(2008) 08 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 10177 of 2008

Vinodbhai Balashanker Raval APPELLANT

Vs

Deputy Collector, Stamp Duty Valuation Deptt. and Others RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:

Bombay Stamp Act, 1958 — Section 32A, 32A(4)
Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (2008) 3 GLH 365 : (2008) 3 GLR 2754

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : R.C. Kakkad, for the Appellant; Sunit Shah, G.P. and Bhavika Kotecha, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Sunit Shah learned Government Pleader appearing with Ms. Bhavika Kotecha learned Asst. Government Pleader, waives service of notice of rule for the respondent Nos. 1, 2 and 3.

2. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard.

3. The short fact of the case appears to be that the petitioner purchased one property, and the document was presented for registration on 4-7-2000. As the document was not properly stamped, as per the sub-register, the matter was referred to the Deputy Collector, under the Bombay Stamp Act, 1958 (hereinafter referred to as the ''Act'') read with the Bombay Stamp (Determination of Market Value of the Property) Rules, 1984 (hereinafter referred to as the ''Rules''). It appears that the notice was issued, whereas the contention of the petitioner is that the notice was not received by him, therefore, the reply could not be submitted. Ultimately, the Deputy Collector passed the order on 22-12-2003, and assessed the deficit stamp duty of Rs. 73,120/- plus penalty of Rs. 250/-, total

Rs. 73,370/-. As per the respondent the order was communicated, however, the case of the petitioner was that it was not communicated well in time. The petitioner preferred an appeal against the order of the Deputy Collector before the competent authority, namely Chief Controller of Revenue Authority-respondent No. 2 herein by depositing 25 percent of the amount of the assessed stamp duty. The said appeal has been rejected by the respondent No. 2, vide order dated 7-4-2006, on the ground that the appeal was presented beyond the period of limitation. It is under these circumstances, the petitioner has approached to this Court by preferring present petition.

4. It may incidentally be mentioned that large number of litigation concerning to such or similar matters in which the orders were passed prior to December, 2006, by the Deputy Collector, are challenged before this Court by various litigations, and the said factum is admitted by the learned Government Pleader during the course of the hearing.

5. He on the contrary submitted that in majority of the cases the notice, as well as exercise of the power, were in a stereotyped manner. There was no proper application of mind. Considering the facts of all the cases, the State Government in the proceedings of Special Civil Application No. 3926 of 2006 and allied matters, having considered the aforesaid position, had made the declaration of reconsideration of the cases. It has been also recorded in the order passed by this Court. Further, based on the said declaration, the circular is also issued, thereafter, by the State Government dated 25-9-2006, in this regard by referring to certain orders of this Court in writ jurisdiction.

6. It deserves to be recorded that in the above referred decision dated 13-9-2006 by this Court (Coram: D.N. Patel, J.) in Special Civil Application No. 3926 of 2006 (Vandanaben Dipakbhai Rana v. State of Gujarat) at Paragraph No. 3, the declaration has been recorded as under:

3. The Secretary, Revenue Department, was called so that repetition of error on the part of Deputy Collector/Collector, Stamp Duty Valuation Organization can be avoided, and ultimately, multifariousness of the petitions can be avoided. Thoroughly, non-speaking orders have been passed. The basis on which the Notice has been issued has never been supplied to the petitioners and, therefore, it is fairly submitted by the Secretary, Revenue Department as well as learned Government Pleader Mr. Sunit Shah that these matters may be remanded to the concerned Deputy Collector, Stamp Duty Valuation Organisation/Collector of Stamps/lowest available authority under the Act, 1958, so that the petitioners may be heard afresh and speaking orders can be passed in all the aforesaid matters. It is understood clearly by the Secretary, Revenue Department that despite the Act, 1958 and the Rules, 1984, which have given enough guidelines in detail for fixing market value of the property and despite several judgments, non-speaking and cyclostyled orders have been passed, without giving any details to the petitioners and they deserve to be quashed. Thus, judgments also work as guidelines to the subordinate staff of the Secretary, Revenue

