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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6537 OF 2017

Praman Infrastructure Private Limited,
a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 402 & 502, Shreepati Arcade, 4th Floor, Nana Chowk, A.K. Marg, Mumbai 400 036 … **Petitioner**

V/s.

1 **The State of Maharashtra** through Ministry of Revenue and Forest, Mantralaya, Mumbai

2 **The Chief Controlling Revenue Authority Maharashtra State**, Pune, Ground Floor, New Administrative Building, Opp. Council Hall, Pune 411 001

3 **The Collector of Stamps, Mumbai** Shahid Bhagat Singh Road, Mumbai 400 023 … **Respondents**

WITH
INTERIM APPLICATION (ST.) NO.21627 OF 2021
IN
WRIT PETITION NO.6537 OF 2017

Collector of Stamps Enforcement 1, General Stamp Office … Applicant

In the matter between

M/s. Praman Infrastructure Pvt. Ltd. … Petitioner

V/s.

The State of Maharashtra, Superintendent of Stamps, Mumbai & Ors. … Respondents

Mr. Ankit Lohiya with Mr. Manan Bhindora i/by Markand Gandhi & Co. for the petitioner.

Mr. O.A. Chandurkar, Addl. G. P. with Mr. R. S. Pawar, AGP for the State in Writ Petition and for the applicant in Interim Application.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 6, 2025

PRONOUNCED ON : MARCH 18, 2025

JUDGMENT:

1. By this writ petition under Article 226 of the Constitution of India the petitioner is challenging the judgment and order confirming order dated 1 April 2017 in Revision Case No.72 of 2014, thereby holding that the deed of conveyance executed in favour of the petitioner was found short levied of stamp duty and directing the petitioner to pay deficit stamp duty along with penalty.

2. The facts and circumstance giving rise to present writ petition are as under:

3. By deed of conveyance dated 15 September 2009 executed by Geeta Dixit Shah in favour of the petitioner conveying 75% share of land and building standing on New Survey No.1/7099 corresponding to cadastral Survey No.804(part) of the Mallabar and Cumballa Hill Division admeasuring 1005.86 square metres as well as 75% share in the leasehold rights in New Survey No.4/7099 admeasuring 342.82 square metres. According to the petitioner, New Survey No.1/7099 consisted of old cessed building

standing thereon and occupied by 12 tenants who were paying rent of Rs.940/- per month to the erstwhile owner and, therefore, to the petitioner. According to the petitioner, freehold and leasehold property is situated in Coastal Regulation Zone II as per Coastal Zone Management Plan annexed by CRZ Notifications dated 19 February 1991 and 25 January 1999.

4. The petitioner presented the said deed of conveyance to the Office of Collector of Stamps and was impounded vide notice dated 19 December 2009 under Section 33 of the Maharashtra Stamp Act, 1958 (hereinafter referred to as "the Act"). The petitioner was called upon to pay stamp duty of Rs.7,75,000/- and penalty of Rs.30,000/- which was paid by the petitioner on 21 December 2009. The Collector of Stamps thereafter certified deed of conveyance under Section 41 of the Act. The petitioner thereafter lodged deed of conveyance for registration along with all the documents.

5. The audit department of respondent raised objection of deficit stamp duty on the deed of conveyance executed in favour of the petitioner. Respondent No.3, therefore, made a recommendation to respondent No.2 to revise its valuation and demand and, accordingly, the petitioner received notice dated 8 December 2014 under Section 53A of the Act calling upon the petitioner to remain present for hearing. The petitioner appeared before the revisional authority and pointed out that the property is affected by CRZ-II and FSI at the relevant time was '2' and not '2.5' as considered by the authorities. It was also pointed out that the lease of leasehold property admeasuring 342 square metres had

already expired. Even for the leasehold property the FSI was '2' and not '2.5'.

6. Respondent No.2, by order dated 1 April 2017, called upon the petitioner to pay sum of Rs.52,44,075/- towards stamp duty and Rs.4,19,523/- towards penalty. Aggrieved by the impugned order dated 1 April 2017, the petitioner has filed present writ petition.

