

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 714 OF 2018

M/s. Crystal Construction Company

A Partnership Firm, having its Office
at 701/A-2, Shubham Centre,
Chakala Square, Andheri-Kurla
Road, Andheri (E),
Mumbai – 400 099.

...Petitioner

Versus

1. Additional Controller of Stamps,
(Mumbai Region) Main Stamp Office,
Old Custom House, Mumbai-400001.

2. The Collector of Stamps, Andheri,
Mumbai Suburban District, Taluka
Andheri, M.M.R.D.A. Building,
Bandra (East), Mumbai – 400051.

3. The State of Maharashtra
Thorough the Revenue Ministry
Revenue and Forest Department
Mantralaya, Madam Cama Road,
Hutatma Chowk, Nariman Point,
Mumbai – 400 032.

... Respondents

Mr. Sagheer A. Khan a/w. Adv. Sharique Nachan, Akif and Shoeb, Parth
Zaveri I/b Judicature Law Associates for petitioner.

Mr. Abhay L. Patki, Addl. G.P. For respondent Nos.1 to 3-State.

Coram : N. J. JAMADAR, J.
Reserved on : 30th January 2020.
Pronounced on : 22nd May 2020.

Santosh

JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned Counsels for the parties, at the stage of admission.

2. This petition under Article 226 of the Constitution of India assails the legality, propriety and correctness of the orders passed by the Collectors of Stamps on 16th March, 2017, adjudicating the stamp-duty on the unexecuted conveyance, at Rs.1,52,77,900/- and an order, dated 29th May, 2017 passed by the Additional Controller of Stamps, Mumbai Region, under Section 32B of the Maharashtra Stamp Act, 1958 ('the Stamp Act, 1958'), whereby the appeal preferred by the petitioner under Section 32B of the Act came to be dismissed.

3. The petition arises in the backdrop of the following facts:

(a) A. H. Wadia Trust is a Public Charitable Trust registered under the Maharashtra Public Trust Act, 1950 (the Trust Act, 1950). The said trust holds a property bearing Survey No.8, Hissa No.1, part corresponding to CTS No.201 admeasuring 3531.30 sq.mtrs. at village Marol, Mumbai (the trust property). The trust had resolved to alienate the trust property as there were encroachments over the trust property and the trust was not in a position to remove the encroachments. The trust, thus, published notices in the newspapers, the Free Press Journal and Navshakti,

Santosh

and invited the offers for the sale of the trust property. One H. S. Aagadi and N. F. Aagadi gave an offer of Rs.1,60,00,000/-. The petitioner herein had also submitted an offer of Rs.71,42,858/-. The trust decided to sell the trust property to the highest bidder H. S. Aagadi and N. F. Aagadi. The trust had also obtained a valuation report of the trust property from M/s. C. P. Vaidya, Government approved Architect and Valuer. The valuer had estimated the price of the trust property at Rs.1,28,00,000/-. The trust, thus, preferred an application under Section 36 (1)(a) of the Trust Act, 1950.

(b) The learned Charity Commissioner allowed the prospective purchasers to intervene in the proceedings. Ultimately, by an order dated 7th April, 2016, the learned Charity Commissioner directed a fresh auction to get the best value for the trust property. In the said auction the petitioner offered the highest price of Rs.2,10,00,000/-. Thereupon, the learned Charity Commissioner, by an order dated 26th April, 2016, was persuaded to accord sanction to the trust to sell the trust property on 'as is where is' and 'as it is where it is' basis to the petitioner for the consideration of Rs.2,10,00,000/-.