Department. It is fairly stated by the Secretary, Revenue Department that these guidelines will be further reiterated by way of Circular so that while passing afresh order, the provisions of the Act, 1958; the Rules, 1984 and the judgments can be followed scrupulously, and therefore, learned Government Pleader Mr. Sunit Shah and the Secretary, Revenue Department requested that the impugned orders may be quashed, which has been passed by the Deputy Collector/ Collector of Stamps and the matters may be remanded. Those matters, which have been covered u/s 32A(4) of the Act, 1958, the impugned order is quashed as the same is time-barred as per Section 32A(4). In certain matters, it is observed that the petitioners have no option but to approach the appellate authority. They approached appellate authority but the delay has not been condoned. Requisite amount has not been paid or has been paid partly, in preferring the appeal. Such order of non-condonation of delay are also hereby quashed. The amount deposited by the petitioners, if any, shall be refunded by the respondent authority upon proper application and upon proper verification of proof of the deposit of the amount.

7. Based on the aforesaid declaration at Paragraph No. 4, following observations were made by this Court and orders came to be passed as under:

4. This common order has been passed mainly because of the request made by the learned Government Pleader Mr. Sunit Shah in the presence of the Secretary, Revenue Department and fairly it is submitted by the Secretary, Revenue Department that all care should be taken for issuance of Notice by the Deputy Collector, Stamp Duty Valuation Organisation/Collector of Stamps, so that they may follow all the guidelines as per the Act, 1958 read with the Rules, 1984 and the pronounced judgments. Learned Government Pleader has also fairly submitted that there is no need to pass separate orders in all the aforesaid petitions as to save public time and public money. Fairness is always desirable from the High Ranking Officer. Both, learned Government Pleader, Mr. Sunit Shah as well as Smt. Vilasiniben Ramchandran, Secretary, Revenue Department, State of Gujarat has shown fairness which is befitting to their posts. Court appreciates this positive attitude and zeal on their part to do justice to the petitioners.

8. The learned Government Pleader during the course of the hearing has also placed on record the copy of the Circular dated 25-9-2006, issued by Superintendent of Stamps to all authorities under the Act, to consider various aspects, which are mentioned in the circular, and such inter alia provides for procedure to be followed by the authority concerned for adjudication, recording of reasons, following the procedure and passing of the order and also the other incidental aspect thereto. It has been submitted that all measures, as were required to be taken are already undertaken by the State Government vide Circular dated 25-9-2006. However, it was submitted that on account of the delay, which took place in adjudication of various cases, the documents, which were presented for registration, but not registered due to deficit stamp duty, initially were about five lacs in the State. The State Government itself was facing

difficultly in preservation, as well as manner and mode of adjudication process undertaken by the authority, at the level of Deputy Collector at the relevant point of time, and also in certain cases, at the level of Chief Controller Revenue Authority-appellate authority).

The learned Government Pleader fairly conceded that there are certain cases, wherein this Court has taken the view that the provisions of Section 5 of the Limitation Act applies, and therefore, there is power for condonation of delay with the appellate authority. However, the appeals have been disposed of on the ground that they are not presented within a period of limitation. It was also submitted that the State Government with a view to avoid delay in adjudication, at one point of time, had also declared amnesty scheme for the litigation of the stamp act, and more particularly pertaining to the registration of the document on account of the deficit stamp duty not paid or improper payment of stamp duty etc., if the party concerned agrees to pay 50 percent of the stamp duty without interest.

9. As per the learned Government Pleader certain person did take benefit of the amnesty scheme, but due to one reason or another, so many persons have not opted for such amnesty scheme, and as a result thereof as per his information as on today about 2,75,000/- documents presented for registration, have remained unregistered because of no final adjudication undertaken for assessment of the deficit stamp duty by undergoing proper procedure, may at the level of the Deputy Collector, who is the first authority, or the appellate authority.

