

Atul

**REPORTABLE**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
IN ITS COMMERCIAL DIVISION  
COMM EXECUTION APPLICATION NO. 22 OF 2016**

1. **PINAK BHARAT & Co.**
2. **BINA V ADVANI**  
Both having their address at Office  
No.323-A, Shah & Nahar Industrial  
Estate, A-I, Sitaram Jadhav Marg,  
Lower Parel, Mumbai 400013. ... **CLAIMANTS**

**~ VERSUS ~**

**ANIL RAMRAO NAIK**  
Flat No. 3, Amarkunj, 3rd floor, Veer  
Savarkar Marg, Shivaji Park, Dadar, Mumbai  
400028. ... **RESPONDENT**

**APPEARANCES**

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<b>FOR THE CLAIMANTS/ AUCTION PURCHASERS</b>	Mr Prerak A Sharma.
<b>DEPUTY SHERIFF</b>	Mr SD Chitgopekar.
<b>FOR THE COLLECTOR OF STAMPS, MUMBAI</b>	Smt Jyoti Chavan, AGP
<b>COLLECTOR OF STAMPS</b>	Mr Dadarao Datkar, present.

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**CORAM : G.S.Patel, J.**

**DATED : 27th March 2019.**

**ORAL JUDGMENT:**

1. In execution of a decree or an award, an immovable property is sold by public auction by this Court acting on its Original Side as an executing Court. The sale is effected in the regular course through the office of the Sheriff, and the auction sale is conducted in the usual manner, that is to say by obtaining a valuation, setting a reserve price, inviting bids by public advertisement, assessing those bids and then deciding in which bidder's favour, if any, the sale should be knocked down. A sale certificate is then issued by the Prothonotary & Senior Master, again in the usual course. That sale certificate must be stamped and registered — it is, after all, a document of title, or conveying title. When submitted for adjudication under the Maharashtra Stamp Act, how should the authority, the Collector of Stamps, assess the 'market value' of the property? Is he required to accept the value of the accepted bid, as stated in the court-issued sale certificate? Is he required to spend time and resources on an independent enquiry? Or is some of the available material on the record of this Court, and which underlies the auction sale, sufficient for his purposes? Is there a meaningful distinction to be drawn between sales by the government and government bodies at a predetermined price, which has to be accepted by the adjudicating authority as the market value, and a sale by or through a court? These are the questions that arise in this execution application.



2. A few background facts. The property in question, of about 1,821 sq mtrs, is CS No. 1514 of the Lower Parel Division, Final Plot No. 309 of TPS IV Mahim, at Rao Bahadur SK Bole Road, Dadar, near the Portuguese Church. It has, or had, a structure or structures standing on it. The entire property was the subject matter of three attempts at auction sales. The first two attempts failed. The Decree Holders, Pinak Bharat & Co & Bina V Advani, then offered a price of Rs. 15.30 crores. They held a decree in the amount of Rs. 9.39 crores. They submitted that they would set off their decretal claim against that offer, thus fully satisfying the decree, and deposit the balance. They were required to deposit about Rs. 5.40 crores. Their bid was accepted. They deposited the balance amount.

3. The order that I then made, consequent on the acceptance on 30th October 2018 required the Prothonotary and Senior Master to issue a sale confirmation certificate. This was obviously then to be lodged with the Collector of Stamps. There was a Sheriff's Report No. 76 of 2018 of 26th October 2018 (a few days prior) which specifically sought a direction to the Stamp Duty Authorities to register the sale certificate "on the basis of the auction price of Rs. 15.30 crores".

4. When the matter was mentioned yesterday, Mr Sharma on behalf of the auction purchaser said that the Collector of Stamps had valued the property at Rs. 155 crores. I asked the Collector to remain present in Court, observing that he could not sit in appeal over orders of this Court. Mr Dadarao Datkar, Collector of Stamps is present in response to that order. I have heard Ms Chavan on behalf of the Government, Mr Sharma on behalf of the auction

purchaser and also considered the submissions of Mr Chitgopekar, the Deputy Sheriff. To begin with, Ms Chavan says the earlier assessment was tentative or preliminary, without having all necessary information at hand. Now that additional material is available, including a confirmation that there were tenants, the market value has been reckoned again and is likely to be assessed in the region of about Rs.35 crores approximately.

5. How is the stamp duty to be assessed in such a situation? Article 16 of the Maharashtra Stamp Act reads thus:

Description of Instrument	Proper Stamp Duty
<p><b>16.</b> CERTIFICATE OF SALE (in respect of each property put up as a separate lot and sold) granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue Officer or any other officer empowered by law to sell property by public auction.</p>	<p>The same duty as is leviable on a Conveyance under clause (a), (b) or (c) as the case may be, of Article 25 on the market value of the property.</p>

6. Article 25, which is a lengthy entry, speaks of a conveyance of both movable and immovable properties. In relation to immovable properties, sub-clause (b) is the relevant clause. It provides the rates payable in relation to sales or conveyances of immovable properties. The rates specified are a percentage of the 'market value of the property'. The phrase '*market value of the property*' thus appears both in Article 16 and Article 25.