(c) The petitioner complied with the terms and conditions, on which the learned Charity Commissioner had accorded sanction for sale of the trust property by the trust to the petitioner. The petitioner, thereafter, submitted an unexecuted conveyance for adjudication to the Collector of Stamps, Andheri, Mumbai, Suburban District – respondent no.2 for

Santosh

determination of the stamp-duty on the Deed of Conveyance. Initially an interim order was passed by respondent no.2 on 14th December, 2016. The petitioner filed an objection to the interim order on 28th December, 2016. As certain deficiencies were noticed, the proposal for adjudication came to be resubmitted. In the meanwhile, respondent no.2 obtained a report about the market value of the trust property from Deputy Director, Town Planning, Mumbai. The respondent no.2 based on the report of the Deputy Director, Town Planning, passed an interim order on 7th March, 2017 and assessed the market value of the trust property at Rs.30,55,58,000/-. An objection was lodged by the petitioner on 8th March, 2017. However, by a final order dated 16th March, 2017, respondent no.2 determined the market value of the trust property at Rs.30,55,88,000/- and adjudicated the stamp-duty at Rs.1,52,77,900/- and called upon the petitioner to pay the deficit stamp-duty of Rs.1,42,77,900/-.

(d) Being aggrieved, the petitioner preferred an appeal before the Additional Controller of Stamps under Section 32B of the Stamp Act, 1958. The appellate authority, after hearing the parties, was persuaded to dismiss the appeal holding *inter alia* that the determination of the value of the trust property by the learned Charity Commissioner did not fall within the proviso to sub-rule (6) of Rule 4 of the Maharashtra Stamp (Determination of True Market Value) Rules, 1995 (the Maharashtra Stamp Rules, 1995). Thus, the claim of the petitioner based on the determination of the value of

Santosh

the trust property by the learned Charity Commissioner was not acceptable. The petitioner has thus invoked the writ jurisdiction of this Court.

(e) The petitioner asserts that the authorities committed error in not adhering to the provisions contained in Rules 4 to 6 of the Maharashtra Stamp Rules, 1995. The fact that the value of the trust property was determined by the learned Charity Commissioner post an exercise of fetching the highest price for the trust property has been completely lost sight of. The authorities have failed to appreciate that the challenge to the order of the learned Charity Commissioner as regards the determination of valuation of the trust property at Rs.2,10,00,000/- by one of the bidders in Writ Petition No.5987 of 2016, was repelled by this Court by judgment and order dated 18th October, 2016. The authorities have also failed to consider the circular dated 13th October, 2006, which provides guideline for determination of the market value where the sale of the trust property takes place with the sanction of the Charity Commissioner under Section 36 of the Trust Act, 1950.

4. An affidavit-in-reply is filed by Mr. Sanjay Jadhav, Collector of Stamps, Andheri. The respondents have resisted the petition on the premise that the determination of the market value by respondent no.2 is in strict conformity with the Stamp Rules, 1995. The respondents claim that the Deputy Director of Town Planning has submitted a report of valuation of

Santosh

the trust property and by following the prescribed criteria of valuation the trust property was valued at Rs.30,55,58,000/-. Since the sale in question is not by one of the authorities mentioned in the proviso to sub-rule (6) of Rule 4 of the Stamp Rules, 1995, the sanction to the sale of the trust property by the learned Charity Commissioner at a specified price cannot be equated with the sale of the property at the pre-determined price by the specified authorities. The respondents have also sought to rely upon the guideline 33 in the Annual Statement of Rates for the year 2016-2017, under which the property sold by or allotted by any Government or Semi-Government Organization or Government Boards, undertaking or local authorities (Municipal Corporation/Municipal Council) by prescribed rate is to be reckoned as the market value for the purpose of the stamp-duty. Likewise, the price realized pursuant to an auction of the mortgaged property by an authorized recovery officer, the value so realized is to be reckoned as the market value. Since the sale with the sanction of the Charity Commissioner does not fall within the said exceptions, the market value of the trust property was required to be determined in accordance with the rules. Thus, the respondents have endeavoured to justify the impugned orders.

5. I have heard Mr. Sagheer A. Khan, the learned Counsel for the petitioner and Mr. Abhay L. Patki, the learned Addl.G.P. for the State, at some length.