10. It was therefore, submitted that as such the State Government has no objection, if in all cases the matter is reconsidered from the level of first authority, and in all fairness, the statement was also made at the relevant point of time, by the Secretary of the Revenue Department in the proceedings of Special Civil Application No. 3926 of 2006 and other matters. However, it was submitted that since the State Government has no such express power to annul exercise of the power of the Deputy Collector or of the appellate authority under the Act, situation cannot be ruled out that in each case, the person if aggrieved by decision of the Deputy Collector, or the Appellate Authority may be required to approach before this Court for challenging the order passed by the Deputy Collector, or the Appellate Authority as the case may be.

11. It was therefore, submitted that if this Court is inclined to consider the matter for passing general orders, so as to enable the State Government to insist upon the reconsideration of the matter at the level of first authority, and thereafter, thereby to follow the procedure with all fairness and after having considered certain law laid down by this Court in its various judgments, the same would be in the larger public interest of the litigating class.

12. Learned Counsel for the petitioner also as such declared before the Court that the petitioner has no objection for such purpose. It may be that in a given case, if general directions are given, the party who is facing order, may be of the

Deputy Collector or appellate authority is not before the Court, and therefore, this Court may consider the said aspect.

13. It deserves to be recorded that the exercise of the power by the Deputy Collector, or the Appellate Authority under the Act, are essentially functions by the officer of the State Government may be at the level of the Deputy Collector or at the appellate authority is a quasi-judicial authority, since as per the scheme read with the in-built mechanism of the Act and the relevant rules, it would be required for the first or the appellate authority to adjudicate by holding inquiry about the market value of the property, and thereafter, only the order can be passed for recovering of the deficit stamp duty. It is hardly required to be stated that though such officer may the Deputy Collector or the appellate authority, are under the administrative control of State Government, but their exercise of the power as quasi-judicial, authority would fall under the supervisory jurisdiction of this Court as per Article 227 of the Constitution of India. It may be that for administrative control, the State Government may exercise its power as superior authority or appointing authority, but the effect or annulment or cancellation of the action undertaken by such officer, as the quasi-judicial authority can finally to be ruled by this Court in its supervisory jurisdiction under Article 227 of the Constitution. At this stage such reference may be made to Article 227 of the Constitution, which reads as under:

227. Power of superintendence over all Courts by the High Court.

(1) Every High Court shall have superintendence over all Courts and Tribunals throughout the territory in relation to which the High Court exercises the jurisdiction.

14. It can hardly be disputed that exercise of the power by the Deputy Collector while adjudicating on the point of market value or the appellate authority as the case may be would not fall as the Tribunal while exercising the power as quasi-judicial authority. Therefore, while exercising the power of superintendence, which is of a general in nature, this Court would be well within its power lo issue directions to quasi-judicial authorities, functioning under the Act may be at the level of the Deputy Collector or at the level of appellate authority for ensuring that the exercise of the power by such quasi-judicial authorities are well within the limits of the law, and the fair procedure is undertaken by such authority, which results into complete justice to a cause, to be decided, or is already decided by such quasi-judicial authority. Reading of such power which are general in nature appears to be in the larger public interest so as to generally correct all errors, may be of law, may be of jurisdiction, may be of procedure of quasi-judicial authority under the Act, with a view to see that the parties, who are facing orders of such quasi-judicial authority are not dragged into the litigation unnecessarily. The peculiar circumstances are that the State, who is the ultimate beneficiary of the orders by collection of the stamp duty has also prayed for such direction, and no prejudice will be caused to the person concerned since the liability to pay alleged deficit stamp duty will not be enforced and matters

shall be considered afresh. Further, such general direction would result into reduction of the litigation, and consequently, reduction of cost of litigation to the State as well as to the person concerned who is facing the orders of alleged deficit stamp duty.

