
(2010) 04 GUJ CK 0089

In the Gujarat High Court

Case No : Special Civil Application No. 7647 of 2006

General Motors India Private Ltd.

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Bombay Stamp (Determination of Market Value of Property) Rules, 1984 — Rule 4(1), 8
Bombay Stamp Act, 1958 — Section 31, 32(1), 32(2), 32A, 32B
Constitution of India, 1950 — Article 20, 226, 26, 28, 30
Stamp Act, 1899 — Section 3, 3(1), 3A, 3B, 3B(2)

Citation : AIR 2010 Guj 108

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Singhi and Co, for the Appellant; Nikuni Raval, Asst. Govt. Pleader, for the Respondent

Judgement

K.A. Puj, J.—The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the impugned order dated 1-2-2006 passed by the respondent No. 3 i.e. Deputy Collector, Stamp Duty Valuation Organization, Godhra.

2. This Court has issued notice on 12-4-2006 and ad interim relief in terms of para-8(B) was granted, whereby the impugned order dated 1-2-2006 passed by the respondent No. 3 was stayed. The petitioner was admitted on 2-5-2006 and ad-interim relief granted earlier was ordered to be continued.

3. It is the case of the petitioner that pursuant to the permission granted by the Gujarat Industrial Development Corporation a Deed of Assignment of Leasehold Rights dated 21-3-1995 was executed between Hindustan Motors Ltd., the assignor on one part and General Motors India, Ltd., the assignee and the petitioner herein on the other part, whereby, the assignor had agreed to transfer to the assignee, all the assignor's right, title and interest in the leasehold land, viz. property bearing Block No. B in the Halol Industrial Area/Estate, situated

within the village limits of Kanjari, Taluka: Halol in the Sub-District Halol, admeasuring about 6,95,182 sq. mtrs., more particularly described in the second schedule to the said deed of assignment. In pursuance of transfer of leasehold land, the petitioner paid the sum of Rs. 2,43,31,000/- to Hindustan Motors Ltd. The existing super structure on the said leasehold land was transferred vide Deed of Conveyance of superstructure executed on 21-3-1995 between Hindustan Motors Ltd., and General Motors India Ltd. Similarly a Deed of Conveyance of Embedded Plant and Machinery dated 21-3-1995 came to be executed between Hindustan Motors Ltd., and General Motors India Ltd. The petitioner agreed to purchase the said embedded plant and machinery, more particularly described in the second schedule to the said deed at or for a total consideration of Rs. 2,82,35,000/-.

4. On 2-2-1998, a demand notice for an amount of Rs. 4,86,618/- came to be issued by Sub-Registrar, Kalol, inter alia, stating that the petitioner had lodged a document No. 391 dated 21-3-1995 being the subject agreement, for registration and that Accountant General had directed to recover the aforesaid deficit in stamp duty. The petitioner was called upon to pay the said amount within seven days from the date of receipt of the said notice. Again on 27-2-1998, another notice came to be issued by the Sub-Registrar, Kalol stating that if the said amount were not paid, coercive measures would be initiated for recovery of the amount. Thereafter, the respondent Nos. 2/3 issued another notice dated 26-5-1999 u/s 32(1) of the Act proposing to recover an amount of Rs. 20,88,910/- being deficit stamp duty in respect of the subject agreement on account of the market value of the leasehold land determined by him at Rs. 4,36,12,638/- against actual consideration of Rs. 2,43,31,000/- stated in the document. The date of hearing was fixed on 11-6-1999 and thereafter on 24-12-1999 by a subsequent notice dated 10-12-1999. The petitioner filed its detailed reply to the notice on 14-2-2000 contending inter alia that the valuation was incorrect and he overlooked the fact that only the leasehold rights had been purchased by the petitioner and that no material had been disclosed in the notice on the basis of which the market value was fixed. In fact, the aforesaid notices were clearly without jurisdiction since the subject instrument had not been brought to the respondent No. 2 for adjudication of proper stamp duty u/s 31 of the Act. No action was taken by the respondent No. 2/3 under the said notices, for about one and half years after the reply of the petitioner.