Santosh

6. The learned Counsel for the petitioner would urge that the authorities have completely misdirected themselves in determining the market value of the trust property solely on the basis of the rates provided in the annual statement of rates. The authorities have not at all adverted to the provisions contained in Rule 4(6) of the Stamp Rules, 1995. The fact that the property was sold post the sanction accorded by the learned Charity Commissioner has not been adequately considered by the authorities. The Charity Commissioner discharges a solemn quasi-judicial function under Section 36 of the Public Trust Act, 1950. In the case at hand there is material to indicate that the Charity Commissioner has taken into account the report of the valuer and even conducted re-auction of the trust property so as to fetch the best value for the same. In this backdrop, the authorities were not at all justified in discarding the value of the trust property as determined by the Charity Commissioner, which in the circumstances is the true market value of the trust property. Moreover, the authorities have failed to take into account the fact that the trust property is totally encumbered in as much as there are 36 sitting tenants on the trust property.

7. The learned Counsel for the petitioner urged with a degree of vehemence that the view recorded by the learned Additional Controller of Stamps that the sale conducted and approved by the Charity Commissioner does not fall within the proviso to sub-rule (6) of Rule 4 of the Stamps Rules, 1995 is legally unsustainable. To bolster up this submission the learned Counsel for the petitioner placed a very strong reliance on a Santosh

judgment of the learned Single Judge of this Court in the case of ***Pinak Bharat and Company vs. Bina V. Adani vs. Anil Ramrao Naik*** in Commercial Execution Application No.22 of 2016 dated 27th March, 2019, wherein this Court had, *inter alia*, considered the question; is there a meaningful distinction to be drawn between sales by the Government and Government bodies at a pre-determined price, which has to be accepted by the adjudicating authority as the market value and a sale by or through a Court? The aforesaid pronouncement according to the learned Counsel for the petitioner applies with equal force to the sale conducted through the aegis of the learned Charity Commissioner.

8. The learned AGP countered the submissions on behalf of the petitioner. At the outset the tenability of the petition was called in question as there is an adequate efficacious remedy under Section 53A of the Act, 1958. On merits the learned AGP submitted that the authorities have determined the market value of the trust property by adhering to the prescription in the Stamp Rules, 1995 and the value of the property provided in the annual statement of rates for the relevant year. Thus, according to the learned AGP no fault can be found with the impugned order.

9. To begin with, it is necessary to appreciate the circumstances in which the trust property was resolved to be alienated by the trust, and the nature of the function which the Charity Commissioner discharges while

Santosh

according or refusing sanction to alienate the trust property under Section 36 of the Trust Act, 1950. For this purpose a reference to the order passed by the charity commissioner would be useful. The order dated 26th April, 2016, records that the application for alienation of the trust property was made by the trustees for the stated reason that the trust property was occupied by unlawful occupants. The trust was not in a position to remove the encroachment. It was not economical to hold the property and pay the taxes and outgoings without there being any income from the said property. Thus, the trust was constrained to alienate the trust property. A resolution to that effect was passed by the trustees on 19th August, 2015. Notice inviting the offers was published in two newspapers, namely, Free Press Journal and Navshakti on 28th August, 2015. In all, three offers were received. The offer of N.F. Aagadi and H.F. Aagadi i.e. Rs.1,60,00,000/- was the highest offer. The trust had also obtained a valuation certificate in respect of the trust property from M/s. C. D. Vaidya, Government approved architect and valuer, who had valued the trust property at Rs.1,28,00,000/-. Thus, the trust preferred an application under Section 36 of the Trust Act, 1950 for permission to sell the trust property for a consideration of Rs.1,60,00,000/- to the highest offerer N.F. Aagadi and H.F. Aagadi.

10. During the pendency of the said application before the Charity Commissioner intervention applications were filed and the Charity Commissioner decided to hold re-auction, and on 7th April, 2016, the auction was held. In the said auction the petitioner herein offered the Santosh

highest price of Rs.2,10,00,000/-. The rest of the bidders withdrew their objections. Thereupon, the Charity Commissioner recorded satisfaction that it was for the benefit of the trust to sell the trust property as the trust property was unlawfully occupied by hutment dwellers. The Charity Commissioner thus accorded the sanction for the sale of the trust property.

11. The position which thus emerges is that the trust was constrained to alienate the trust property as it was fully encroached. The removal of the unlawful occupants from the trust property being a herculean task, the trust invited the offers for purchase of the trust property by issuing public notice in two newspapers. The trust had obtained a valuation certificate from the approved valuer. The trust professed to sell the trust property to the highest bidder for Rs.1,60,00,000/-. Before the Charity Commissioner intervention applications were filed and it was decided to re-auction the trust property so as to fetch the best value. Thereupon the petitioner offered the highest price of Rs.2,10,00,000/-.

