
(2019) 08 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 6841 Of 2016

Godrej Properties Ltd

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 08-08-2019

Acts Referred:

Maharashtra Stamp Act, 1958 — Section 2(na), 53A
Maharashtra Stamp (Determination Of True Market Value Of Property) Rules, 1995 —
Rule 3, 4
Maharashtra Stamp Act, 1958 — Article 5(ga), 25(b), 25(c), 25(b)(i)

Citation : (2019) 08 BOM CK 0048

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : Anand Jaiswal, N. Moharir, S. Bissa, Anand Parchure

Final Decision : Disposed Off

Judgement

1. Rule. Heard finally with consent of counsel for the parties.
2. The challenge raised in this writ petition is to the order dated 22.09.2016 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune in exercise of powers under Section 53 A of the Maharashtra Stamp Act, 1958 (for short, 'the said Act'). The consequent recovery notice issued pursuant to that order is also under challenge.
3. The facts in brief are that on 30.09.2011 a development agreement was entered into between the petitioner - Godrej Properties Limited (GP) and Goldbricks Infrastructure Private Limited (GIPL). Under the said agreement land admeasuring about 29 acres or 1,17,257 square meters which was called as the larger property was stated to be owned by G.I.P.L. It was intended by G.I.P.L. to develop the said larger property by making construction of various buildings. The total saleable area in the residential zone was calculated to be 27,69,290 square feet. The development rights for constructing various multi-storied buildings was thus given by G.I.P.L. to G.P. The right to market, sell and otherwise dispose of

the constructed premises and other facilities was given to G.P. and it was entitled to conduct negotiations to transact and conclude transactions with the unit purchasers. The units were to be sold to the purchasers at the choice of G.P. With a view to ensure compliance of certain conditions as set out in the agreement, an interest free refundable deposit of Rs.29,00,00,000/- was agreed to be paid by G.P. to G.I.P.L. It was further agreed that G.P. would be entitled to recover/adjust 30% of the share of the G.I.P.L. from the gross sales revenue collected from the sale of the buildings. There was also an agreement to share revenue between the two parties. As per the revenue sharing ratio for the first 10,00,000 square feet area of the flats sold on the average sale price of the flats up to Rs.5,250/- per square foot, G.I.P.L. was entitled to 38% of the gross sales revenue while G.P. was entitled to 62% of the gross sales revenue. With regard to the balance saleable area of the flats above 10,00,000 square feet, it was agreed that up to Rs.5,250/- per square foot of the average sale price, G.I.P.L. would be entitled to 43% of the gross sales revenue and G.P. would be entitled to 57% of the gross sales revenue. The aforesaid are the relevant terms that were agreed between the said parties to the development agreement.

4. In terms of the aforesaid agreement, adjudication in respect of the market value of the property in question for the purposes of payment of stamp duty was sought to be determined. The market value was accordingly determined by the Collector of Stamps at Rs. 66,85,93,000/- under the provisions of Section 2(na) of the said Act. On the basis of the said valuation, stamp duty came to be paid. On 13.06.2014 a show cause notice was issued to G.P. in context of the provisions of Section 53 A of the said Act in which it was stated that lesser stamp duty had been levied on the development agreement in question. This notice was issued pursuant to the scrutiny of the said case by the Audit Department wherein it was noticed that lesser stamp duty had been paid by G.P. Hence explanation of the petitioner was called in that regard. A reply was given to said show cause notice justifying the stamp duty already paid and denying any liability to pay further stamp duty. Thereafter the Chief Controlling Revenue Authority on hearing both the parties came to the conclusion that under the development agreement various amounts were to be received by the developer - G.P. The opinion of the Joint Director, Town Planning Department was sought with a view to verify the components of the development agreement that the developer was entitled to receive. Accordingly, the Joint Director, Town Planning on 29.08.2016 in the light of the terms of the development agreement indicated its assessment on the basis of which stamp duty was liable to be levied. The Chief Controlling Revenue Authority accepted that assessment and by his order dated 22.09.2016 directed the petitioner to pay the difference of stamp duty of Rs.14,39,82,575/- as well as penalty of Rs.8,73,902/-. Being aggrieved by this adjudication, the petitioner has challenged the said order.

