(2016) 01 GUJ CK 0044

In the Gujarat High Court

Case No : Special Civil Application No. 17312 of 2014.

Hemantkumar Ishwarlal Desai APPELLANT

Vs

Chief Controlling Authority, State of Gujarat RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Bombay Stamp (Determination of Market Value of Property) Rules, 1984 — Rule 7
Gujarat Stamp Act, 1958 — Section 39(1)(b), 53

Citation : (2016) 2 GCD 1653 : (2016) 2 GLR 905

Hon'ble Judges : N.V. Anjaria, J.

Bench : Single Bench

Advocate : Mayank K. Trivedi, Advocate and K.K. Trivedi, Advocate, for the Appellant

Final Decision : Partly Allowed

Judgement

N.V. Anjaria, J. (Oral) - Draft amendment dated 31.12.2015 tendered today is allowed. The amendment shall be carried out forthwith.

2. Rule. Learned Assistant Government Pleader Ms. Jyoti Bhatt waives service of Rule on behalf of the respondents-State authorities.

2.1 In the facts and circumstances of the case and with the consent of learned advocates for parties, the petition is taken for final consideration.

3. The petitioner has prayed to set aside orders dated 10.02.2014 passed by the respondent No.2-Deputy Collector, Stamp Duty Valuation Organisation, Surat, as well as order dated 15.10.2014 passed by the Chief Controlling Authority - the respondent No.1 herein.

3.1 By the first mentioned order dated 10.2.2014, the Deputy Collector required the petitioner to pay deficit stamp duty Rs. 64,90,468/- plus Rs. 1,000/- towards penalty. The said order was passed in exercise of powers under section 39(1)(b) of the Act. Against that order, appeal under section 53(1) came to be preferred by the petitioner before the respondent No.1 authority who dismissed the same as per the impugned order dated 15.10.2014. It was on two grounds that the authority dismissed the appeal. Firstly that the appeal was beyond the prescribed statutory period of 90 days, and secondly that the petitioner had not deposited 25% of the deficit stamp duty, which was a condition for preferring the appeal.

3.2 The facts available from the pleadings of the petition are inter alia that the petitioner and his three sisters executed a partition deed after the death of their father Shri Ishwarlal Thakorbhai Desai. Their father died on 28.09.2002. The partition deed was in respect of the ancestral property and was executed on 21.7.2012. The same came to be impounded by the sub-Registrar, Katram Gam Surat under section 33 of the Act and notice under section 39(1)(b) of the Gujarat Stamp Act, 1958, was issued on 18.09.2012. On 18.01.2014 the petitioner filed reply.

3.3 The Deputy Collector, Stamp Duty Valuation Department passed an order dated 10.02.2014 asking the petitioner to pay the deficit amount of stamp duty to the tune of Rs. 64,90,468/- plus amount of Rs. 1000/- towards penalty. The aggrieved petitioner preferred an appeal/revision before the respondent No.1 Chief Controlling Authority under section 53 of the Act, which was not entertained as per the impugned order on the grounds mentioned above.

4. Learned advocate Mr. Mayank K. Trivedi submitted that the reason of delay in filing the appeal supplied by respondent No.1 authority was not sustainable. He submitted that the order of the Collector was passed on 10.02.2014, which was dispatched by the office of the Deputy Collector-respondent No.2 on 12.02.2014 and the petitioner thereafter received the same. Learned advocate for the petitioner invited attention of the court to the aspect that the order of the Deputy Collector was dispatched by registered A. D. post on 12.2.2014. From the extract of journal of uninsured registered letters of the Department of Post; copy of which is produced as Annexure-I along with the draft amendment tendered and granted today, it was shown that the entry no. 13 of which reveals that the envelop was dispatched by the office of the Collector to the petitioner on 12.2.2014.

4.1 Learned advocate for the petitioner further submitted that as per the instructions of the petitioner, he was ready to pay 25% of the deficit stamp duty in accordance with the provisions of section 53(1), but since the authority did not accept the appeal treating it to be time-barred, there was no occasion offered to the petitioner to deposit 25% amount. He, however, submitted on instructions from the petitioner that even today the petitioner is ready to deposit 25% amount in compliance of the condition ,if the case is to be accepted.

4.2 Learned Assistant Government Pleader defended the order of respondent No.1 and submitted that appeal was time barred and the petitioner did not comply with the condition of deposit of 25% of the deficit amount of stamp duty. She urged to dismiss the petition.

5. Section 53 of the Act under which appeal lies against the order of the Collector

before the Chief Controlling Authority, reads as under,

"53. Control of and statement of case to Chief Controlling Revenue Authority.- (1) The powers exercisable by a Collector under Chapter III, Chapter IV and Chapter V and under clause (a) of the second proviso to section 27 shall in all cases be subject to the control of the Chief Controlling Revenue Authority :

[provided that the Chief Controlling Revenue Authority shall not entertain an application made by a person under sub-section (1) unless (a) such application is presented [within a period of ninety days] from the date of order of the Collector.

(b) such person deposits twenty-five per cent of the amount of duty or as the case may be, amount of difference of duty payable by him in respect of subject matter of the instrument for which application has been made.

(2) If any Collector, acting under section 31, [Section 32A] section 39 or section 40, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

5.1 According to the above provisions, period of 90 days "from the date of order" of Collector is prescribed for preferring the appeal. Further condition is of depositing 25% of the amount of deficit duty payable in respect of subject matter of the instrument for which the application is made before the Chief Controlling Revenue Authority.

