

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10400 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK Sd/-**

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Approved for Reporting	Yes	No
		No

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LHRS OF DECD. LAXMANSINHJI PRATAPSINHJI DESAI & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR MRUGEN K PUROHIT(1224) for the Petitioner(s) No. 1

MR NIKUNJ KANARA AGP for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**Date : 27/04/2026****JUDGMENT**

1. **Rule** returnable forthwith. Mr. Nikunj Kanara, learned Assistant Government Pleader, waives service of notice of Rule for and on behalf of the respondent No.1.

2. With the consent of the learned counsel appearing for the respective parties, the petition has been taken up for final hearing today.

3. By way of present petition under Articles 14 and 226 of the Constitution of India read with the provisions of the

Gujarat Stamp Act, 1958 (hereinafter be referred to as “the Act”), petitioners have prayed for the following reliefs :

“9 (A) This Hon’ble Court may be pleased to issue a writ of certiorari and/or a writ in nature or a writ in the nature of certiorari and/or any other appropriate writ, order or direction to hold and declare that the demand of deficit stamp duty and penalty by virtue of impugned notices dated 04th August, 2021, 20/27th September, 2021 and 06th April, 2023 at Annexure-A to the petition issued by respondent No.3 is without jurisdiction, authority to the Gujarat Stamp Act, 1958 and also may be to hold and declare that the impugned notices at Annexure-A to the petition are illegal, arbitrary, and violative of Article 14 of the Constitution of India and further may be pleased to quash and set aside the impugned notices at Annexure-A to the petition issued by respondent No.3;

(B) This Hon'ble court may be please to issue writ of prohibition to respondents authorities and restrain them from proceeding further with the impugn notices as the same is without jurisdiction and authority in law.

(C) Pending the admission, hearing and final disposal of this petition, this Hon'ble Court may be pleased to stay the further proceedings. initiated pursuant to issuance of impugned notices dated 04th August, 2021, 20/27th September, 2021 and 06th April, 2023 at Annexure-A to the petition issued by respondent No.3;

(D) Any other and further relief or reliefs to which this Hon'ble Court deemed fit, in the interest of justice; may kindly be granted;”

4. Brief facts giving rise to the present petition are that, the land bearing Final Plot Nos. 598, 693/1, 693/2, 693/3, 693/4 and 693/5 admeasuring in aggregate about 9621 sq. mtrs., situated in Town Planning Scheme No. 3/5 (varied) at Chhadvad Sim, Taluka Sabarmati, District Ahmedabad, originally belonged to late Shri Pratapsinhji Desai, grandfather of petitioner Nos. 1 and 2. The said land was

leased by the State Government on 27.03.1907/22.01.1908 for a period of 50 years for residential use with heritable and transferable rights, and constructions were put up around 1920. Upon expiry of the lease in 1958, representations were made for extension and permanent allotment. A registered partition deed dated 30.10.1972 was executed among the family members, whereby Final Plot No. 693/4 admeasuring 1161 sq. mtrs. fell to the share of Laxmansinhji Desai, father of the petitioners. After his demise on 20.08.2013, the said property devolved upon the petitioners and their names were duly mutated in the revenue records.

4.1 The State Government, by resolution dated 08.01.2007 read with corrigendum dated 02.03.2009, decided to grant the land permanently upon payment of 15% of the market value. Accordingly, the Collector by order dated 06.06.2015 directed payment of Rs. 16,00,02,041/- for all plots, which was paid proportionately by the concerned plot holders, including the petitioners, and thereafter by order dated 17.07.2015 the land was permanently allotted to the heirs of late Shri Pratapsinhji Desai on old tenure basis. The petitioners paid a total sum of Rs. 2,59,27,760/- towards their share including interest and rent, and no stamp duty was levied as the transaction was treated as an allotment and not a transfer or conveyance. However, subsequently, respondent No. 3 issued impugned notices dated 04.08.2021, September 2021 and 06.04.2023 demanding deficit stamp duty and penalty, purportedly based on audit remarks for the year 2018-19. The petitioners were not served with the said notices and became aware of the same only in April 2023 through a relative. The petitioners

have also executed a registered sale deed dated 20.07.2017 in respect of the said property.