12. At this juncture, it is necessary to note the functions which the Charity Commissioner discharges under Section 36 of the Trust Act, 1950. The inquiry before the Charity Commissioner is unquestionably a quasi-judicial enquiry. The Charity Commissioner has to address unto himself two questions: (i) Is it necessary to alienate the trust property in the interest of the trust; (ii) If the charity Commissioner is satisfied that the alienation of the trust property is necessary for the benefit of the trust then the Charity

Santosh

Commissioner has to ensure that the property is alienated at a price or value which is in the best interest of the trust. The overriding consideration which weighs with the Charity Commissioner is the interest and the benefit of the trust.

13. In this context, a profitable reference can be made to a Full Bench judgment of this Court in the case of ***Shailesh Developers and others vs. Joint Charity Commissioner, Maharashtra and others*** reported in 2007(4) of MR 100, wherein the following questions were considered by the Full Bench on a reference by a Division Bench :

“i) Whether the power vesting in the Charity Commissioner under Section 36 of the Bombay Public Trusts Act, 1950 is confined to grant or refusal of sanction to a particular sale transaction which the trustees propose to make or it extends to compelling trustees to sell or transfer the property to another party who participates in the proceedings under Section 36 and gives his offer?

ii) Whether the party who comes forward to submit his offer directly before the Charity Commissioner in a pending application under Section 36 of the said Act of 1950 has locus standi to challenge the order passed in a proceeding under Section 36?”

14. The Full Bench answered the questions as under:

“32. Hence, we answer the questions referred to our decision as under:

(i) The power vesting in the Charity Commissioner under Section 36 of the Bombay Public Trust Act 1950 is not confined merely to grant or refusal of sanction to a particular sale transaction in respect of which sanction is sought under [Section 36](#) of the said Act. The power of the Charity Commissioner extends to inviting offers from the members of the public and directing the trustees to sell or transfer the trust property to a

Santosh

person whose bid or quotation is the best having regard to the interest, benefit or protection of the trust. Hence we declare that the decision of the Division Bench of this Court in the case of *Jigna Construction Co. Mumbai v. State of Maharashtra and Ors.* does not lay down correct law.

(ii) The party who comes forward and submits his offer directly before the Charity Commissioner and complies with other requirements as may be laid down by the Charity Commissioner in a pending application under [Section 36](#) of the said Act of 1950 has a locus standi to challenge the final order passed in a proceeding under [Section 36](#). However, the scope of the challenge will be limited as indicated in paragraph 29 above.

(iii) We direct the Office to place the Writ Petitions before the appropriate Benches for deciding the same in accordance with law.

Reference answered.”

15. In the process of arriving at the aforesaid conclusion the Full Bench adverted to the historical perspective of the provisions contained in Section 36 of the Trust Act, the pronouncements of this Court and the Supreme Court on the nature and contour of the power under Section 36 and thereafter elucidated the powers exercised by the Charity Commissioner in the following words:

“30 While exercising power either under Clause (b) or Clause (c), the Charity Commissioner can impose conditions having regard to the interest, benefit or protection of the trust. Before passing an order of sanction or authorisation, the Charity Commissioner has to be satisfied that the trust property is required to be alienated. Once the Charity Commissioner is satisfied that the alienation of the trust property is necessary in the interest of the trust or for the benefit of the trust or for the protection of the trust, it is very difficult to accept the submission that the power of the Charity Commissioner is restricted either to grant sanction to a particular proposal of the trustees or to reject it. It is the duty of the Charity Commissioner to ensure that the transaction of alienation is beneficial to the trust and its beneficiaries. He has to ensure that the property is alienated to a purchaser or buyer whose offer is the best in all respects. It is not necessary in every case that the Charity Commissioner has to ensure that property is sold by the trustees to the person offering