5. Thereafter, a notice dated 23-8-2001 was issued by the respondent No. 2/3 stating that the subject agreement had been impounded and it was proposed to recover deficit stamp duty of Rs. 4,86,618/- being the additional duty of 25% u/s 3B(d) of the Act leviable on instruments relating to vacant land, and penalty at ten times thereof u/s 39(1)(b) of the Act. The date of hearing was fixed on 3-9-2001 which was adjourned from time to time on the requests made on behalf of the petitioner.

6. It is also the case of the petitioner that under mistaken legal advice, the

petitioner agreed to pay the aforesaid amount of Rs. 4,86,618/- on condition that the entire penalty be waived and this was conveyed to the respondent No. 2/3 vide letter dated 18-12-2002. However, the offer of the petitioner was not accepted by the respondent No. 2/3 who issued another notice for payment of the deficit stamp duty and penalty on 1-2-2003. The petitioner then learnt that the demand was on the premise that the subject land was vacant non-agricultural land, which premises was absolutely incorrect and, therefore, the petitioner filed its reply to the notice on 31-3-2003 along with documents to establish that the super structure existed on the said land and the petitioner also withdrew its offer to make the payment of the deficit stamp duty, which offer had in any case not been accepted by the respondent No. 2/3. A further representation was submitted on 9-4-2003. The respondent No. 2/3 fixed the date of hearing on 20-5-2003 vide notice dated 23-4-2003. The petitioner attended the hearing on 20-5-2003 and submitted its reply on the same date. An additional reply was submitted on 23-5-2003. After the hearing and replies no action was taken by the respondent No. 2/3. More than two years thereafter the respondent No. 2/3 issued a notice dated 17-5-2005 regarding deficit stamp duty of Rs. 4,86,618/- purportedly granting a last opportunity of hearing on 23-5-2005. There was no reference to the replies submitted by the petitioner. The date of hearing was adjourned at the request of the petitioner and, thereafter, on 11-7-2005 the petitioner submitted its reply setting out the aforesaid facts regarding submission of detailed replies and conclusion of the hearing in the matter more than two years before the issuance of the notice dated 17-5-2005. Thereafter, the respondent No. 3 issued a notice on 2-8-2005 u/s 39(1)(b) of the Act proposing to recover Rs. 21,81,799/-. This amount includes the deficit stamp duty on the basis of the market value determined by the respondent No. 3 and penalty thereon at ten times of the said amount. The demand was made for the first time after six years from the date of the earlier notice dated 26-5-1999 issued u/s 32(1) of the Act which section had no application to the facts of the case and proceedings pursuant to the notice had been dropped pursuant to the reply dated 14-2-2000 as stated earlier. However, these facts were not even adverted to in the said notice. The balance demand was of additional duty in respect of the subject agreement on the premises that what was transferred was vacant non-agricultural land, which premises was obviously erroneous as stated earlier.

7. It is also the case of the petitioner that though a number of replies on both the issues had been submitted by the petitioner, the petitioner sought time for submitting its reply to the fresh notice dated 2-8-2005 and the hearing was thereafter fixed by the respondent No. 3 on 29-12-2005. However, the petitioner was unable to file its reply since the officer conversant with the facts had left the organization. The respondent No. 3 thereafter passed the impugned order on 1-2-2006 completely ignoring the replies submitted by the petitioner and directed the petitioner to pay deficit stamp duty of Rs. 21,81,799/- and penalty of Rs. 5 lacs.