4.2 Being aggrieved by the impugned notices dated 4th August 2021, 20/27th September, 2021 and 06th April, 2023 the petitioners have preferred present petition.

5. Heard Mr. Mrugen K. Purohit, learned counsel appearing on behalf of the petitioner and Mr. Nikunj Kanara, learned Assistant Government Pleader, appearing on behalf of the respondent.

6. Mr. Purohit, learned counsel for the petitioners has submitted that the impugned notices are illegal, bad in law, improper and contrary to the provisions of law and therefore, the same deserves to be quashed and set aside. He has submitted that respondent authority has erred in exercising the jurisdiction vested to him. He has submitted that the impugned notices issued by respondent No.3 herein in exercise of powers under Section 39(1)(b) of the Act demanding deficit stamp duty is without any authority in law and jurisdiction. He has submitted that the respondent authority could not have issued such demand notices almost after about six years based on their internal communication. He has submitted that the respondent No.3 could not have exercised the power under Section 39(1)(g) of the Act and the said power would only come into play where instrument has been impounded under Section 33 or required to be impounded under Section 32A of the Act and only then the Deputy Collector, Stamp Duty Valuation, has power to demand the stamp duty or penalty.

6.1 Mr. Purohit, learned counsel for the petitioners in support of his contention has relied upon Section 39(1)(b) as well as Section 31 and 32A of the Act, and submitted that impugned notices may be quashed and set aside and present petition may be allowed.

6.2 Mr. Purohit, learned counsel for the petitioners has submitted that the issue involved in the present petition is squarely covered by the decision of this Court rendered in case of **Nandadevi Dineshkumar Sharma vs. Chief Controlling Revenue Authority & Ors.** reported in [2006] 3 GLR 2535; the recent decision of this Court rendered in case of **Century Tiles Through Director Ganpatbhai Dahyabhai Patel vs. Deputy Collector & Ors.** in **Special Civil Application No. 6640 of 2008**, decided on 05.08.2022; the decision of the Division Bench of this Court rendered in case of **Bileshwar Industrial Estate Developers Pvt. Ltd. vs. State of Gujarat, Through Under Secretary** reported in [2013] 2 GLR 1434; and also the decision of this Court rendered in case of **Jayant Shantilal Sanghvi vs. State of Gujarat** in **Special Civil Application No. 12015 of 2016**. Over and above the grounds agitated in the memo of petition, Mr. Purohit, learned counsel for the petitioners has urged that the present petition be allowed and the impugned orders be quashed and set aside.

7. As against that, Mr. Nikunj Kanara, learned AGP appearing on behalf of the respondent has objected the present petition and submitted that the impugned notices issued by the respondent No.3 do not require any interference

as the impugned notices are completely legal, just and proper. He has submitted that the Deputy Collector Stamp Duty Assessment Department has after taking into account relevant act and law had issued the notices and therefore, the same may not be quashed and set aside and present petition may be dismissed.

8. I have heard the learned counsel appearing for the respective parties and perused the material placed on record. I have also gone through the impugned notices issued by the respondent No.3. The issue involved in the present petition is that whether the authorities are right and justified in initiating the proceedings, whether the respondent No.3 is justified in issuing notices without considering the settled legal principles enunciated by this Court, in response to which, the decision referred and relied upon by the learned counsel Mr. Purohit, in case of **Nandadevi Dinehskumar Sharma (Supra)**, wherein, this Court has considered the provisions of Rule 4 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 read with Section 32A of the Act with regard to levy of stamp duty, determination of market value of property on the basis of Jantri is merely probability and the hypothetical Jantri determines the market value of the property. This Court has further held that the market value is to be determined in accordance with the procedure and principles contained in Rule 4 and 8 of the Rules read with the provisions of the Act, and when any authority determines or proposed to determine higher market value then the said authority has to justify fixation of such higher market value and the authority has to assign reasons

for arriving at such higher market value and if, the authority assigns no reasons, no basis, no calculation for arriving at the higher market value, then such order is required to be quashed and set aside. This Court in case of **Jayant Shantilal Sanghvi (Supra)** in Special Application No. 12015 of 2016 has also observed on the same lines and quashed and set aside the order passed by the concerned authority.