Santosh

highest price or consideration. What is the best offer in the interest of the trust will again depend on facts and circumstances of each case. In a given case, while alienating the trust property, the trustees may provide that as a part of consideration for alienation, the purchaser should construct a building on a part of the trust property for the use by the trustees for the objects of the trust. In such a case, it may be necessary to ascertain the reputation and capacity of the purchaser apart from the consideration offered. When the Charity Commissioner is satisfied that trust property needs to be alienated and when he finds that the offer received by the trustees may not be the best offer, he can always direct that bids be invited by a public notice. When a better offer is received in public bidding or auction, it is very difficult to say that the power of the Charity Commissioner is restricted and he cannot enjoin the trustees to sell or transfer the trust property to a third party who has given an offer which is the best in the interest of the trust. The Trustees approach the Charity Commissioner only when they are satisfied that there is a necessity to alienate the trust property. The trustees hold the property for the benefit of the beneficiaries and therefore once they express desire to alienate the property, it is obvious that Charity Commissioner can always impose condition while granting sanction that the property shall be sold or transferred to a person who has come with an offer which is the best offer in the interests of the trust. The Section gives a power to the Charity Commissioner to impose conditions and the said conditions will include a requirement of selling or transferring or alienating the trust property to a purchaser who has offered the best deal having regard to the interest and benefit of the beneficiaries and the protection of the trust. The power to impose conditions cannot be a limited power when the law requires the Charity Commissioner to exercise the said power having regard to the interest, benefit and protection of the trust. Once the Charity Commissioner accepts the necessity of alienating the trust property, the trustees cannot insist that the property should be sold only to a person of their choice though the offer given by the person may not be the best offer. The property may be vesting in the trustees but the vesting is for the benefit of the beneficiaries. The Charity Commissioner has jurisdiction to ensure that the property is sold or transferred in such a manner that the maximum benefits are available to the beneficiaries of the Trust. Under Clause (b) of [Section 36](#) of the said Act, the Charity Commissioner has jurisdiction to decide whether it is in the interest of the trust that the property of the trust be sold or transferred. Once the learned Charity Commissioner is satisfied that the property is required to be transferred or sold in the interest of the Trust, the learned Charity Commissioner cannot remain silent spectator when he finds that the transaction proposed by the Trustees is not in the interest of the Trust or its beneficiaries. Once the necessity of sale or transfer is established, the Charity Commissioner can certainly ensure that best available offer is accepted, so that the transaction is for the benefit of the trust. If the trustees were to be the final authority to judge what is in the interest of the Trust, the legislature would not have enacted

provision requiring prior sanction. While deciding which is the best offer, the learned Charity Commissioner is bound to take into consideration various factors which cannot be exhaustively listed. However, the paramount consideration is the interest, benefit and protection of the trust. It is obvious from the scheme of Section 36 that legislature never intended that trustees could sell or transfer the trust property vesting in them as if it was their personal property. It is the duty of Charity Commissioner to ensure that the property should be alienated in such a manner that maximum benefits are accrued to the trust. The Charity Commissioner while considering an application under Section 36(1) of the said Act of 1950, in a given case can opt for public auction or can invite bids.

Thus narrow interpretation sought to be given to the power of Charity Commissioner under Clauses (a) and (b) of Sub section 1 of Section 36 cannot be accepted. Thus the view taken in the case of A.R. Khan Construwell and Co. (supra) is the correct view. The case of Arunodaya Prefab is not correctly decided. “

16. In the light of the aforesaid exposition of the legal position, the exercise of the power to sanction the alienation of the trust property by the Charity Commissioner under Section 36 of the Trust Act, 1950, cannot be construed as a mere administrative action. The power is exercised after adhering to the principles of inviting an open offer, promoting competitive bidding and ensuring that the best value is fetched.