8. It is this order of the respondent No. 3 which is under challenge in the present petition.

9. Mr. Mihir Thakore, learned Senior Counsel appearing with Mr. Sandip Singhi for Singhi & Company, for the petitioner submitted that the impugned order passed by the respondent No. 3 is without jurisdiction and authority of law and hence the same deserves to be quashed and set aside. He has further submitted that the impugned order overlooks the detailed replies and submissions of the petitioner to the earlier notices and suffers from the vice of non-application of mind and, therefore, deserves to be quashed and set aside. It is further submitted that the impugned order is in breach of principles of natural justice since the notices issued for recovery of deficit stamp duty did not disclose the material relied upon by the authority for determining the higher market value and, therefore, the petitioner was denied an adequate and proper opportunity of representing its case against, such determination. It is further submitted that the procedure adopted by the respondent authorities of mechanically issuing notices, ignoring detailed replies of the petitioner, overlooking the fact that proceedings had been concluded after hearing the petitioner and restarting or reviving the proceedings after an unreasonably long period of time, is clearly high handed, irrational and arbitrary and the impugned order passed pursuant to such proceedings is consequently illegal and liable to be quashed. He has further submitted that the basis for confirming the demand of deficit stamp duty on account of additional duty which had purportedly not been paid in respect of the subject agreement, is non-existent inasmuch the subject land is not vacant land at all and, therefore, the additional duty is not leviable on the subject agreement. It is further submitted that the notice dated 26-5-1999 for deficit stamp duty on account of determination of market value by the respondent No. 3 was issued u/s 32(1) of the Act which had no application to the facts of the case and was without jurisdiction and authority of law and, therefore, could not have resulted into a valid order and therefore deserves to be quashed and set aside. He has further submitted that the notice dated 26-5-1999 and the notice dated 2-8-2005 do not record a reason to believe by the respondent No. 3 that the subject agreement has suffered inadequate stamp duty due to under valuation of consideration and in the absence of the same, the impugned notices deserve to be quashed and set aside. He has further submitted that the demand has been raised solely on the basis of an audit objection and the proceedings have not been initiated upon independent exercise of discretion of the concerned authority as required under law and the impugned order passed upon invalid assumption or exercise of jurisdiction therefore deserves to be quashed and set aside. He has further submitted that the subject agreement does not appear to have been validly impounded at all and the notices and the consequential order are invalid on this ground. He has further submitted that the impugned order raises a demand after nearly 11 years from the execution of the subject agreement and is therefore unreasonably delayed and deserves to be quashed and set aside.

10. On behalf of the respondent an affidavit-in-reply is filed by the Dy. Collector,

Stamp Duty, Godhra. Mr. Nikunt Raval, learned Assistant Government Pleader appearing for the respondent has submitted that the petitioner has not availed alternative remedy available under the Statute. The petitioner could have filed an Appeal before the Secretary, Revenue Department, against the order passed, u/s 32B and u/s 53 of Bombay Stamp Act, 1958. Though alternative remedy was available to the petitioner straightway the petitioner has preferred writ petition under Article 226 of the Constitution of India. If the petitioner were to file an Appeal the petitioner would have required to deposit 25% of the amount demanded and only with view to avoid the deposit of 25% of the amount demanded, the petitioner has approached this Court by way of this writ petition. He has, therefore, submitted that the petition deserves to be dismissed only on this short ground. He has further submitted that on 21-3-1995, the petitioner executed three Sale Deeds, out of which the document No. 391 dated 21-3-1995 is for the land. The document No. 392 dated 21-3-1995 is for the construction carried out on the said land and document No. 393 dated 21-3-1995 is for the plant and machinery embedded on the said premises. The petitioner had suppressed the material fact before the registering authority that he has executed three Sale Deeds on 21-3-1995. The document No. 391/1995 is for the open land admeasuring 6,95,182 sq. mtrs. He has further submitted that initially the petitioner has agreed to pay additional stamp duty raised pursuant to the audit objection raised by the Accountant General (Audit) and the petitioner demanded to grant exemption from making payment of fine. However, as per the provision of law, the respondent authorities could not give concession to the petitioner in payment of fine. The petitioner, therefore, indirectly accepted the fact that he had evaded the stamp duty, and hence the petitioner is liable to pay the demand of duty as well as penalty. He has further submitted that on 2-8-2005 notice was issued and the matter was kept for hearing on 17-8-2005 as per the request made by the petitioner. The matter was thereafter kept on 30-11-2005 and on 24-12-2005. Though ample opportunity was given to the petitioner to defend its case, the petitioner did not represent its case and ultimately on 1-2-2006 the final order was passed by the respondent authority considering all the facts and documents on record. He has, therefore, submitted that this Court should not interfere in the impugned order passed by the respondent No. 3 and dismiss the petition with cost.