8.1 In case of **Century Tiles Through Director Ganpatbhai Dahyabhai Patel (Supra)**, this Court has observed and held as under :

“5. On both the aforesaid counts, the case of the petitioner could be countenanced. On going through the document dated 07.03.2005, which is titled as “Memorandum of Deposit of Title Deeds”, it could be gathered that it provided for handing over to and deposit with the bank the title deeds of the property mentioned in the second schedule of the memorandum. The deposit was in connection with credit facility granted to the petitioner- Company.

5.1 This being the position emerging, the learned advocate for the petitioner could successfully rely on the decision of this court in the case of Sumesh Prahladbhai Bakshi vs. State of Gujarat being Special Civil Application No.15388 of 2013 decided on 04.07.2016, in which similar issue was dealt with and it was held that for attracting stamp duty in respect of document in the nature of Memorandum of Deposit of Title Deeds, Article 6 of Schedule-I of the Bombay Stamp Act, 1951 would apply. The authorities could not have adverted to Article 36 of Schedule-I for the purpose of levying stamp duty treating the documents to be a mortgaged deed. In the facts of this case, the decision of this court in Sumesh Prahladbhai Bakshi (supra) is required to be followed.

5.2 The second contention raised by the petitioner also merits acceptance which is that the authority under the Stamp Act, could not have exercised his powers unless there was an impounding of the document. A valid exercise of the powers under Section 33 read with Section 39 of the Act can only be

done after the instrument is impounded. Mere securing copy of the instrument is no impounding but original document has to be taken into custody to make it an act of impounding. It is well settled that it is only after the instrument is lawfully impounded, the jurisdiction would vest in the stamp authorities to proceed under Sections 33 and 39 of the Act for the purpose of charging document and assessing the same to stamp duty."

8.2 In case of **Bileshwar Industrial Estate Developers Pvt. Ltd. (Supra)**, the division Bench of this Court has observed and held as under :

"8. Provisions of sections 33 and 39 of the Act read as under :

"33. Examination and impounding of instruments.-

[1] Subject to the provisions of section 32-A, every person having, by law or consent of parties, authority to receive evidence and every person in charge of a public office, except an officer of police or any other officer, empowered by law to investigate offences under any law for the time being in force, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same irrespective whether the instrument is or is not valid in law.

[2] For that purpose, every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed;

"39. Collector's power to stamp instruments impounded.-

[1] When the Collector impounds any instrument under section 33, or receives any instrument sent to him under sub- section [2] of section 37, not being an instrument chargeable with a duty of twenty naye paise, or less, he shall adopt the following procedure :-

[a] if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be.

[b] if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the

property duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion therefor, whether such amount exceeds or falls short of five rupees ...”

9. *The plain reading of above two sections makes it clear that the powers under section 39 [a] comes in picture only when document is impounded as provided in section 33 read with section 32-A of the Act. Section 32-A is part of Chapter 3 of the Act, which deals with adjudication as to stamp; whereas sections 33 and 39 are part of Chapter 4 of the Act, which deals with instruments not duly stamped. But when reference of section 32 is in section 33 and reference of section 33 is in section 39, all such provisions practically speak and deal with the documents which are otherwise produced before any authority as an evidence and empowers such authority to impound such document if it appears to it in the performance of its functions that such instrument is not duly stamped. Though such provision of section 33 is subject to provision of section 32-A, which empowers the Registrar at the time of registration itself to initiate proceedings under such sections; as such provision was added only in the year 1982; it is certain and clear that the Deputy Collector, Stamp Duty Valuation, can impound the document only if it appears to him that such instrument is not duly stamped. Whereas in the present case, unfortunately, the Deputy Collector, Stamp Duty Valuation, has while issuing impugned show cause notice dated 2-11/4/2012 failed to appreciate that in fact the appellant has applied to him under section 31 calling upon him to determine the stamp duty and only after determination of the stamp duty by the Competent Authority, which is for higher amount than the actual sale price, the appellant has already paid such stamp duty.*

