
(2005) 04 BOM CK 0016
In the Bombay High Court
Case No : Writ Petition No. 1437 of 1993

Sunil Loiya

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Bombay Stamp (determination of true market value of property) Rules, 1981 — Rule 3, 3(4), 3(5)
Bombay Stamp Act, 1958 — Section 31, 31(3), 32, 32(5), 32A
Constitution of India, 1950 — Article 226, 227

Citation : (2005) 3 ALLMR 864 : (2005) 6 BomCR 419 : (2005) 3 MhLj 524

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : V.A. Naik, for the Appellant; Assistant Government Pleader, for the Respondent

Judgement

B.P. Dharmadhikari, J.—By this petition under Articles 226 and 227 of the Constitution of India, the petitioner, purchaser of immovable property W. P. No. 1437 of 1993 decided on 12-4-2005. (Nagpur) challenges the notices dated 12-5-1993, 20-7-1993 and provisional order dated 27-9-1993, passed by the respondent No. 2, provisionally determining the valuation of the agricultural field property purchased by him to be Rs. 1,12,500/-and demanding total stamp duty with penalty and other over heads totalling to Rs. 6,860/-.

2. The petitioner states that on 10-11-1986, he purchased agricultural land admeasuring 2.25 Acres out of field survey No. 199/200 of mouza Kanhan-Pipri, Tahsil Parseoni, District Nagpur, for consideration of Rs. 2250/-. It is his case that, the entire survey number has bigger area admeasuring 4.33 A, and it was purchased by his vendor Shriram Pandurang Tiwade on 8-6-1984 for Rs. 5000/-. He contends that on 15-9-1992, he received a notice from the respondent No. 2, whereby it was stated that real valuation of the property was Rs. 2,89,250/-and stamp duty of Rs. 14,855/- was payable on it. The said notice was accompanied by a provisional order passed u/s 32-A of the Bombay Stamp Act, 1958. The

petitioner challenged the said order and notice in Writ Petition No. 2147/1992, before this Court, and on 13-11-1992, this Court found that the action initiated was contrary to the provision of Rule 3 of the Bombay Stamp (determination of true market value of property) Rules, 1981 and as such was pleased to quash and set aside the same.

3. Thereafter, the respondent No. 2 again issued fresh notice under Rule 3(5) on 20-7-1993, itself and at that time stated that the real market value of the property is Rs. 1,12,500/- and as such stamp duty of Rs. 5,587.50 ps. was payable on the sale deed. A provisional order of same date was accompanying this notice and the petitioner was called upon to remain present for hearing on the same date at 12.00 noon, for finalization of that order. The petitioner approached this Court again in Writ Petition again. Though this Court has admitted the petition for final hearing, stay has been refused.

4. I have heard Advocate Naik, for the petitioner. He contends that no final order has been passed as yet, though stay has been refused. He further contends that the earlier judgment of this Court dated 13-11-1992, stated that the provision of Rule 3 of the above referred Bombay Stamp Rules, 1981 warrant opportunity before determining the market value and before passing provisional order. He contends that such opportunity is admittedly not given to the petitioner. He further states that when Section 32-A was amended, the amendment came into force w.e.f. 4-7-1980 and at that time in exercise of powers u/s 32-A, the Collector can suo motu act upon any information received by him within 2 years from the date of registration of an instrument. He thus states that enquiry of present nature was then possible within two years of the date of registration of the document. He further states that on 10-12-1985, this period of 2 years was amended and replaced by period of 6 years, and thereafter on 1-12-1989 this period of 6 years was replaced by period of 8 years. He points out that presently period is of 10 years w.e.f. 15-5-1997. His contention is as the petitioners sale deed is registered on 10-11-1986, Section 32-A on that date contained the period of 6 years, and therefore, the Collector could have taken action within 6 years from 10-1-1986. He contends that the period of 8 years which have been substituted on 1-12-1989 cannot be extended to the document, which has been already registered on 10-11-1986. He further argues that when this Court allowed the Writ Petition on 13-11-1992 this Court quashed the notice as also the provisional order and the matter was not remanded back to the respondent No. 2, therefore, it was not open to the respondent No. 2 to re-start the enquiry and to issue notice again. He therefore, contends that the action initiated is without any jurisdiction.

