

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.207/2022

1. MR. SAMEER VASUDEV
MORAJKAR alias Samir Vasudeo
Morajkar, son of late Mr. Vasudev
Morajkar, age 45 years, married, business,
permanent resident H no. 640, Dhorli
Haturli, Mayem, Bicholim, Mayem North
Goa 403504 presently residing at H.
No.179/124, Alto Bella Vista, Sangolda,
Bardez-Goa Contact No. 9822488413,

2. MRS. PRITHVI B. DESSAI,
Daughter of Mr. Bhicu Vithal Dessai,
Age 28 years, unmarried, business,
Resident of FL-2 Diwan Residency,
New Vaddem Vasco, Mormugao,
South Goa 403802, contact no.
7798220908, Duly represented herein by
Lawfully constituted POA Holder Mr.
Sameer Vasudev Morajkar i.e. Appellant
no.1 Vide POA dated 11/12/2020, Bearing
reg. no. 3661/2020 registered before the
Notary Adv. Vikesh K. Harmalkar,
Mapusa Goa.

... PETITIONERS

Versus

1. STATE OF GOA, Through Chief
Secretary Having Office at Secretariat
Alto Porvorim Goa.
2. CIVIL REGISTRAR CUM SUB-
REGISTRAR, Office of the Civil Registrar
cum Sub-Registrar, Bardez North Goa at
Mapusa 403507.

3. COLLECTOR NORTH GOA, having office at Collectorate Building North Goa at Panjim

4. MRS. SERAFICA IMELDA MARIA D'SILVA alias Serafica I Dsilva alias Serafina Imelda Maria De Souza, D/o late Mr. Exequiel Caetano Francisco De Souza, wife of Chagas Joaquim D'Silva, age 75 years, married, retired,

5. MR. CHAGAS JOAQUIM D'SILVA, Son of late Mr. Rosario Xavier D'Silva, Age 82 years, married, retired, both resident of 11 Mi Casa, Central Avenue, Ram Krishna Mission Hospital, Santacruz (West), Mumbai, Maharashtra 400054, contact No. 9822144433, Through their POA holder, their nephew Mr. Luis Martires, Son of late Mr. Lourenco Justiniano Martires, Age 70 years, married, retired, Resident of F/2 Zodiac Park, Behind State Bank of India, Socorro, Alto Porvorim, Bardez-Goa, Contact No. 9822144433, Vide POA dated 4th August 2018, Executed before Vijay V. Rohra, Notary Public Greater Mumbai-(MAH) Govt. of Goa (India), Reg. Under Sr. No.259/2018.

6. DEPUTY TOWN PLANNER, Office of Senior Town Planner, TCP Department, North Goa District office 302, Government Building Complex, Mapusa Bardez Goa.

...RESPONDENTS

Mr J. P. Mulgaonkar, Senior Advocate with Mr K. T. Sawant, Ms Asmita Tirodkar and Ms D. Apte, Advocates *for the Petitioners*.

Mr D. J. Pangam, Advocate General with Mr N. Vernekar, Additional Government Advocate *for the State*.

CORAM: **M. S. SONAK, J.**

Reserved on: **25th JANUARY 2024**

Pronounced on: **29th JANUARY 2024**

JUDGMENT:

1. Heard Mr J. P. Mulgaonkar, learned Senior Advocate, who appears along with Mr K. T. Sawant, Ms Asmita Tirodkar and Ms D. Apte for the petitioners and Mr D. Pangam, learned Advocate General, who appears along with Mr N. Vernekar, learned Additional Government Advocate for the State.

2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

3. The challenge in this petition is to the following orders made under the Indian Stamp Act, 1899 (as amended in the State of Goa):-

(i) Judgment and Order dated 13.07.2021 made by the Additional Collector-I in AC-1/STP/1/2021;

(ii) Judgment and Order dated 10.01.2022 made by the Civil Judge, Senior Division, Mapusa in CAISA No.1/2021/C;

4. The aforesaid challenge arises in the following facts and circumstances:-

a) The petitioners executed and presented a Sale Deed dated 16.12.2020 before the Sub-Registrar of Bardez under Registration No.BRZ-1-3432-2020 on 20.12.2020. This sale deed is in respect of property measuring 1900 sq. mtrs. situated at Socorro, Bardez Goa and was valued at ₹3,600/- per sq. mtr. The appropriate stamp duty corresponding to this rate was also paid.

(b) The Sub-Registrar registered the sale deed but referred the issue of valuation to the Additional Collector-I, North Goa, for adjudication in terms of Section 47-A of the Indian Stamp Act (Goa Amendment) Act, 1899 (Stamp Act). This reference was made on 29.12.2020 upon recording satisfaction that at least five sale deeds from the same village of Socorro, Bardez, Goa had reflected much higher rates ranging between ₹5,106/- to ₹9,333/- per sq. mt.

(c) The Additional Collector-I, North Goa, by order dated 13.07.2021 and in terms of Section 47-A of the Stamp Act, determined the market value of the subject property at

₹7,195/- per sq. mt. However, after acknowledging that the subject property was in settlement (S3 Zone) and measuring 1900 sq. meters., deducted 25% and finally determined the market value at ₹5,397/- per sq. mt. Accordingly, the Additional Collector-I, North Goa, directed the petitioners to pay the deficit stamp duty of ₹2,22,043/-.

(d) The petitioners appealed to the Civil Judge, Junior Division at Mapusa, against the Additional Collector's order dated 13.07.2021. This appeal was dismissed on 10.01.2022.

(e) Hence, the petitioners instituted the present petition to challenge the Additional Collector's order dated 13.07.2021 and Civil Judge, Junior Division's order dated 10.01.2022 (impugned orders).