5. Shri Anand Jaiswal, learned Senior Advocate for the petitioner submitted that the respondent no.2 was not justified in determining the market value of the land that was agreed to be developed at Rs.354,82,34,335/-. Referring to the

provisions of Section 2 (na) of the said Act, it was submitted that the market value of the larger property ought to have been taken at the price at which the same would have been sold in the open market on the date of execution of such instrument. Said market value had been rightly determined at Rs. 66,85,93,000/- when the agreement dated 30.09.2011 was adjudicated upon which was the correct market value of the said property. The stamp duty had been paid on the basis of the said valuation. Since the price of individual flats/units that were to be sold was yet to be determined, the respondent no.2 was not justified in proceeding to take into consideration the revenue sharing ratio that was agreed between the parties. He submitted that only hypothetical figures had been taken into consideration for determining the revenue sharing ratio. For the area to be sold up to 10,00,000 square feet, the average sale price of the flat up to Rs.5,250/- per square foot was taken into consideration. The flats could be sold even at a lesser price or at a higher price than Rs.5,250/- per square foot. Similar was the position with regard to the saleable area of the flats beyond 10,00,000 square feet area. The revenue sharing ratio was agreed between the parties only to determine the manner in which the revenue that would be received from the sale of the flats was to be shared. The respondent no.2 was not justified in taking that revenue sharing ratio into consideration for determining the market value of the larger property. He then submitted by referring to the provisions of Article 25(b) of the said Act that the stamp duty at 5% of the market value as initially adjudicated had been duly paid. He also referred to the provisions of Article 5(g-a) of the said Act in that regard. It was then submitted that the interest free refundable deposit of Rs.29,00,00,000/- was not a part of the consideration and that figure could not have been taken into consideration while determining the market value of the larger property. Referring to Clause 11 of the said agreement, it was urged that said amount of deposit was refundable and the manner in which it was to be recovered/adjusted was also stated in the agreement. That amount was therefore wrongly taken into consideration for determining the market value of the larger property. He also referred to Maharashtra Stamp (Determination of True Market Value of Property) Rules, 1995 and especially Rules 3 and 4 thereof to substantiate his contentions. The learned Senior Advocate therefore submitted that what was material was the value of the immovable property and not the basis of sharing of revenue between the parties. The impugned order was therefore liable to be set aside.

6. Shri Anand Parchure, learned counsel for respondent no.3 and Shri S.Bissa, learned Assistant Government Pleader for respondent nos. 1 and 2 supported the impugned order. Shri Parchure, learned counsel submitted that the respondent no.2 rightly determined the market value of the larger property by referring to the consideration that G.P. was to receive under the development agreement. He referred to the agreement dated 30.09.2011 to submit that the right to sell the flats after developing the larger property had been given to the petitioner and hence the revenue sharing ratio agreed between the parties was a relevant factor for consideration. Referring to the reply that was filed by the petitioner to the

show cause notice, it was submitted that the provisions of Article 5 (g-a) of the said Act had not been taken into consideration while determining the market value earlier. The respondent No.2 rightly referred to the said provisions and passed the impugned order. It was further submitted that the interest free refundable deposit was an amount received by the petitioner which it could utilize and therefore it formed part of the consideration under the agreement. That figure was also rightly taken into consideration while determining the market value. He relied upon the affidavit in reply filed on behalf of the respondent no.3 in that regard. It was thus submitted that the writ petition was liable to be dismissed.

7. I have heard the learned counsel for the parties at length and I have given due consideration to their respective submissions. While considering the challenges as raised to the impugned order, it would be first necessary to refer to the relevant clauses of the development agreement dated 30.09.2011. As per that agreement, G.I.P.L. has claimed title to the larger property admeasuring about 1,17,257 square meters of land. The agreement refers to various permissions that have been obtained for the purposes of commercially utilizing that land with a view to develop the said larger property. In the light of the sanctioned plans and the commencement certificate issued to it, G.I.P.L. had entrusted the development rights of the larger property to G.P and on that basis G.P. was to have the right to market, sell and otherwise dispose of the constructed premises and facilities. In other words, an absolute right to develop and sell the constructed premises was given to G.P. and G.P. alone was entitled to negotiate, transact and conclude transactions with unit purchasers. As per Clause 11 of the said agreement with a view to ensure compliance of stipulated conditions of the agreement, G.P. had agreed to pay an amount of Rs.29,00,00,000/- to G.I.P.L. as interest free refundable deposit. It was agreed that G.P. would be entitled to recover/adjust the share of G.I.P.L. of gross sales revenue collected from the sale of units towards repayment of refundable deposit till the entire refundable deposit with interest thereon, if any, was recovered by G.P. Clause 12 of the agreement which is the relevant clause entitles G.P. to develop the said project with G.I.P.L. on a revenue sharing basis. The revenue received was agreed to be shared in two parts. For the first 10,00,000 square feet area of the flats sold for an average sale price of the flat upto to Rs.5,250/- per square foot, G.I.P.L. was to get 38% of the gross sales revenue while G.P. was to get 62% of the gross sales revenue. In the second part, for the balance saleable area of the flats above 10,00,000 square feet area, it was agreed that on the average sale price up to Rs.5,250/- per square foot, G.I.P.L. was to get 43% of the gross sales revenue while G.P. was to get 57% of the gross sales revenue. It was clarified in the said clause of the agreement that the term 'gross sales revenue' would mean amounts received from the flat purchasers towards the sale consideration. It would not include the amounts received towards statutory taxes or towards stamp duty, registration fees, etc. The manner in which the average sale price of flat was to be determined has also been