17. A useful reference at this juncture can be made to the judgment of the learned Single Judge of this court in the case of ***Pinak Bharat and Co.*** (supra). In the said case this Court in execution of the decree had confirmed the sale of the trust property for the consideration of Rs.15.30 Crores. When the sale certificate was issued by the Prothonotary and Senior Master and was lodged with the Collector of Stamps, the later valued the property at Rs.155 Crores. It was later on submitted that the authorities

Santosh

after taking into consideration the fact that there were tenants on the said property, re-determined the market value at about Rs.35 Crores approximately. In the context of the aforesaid facts, the learned Single Judge considered the question as to whether the determination of the price in a sale by Court would fall within the ambit of the proviso to sub-rule (6) of Rule 4 of the Rules, 1995. Sub-rule (6) with which we are primarily concerned reads as under:

“(6) Every registering officer shall, when the instrument is produced before him for registration, verify in each case the market value of land and buildings, etc. as the case may be, determined in accordance with the above statement and Valuation Guidelines issued from time to time and if he finds the market value as stated in the instrument, less than the market value, determined as above, he shall refer the same to the Collector of the District for determination of the true market value of the property which is the subject matter of the instrument and the proper duty payable thereon:

Provided that, if a property is sold or allotted by Government or Semi Government body or a Government Undertaking or a Local Authority on the basis of a predetermined price, then value determined by said bodies, shall be the true market value of the subject matter property:

Provided further that, where the property is purchased or acquired or taken over by the Government, Semi-Government Body or a Government Undertaking or Local Authority, then the actual value determined as consideration by the said bodies as mentioned in the deed, shall be considered to be the true market value of the subject matter property

Provided also that where the market value has been stated in accordance with or more than that prescribed in the statement issued by the Chief Controlling Revenue Authority, but the Registering Officer has reason to believe that the true valuation of the immoveable property cannot be arrived at without having recourse to local enquiry or extraneous evidence he may, before registering such instrument, refer the same to the Collector of the District for determination of true market value of property and the proper duty payable thereon.”

Santosh

18. The Court considered the omission of the sale through Court in the first proviso to sub-rule (6) and observed as under:

“12 The wording of the first proviso is also important in what it leaves out. It makes no mention of a sale through Court although Article 16, as we have seen, specifically deals with public auctions by Civil or Revenue Courts. In other words, we are told that if the Government, in any one of its very many manifestations or avatars, sells a property, and the document mentions that price, then the Collector or the adjudicating authority is required by law, on account of this proviso, to accept that stated value as the true market value without further enquiry. Once these two conditions are met, therefore, the adjudicating authority does not need to make any further enquiry. Indeed, the adjudicating authority cannot make any further enquiry.

13. Why should a sale through a Court by public auction on the basis of a valuation obtained, i.e. by following a completely open and transparent process, be placed at any different or lower level than the government entities covered by the first proviso? Indeed the process that we follow in Courts is perhaps much more rigorous than what the proviso contemplates, because the first proviso itself does not require a public auction at all but only that the Government body should fix “a predetermined price”.

14. In our present system, a sale through the Sheriff's Office, i.e. a sale in execution is always necessarily by public auction. If it is by private treaty, it requires a special order. A sale effected by a Receiver in execution is not, technically, a sale by the Court. It is a sale by the Receiver appointed in execution and the Receiver may, of course, with leave of the Court sell either by public auction or by private treaty. Wherever a sale by public auction, there is an assurance of an open bidding process and very often that bidding process takes place in Court itself (as in the present case). Courts always obtain a valuation. They need to do this so that they can set a reserve price to ensure that properties are not sold at an undervaluation and to avoid cartelization and an artificial hammering down of prices. The reserve price is at or close to a true market value. Usually, the price realized approximates the market value. Sometimes the valuation is high and no bids are at all received. The Decree Holders cannot be left totally without recovery at all and it is for this reason that Courts sometimes permit, after maintaining the necessary checks and balances, a sale at a price below the market value even by public auction. There are, equally,

Santosh

times when after a competitive bid-improvement process in open court, the sale is knocked down at a price much higher than even the highest valuation.

16. I have no manner of doubt and I have absolutely no hesitation in saying that if the sale either by the Deputy Sheriff with permission of the Court, or by the Court Receiver with leave of the Court, is by private treaty, then it is for the adjudicating authority to certainly determine the true market value.

