(2012) 02 BOM CK 0160

In the Bombay High Court

Case No : Writ Petition No''s. 656, 661, 847, 852, 2315-2321, 3317 of 1993

Vinod Kumar Nagindas Shah APPELLANT

Vs

The State of Maharashtra and Others RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:
Bombay Stamp Act, 1958 — Section 31, 32, 32A, 33

Citation : (2013) 3 ABR 1339 : (2012) 6 ALLMR 387

Hon'ble Judges : S.V. Gangapurwala, J

Bench : Single Bench

Advocate : M.M. Patil Beedkar in W.P. Nos. 656, 661, 847, 852 of 1993, Mr. V.I. Thole in W.P. Nos. 2315, 2317 to 2321 of 1993, Mr. A.D. Kasliwal in W.P. No. 2316 of 1993 and Mr. M.S. Sharma in W.P. No. 3317 of 1993, for the Appellant; P.P. More, Asstt. Govt. Pleader for the State in all Writ Petitions, for the Respondent

Judgement

S.V. Gangapurwala, J.—Heard. All these petitions involve common question of law, as such are decided together.

2. The petitioners in all those Writ Petitions had presented the document of conveyance for registration in the year 1982 83. At that time, the registering authority did not raise objection about the valuation consideration shown in the document of conveyance. Subsequently, in the year 1990 91, the Respondent authority issued notice to the petitioners in Form I purportedly invoking Section 32-A of the Bombay Stamp Act, contending therein that the consideration amount/valuation shown is improper and not according to the true market value. Some of the petitioners preferred appeal before the appellate authority which were dismissed. All the petitioners herein have assailed the order of the authority determining the market value and holding that the consideration shown in the deed of conveyance is not the true market value.

3. Mr. Thole, learned counsel for some of the petitioners submits that the authority could not have invoked the jurisdiction U/s 32A after lapse of eight (8)

years. The documents were registered in the year 1982 and after the year 1990, the notices were issued. The learned counsel further contends that there was no material on record before the authority to arrive at the conclusion that the market value is not the same as shown in the document of conveyance. According to the learned counsel, it is a case of arbitrary exercise of power. The learned counsel submits that the consideration amount shown in the document of conveyance is the real consideration amount and is the true market value.

4. Mr. More, learned Asstt. Govt. Pleader submits that at the relevant time the authority was empowered to consider the transactions entered into between the parties till eight (8) years. The documents were tendered for registration but were not registered. In view of that the limitation of eight (8) years as sought to be applied by the petitioners is unfounded. The learned Asstt. Govt. Pleader further contends that the authorities have taken into consideration the sale instances of the adjoining areas, so also the other adjudications made by the authorities while arriving at the conclusion of the true market value. No fault can be found in the order of the authorities determining the market value. It was within their competence.

5. Before I proceed to deal with the contentions canvassed by the learned counsel for respective parties, it would be appropriate to refer to the relevant provision Section 32A of the Bombay Stamp Act as it stood then reads as under:

32A. (1) Every instrument of conveyance, exchange, gift, certificate of sale, deed of partition or power of attorney to sell immovable property when given for consideration, deed of settlement or transfer of lease by way of assignment, presented for registration under the provisions of Registration Act, 1908, shall be accompanied by a true copy thereof:

Provided that, in case of such instruments executed on or after the 4th July 1980, to the date of commencement of the Bombay Stamp (Amendment) Act, 1985, an extract of the instrument to be taken from the registration record shall be deemed to be the true copy accompanying the instrument, presented for registration for the purposes of sub-section (1).

(2) If any officer registering such instrument has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been truly set forth therein, he may, (before) registering the instrument, refer the true copy of such instrument to the Collector of the District for determination of the true market value of such property and the proper duty payable on the instrument.

(3) If any person referred to in section 33, before whom any such instrument is produced or comes in the performance of his functions, has reason to believe that the market value of the immoveable property which is the subject matter of such instrument has not been truly set forth therein, he may, after performing his function in respect of such instrument, refer the instrument alongwith a true copy of such instrument to the Collector of the District for determination of the

true market value of such property and the proper duty payable on the instrument.