7. Mr. Lohiya, learned Advocate on behalf of the petitioner submitted that the document to show that the property was affected by CRZ-II had been annexed as annexure to the main instrument and, therefore, such annexure needed to be considered as part of the instrument for the purpose of adjudicating market value of the property. He further submitted that Relevant DCR were amended in the year 1999 to increase FSI for project under DCR 33(7). However, such amendment is not applicable to the area covered by CRZ. He submitted that lease for area admeasuring 342 square metres had already expired as such recital is present in the deed of conveyance which stated that lease deed dated 29 November 1984 from the Secretary for State of India in favour of one Vallabhdas Walji for period of 99 years commencing from 1 June 1984 and such piece of leasehold land more particularly described in first schedule was made part of the instrument. He submitted that the total area in occupation of the tenant had been wrongly considered as 1883.73 instead of 2241.89 square metres and, therefore, according to him, the impugned order deserves to be quashed and set aside.

8. Per contra, learned AGP for the State relying on judgment in the case of *Himalaya House Co. Ltd. Bomay vs. Chief Controlling Revenue Authority,* 1972 SCC (1) 726, submitted that the parties to a document are required to set forth in the document fully and truly, the consideration (if any) and all other facts and circumstances affecting the chargeability of document with duty or amount of duty with which it is chargeable and unless the recitals are specifically stated in the instrument, benefit of said circumstances cannot be given to the assessee. He submitted that the recitals regarding the part of the property being affected by CRZ II, the area occupied by the tenant being 1883.73 square metres instead of 2241.89 square metres and FSI being '2' instead of '2.5' have not been mentioned in the instrument and, therefore, assessee is not entitled to the benefit of said circumstances. He, therefore, prayed for dismissal of the writ petition.

9. Rival contentions fall for consideration.

10. Three interlocking questions arise for consideration—(i) whether a recital with respect to applicability of Coastal Regulation Zone (CRZ) restrictions on a part of land must form part by principal instrument itself (sale deed) or whether it suffices if the same is included in an annexure thereto; (ii) the impact upon market value, for the purposes of computing stamp duty, of a recital in the sale deed indicating that lease of part of land had already expired; and (iii) the effect of considering less land to be considered as land occupied by tenant for market valuation of stamp duty.

11. In answering these questions, the Court must consider closely to established doctrine under the Act and the precedents that guide the interpretation of the term "market value." The legislative framework is grounded in the principle that stamp duty is to be levied on the real nature of the transaction as reflected in the instrument and the underlying value transferred. Further, the measure of the levy is the market value of the property (or portion thereof) intended to be transferred. Sections 3, 17, 19, and 31 of the Maharashtra Stamp Act, along with the definitional clauses, underscore the significance of reflecting all material facts so that the true valuation is ascertainable.

12. A foundational question arises as to whether a recital indicating the applicability of CRZ restrictions on a part of the land —thereby potentially reducing the effective development potential and hence impacting the sale consideration—must mandatorily find place in the body of the sale deed, or whether reference to an annexure would be sufficient.

13. At the threshold, it must be emphasized that, in the law of conveyancing, an annexure that is expressly referenced and incorporated by the principal deed is typically considered an integral part of the instrument. Where an annexure is referred to in extenso within the operative portions of the instrument, it is not an external or extraneous document but constitutes part and parcel of the deed. If the annexure is specifically referenced and integrated by language in the main body—such as "the schedule hereto forming part of this deed" or "the plan annexed hereto shall be read as part of this sale deed"—the recitals therein are subject

to the same scrutiny as if set forth in the main text. The authorities cannot disregard material recitals found in an annexure, provided the main deed unambiguously incorporates it. Therefore, a statement about CRZ restrictions placed in such a thoroughly incorporated annexure is necessary to inform the sub-registrar or the competent stamp authority about the nature of the property.

14. It is necessary to include in the main body of the document all critical facts and recitals that go to the very essence of the sale consideration or that bear upon the market value. Courts and authorities administering the stamp laws cannot look beyond the four corners of the main text unless the references to annexures are unambiguous. A recital affecting market valuation, particularly one that diminishes development potential, must be clearly set forth in the document itself or be unambiguously incorporated through a referenced annexure.