17. Very different considerations will, however, arise where there is a sale by public auction through a Court, and this sale is preceded by a valuation obtained by the Court as part of that public auction process. In a situation like that, I do not see why such a sale or transaction should stand on any different footing from those that are part of the proviso to sub-rule (6) of Rule 4. I emphatically do not suggest that the sale certificate amount should be accepted as the true market value. The correct course in such a situation would be for the adjudicating authority to accept the valuation on the basis of which public auction was conducted as fair market value; or, if the sale is confirmed at a rate higher than the valuation, then to accept the higher value, i.e. the sale amount accepted. If more than one valuation has been obtained, then the highest of the most recent of the valuations is to be accepted as the true market value. This approach is consistent with sub-rule (6), its first proviso and ensures that there is consistency both between the stamp adjudication process and the basis on which the sale is conducted in the first place. There cannot be an inconsistency between the Court order and a Court-supervised sale on the one hand and the adjudication for stamp on the other. This is the only method by which complete synchronicity can be maintained between the two.

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19. Finally, if this Court in execution is satisfied with the valuation and accepts it, then it is not open to the adjudicating authority to question that valuation. In another manner of speaking, it is never open to the adjudicating party to hold, even by implication, that when a court sold the property through a auction by following this process, it did so at an undervaluation. The imprimatur of the court on the sale, i.e. its confirmation of the sale, carries great sanctity. If the validity or very basis of the sale was allowed to be brought into question by an executive or administrative authority, it would result in the stamp authority calling into question judicial orders of this court. That is impermissible and entirely beyond the remit of the adjudicating authority. In this, the purpose of the Stamp Act must be kept in mind. This is not an Act that validates, permits or regulates sales of property. It only assesses the transactions for payment of a levy to the exchequer. Therefore, it follows that it is not

Santosh

open to the adjudicating authority to suggest, directly or indirectly, that a sale that carries the imprimatur of the court, one that is confirmed by the court, is liable to be set aside or not given effect to. When it confirms a sale, the court never determines the stamp duty payable. It always leaves that to the stamp adjudicating authority, and that is the only thing the stamp adjudicating authority can do, nothing more and nothing less. It cannot, therefore, question the sale in any manner. The only issue before the adjudicating authority is the determination of the market value for the purposes of computing the stamp payable. That basis cannot be different from the one on which the court proceeded, i.e. the highest valuation obtained or the actual sale price, whichever is higher.”

(emphasis supplied)

20. The learned Single Judge proceeded to delineate the general practice as well in paragraph no.23, which reads as under:

“23. Hence, as a general practice:

(a) Where there is a sale by private treaty, the usual course stipulated in the Maharashtra Stamp Act will apply;

(b) Where the sale is by the Court, i.e. through the office of the Sheriff, or by the Court Receiver in execution, and is by public auction pursuant to a valuation having been previously obtained, then –

(i) If the sale price is at or below the valuation obtained, then the valuation will serve as the current market value;

(ii) If the final sale price, i.e. the final bid, is higher than the valuation, then the final bid amount and not the valuation will be taken as the current market value for the purposes of stamp;

(iii) Where there are multiple valuations obtained, then the highest of the valuations most recent, i.e. most proximate in time to the actual sale, should be taken as the current market value.”

21. The aforesaid pronouncements indicate as to how a sale through Court stands even on a higher pedestal than the sale by the authorities envisaged by the first proviso to sub-rule (6), namely, sale or allotment by

Santosh

the Government or Semi-government Body or a Government undertaking or a local authority on the basis of the predetermined price, when the method of auction sale is resorted to, which in itself provides for an open competitive bidding. In the event the process of sale through auction is preceded by obtaining a valuation certificate from an approved valuer and thereafter the open competitive bids are invited then the said process has all the trappings of a process which ensures the objective of fetching of a true market value of the property. The aforesaid pronouncement governs the sale of the trust property by the Charity Commissioner under section 36 of the Trust Act, 1950, provided the elements of prior valuation of the trust property and the sale of the trust property through auction process are adhered to.