5.2 This court in its judgment dated 30.03.2015 in Ritaben Kamleshbhai Mehta through power of attorney holder Devang Kamleshbhai Mehta v. State of Gujarat being Special Civil Application No. 5422 of 2015 and cognate petitions, dealt with similar controversy and considered the question as to how the words "from the date of order" occurring in Section 53 could be purposefully construed. The court observed and held as under,

"16.3 The remedy of appeal or revision can be availed only if (and when) the person has knowledge about the order/decision (i.e. what, actually, is the decision and the reasons for the conclusion and decision by the authority) and not in absence of such knowledge.

17.2 When the person is not even aware that some decision is taken and order is passed and/or when the person is not aware about the actual decision i.e. contents of the order, he cannot effectively and meaningfully avail the remedy provided under the Act. Unless the person has the knowledge about the order the provisions/remedy will be meaningless. Therefore, the said provision i.e. Section 53 of the Act and more particularly the expression from the date of the order must be construed to make the provision and the remedy effective and meaningful and not in a manner which would restrict the period of said remedy''s availability i.e. the period for which the remedy would be effectively available to the concerned and affected person.

19.1 The said view and decision of the authority ignores that for real, practical and actual operation of Section 53 of the Act, relevant factor is knowledge about the order. Therefore the relevant date for finding the answer to the question viz. whether the application (revision) is filed before expiry of prescribed period of limitation (i.e. 90 days) or not, would be the date on which the order is served/ communicated to the concerned person.

5.3 It is also relevant to take notice of provisions under Ruler 7 of Bombay Stamp (Determination of Market Value of Property) Rules, 1984, which reads as under,

"7. Manner of service of notice under rule 4:-

Any notice or order under these rules shall be served in the following manner, namely:-

(1) In the case of any company, ***

(a) ***

(b) ***

(2) In the case of any firm, ***

(a) ***

(b) ***

(3) In the case of a family ****

(4) In the case of any individual person, the notice or order shall be served, -

(a) by delivering or tendering the notice or order to the person concerned or to his advocate or authorised agent ; or

(b) by delivering or tendering the notice or order to some adult member of the family; or

(c) by sending the notice or order to the person concerned by registered post with acknowledgment due; or

d. if none of the aforesaid modes of service is practicable, by affixing the notice or order in some conspicuous part of the last known place of residence or business of the person concerned.

6. In light of the aforesaid provisions, reverting back to the facts of the case, it is not in dispute that the order of the Deputy Collector was passed on 10.02.2014. Against the said order, the petitioner wanted to prefer an appeal and the appeal was filed by respondent No.1 authority on 13.5.2014 which came to be rejected

on the grounds of being not within the limitation period of 90 days. As is held in the aforesaid decision of this court in Ritaben Kamleshbhai Mehta (supra) and further relying on decision in case of Yatin Natvarlal Bhatt v. Chief Controlling Revenue Authority being Special Civil Application No. 6352 of 2015, it is the date of knowledge of the order of the Deputy Collector attributable by the petitioner, which would be relevant date for counting the period of limitation. The limitation, is held to be reckoned from the date of communication of the order, which would be the date of knowledge.

6.1 In the present case, as could be successfully demonstrated by the learned advocate for the petitioner the office of the Deputy Collector dispatched the order dated 10.2.2014 of the Deputy Collector on 12.2.2014 by registered A.D. Post. This fact is evidenced by extract from the journal of uninsured registered letters maintained by the Department of Post. It necessarily implies that the order of the Deputy Collector must have been received by the petitioner after the date of dispatch that is after 12.2.2014. Counting accordingly, the appeal before the respondent No.1 authority having been filed on 13.5.2014, the same was within 90 days. Even if the date of dispatch of the order by RPAD post is taken as the basis for reckoning the period of 90 days, the appeal would fall within the 90 days.

6.2 Learned Assistant Government Pleader wanted to contend that the petitioner did not comply with the condition of payment of deposit of 25% of the deficit amount of the stamp duty therefore also no relief should be granted to the petitioner and the appeal was rightly rejected. The contention does not have any merit inasmuch when the rejection of appeal was on the ground of delay, the petitioner could not deposit 25% amount. He had in fact no opportunity or occasion to deposit when the appeal was erroneously treated beyond time on the above misapplied facts by the authority. If as a result of that the petitioner could not deposit 25% amount, though he was willing to, he was not at fault at all and non-deposit at that point of time, could not be a ground to deny right to appeal, which is held to be in time. Therefore, the submission of learned Assistant Government Pleader cannot be accepted that the condition of deposit of 25% was not complied with.

6.3 The petitioner, if deposits 25% of the deficit amount stamp duty, he is entitled to prosecute his appeal on merits, as the appeal is found to have been lodged within 90 days period.

7. As a result, the decision of the Chief Controlling Revenue Authority to treat the appeal of the petitioner beyond limitation period and refusing to accept the appeal is hereby set aside. It has to be held that the appeal of the petitioner was filed within the period of limitation of 90 days. The communications-cum-order dated 15.10.2014 of respondent No.1-Chief Controlling Authority is set aside. Respondent No.1-Chief Controlling Authority shall proceed to decide the appeal against the order dated 10.2.2014 of the Deputy Collector, Stamp Duty Valuation Department, Surat, on merits and complete the exercise of hearing and

rendering appropriate decision in accordance with law expeditiously.

8. It is clarified that this court has not gone into the merits of the case of the petitioner.

9. This petition is allowed to the extent aforesaid. Rule is made absolute to the said extent.

10. Direct service is permitted.