11. Having heard learned Counsel appearing for the parties and having considered their rival submissions in light of the statutory provisions and settled legal position, the Court is of the view that the challenge is made to the action of the respondent u/s 39(1)(d) of the Bombay Stamp Act, 1951. It transpires from the record that during the audit by the Accountant General it is noticed that on the subject deed of assignment of leasehold right being document No. 391 executed on 21-3-1995 stamp duty of Rs. 26,27,750/0 @ 10.8% has been fixed and that on account of the deficiency in stamping the document has been allegedly impounded under purported exercise of power available to the respondent u/s 33 of the Bombay Stamp Act, 1958. It was the stand of the

respondent that subject deed of. assignment of leasehold right dated 21-3-1995 was required to be stamped u/s 3B at 12.8% and that accordingly the stamp duty of Rs. 31,14,368/- would become payable and since the stamp duty of Rs. 26,27,750/- @ 10.8% was paid by the petitioner there was deficit of Rs. 4,86,618/-. The power to impound an instrument is contained u/s 33 of the Stamp Act. It provides for examination and impounding of instruments which runs as under:

33. Examination and impounding of instruments:

(1) (Subject to the provisions of Section 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, before whom any instrument, chargeable, in his opinion, with duty, is produced if it appears to him that such instrument is not duly stamped, impound the same.

(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:

Provided that

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of Criminal Court to examine or impound, if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under Chapter-XII or Chapter XXXVI of the Code of Criminal Procedure, 1898; (V of 1898);

(b) in the case of Judge of High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.

(3) For the purpose of this Section, in case of doubt;

(a) the State Government may determine what offices shall be deemed to be public offices, and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

The above provision entitles the person having by law authority to receive evidence and every person incharge of a public office before whom an instrument chargeable, is produced or comes in performance of his functions, if it appears to him that such instrument is not duly stamped, he can impound the same. It is not clear as to whether the Collector of Stamp has impounded the document or it has been impounded by the Accountant General. The Accountant General would have no authority to impound, not being an authority to entitle to receive evidence nor being incharge of a public office. There is nothing to show as to how

the subject instrument has been produced before the Collector of Stamp or has come before him in the performance of his functions. Moreover, before an instrument can be impounded he would have reached an objective opinion that the instrument is not duly stamped which does not appear to have been reached. There is nothing to show that Sub-section (2) of the Stamp Act has been complied with. Even if it is assumed that subject instrument came to the knowledge of the Collector of Stamp in the performance of his function, it is only the Accountant General who has raised the issue of under-stamping the instrument. Even the stand of the respondent authority with regard to understanding of the document is also not acceptable. Section 3 of the Stamp Act refers to chargeability of the instrument with duty which runs as under:

3. Instruments chargeable with duty:

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;

(b) every instrument mentioned in Schedule-1, which not having been previously executed by any person, is executed out of the State on or after the said date, relates to any property situate, or to any matter or thing done or to be done in this State and is received in this State;

(1) any instrument executed by or on behalf of, or in favour of, the Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

(2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Bombay Coasting Vessels Act, 1938, or the Indian Registration of Ships Act, 1841.

Section 3B of the Stamp Act provides for additional duty on certain instruments relating to vacant land which reads as under:

3B Certain instruments relating to vacant land chargeable with additional duty.

(1) Every instrument of

(a) conveyance of vacant land;

(b) exchange of vacant land;

(c) gift of vacant land;

(d) lease of vacant land;

(e) power of attorney when given for consideration and authorizing the attorney to sell vacant land; and

(f) transfer of lease of vacant land by way of assignment and not by way of under lease.

Chargeable with duty u/s 3 and mentioned in Articles 20, 26, 28, 30 Clause (f) of Article 45 and Article 57 respectively;

(i) when such vacant land is situate in an urban area, be chargeable in addition to the duties chargeable under Sections 3 and 3A, with a duty at the rate of fifty per cent of the duty chargeable u/s 3; and

(ii) when such vacant land is situate in an area other than urban area, and is non-agricultural land, be chargeable in addition to the duties chargeable u/s 3 with a duty at the rate of twenty five per cent of the duty chargeable u/s 3

Provided that nothing in this section shall apply to a vacant land of an area not exceeding one hundred square meters which is intended to be used for a residential purpose.

(2) Except as otherwise provided in Sub-section (1), the provisions of this Act and the rules made thereunder shall, so far as may be, apply in relation to the additional duty chargeable under Sub-section (1) as they apply in relation to the duty chargeable u/s 3.