22. There is another factor which has a significant bearing on the determination of the market value of the property sold through the aegis of the Charity Commissioner. The authorities were not justified in totally eschewing from consideration the factum of the sale of the trust property by the Charity Commissioner by opining that the said sale by the Charity Commissioner does not fall within the categories of the sale exempted by the proviso to sub-rule (6) of Rule 4 of the Rules, 1995. The circular dated 13th October, 2006, issued by the Controller of Stamps, State of Maharashtra, indicates that while determining the market value of the

Santosh

property sold by the orders of the Charity Commissioner, the adjudicating authorities shall call for certain information, namely, whether there was a public notice of auction, whether the value at which the property was sold was obtained in a public auction conducted by the Charity Commissioner. In case, the transaction is otherwise than by public auction it shall be ascertained as to how the Charity Commissioner arrived at the value of the trust property while according sanction for its sale. In the event no documents were forthcoming on the aforesaid points then the competent authorities shall determine the market value in accordance with the provisions contained in Sections 31, 32A and 33 of the Stamp Act, 1958.

23. The aforesaid circular thus equates the sale of the trust property by the orders of the Charity Commissioner with the sale and/or allotment of the property by the authorities enumerated in the first proviso to sub-rule (6) of Rule 4. The circular further envisages the procedure to be followed where the competent authorities entertain a genuine doubt about the correctness of the value of the property which is sold under the orders of the Charity Commissioner. The authorities in the instant case were thus not within their rights in totally discarding the determination of the value of the trust property by the learned Charity Commissioner on the premise that the said 'authority' is not enumerated in the proviso to sub-rule (6) of Rule 4.

Santosh

24. The situation is further accentuated by the fact that in the case at hand the Charity Commissioner had followed the requisite process to fetch the best value. The trust itself had issued public advertisements. The trust had professed to sell the trust property to the highest bidder. The entire transaction was backed by a valuation certificate issued by the approved valuer, which the learned Charity Commissioner took into account. The Charity Commissioner, in turn, conducted a fresh auction to obtain the best price. Furthermore, the challenge to the order of the Charity Commissioner was repelled by this Court by order dated 18th October, 2016, in Writ Petition No.5987 of 2016.

25. The upshot of aforesaid consideration is that the Collector of Stamps committed a manifest error in not at all advertng to the fact that the learned Charity Commissioner had determined the value of the trust property by following requisite process to ensure the best value, and determining the market value of the trust property on the sole premise that there was vast difference in the value determined by the Deputy Director, Town Planning and the value at which the learned Charity Commissioner accorded sanction for sale. The appellate authority also fell in error in opining that the sale by the order of the Charity Commissioner did not fall within the ambit of the first proviso to sub-rule (6) of Rule 4. The authorities have singularly missed to take into account the fact that there were 36 unauthorised

Santosh

occupants over the trust property and they were stated to be in occupation of the trust property since 1980, and, thereby the value of the trust property was considerably diminished. It is trite that the property occupied by the encroachers / hutment dwellers does not get the expected price. Indubitaly, the fact that the property is under encroachment since decades affects its price considerably. There is no consideration at all on these aspects of the matter as well.

26. The upshot of aforesaid consideration is that the impugned orders deserve to be quashed and set aside since the authorities have not considered the very instructions issued by the Controller of Stamps in the circular dated 13th October, 2006, and have proceeded to determine the market value solely on the basis of the valuation report of the Deputy Director, Town Planning. It would be in the fitness of things to direct the Collector of Stamps, Andheri, Mumbai – respondent no.2 to adjudicate the stamp-duty on the instrument in question after providing an effective opportunity of hearing to the petitioner and in the light of the aforesaid observations.

27. Hence, the writ petition stands allowed in the following terms:

- (i) The order dated 16th March, 2017 passed by respondent no.2 determining the market value of the trust property and the order

Santosh

dated 29th May, 2017, passed by respondent no.1, on appeal, are hereby quashed and set aside.

(ii) The matter stands remitted back to respondent no.2 for a fresh adjudication after providing an opportunity of hearing to the petitioner and in the light of the observations made by this Court.

(iii) The petitioner shall appear before respondent no.2 on 6th July 2020.

(iv) Respondent no.2 shall make an endeavour to adjudicate the stamp-duty within a period of two months from the date of the first appearance of the petitioner before respondent no.2.

28. In the circumstances, there shall be no order as to costs.

29. Rule made absolute in aforesaid terms.

[N. J. JAMADAR, J.]

Santosh