5. The learned Assistant Government Pleader appearing for respondent Nos. 1 and 2, states that after the judgment of this Court on 13-11-1992, a notice was initially sent on 12-5-1993, as contemplated by Rule 3(1) of the Bombay Stamp Rules, 1981 and information in prescribed proforma was called for, from the petitioner. He states that the petitioner accordingly submitted his reply on

14-6-1993, and thereafter, the provisional order was passed on 20-7-1993, and for its finalization the petitioner was called upon to remain present on 20-7-1993. However, he states that no finalization order in the matter has been passed as the petition came to be admitted by this Court. He contends that the ground which the petitioner has raised before this Court can be raised before the Authority while passing the final order and no case is made out for interference in writ jurisdiction.

6. Provisions of Section 32(5) of the Bombay Stamp Act, 1958 as they stand today, read as under :

"32(5) The Collector of the District, may suo motu or on receipt of information from any source, within 10 years, from the date of registration of any instrument referred to in Sub-section (1) (not being the instrument upon which an endorsement has been made u/s 32 or the instrument or the instruments in respect of which the proper duty has been determined by him under Sub-section (4) or any instrument executed before the 4th July, 1980) call for the true copy or an abstract of the instrument from the registering officer and examine it for the purpose of satisfying himself as to the correctness of the market value of the immovable property which is the subject matter of such instrument and the duty payable thereon; and if, after such examination he has reason to believe that the market value of such property has not been true and fully set forth in the instrument he shall proceed as provided in Sub-section (4)."

7. The Rules framed in this respect are Bombay Stamp (Determination of True Market Value of Property) Rules, 1981 and the Rule which is relevant for the purpose for this petition is Rule 3, the said Rule reads as under :

"3. Procedure to be followed by the Collector of the District for determining true market value of property under Sections 31 and 32A. --Where any instrument of the nature described in Sub-section (3) of Section 31, or as the case may be, in Sub-section (1) of Section 32-A --

(a) is referred to the Collector of the District under Sub-section (3) of Section 31 or under Sub-section (1) of Section 32-A for determination of the true market value of the property which is the subject matter of such instrument and the proper duty payable thereon, or

(b) Where the Collector of the District on his own proposes to examine the instrument under Sub-section (3) of Section 32-A for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject-matter of the instrument and the proper duty payable thereon, the Collector of the District shall hold an enquiry and for that purpose follow the following procedure namely :--

(1) As soon as may be, after receipt of the reference or his decision to proceed in the matter on his own, the Collector of the District shall issue a notice in Form 1 to every person by whom, and to every person in whose favour, the instrument is

executed requiring every such person to submit, within thirty days from the date of service of notice upon him, his representation in writing, along with the appropriate forms mentioned in Clause (2) duly filled in, to show that the market value of the property set forth in the instrument is the true market value, to the best of his knowledge.

(2) Where the notice is to be served on a person by whom the instrument has been executed, the Collector of the District shall, along with such notice forward any one or more of the following forms having regard to the nature and location of the property which is the subject matter of the instrument and require such person to fill in the same in all respect and to forward the same to him along with his representation, namely :--

(a) in a case of municipal and corporation areas. Form II;

(b) in the case of agricultural land in a non-municipal area, Form III.

(c) in a case of non-agricultural land, houses-sites, buildings and structures in a non municipal area, Form IV.

Where the subject matter of the instrument relates to agricultural land comprising different survey numbers or their sub-divisions, or to different pieces of properties, separate forms for survey number and subdivision and each such piece of property shall be forwarded.

(3) The Collector of the District may, if he thinks fit so to do, record the statement of the person on whom the notices has been served and may for the purpose of the enquiry --

(a) Call for any information or record from any public office, officer or authority under the State Government or any local authority;

(b) record statement from any member of the public, officer or authority under the State Government or any local authority."

8. Thus from perusal of Rule 3, it is clear that the respondent No. 2 has after receipt of reference or information issued a notice in Form No. 1, to the petitioner and required him to submit his representation in writing within 30 days along with the said information to show that the market value of the property mentioned in such instrument is true market value. Sub-rule (3) requires the Collector, respondent No. 2 to conduct an enquiry and for that purpose the said respondent may record the statement of person in whose favour instrument has been executed. The proviso to Sub-rule (4) to Rule 3, shows that after he record and evidence before him is perused by the respondent No. 2, an order provisionally determining the market value of property which according to him would be the true market value is required to be passed, mentioning the proper duty payable in respect of such instrument along with the penalty. After the provisional order is passed it is required to be communicated to the person concerned with notice upon him to lodge his objection if any, to the market value

so determined and thereafter the respondent No. 2 has to call upon the parties to be present on the date specified in the notice and after hearing them and after considering their objections, respondent No. 2 has to pass final order determining the true market value of the property, the stamp duty payable on the instrument and the penalty charged upon it. This Court in its earlier judgment dated 13-11-1992, has considered this position and the findings recorded in para No. 5 are important. The said paragraph No. 5 reads as under :