10. *Thus, it appears that the show cause notice was issued by the Deputy Collector, Stamp Duty Valuation, Ahmedabad, under the impression that the sale-deed dated 15/4/2008 had been impounded by the respondents. Though there is no scope to impound the document when it was presented for registration on the ground that it was not duly stamped. In the affidavit-in-reply it has not been disputed that after registration, the sale-deed or deed of sale has been returned back to the appellant. It was never required to be impounded by the respondents or the authorities concerned, since stamp duty was paid after obtaining certificate under section 31 of the Act. Such restriction is confirmed in section 32-A itself. Therefore, provision of section 39 [1][b] would only come into play where the instrument has been impounded under section 33 or required to be impounded under section 32-A of the Act and only then the the Deputy Collector, Stamp Duty Valuation, Ahmedabad, shall have power to demand stamp duty or penalty. The Act does not provide or grant any power to the Deputy Collector, Stamp Duty Valuation, to impound the document where*

the instrument is found sufficiently stamped and has been registered. In such a situation, there is no provision in the Act under which the the Deputy Collector, Stamp Duty Valuation, Ahmedabad, could issue show cause notice to the concerned party under section 39[1] [b]. The provisions of the Act are crystal clear, wherein though powers are vested in the Competent Authority to impound the instruments which are not duly stamped and to penalize the person who executes any instrument chargeable with duty without the same being duly stamped, the Competent Authority can take steps in only accordance with law and any action under law shall be restricted to the applicable law and the rules with reference to the instrument in question. Thereby, when the Competent Authority has selected wrong provision to initiate any proceedings, such act cannot be considered legal and within powers and jurisdiction of the Competent Authority.

11. *In the present case, at the cost of repetition it is to be recollected that the appellant has purchased the property in the auction from the DRT and even after issuance of sale certificate by DRT mentioning the sale price as Rs.4.51 crore, the appellant has paid stamp duty on the market value being Rs.5.49 crore as determined by the Competent Authority and present respondents themselves. Therefore, at later stage, after four years, the respondents are not permitted to reopen the issue only by making reference of some internal audit. It is also necessary to consider here that by passage of time, value of immovable property increases and, therefore, the value of the property at the time of audit cannot be considered, but market value and price of the property is to be considered as on the date of the auction and sale. Therefore, we are of the considered opinion that the Deputy Collector, Stamp Duty Valuation, has no power to issue impugned notice under section 39 [1][b] of the Act, and the notice issued by him is without jurisdiction.*

12. *The appellant has relied upon the judgment rendered in Special Civil Application No. 18319/2007 dated 23/2/2010 as well as reported judgment in the case of Nandadevi Dineshkumar Sharma v. Chief Controlling Revenue Authority reported in 2006 [2] GLH 775. Both the judgments are though of the Ld. Single Judge, specifically confirmed that the respondents have no authority either to impound the document or to reopen the valuation only upon the report of the auditor, under section 39 and that burden of proof to determine the market value is upon the Stamp Duty Valuation Authority and they have to justify fixation of higher market value. Therefore, in the present case, once certificate under section 31 was issued by the respondents, they should not be allowed to reopen their own valuation after four years to say that valuation of the property is higher, relying only upon the Auditor's report. Whereas the judgment rendered by the Hon'ble Apex Court in V N Devadoss v. Chief Revenue Control Officer reported in 2009 GLHEL SC 43655 [Civil Appeal No.*

3411/2009 decided on 8/5/2009] specifically confirmed and held that when any property has been purchased as per open offer, question of undervaluation does not arise. In the given case, when property was purchased under the directions of BIFR and AAIFR, the Hon'ble Apex Court has held that the market value is price of the property which can be fetched if sold in open market on the date of execution of instrument and, therefore, stamp duty is payable on such sale price when the Stamping Authority had issued a notice to the purchaser in that case, to pay the stamp duty as per market value."

9. In view of the foregoing reasons, discussion and position of law emerging, the present petition is allowed. The impugned impugned notices dated 4th August 2021, 20/27th September, 2021 and 06th April, 2023 issued by respondent No.3 are hereby quashed and set aside. Rule is made absolute.

SURESH SOLANKI

Sd/-
(HEMANT M. PRACHCHAK,J)