeding under Sec. 40 of the Stamp Act was started by the Collector, the Collector had no power to embark upon an enquiry with regard to the market value of the properties and require the payment of further stamp duty by the petitioners in accordance with his finding as to valuation. After examining the provisions of Art.58 in the Central Stamp Act, they observed that the instrument of settlement was to be stamped with the same duty as a bond "for a sum equal to the amount or value of the property settled as set forth in such settlement," and following the view of the Allahabad High Court they held that the words "as set forth in such settlement" referred back to the word "value" and not to the words "property settled," and therefore, if the Collector were to be of the opinion that the instrument of settlement was duly stamped with proper duty according to the valuation given by the petitioners in the deed of trust, it was the duty of the Collector to give a certificate under clause (a) of sub-section (1) of Sec. 40 and thereafter return the document to the impounding officer. A similar view is also to be found in. *Re C.R.M.M.L.A. Chettyar Firm* AIR 1935 243 (SB). There is, therefore, a consensus of opinion among the High Courts to the effect that the words "where the amount or value of the consideration for such conveyance as set forth therein" would mean that the stamp duty authorities have to accept the amount or the value of consideration set forth by the parties in the deed of conveyance. Unless it is

found from the document itself that the amount or the value of the consideration was not the true consideration that passed between the parties, the stamp duty payable thereupon would be upon the consideration set forth by the parties in the document itself. If the stamp duty, as laid down in Art.25 (b) of Schedule 1, has been paid by the parties, such a document must be treated as one which is "fully stamped" with in the meaning of Sec. 2(h) of the Act and the Collector would have no power jurisdiction to enter upon an enquiry for the purpose of ascertaining the actual or the market value of the property in question and thereupon proceed to fix the stamp duty which according to him would be the proper duty chargeable.

(5) In this view, we are of the opinion that the Collector was bound to acceptor the value of the consideration set forth in the deed of conveyance before us and he had no authority to institute any enquiry de hors the said document. There will no order to costs.

(6) Order accordingly.