"5. Only after proper notice is served the market value of the property could be determined in the matter provided Sub-rule (4) of Rule 3. The said sub-rule provides that after receipt of the representation and other information from the person concerned, the respondents have to pass an order provisionally determining the market value which according to them would be the true market value of the property and the penalty, if any. The said rule also provides that the basis on which the true market value has been arrived at should be clearly indicated in the provisional order and after communicating the provisional order, the Collector has to call upon the concerned person to be heard as to whether the provisional order should be finalised or not. A perusal of the provisional order would show that the basis for arriving at the true market value of the property is not to be found therein. The principles adopted under the Land Acquisition Act are required to be followed for the purpose of determining the market value of the property. In this context it may be necessary even to record evidence. In the absence of following all the prescribed procedure, the respondent No. 2 in cyclostyled printed proforma filled in the blanks at random and prepared the provisional order. It appears that the value of the property is put in whatever the authority felt without there being any basis whatsoever. Such a procedure is unheard of and can never stand judicial scrutiny."

9. In the background of this legal position when the facts of present case are scrutinized it is clear that after the petitioner giving his reply on 14-6-1993, he was not called for any hearing and the authorities straightway proceeded to pass the provisional order determining the true market value of the property to be Rs. 1,12,500/- and thereafter proceeded to decide the stamp duty along with the penalty etc. What is served upon the petitioner is a notice under Rule 3(5), dated 20-7-1993, along with copy of this order and he has been given a show cause as to why this provisional order should not be enforced. Thus the opportunity as contemplated by Rule 3(4), before passing of the provisional order has not been extended to the petitioner till date. No enquiry as contemplated by Rule 3(3) or 3(4) has been conducted in the matter. Even when the said notice dated 20-7-1993, is perused the notice has got outward number of the same date and the petitioner was called upon to remain present on that date only at 12.00 in the afternoon. Thus it is clear that the petitioner was not given even reasonable opportunity to defend himself in the matter. The notice dated 20-7-1993, is only issued for proper compliance with the provisions of the Rules. The said show cause notice is therefore, contrary to the provisions of the Rules, as stated above and cannot be sustained. The provisional order which has been passed without

hearing the petitioner is also therefore unsustainable and deserves to be quashed and set aside.

10. The petitioner has invited the attention to Division Bench Judgment of this Court, reported at 1995 Mh.L.J. 105, Balaji Cotton Company v. Sales Tax Officer, Wardha, to contend that as the High Court did not remand the matter back on 13-11-1992, initiation of fresh enquiry into the matter by the respondent No. 2 is without jurisdiction. The learned Counsel has relied upon para No. 6 of the reported judgment, which reads as under :

"6. The matter may still be looked into from one more angle. Even assuming that the appellate authority had the power to set aside the order of penalty and to remit the same to the assessing officer for making a fresh order of penalty cannot be sustained as admittedly no such direction had in fact, been given in the instant case by the appellate authority while setting aside the order of penalty. In the absence of any such direction in the order, the Sales Tax Officer had no power to take up the matter again and to pass a fresh order. The order, therefore, cannot be sustained on that count also."

11. However, the judgment reveals that the view has been taken because of the specific power conferred, in the appeal preferred against the order of assessment and not available in appeal against order of penalty. This discretion became apparent from reading of para No. 4 of the judgment of the Division Bench. It is clear that when appeal is against an order of assessment the appellate authority has been given power to remand the matter back, and when the appeal is against the order of penalty such authority has not been given the power to remand back the matter. The Division Bench has arrived at a conclusion which are mentioned in para No. 6, because of this difference. Thus, this Ruling has no application in the facts and circumstances of the case.

12. The issue of limitation i.e. whether the respondent No. 2 would have taken action within 6 years only or within 8 years, from the date of registration of the document is still not concluded. It is admitted position that the respondent No. 2 has not passed any final orders as yet in the matter. The petitioner has not been given any hearing in this case as this Court has already found that the notice dated 20-7-1993, and provisional order of assessment of even date are illegal, the respondent No. 2 will be duty bound to provide opportunity of hearing to the petitioner before proceeding further in the matter. The issue of limitation can be conveniently considered and decided by the respondent at that time. The said issue therefore is required to be left open and is accordingly left open.

13. In the circumstances, the notice dt. 20-7-1993 at Annexure-H with the petition and provisional order of even date at Annexure-I, with the petition are quashed and set aside. The matter is remanded back to the respondent No. 2 for giving an opportunity in accordance with law to the petitioner before passing provisional order of assessment.

14. Rule is made absolute in the above terms. No costs.