(4) On receipt of the instrument or the true copy of the instrument as the case may be, under sub-section (2) or (3), the Collector of the District shall, after giving the parties concerned a reasonable opportunity of being heard and in accordance with the rules made by the State Government in that behalf, determine the true market value of the immoveable property which is the subject matter of the instrument and the proper duty payable thereon. Upon such determination, the Collector of the District shall require the party liable to pay the duty, to make the payment of the amount required to make up the difference between the amount of duty determined under this sub-section and the amount of duty already paid by him and shall also require such party to pay in addition, a penalty which shall not be less than such difference and not more than twice the amount of such difference; and on such payment, the instrument received under sub-section (2) or (3) shall be returned to the officer or person referred to therein;

Provided that, no such party shall be required to pay any amount to make up the difference or to pay any penalty under this sub-section, if the difference between the amount of the market value as set forth in the instrument and the market value as determined by the Collector of the District does not exceed ten percent of the market value determined by the Collector of the District.

(5) The Collector of the District may, suo motu or on receipt of information from any source, within (eight 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 an 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 immoveable 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 truly and fully set forth in the instrument he shall proceed as provided in sub-section (4).

(6) It shall be lawful for the Collector of the District to transfer any reference received by him under sub-section (3) of section 31 or under this section for determination of the true market value of the immoveable property which is the subject matter of the instrument and the proper duty payable thereon, for disposal in accordance with the provisions of the said sub-section (3) of Section 31 or, as the case may be, this section, to the Additional Collector of the District, if any, or any other officer in his District not below the rank of--

(i) Tahsildar,

(ii) Town Planner borne on the cadre of the Director of Town Planning, Maharashtra State, or;

(iii) Joint District Registrar appointed under the Registration Act, 1908 as the State Government may, from time to time, by general or special order in the official Gazette, specify.

6. There is no record to suggest that the instruments submitted by the petitioners were registered at the relevant time. The contention of the petitioners that the action is initiated after eight (8) years of registration of the documents is as such not tenable.

7. Form No. 1/Notice as issued to the petitioners, nowhere lays down the market value arrived by the authority i.e. it does not state as to the quantum of market value which according to the authority is the true market value.

8. It is a trite law that when statute requires a particular act to be done in a particular manner, it has to be done in that manner only. The authority invoking its jurisdiction U/s 32A of the Bombay Stamp Act, shall be governed by the rigors of Section 32A of the Act. Section 32A of the Bombay Stamp Act, empowers the authority to call for the record and if he has "reason to believe" that the market value of such property has not been truly set forth in the instrument then he can proceed further.

9. The expression "reason to believe" is with some intent and purpose. It acts as fetter on the arbitrary exercise of Power by the authority Phraseology "reason to believe" contemplates objective determination based on intelligent deliberation in contra distinction to purely subjective consideration of the authority. The term "reason to believe" is combination of two words. The word "reason" means cause justification and the word "believe" means to accept as true or faith in it. In other words it means coming to conclusion on basis of information that a thing, condition statement or fact exists. It means facts which prima facie convince any reasonable person under the circumstances of the case to form a belief will impel him to take action under law.

10. It is always open to the Court to examine the question whether reason to believe has a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant for the purpose.

11. In the present case, perusal of the notices and the orders, it is manifest that there was absolutely no material worth the name before the authority for invoking Section 32A of the Act. The cause notice/Form I issued to the petitioners did not even refer to the amount considered to be market value according to the authority. The appellate authority has only stated that in some of the matter he has held market value of other properties and has applied the same standard.

12. The market value of a property depends upon various facets i.e. the location surrounding, amenities, topography etc. The order does not discuss about any such aspect.

13. From the aforesaid conspectus of the matter, it is manifest that the authority did not possess any material before it for satisfying itself about the true market value. In other words, the authority has failed to satisfy the test of "reason to believe" as engulfed in the said provision.

14. In light of the above, the impugned orders and the action of the authority can not be sustained and deserve to be quashed and set aside and are hereby quashed and set aside. Rule accordingly made absolute. However, there shall be no order as to costs.