**(2007) 10 GUJ CK 0047**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 22455 of 2007

Revashankar and Co. now Revashankar Gems Ltd. APPELLANT

Vs

State of Gujarat and Another RESPONDENT

**Date of Decision :** 09-10-2007

**Acts Referred:**

Bombay Stamp Act, 1958 — Section 32A
Constitution of India, 1950 — Article 14, 19, 226

**Citation :** (2008) 1 GLR 918

**Hon'ble Judges :** D.H. Waghela, J

**Bench :** Single Bench

**Advocate :** Tanvish Bhatt, for Wadia Ghandy and Co, for the Appellant; Bhavika Kotecha, A.G.P., for the Respondent

**Final Decision :** Allowed

## Judgement

D.H. Waghela, J.—By this petition invoking Articles 14, 19 and 226 of the Constitution, the petitioner has prayed for a writ setting aside orders dated 29-3-2005 of the Deputy Collector, Stamp Duty Valuation Organization, Zone II, Vadodara, whereby market value of the properties in question were determined and stamp duty along with penalty was ordered to be recovered from the petitioner. Similar orders were made in total six cases and stamp duty of varying amounts were sought to be imposed by the impugned orders, all of which were made under the provisions of Section 32A of the Bombay Stamp Act, 1958 (for short "the Act") and the Rules made thereunder.

2. It is the case of the petitioner that, the petitioner firm had purchased from different owners several pieces and parcels of land. The petitioner made an application on 22-1-1993 to the authorities concerned for adjudicating due stamp duty and by order dated 28-9-1993 due stamp duty was determined by order of the Collector and Additional Superintendent of Stamps. Pursuant thereto, the documents were executed and registered. However, in the year 2004-2005, the petitioner received several notices stating that the stamp duty paid by the

petitioner was not sufficient. Even after making of representation by the petitioner that stamp duty was paid only after receiving adjudication order from the authority concerned, the notices were issued almost after ten years by ignoring the submissions of the petitioner and facts brought to the notice of the authority. And by similar impugned orders dated 29-3-2005, huge amounts of additional stamp duty along with penalty was demanded from the petitioner.

3. After issuance of notice with the direction to file an affidavit of the officer who had made the impugned orders under the provisions of Section 32A of the Act, to explain as to why, pursuant to the impugned orders no recovery or any other execution proceedings were initiated and why appropriate orders to pay exemplary cost should not be made in case the petition were allowed, an affidavit-in-reply of Deputy Collector, Stamp Duty (Valuation) Department Zone-I, Vadodara has been filed. It is, inter alia, stated therein that the deponent had taken over the charge of Deputy Collector only on 5-2-2007 whereas the notices in question were issued by one Mr. Kacha, who was no more in service. It was, however, orally submitted by learned A.G.P., Ms. Kotecha that statement was incorrect insofar as Mr. Kacha was working as Mamlatdar in the Revenue Department, which was the same department which was concerned with the administration of the Act. It is further stated that the documents of the petitioner were transferred to the Deputy Collector, Zone-II and Deputy Collector appeared to have overlooked the fact that documents were certified to be duly stamped and had issued the impugned notices, which according to the deponent, were without jurisdiction, as the Deputy Collector was an authority subordinate to the authority certifying the document as duly stamped. It is also stated on oath that the Act did not confer any power upon the successor Deputy Collector to withdraw any order passed by his predecessor, and therefore, the impugned order would have to be quashed, either by this Court or by the Chief Controlling Revenue Authority, which is the superior authority, upon the petitioner filing a Reference Application.

4. Thus, there is not even a formal dispute about the fact that the petitioner was issued notices and slapped with the impugned orders without any justification or legal basis, and even while admitting that, Mr. Biren H. Pathak, Deputy Collector, Stamp Duty (Valuation) Department Zone-I, has made incorrect and misleading statements on oath, apparently to save the skin of the officer who had initiated the whole illegal procedure and compelled the petitioner to approach this Court. Even after clearly admitting the fault of the department and inviting an order to quash the impugned orders, the deponent has shown the temerity to suggest that the petitioner had alternative remedy of filing a Reference Application, which would apparently be an infructuous and cumbersome procedure requiring deposit of a part of the duty demanded by the impugned admittedly illegal orders.

5. The above facts clearly show the lackadaisical manner in which Stamp Duty Valuation Organization has worked and generated a litigation for the parties or persons, who may be suffering or who may be benefited by such litigation at the

 

cost of public time of the Court. It was under such circumstances that the Secretary of the Department of Revenue of Government of Gujarat or the Chief Controlling Revenue Authority was ordered to remain personally present in the Court to explain such attitude and approach of the respondent which was in ample evidence in hundreds of similar matters coming up before this Court. The Chief Controlling Revenue Authority, Mr. Vinay Vyasa, remained personally present and assured the Court that due care shall be taken to see that such incidents do not recur, that parties are not unnecessarily compelled to approach the Court and that appropriate departmental actions are taken against the erring officers.

6. In the facts and for the reasons discussed hereinabove, the petition is allowed and the impugned six orders dated 29-3-2005 are set aside by consent. Rule is made absolute accordingly with cost of Rs. 5,000/- which shall be paid by respondent No. 1 to the petitioner, and subsequently, recovered from the officers who may be found, after affording them an opportunity of being heard, to have consciously or carelessly made illegal orders and caused an incorrect affidavit to be filed in the Court.

7. A copy of this order shall be sent to the Gujarat Vigilance Commissioner and the Chief Secretary, Government of Gujarat for their perusal and appropriate actions at their end.