stipulated.

8. Thus from the aforesaid terms in the agreement dated 30.09.2011, it can be seen that G.I.P.L. had handed over all development rights of the larger property to G.P. G.P. was entitled to develop and thereafter sell the individual units by entering into negotiations and concluding transactions with unit purchasers. The total saleable area has also been determined to be 27,69,290 square feet as per Clause (t) of the agreement. It is on that basis that the parties have agreed to the ratio in which the revenue was to be shared between them. The same was in two parts and the manner in which the average sale price of the flats was to be determined has also been stipulated. It can also be gathered that the minimum average rate fixed as sale price of a flat was at Rs.5,250/- per square foot. That figure was taken as the base while determining the revenue sharing between the parties.

9. The provisions of Section 2(na) of the said Act defines the expression "market value". The same reads thus :

"2 (na) 'market value' in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument or the consideration stated in the instrument, whichever is higher".

It can be seen that the market value would mean the price which such property would have fetched if sold in open market on the date of execution of such instrument. If any consideration is stated in the instrument itself then whichever value amongst the two is higher, the same would be taken for determining the market value.

The provisions of Article 5(g-a) of the said Act relate to giving authority to a developer for construction, development or sale or transfer of immovable property and the stamp duty payable is the same as is leviable on a conveyance as per Article 25(b) or (c) on the market value of the property. Article 25 (b)(i) refers to a conveyance in relation to immovable property situated within the limits of any Municipal Corporation and the stamp duty payable is 5% of market value of the property.

10. When the agreement dated 30.09.2011 was got adjudicated, the Collector of Stamps determined its market value at Rs. 66,85,93,000/-. This market value was determined on the basis of a valuation report that was submitted by the Assistant Town Planner on 16.04.2012. It is on that basis that the petitioner was called upon to pay stamp duty. The various clauses in the agreement dated 30.09.2011 were however not taken into consideration while determining the market value. Since the Auditors of the Department noticed that the agreement as a whole had not been taken into consideration while determining the market value on the basis of which it could be gathered that the consideration stated was higher than the price at which the property could have been sold on the basis of which proper stamp duty would be payable, a notice was issued to the

petitioner. In the light of that notice, the impugned order came to be passed after hearing the petitioner. On perusal of the agreement and its various clauses, G.P. after having been given rights of development was entitled to sell the saleable area under the said agreement. Since the right of sale of the units was exclusively given to G.P. by G.I.P.L., the parties agreed to work out the revenue sharing ratio amongst them. The said ratio takes into consideration the initial sale of 10,00,000 square feet area at the first instance and thereafter sale of the balance saleable area. The average sale price of the flats has been taken at Rs. 5,250/- per square foot. It is these figures that have been taken into consideration by the Chief Controlling Revenue Authority while accepting the opinion of the Joint Director of Town Planning furnished on 29.08.2016. Perusal of that communication indicates that the total saleable area has been first taken into consideration. Since Residential Zone-II was the subject matter of that agreement, total saleable area was 19,84,500 square feet. The average price of each flat at Rs.5,250/- per square foot has thereafter been taken into consideration. The revenue sharing ratio for the first 10,00,000 square feet area and thereafter for the balance saleable area has also been taken into consideration. Since the project was to be completed within five years, it is on that basis that the said amount of Rs.340,32,34,335/- has been arrived at.