The petitioner's submissions are, prima facie, found to be attractive. The additional duty cannot be demanded u/s 3B of the Act as the subject matter of the instrument was not vacant land at the time of execution of the subject instrument and, therefore, not chargeable with any additional duty. It is clear from the record that their deeds were executed and presented for registration with the office of Sub-Registrar, Kalol on 21-3-1995. There is no dispute about the fact that the subject lands was not vacant land within the meaning of Explanation-2 to Section 3B(2) of the Stamp Act. This being so, Section 3B of the Stamp Act would have no application to the subject instrument. The chargeability of the additional duty contemplated u/s 3B depends upon the factual situation as to whether the land is vacant or not and unless that be so, no additional duty would become chargeable.

12. Despite the above legal position, the fact still remains that the document No. 391 dated 21-3-1995 refers to the land only. At the time of examination of the said document it is difficult to believe that the said land is with super structure or plants and machinery are embedded on the land. It has not come on record that why three different documents were executed on the same day. Be that as it may, the petitioner agreed vide its letter dated 18-12-2002 to deposit the differential amount of Rs. 4,86,618/- towards principle dues forthwith on receipt of challan from the office of Collector of Stamp. The petitioner has also requested to waive the penalty. The petitioner has made it very clear in the said letter that it had no intention to short pay the stamp duty on the deed of assignment of

leasehold land between itself and Hindustan Motors Ltd., dated 21-3-1995. The petitioner had come out with this offer only when the Collector of Stamp, Panchmahal had issued "second show cause notice dated 23-8-2001 making a demand of deficit stamp duty of Rs. 4,86,618/- along with penalty of Rs. 48,66,180/- u/s 39(1)(b) of the Bombay Stamp Act at ten times of the duty. It is a different story that subsequently the petitioner has withdrawn the said offer and challenged the action of the respondent authority even with regard to the demand of additional stamp duty. Since the petitioner has agreed to pay the said amount and since document No. 391 dated 21-3-1995 is totally silent with regard to any construction on the subject land, the Court is of the view that the petitioner is liable to pay the said additional stamp duty of Rs. 4,86,618/-. However, looking to the facts and circumstances of the case and considering the legal position, there is no question of levy of any penalty in respect of this demand.

13. The second issue is in relation to determination of the value for the property in question to the tune of Rs. 4,36,72,638/-. The disputed land is owned by GIDC. The said land was leased to Hindustan Motors Ltd. The said Hindustan Motors Ltd., had assigned this lease hold right to the petitioner with the consent of GIDC and accordingly the petitioner got executed the document No. 391/1995 on 21-3-1995 on a proper stamp of Rs. 26,27,780/-. The petitioner had not purchased the disputed land on ownership basis. The ownership of the disputed land still remains with GIDC. Considering the range of the land situated in the surrounding locality of the land in dispute the value that is assessed of the disputed lease hold land is proper and as per the prevailing market rate. The disputed land is situated at Halol, District: Panchmahal which is declared to be backward area by the State Government. The rent of the land which is at Panchmahal District cannot fetch more rent than what is mentioned in the document. From the record it transpires that the respondent authority has assessed Rs. 54.05 ps. per sq. mtr., after considering depreciation of the construction. The other factors like supply and demand while assessing the value of the disputed land has not been taken into consideration. Even the jantri was also not provided to the petitioner. Though it is mentioned that the value was determined on the basis of other sale deeds but no such details whatsoever were provided to the petitioner. This Court has taken the view in number of cases that while considering and determining the true market value the Collector is required to consider the principles, which are enumerated in Rule 8 of Bombay Stamp (Determination of Market Value of Property) Rules, 1984. As per the said Rules, it is the duty of the Collector to issue notice showing the basis on which the 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 has 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 the rules itself. Various objections raised by the petitioner in its different representations, were not properly considered.

14. In the above view of the matter, the impugned order passed by the Dy. Collector demanding the deficit stamp duty of Rs. 21,89,799/- and penalty of Rs. 5 lacs is hereby quashed and set aside.

15. In view of the above discussion, the petitioner partly succeed in this petition. Rule is made absolute to the aforesaid extent without any order as to costs.