15. The statutory framework under Sections 33 and 34 of the Act, which concerns the impounding of instruments and the assessment of duty, mandates that the instrument must "fully and truly" express the transaction. If the principal instrument is silent on CRZ restrictions and they appear solely in an annexure that is vaguely referenced or not explicitly incorporated, the stamp authorities are justified in disregarding such vague recitals. In such cases, the authorities may either refuse to acknowledge the annexure or apply a higher notional market value on the premise that the principal deed does not adequately reflect the development limitations of the property.

16. Therefore, in my opinion, a suitably incorporated annexure that is expressly referenced within the sale deed is to be treated as part of the instrument and is necessary to place the CRZ limitations on record for the purpose of assessing market value. The omission of such an express reference could lead to the authorities disregarding material limitations and assessing stamp duty based on an inflated market value.

17. At this stage, it is pertinent to refer to the observations of the Hon'ble Supreme Court in the case of *Himalaya House Co. Ltd. Bombay* (supra), where the government leased out a plot to a corporation for 999 years, which was subsequently sub-leased for the same period. The sub-lessee constructed a building and, through various agreements, assigned the right of occupation in the plot, shop, and offices within the building to several individuals. Thereafter, the appellant company was incorporated, and through a deed, the sub-lessee purported to assign its rights in the building without consideration, purportedly for better administration of the property. The stamp authorities took the view that the company was formed by individuals who had purchased flats in the building and that the real consideration for the assignment was the amounts paid by these occupiers. Consequently, the authorities held that even in the absence of express consideration in the document, the value of the premises constituted an index of consideration.

18. The Supreme Court, while interpreting Section 27 of the Indian Stamp Act, held that parties to a document are required to set forth in the document fully and truly the consideration (if any)

and all other facts and circumstances affecting the chargeability of the document with duty or the amount of duty payable. The Court further observed that no provision in the Indian Stamp Act empowers the revenue authorities to conduct an independent inquiry into the value of the property conveyed. Additionally, the Court held that a reference to an earlier transaction in a deed of assignment does not amount to an incorporation of its terms unless the document clearly demonstrates the intention of the parties to adopt such incorporation.

19. Therefore, in my opinion, while an annexure, if explicitly referenced in the sale deed, may be deemed part of the instrument for the purpose of stamp duty assessment, facts and circumstances that bear directly upon the Floor Space Index (FSI) and development potential of the property must necessarily be stated on the face of the main deed. Any ambiguity in referencing such limitations could lead to incorrect assessments and disputes regarding valuation.

20. In light of the foregoing discussion, the contention raised on behalf of the petitioner that an annexure to the instrument indicating that portions of the property described in the first and second schedules are affected by CRZ restrictions does not hold merit. This is because such an annexure has not been expressly referenced and incorporated by the principal deed. Therefore, in the absence of a clear and explicit reference within the main instrument, the petitioner cannot seek the benefit of a reduced market valuation on the basis of CRZ restrictions set forth only in an annexure.

21. The second question pertains to the effect of a recital in the deed of conveyance that a portion of the land was subject to a lease which, at the time of conveyance, had already expired. Where the deed of conveyance clarifies that although the lease has expired, the occupant remains in possession by "holding over," the authorities must take cognizance of such continued possession, as it constitutes a factor that diminishes the market value of the land. The presence or absence of an actual encumbrance in fact is a crucial determinant in assessing market value.

22. Clause (B) of the instrument incorporates a recital stating that the lease deed dated 29 November 1984, executed by the Secretary for State of India, was for a period of 99 years commencing from 1st June 1984. As held earlier, the requirement under the Act is that facts and circumstances affecting chargeability must be specifically incorporated in the document, and the document must clearly show that the parties intended to incorporate them.