11. As noted above, the market value as determined by Section 2(na) of the said Act would be the price which the property would have fetched on the date of execution of the document or the consideration stated in the instrument whichever is higher. In the light of the fact that the average sale price of the flats along with the revenue sharing ratio has been stipulated in the agreement itself, the respondent no.3 has rightly determined the consideration that would be realised by virtue of sale of various units. It is to be noted that while determining this amount, the basic average price of Rs.5,250/- per square foot has been taken despite the fact that revenue sharing ratio is also provided for by considering the average sale price of the flat from Rs.5,251/- per square foot to Rs.5,991/- per square foot. There is also a provision in case the average sale price is above Rs.6,000/- per square foot. Similar is the case with regard to the balance saleable area exceeding 10,000 square feet area. Even under that head the basic average price of the flat up to Rs.5,250/- per square foot has been taken into consideration. It is found that the respondent no.3 has rightly determined the consideration at which the rights that were received by G.P. under the said agreement are to be sold. That adjudication is in accordance with the terms of the said Act and after considering the provisions of Section 2(na) read with Article 25(b)(i) of the said Act.

12. It is however to be noted that the respondent no.3 has also taken into account the interest free refundable deposit of Rs.29,00,00,000/- that is referred to in Clause 11 of the agreement for determining the market price. Clause 11 indicates that the interest free refundable deposit was stipulated for the purposes of ensuring compliance of various conditions under the agreement. This amount of Rs.29,00,00,000/- could not have been treated as forming part of the

consideration under the agreement so as to determine the market value of the property. That amount was to be refunded or recovered/adjusted from the share of G.I.P.L. and therefore by no stretch of imagination can it be said to form a part of the consideration. To that extent, the submission made on behalf of the petitioner is liable to be upheld. It is accordingly held that the respondent no.3 was not justified in treating the interest free refundable deposit of Rs. 29,00,00,000/- as a component of consideration for determining the market value.

13. In that view of the matter, it is found that the respondent no.3 has determined the market value of the property agreed to be developed and then sold by G.P. by taking into consideration the revenue sharing ratio agreed between the parties. Since the consideration has been indicated in the revenue sharing ratio and the consideration has been determined by taking the minimum average price of sale of the flats at Rs.5,250/- per square foot in the light of the total saleable area which G.P. was entitled to sell, that adjudication does not call for any interference being in accordance with law. It has been rightly found that the market value as adjudicated by the Collector of Stamps at Rs.66,85,93,000/- was by ignoring the relevant clauses of the agreement. The consideration as indicated in the agreement which was higher than the consideration at which the said property could have been sold in the open market was required to be taken into consideration. However, at the same time, that part of the order to the extent the amount of interest free refundable deposit has also been treated as part of the total consideration is liable to be set aside.

14. As a result of slight reduction in the total stamp duty payable, there would be a slight reduction even in the amount of penalty as determined by the impugned order. The stamp duty has to be determined on the basis of 5% of the market value as per provisions of Article 25(b)(i) of the said Act. As it has been found that the market value as per Section 2(na) is Rs.340,32,34,335/-, the stamp duty at 5% thereof would come to Rs. 17,01,61,717/-. The stamp duty short levied after deducting the stamp duty paid would therefore be Rs.13,67,32,567/- (Rs. 17,01,61,717 - Rs. 3,34,29,150/-).

The penalty would thus be payable on the amount of Rs.17,01,61,717/- for the period from 30.09.2011 to 25.10.2011 at 2% as directed by the impugned order. The penalty already paid is liable to be deducted.

15. In that view of the matter the following order is passed :

(i) The order dated 22.09.2016 passed by the Chief Controlling Revenue Authority is partly modified.

(ii) It is held that the petitioner is liable to pay stamp duty on the market value of the property as assessed at Rs.340,32,34,335/-. 5% stamp duty on the said market value comes to Rs.17,01,61,717/-. Thus total stamp duty payable is at Rs.17,01,61,717/- including the stamp duty already paid. The direction to pay stamp duty on the amount of refundable deposit of Rs.29,00,00,000/-(Twenty

nine crores) which has been determined at Rs.14,50,000/- is set aside.

(iii) Penalty is liable to be paid on the amount of Rs.17,01,61,717/- for the period from 30.09.2011 to 25.10.2011 at 2% as directed by the impugned order. Credit has to be given for the amount of penalty already paid.

(iv) Rule is made partly absolute in aforesaid terms. No costs.

16. At this stage, the learned counsel for the petitioner prays that interim relief which was granted on 06.12.2016 be continued for a period of eight weeks. This request is opposed by the learned counsel for the respondents. The interim relief shall continue to operate for a period of six weeks from today and it shall cease to operate automatically thereafter.