In view of the aforesaid, it appears that this Court in exercise of its power under Article 227 of the Constitution, can issue general directions to all quasi-judicial authorities under the State, functioning under the stamp act for ensuring that the mechanical exercise of the power undertaken in stereotype manner by the Deputy Collector, and/or the appellate authority may not continue to operate and there is fair consideration of each case after following a proper procedure known to law.

15. Mr. Shah learned Government Pleader under the instruction of the State Government declared before the Court that State has no objection, if cases of all documents which are pending for registration as on 15-5-2007, and the cases of all documents which are already registered, and after registration the reference was made to the Deputy Collector for adjudication of the market value, but presented prior to 15-5-2007 or after presentation are included in the directions, which may be issued by this Court, irrespective of the fact that the matter is decided at the level of the Deputy Collector i.e. first authority or at the level of appellate authority. He also declared before the Court that the general directions may issue by this Court for nullifying the operation of the order passed by the Deputy Collector, or appellate authority as the case may be, concerning to the document, in which the deficit stamp duty is not paid on account of the dispute of market value of the land.

16. It was also submitted by the learned G.P. that there are cases where the documents were presented for registration, and thereafter, it was also registered, and subsequently, the reference has been made for valuation to the concerned authority for verification of the market value. The concerned Deputy Collectors have made as assessment of deficit stamp duty in such cases and in some cases, the matters are also pending at the appellate level. Therefore, if this Court is inclined to consider for issuance of the direction, the Government has no objection and on the contrary the Government is inviting such direction.

17. It was also submitted that in all such cases, the party who is facing the order of deficit stamp duty may be that of the Deputy Collector or of the appellate authority is not going to suffer any prejudice and is going to be benefited by-such direction, since the matter would be considered afresh in accordance with law, it would also result into reduction of the litigation on the part of the Government in those cases also.

Considering the aforesaid, in any case so far as the present petition is concerned, the impugned orders of the Deputy Collector and of the appellate authority both are quashed and set aside, and the matter shall stand restored to the Deputy Collector. The petitioner shall appear before the Deputy Collector within two weeks from today by submitting the reply to the show-cause notice, and the Deputy Collector shall pass fresh order in accordance with law. In the event, the petitioner is aggrieved by the order, which may be passed by the Deputy Collector after giving opportunity of hearing to the petitioner, the petitioner shall be at the liberty to resort to the appropriate proceedings in accordance with law.

18. It is also observed that:

(1) It would be open to the State Government to treat orders passed by the Deputy Collector as well as by the appellate authority under the Act for assessment of the deficit stamp duty, as not in operation, if such decisions have been taken on or before 15-5-2007.

(2) As a consequence of the aforesaid, it would also be open to the State Government to intimate the decision to all Deputy Collectors or the appellate authorities as the case may be, to treat the orders for adjudication of the stamp duty, which are passed prior to 15-5-2007, as not in operation and consequently no recovery is to be effected pursuant to such orders.

(3) It would also be open to the State Government to intimate all authorities under the Act, may be the Deputy Collector or the appellate authority as the case may be to consider and treat the proceedings as restored at the level of the Deputy Collector from the stage of show-cause notice, if already issued and received by the person concerned or in absence thereof for issuance of the fresh show-cause notice in accordance with law.

(4) The State Government shall be at the liberty to communicate to the Deputy Collector or the appellate authority as the case may be that on account of the restoration of the proceedings, at the level of the Deputy Collector, it would be required for the concerned Deputy Collector to consider the proceedings afresh in accordance with law, after giving opportunity of hearing to the person concerned, and thereafter, to pass a fresh order in accordance with law.

(5) It is clarified that the aforesaid directions shall apply only in cases-

(A) of documents which are pending for registration, but presented prior to 15-5-2007.

(B) of documents which were presented and registered prior to April 2000, but references were made for determination of the market value u/s 32A of the Act to the concerned authority.

However, in all such cases, the requirement would that the deficit stamp duty with or without penalty is not paid by the person concerned against whom the order has been passed.

(6) Liberty to either side to apply in case of difficulty.

19. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to cost.