Amardeep Association Navsari Vs. Deputy Collector and 2 ors.

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Court : Gujarat

Decided On : Jun-25-2008

Reported in : (2009)1GLR112

Judge : M.D. Shah, J.

Acts : Bombay Stamp (Determination of Market Value of Property) Rules, 1984 - Rules 4 and 8; Bombay Stamp Act, 1958 - Sections 32A, 39(1)(B), 44, 44(2), 53, 53A, 53(1), 53(1A), 53(2), 54, 54(1), 54(2), 55 and 56; Constitution of India - Articles 226 and 227

Appeal No. : Special Civil Application Nos. 24231, 29189 and 29312 of 2007

Appellant : Amardeep Association Navsari

Respondent : Deputy Collector and 2 ors.

Advocate for Def. : L.R. Poojari, AGP

Advocate for Pet/Ap. : Ketty A. Mehta, Adv.

Judgement :

M.D. Shah, J.

1. Since common questions arise for consideration in all these petitions instituted under Articles 226/227 of the Constitution of India, the parties to these petitions

are also common, by consent of the learned Counsel for the parties, they are taken up for final disposal, and are being disposed of by this common judgment.

2. Mainly, the prayer made in Special Civil Application No. 24231/2007, reads as follows:

(A) That by an appropriate writ, direction or order, the order dated 3-8-2007 (Annexure 'j' to the petition) passed by the Chief Controlling Revenue authority, Gujarat State, Gandhinagar in Stamp Appeal/Section 44/Review/53A/37/04/3/06 be quashed and/or set aside.

(B) That by an appropriate writ, direction or order the Deputy Collector, Stamp Duty Valuation, Navsari dated 10-5-2004 (Annexure 'C' to the petition be quashed and set aside.

(C) That by an appropriate writ, direction or order, the respondent authorities be directed to refund the petitioner the additional stamp duty of Rs. 8,17,880/- paid by it under protest in accordance with the order of the Deputy Collector, Stamp Duty Valuation, Navsari.

2.1 Similarly, the main prayers made in Special Civil Application No. 29189/2007 reads as follows:

(A) That by an appropriate writ, direction or order, the order dated 3-7-2007(Annexure 'G' to the petition) passed by the Chief Controlling Revenue Authority, Gujarat State, Gandhinagar be quashed and/or set aside and necessary direction be given to the Chief Controlling Revenue Authority, Gandhinagar to exercise his jurisdiction under Section 44(2) of the said Act.

(B) The same prayer (B) as in Special Civil Application No. 24231/2007 above.

(C) That by an appropriate writ direction or order, the respondent authorities be directed to refund to the petitioner the additional stamp duty of Rs. 12,15,400/- recovered from the petitioner by virtue of the order of the Deputy Collector, Stamp Duty Valuation.

2.2 In Special Civil Application No. 29312/2007, the prayer (A) & (B) is similar to that made in Special Civil Application No. 29189/2007, while prayer (C) reads as follows:

That by an appropriate writ, direction or order, the respondent authorities be directed to refund to the petitioner the additional stamp duty of Rs. 8,17,880/- paid by it under protest in accordance with the order of the Deputy Collector.

3. Briefly stated, the facts of the case as emerging from the averments made in the petitions are to the effect that the property in question being 11 lakh sq.ft. of land with superstructure standing thereon came to be purchased by the petitioner-Association through a sale by public auction. It is the case of the petitioner-Association that Navsari Cotton & Silk Mills was the owner and in possession of the said lands with building but became a sick unit. Therefore, according to the petitioner, proceedings were taken up before the Board for Industrial & Finance Reconstrcution (BIFR), a scheme for reconstruction was passed by the BIFR and a sale committee consisting of four members including the Collector, Navsari, was constituted for the purpose of sale by public auction. It is further the case of the petitioner-Association that as there were no prospective buyers for buying part of the land, public advertisements were given in daily newspapers and the last such advertisement was published on 21-4-2003. The sale committee then obtained the valuation report from a Government approved valuer. According to the petitioner-Association eleven tenders were issued but only two offers were received by the sale committee. The petitioner-Association being the party who had offered the higher price of Rs. 48/- per sq.ft. was called upon by the sale committee and after some negotiations and petitioner-Association raised the offer to Rs. 51/per sq.ft. which was confirmed by the sale committee as auction price and the total consideration of Rs. 5.61 crores was agreed to be paid by the petitioner for 11 lakh sq.ft of land with superstructure standing thereon. As the Mill was operational, it was decided that 50% amount including the advance deposit was payable within three months. Against 50% payment documents of 50% land were to be executed and accordingly initially three documents were executed for three different parcels of land, document No. 4069 valued at Rs. 2,71,33,734/- registered on 10-10-2003, document No. 4484 valued at Rs. 0,61,54,946/- registered on 21-11-2003,