23. Upon perusal of recital (B), it is evident that what was conveyed in favour of the petitioner was a piece of leasehold land described secondly in the first schedule annexed to the conveyance deed. It was necessary for the petitioner to have explicitly stated in the instrument that the vendor's leasehold rights had been extinguished and that what was conveyed were only the reversionary rights. In cases where an instrument conveys a specific piece of land, in the absence of a specific recital regarding the transfer of reversionary rights, the chargeability will be on the transfer of leasehold rights in the immovable property. Since the

instrument in question creates an interest in the property in favour of the transferee, the authorities are justified in treating the transaction as a conveyance under Article 25 of the Act for the purpose of stamp duty assessment.

24. Lastly, this Court is called upon to adjudicate upon the issue of whether the presence of tenants occupying an area of 2241.18 square meters, instead of 1883.73 square meters, has a bearing on the determination of the market value of the subject property for the purposes of stamp duty assessment. It is a well-settled principle in law that immovable property subject to tenancies, particularly in cases where statutory protections are conferred upon tenants under rent control legislation, is to be valued differently from property that is vacant and free from such encumbrances. The rationale for this distinction emanates from the fact that the Maharashtra Rent Control Act, 1999, and analogous statutory enactments impose limitations upon the rights of landlords in respect of tenanted premises. Consequently, the market value of a property governed by such rent control statutes is invariably lower than that of an identical property unencumbered by tenancies.

25. The differential valuation arises due to several well-recognized factors, including but not limited to: (i) the statutory restriction on the landlord's ability to evict tenants, except on recognized grounds under the applicable legislation; (ii) the impediment posed to the redevelopment or alienation of the property free from existing tenancies; and (iii) the resultant diminution in market interest for such properties, as potential buyers would be cognizant of the statutory protection available to

tenants, making vacant possession uncertain. In view of these considerations, the portion of the property in question, to the extent that it is occupied by tenants enjoying statutory protection, cannot be assessed at the same open-market value as a comparable vacant property. Accordingly, it was incumbent upon the stamp authorities to duly recognize the fact that the subject property, to the extent of the area occupied by tenants, is burdened with such statutory constraints and, therefore, liable for appropriate valuation adjustments.

26. However, in determining the extent of depreciation in the market value of the property owing to tenant occupation, the fact-finding authority is required to engage in a comparative and analytical approach. This necessitates an examination of (a) transactions involving similarly situated properties in the same locality that are also subject to protected tenancies; (b) other local determinants, such as the likelihood of obtaining vacant possession, the nature and extent of statutory protections available to the tenants, the quantum of rent payable, and the procedural challenges in eviction proceedings. It is pertinent to note that, in the absence of a cogent and demonstrable basis establishing the precise extent of depreciation in market value due to tenant occupation, the competent authorities may justifiably rely upon the general ready reckoner rates prescribed for the region, with reasonable deductions being made in accordance with the applicable departmental circulars and prevailing valuation practices of the local authorities.

27. In the present case, the authorities have rightly considered the tenant-occupied portion to be 1883.73 square meters, rather than 2241.18 square meters, in consonance with the principles laid down by the Hon'ble Supreme Court in *Himalaya House Co. Ltd.* (supra). As elucidated in the said decision, it is incumbent upon the petitioner to set out, with due specificity, all questions affecting the chargeability of the document with the duty imposed thereon. In this context, it was necessary for the petitioner to precisely specify, in the instrument in question, the exact area under occupation of tenants if it intended to seek a deduction in market value on the basis of such tenancy-related encumbrances. The omission on the part of the petitioner to incorporate such particulars within the instrument precludes any claim for a downward revision in valuation. Accordingly, in the considered opinion of this Court, the authorities under the Maharashtra Stamp Act, 1958, have acted within the ambit of their statutory powers in directing the petitioner to discharge the requisite stamp duty as determined.

28. In view of the foregoing discussion, no ground for interference is made out.

29. The writ petition is, accordingly, dismissed. No order as to costs.

30. Pending interlocutory application(s), if any, stand disposed of.

31. At this stage, learned Advocate for the petitioner seeks extension of ad-interim relief. Considering the fact that the interim

order has effect of restraining Revenue Authorities from collecting revenue, no case for extension of ad-interim relief is made out. The prayer for extension of ad-interim relief is rejected.

(AMIT BORKAR, J.)