7. Chapter III of the Stamp Act deals with adjudication as to stamp. Section 31, the first Section in that Chapter, relates to adjudication as to proper stamps. For our limited purposes, it is sufficient to note that sub-clause (1) requires the Collector to

determine the duty with which the instrument presented to him is chargeable. Sub-section (2) speaks of material and evidence that may be required to be given to the Collector to enable him to arrive at his determination. It also says that he may refuse to process any such application unless that material has been given to him. Then sub-section (3) speaks of a situation where the Collector has reason to believe that the market value of the property that is the subject matter of the instrument has not been truly set forth in the instrument, he must determine 'the true market value of such property' as laid down in the Bombay [now Maharashtra] Stamp (Determination of True Market Value of the Property) Rules 1995. This would indicate that the Collector is not bound to accept as correct any value or consideration stated in the instrument itself. Should he have reason to believe that it is incorrect, he is to determine the true market value. He is to be guided by the Market Value Rules in doing so.

8. These Rules provide for various circumstances. Rule 3 require certain particulars to be stated in the instrument as prescribed in Section 28 of the Stamp Act. Rule 4 deals with annual statements of rates of the immovable property. We are not concerned with sub-rules (1) to (5) of Rule 4, but we are immediately concerned with an interpretation of sub-rule 6 and its various provisos. For convenience, I will reproduce these below:

“(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 immovable 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."

*(Emphasis added)*

9. Now what does this tell us? The first aspect is that once the registering officer has an instrument before him, he is required *to verify the market value of the lands and building*. In doing this, he is required to refer, in the first instance, to the annual statement of rates covered by sub-rules (1) to (5), as also the valuation guidelines issued periodically. Should he find the market value stated in the instrument to be below the market value so determined, he must then refer the matter to the Collector of the District for determination of the true market value of the property that is the subject matter of the instrument.

10. The three provisos however carve out important exceptions — and, more importantly, *fail* to carve out one all-important exception. We are not immediately concerned with the second and third provisos, so I will not deal with them any further.

11. The first proviso, however, tells us that where the property is sold or allotted by the Government or Semi-Government Bodies, Government Undertakings or a Local Authority ‘on the basis of the predetermined price’, then that value as determined by these bodies is to be *taken as* the true market value of the subject matter property. In other words, where the sale is by one of this government entities, then the adjudicating authority *must* accept the value stated in the instrument as the correct market value. He is not to make any further enquiry.

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).

15. 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, 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.

18. This schema is also the only one that maintains consistency between government-body sales at predetermined prices and court-supervised sales. Any other approach or interpretation that does not maintain parity between Court-supervised sales and sales by the government is anathema to public administration and without intelligible differentia. Moreover, at a practical level, this will ease the burden on the adjudicating authority in spending time and money in having to collect, obtain and assess independent material as to market value, an exercise that has already been done to the satisfaction of the court.

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 public

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 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.

20. Evidently this will only apply to a situation where the Court has actually obtained a fair market value of the property before confirming the sale. If there is no fair market valuation obtained by the Court, or no authenticated copy of a valuation is submitted

along with the sale certificate, then the adjudicating authority must resort to the usual provisions mentioned in the Rules and in the Act.

21. At a practical level it will thus be necessary for the Deputy Sheriff to ensure that on each occasion when a sale certificate is lodged for adjudication as to stamps, it is accompanied by an authenticated copy of the applicable valuation. That authentication will be done by the Prothonotary and Senior Master of the High Court at the time of issuance of confirmation of sale certificate and it is the sale certificate as accompanied by the valuation that will be taken up.

22. This is also consistent with Section 31(2) of the Stamp Act which permits the Collector to call for additional material and evidence in order to determine the fair market value. The court-obtained valuation is precisely in the nature of this additional material. The government need not spend time and money to call for it all over again.

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.

24. To facilitate this, every sale certificate lodged for registration will be accompanied by a copy of the applicable valuation (or, if there are multiple valuations, all such valuations most recent in time) authenticated by the Prothonotary & Senior Master.

25. In the present case, the valuation obtained was roughly in the region of more than Rs. 30 crores. A copy of that valuation report authenticated by the Prothonotary and Senior Master will be forwarded to the authority within one week.

26. Ms Chavan has one further submission. She says that the town planner's office routinely carries out valuations, and in all public auctions conducted by the Court, this is the valuation that should be used. The discretion of a court cannot be limited like this.

A court may use such a valuation, or it may prefer to use the services of one of the valuers on its panel, or may even obtain a valuation from an independent agency. That judicial discretion cannot be circumscribed on account of a Stamp Act requirement.

27. Ms Chavan states on instructions that the preliminary assessment is being revised *inter alia* on the basis that there were sitting tenants on the land. This has already been taken into account in the valuation that was obtained by the Court and the authority will thus proceed on the basis of the Court's valuation. The Prothonotary & Senior Master will issue an authenticated copy of the valuation within two weeks. The Deputy Sheriff will, within one week, furnish a copy of that valuation to the Prothonotary & Senior Master along with the original so the Prothonotary & Senior Master's authentication.

28. The order on the Sheriff's Report No. 76 of 2018 as regards prayer clause (d) will thus stand modified to this extent.

**(G.S. PATEL, J.)**