document No. 4485 valued at Rs. 0,05,66,266/- registered on 21-11-2003 aggregating Rs. 3,38,54,946/- The documents for the remaining lands were to be executed on full payment. The Sub Registrar, Navsari before whom the documents were presented for registration being of the opinion that the property is undervalued, he referred all the three documents to the Deputy Collector, Stamp Duty Valuation, Navsari for determining the correct market value under Section 32A of the Act. Thereafter, notices under Rule 4 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 ('the Rules' for short came to be issued on 10-10-2003 and 11-11-2003 in respect of document No. 4069 by which the Deputy Collector has determined the higher market value and demanded Rs. 43,12,250/- towards additional stamp duty for document No. 4069. It appears that the petitioner has filed reply to the said notice and submitted that the market value which is fixed by the sale committee and confirmed as the auction price after considering all the aspects as to situation, area and the property in question is proper and actual market value as the same has been arrived at on the basis of the report of the Government approved valuer, especially when, one of the members of the sale committee is the Collector, Navsari himself. However, the Deputy Collector, Navsari, by his order dated 10-5-2004 held that the market value of the land sold by document No. 4069 on 14-10-2003 was Rs. 3,44,34,200/-, and thereby, determined the total stamp duty in respect of document No. 4069 at Rs. 38,56,630/- and deducting therefrom the stamp duty of Rs. 30,39,000/- paid by the petitioner, directed the petitioner to pay additional stamp duty of Rs. 8,17,880/ including Rs. 250/- towards penalty which was paid up by the petition under protest as he was desirous of having the document. Thereafter, the petitioner preferred Revision Application No. 37/2004 before the CCRA under Section 44(2) of the Act for refund of the stamp duty paid in excess whereupon the CCRA issued two notices dated 22-12-2006 and 2-3-2007 under Section 53A of the Act one calling upon the petitioner as to why stamp duty assessed by the Deputy Collector, Stamp Duty Valuation, Navsari should not be raised, and the other assessing the market value of the property in question at Rs. 4,45,01,000/- and claiming additional stamp duty at Rs. 10,64,082/-. Again, the CCRA issued a third notice on 23-7-2007 mentioning therein that in the earlier notice the value of construction has not been assessed and that the construction is assessed at Rs. 52,66,647, and therefore, the total value of the land with construction would be Rs. 4,97,67,647/- and that the additional stamp duty would be Rs. 16,53,953/- over and above what has been paid by the petitioner. The petitioner had replied to the said notices and also submitted written statements. The CCRA then after giving opportunity of hearing and considering all the relevant materials placed before it passed the order under dated 3-8-2007 under Section 53 of the Act assessing the value of the land with construction at Rs. 4,97,67,647/- and set aside the order passed by the Deputy Collector, Stamp Duty Valuation, Navsari. The CCRA also cancelled the order passed under Section 39(1)(B) of the said Act certifying the payment of duty, demanding total duty of Rs. 16,47,613/- and releasing the document.

4. Feeling aggrieved by and being dissatisfied with the orders referred to herein above, the petitioners have preferred the above Special Civil Applications.

5. Mrs. Ketty A. Mehta, learned Counsel appearing for the petitioner in each of these petitions submitted that the Chief Controlling Revenue Authority has failed to appreciate that the only on the basis of Jantri, the additional duty is assessed and that the authority ought to have considered the certificate issued by the sale committee as also the valuation report. The learned Counsel next argued that the CCRA or the Deputy Collector Stamp Duty Valuation has failed to supply copy of the relevant jantri or its extracts to the petitioner and has not followed the procedure as required under Rule 4 of the Rules, and therefore, the notice as also the order passed by the CCRA raising the duty is violative of Rule 4 of the Act. The learned Counsel next submitted that the CCRA has exercised the power of revision under Section 53A after the prescribed period of one year and therefore the order passed by the CCRA is contrary to law. The learned Counsel next submitted that the CCRA has not followed the principles of Rule 8 of the Rules which says that the facilities and amenities ought to be considered before raising the market value and that the notice also does not spell out anything in this regard. The learned Counsel next submitted that the CCRA has erred in adding the value of construction as on the date of assessment of duty even though the auction of land was made along with the construction. The learned Counsel next submitted that similarly, the order passed by the Deputy Collector Stamp Duty Valuation,

Navsari, is contrary to the provisions of Section 32A read with Rules 4 and 8 of the Rules.

6. On the other hand the learned AGP Mr. Poojari has contended that the authorities had issued legal, proper and detailed notices to the petitioner within the prescribed time as required under the law before assessing the market value of the property in question and that it is not correct to say that the CCRA has passed the order only on the basis of the Jantri. According to the learned AGP, the authorities after holding necessary inquiry had passed a reasoned order after considering all the revelant material on record, and therefore, the orders passed by the authorities are quite legal and proper which does not call for any interference.

7. As can be seen from the above prayers, the main controversy involved in these petitions centers around the order passed by the Chief Controlling Revenue Authority under Section 53 of the Act. That being so, I do not deem it necessary to deal with the contentions raised by the learned Counsel for the parties inasmuch as a statutory alternative remedy is available against the order passed by the CCRA. Section 54 of the Bombay Stamp Act, 1958 reads thus:

Statement of case by Chief Controlling Revenue Authority to High Court:

1. The Chief Controlling Revenue Authority may state any case referred to it under Sub-section 2) of Section 53 or otherwise coming to its notice and refer such case, with its own opinion thereon, to the High Court.

[(1A) Notwithstanding anything contained in Sub-section (1), any person aggrieved by the decision of the Chief Controlling Revenue Authority under Section 53 regarding the amount of duty with which any instrument is chargeable may, if the amount of duty payable as a result of such decision in a case where the instrument is not charged with any duty or the amount required to make up such duty in a case where the instrument is charged with insufficient duty, exceeds rupees two thousand, by application presented within a period of sixty days from the date of such decision and accompanied by a fees of rupees one hundred, require the Chief Controlling Revenue Authority to draw up a statement of the case and refer it to the High Court and the Chief Controlling Revenue Authority shall, within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court:

Provided that the Chief Controlling Revenue Authority may, if it is satisfied that the application was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.2. Every such case shall be decided by not less than three Judges of the High Court and in case of difference, the opinion of the majority shall prevail.

3. The costs of any reference to the High Court made under Sub-section (1A) which shall not include the fee for making the reference shall be in the discretion of the High Court.

8. There is no dispute to the fact that what is challenged in these petitions is the order passed by the Chief Controlling Revenue Authority. The Scheme of the Act envisages that any person aggrieved by the decision of the CCRA under Section 53 regarding the amount of duty with which any instrument is chargeable has to make an application to the CCRA with a request to draw up the statement of case and refer it to the High Court. Section 54(1)A stipulates that the CCRA has to draw statement of the case and refer it to the High Court within the time stipulated. Sub-section 2) of Section 54 provides that the case referred to it by the CCRA has to be decided by a Bench comprising not less than three Judges of the High Court.

9. Section 55 of the Act empowers the High Court to call for further particulars as to case stated and the case stated has to be disposed of in terms of Section 56 of the Act.

10. The averments made by the petitioner in each of these petitions do not indicate that the petitioner had made any application as contemplated in Section 54(1) to the CCRA. Thus, the petitioner having failed to avail of the statutory alternative remedy is not entitled to the reliefs claimed in these petitions

11. In the result, all these petitions fail and are hereby dismissed on the sole ground of availability of statutory alternative remedy. However, having regard to the facts and circumstances of the case, it is directed that it would be open to the petitioner-Association if they so desire to make an application before the CCRA without any loss of time. As and when such application is made by the petitioner, the CCRA shall decide the same on merits and in accordance with law, provided of course, if the application is made by the petitioner within one month from the date of receipt of the certified copy of this order. The CCRA shall not dismiss such application if made by the petitioner on the ground of limitation. There shall be no orders as to costs. Rule is discharged.