5. Mr Mulgaonkar submitted that the reference dated 29.12.2020 made by the Sub-Registrar of Bardez was incompetent, being in conflict with Rule 4(6) of the Goa Stamp (Determination of True Market Value of Property) Rules, 2003. He submitted that in this case, the annual statement of rates prepared by the Government under Rule 4(3) of the said Rules had specified the market rate at Socorro as ₹4,800/- per sq. mt. He submitted that this annual statement of rate further provided that for a property under S3 Zone measuring between 1001 and 4000 sq. meters., a deduction of 25% from the base value had to

be made to determine the true market value. Accordingly, Mr Mulgaonkar submitted that the rate of ₹3,600/- reflected in the subject sale deed represented the true market value in terms of the annual statement of rates published by the Government itself on 05.08.2020, i.e. hardly four months before the subject sale deed was presented for registration before the Sub-Registrar. Mr Mulgaonkar submitted that in such circumstances, the reference to the Additional Collector made on 29.12.2020 was incompetent and without jurisdiction.

6. Mr Mulgaonkar submitted that the rate of ₹3,600/- reflected in the subject sale deed was entirely in consonance with the Government's annual statement of rates published on 05.08.2020. He submitted that the burden was on the Sub-Registrar to show that the true market value was over and above that which was reflected in the Government's annual statement of rates published hardly four months before the subject sale deed was presented for registration. He submitted that since no such material was placed on record by the Sub-Registrar or otherwise discovered by the Additional Collector in inquiry, the impugned orders made by the Additional Collector and the Appellate Authority deserved to be set aside. Mr Mulgaonkar relied on *Ramesh Chand Bansal And Ors. v/s. District Magistrate/Collector Ghaziabad And Ors. - (1999) 5 SCC 62*, in support of his contentions.

7. Mr Mulgaonkar, without prejudice to the above contention, submitted that the Additional Collector failed to

comply with the provisions of Section 47-A of the Stamp Act r/w. Rule 5 of the 2003 Rules. He submitted that no proper inquiry was held, and even the material relied upon by the Collector to determine the rater of ₹5,397/- per sq. mt. was not furnished to the petitioners. He submitted that the sale statistics supplied by the Sub-Registrar, who did not even bother to attend the proceedings before the Additional Collector, was not relevant material, and based upon the same, this rate of ₹5,397/- per sq. mtr. could not have been determined by the Additional Collector. He, therefore, submitted that the determination by the Additional Collector was perverse and warranted interference.

8. Mr Mulgaonkar submitted that the Appellate Authority agreed with the petitioners' contention that the market rate at Socorro was ₹4,800/- per sq. mtr. and not ₹5,397/- per sq. mtr. However, the Appellate Authority refused to make a deduction of 25% even though the Government's annual statement of rates dated 05.08.2020 clearly provided for such a deduction because the subject plot was in the S3 Zone and measured over 1000 sq. mtrs. but was less than 4000 sq. mtrs. Mr Mulgaonkar submitted that this was an error apparent on the face of record because even the Additional Collector had made a deduction of 25% on the same basis, and the State never challenged such deduction.

9. Learned AG defended the Additional Collector's order dated 13.07.2021 based on the reasoning reflected therein. He submitted that the reference dated 29.12.2020 was entirely consistent with the provisions of Section 47-A(2) of the Stamp

Act. He submitted that in case of any conflict between the 2003 Rules and the Stamp Act, the provisions of the State Act would prevail as was held by the Hon'ble Supreme Court in *The S.T.O., Moradabad And Anr. v/s. M/s. H. Farid Ahmed & Sons - (1976) 1 SCC 245.*

10. Learned AG submitted that the Additional Collector held an inquiry in terms of Section 47-A r/w. the 2003 Rules. He submitted that the Additional Collector relied upon the sale statistics furnished by the Sub-Registrar. He submitted that the petitioners produced no material before the Additional Collector and only relied upon the annual statement of rates as if the same was sacrosanct and could not have been deviated from under any circumstances. He submitted that it was the settled position in law that such annual rate statements announced by the Government were not sacrosanct and it was open to the State (Revenue) or the parties presenting the instruments for registration to produce material and, based upon such material, establish the true market value of the property in question. Learned AG also referred to clause 2(16B) and Section 47-A of the Stamp Act to support his above contentions.

11. Learned AG relied upon *R. Sai Bharathi v/s. J. Jayalalitha And Ors. – (2004) 2 SCC 9, Jawajee Nagnatham v/s. Revenue Divisional Officer, Adilabad, A.P. And Ors. – (1994) 4 SCC 595 and Prasadnagar Co-operative Housing Society Ltd., Nagpur v/s. State of Maharashtra And Ors. - 2005 (2) Mh.L.J. 310* in support of his contentions.

12. The rival contentions now fall for my determination.

13. The first question that requires determination is whether the reference dated 29.12.2020 made by the Sub-Registrar under Section 47-A of the Stamp Act was competent.

14. The reference letter/order dated 29.12.2020 reads as follows:-

"No. CRSR/BARDEZ/2020/1547

Dated: 29/12/2020

*To,
The Additional Collector-I,
Office of the Collector,
North Goa District,
Collectorate Building,
Panaji, Tiswadi-Goa.*

*Sub.: Undervaluation of property-Referring document u/s
47(A) of the Indian Stamp Act 1899*

Sir,

A Deed of Sale, registered in this office on 28/12/2020, under Registration No. BRZ-1-3432-2020, is forwarded herewith under Section 47-A of the Indian Stamp Act, 1899 as found to be undervalued, since the rate per square meter of the property mentioned therein appears to be on the lower side as compared with the rate shown in other documents relating to the property situated in Socorro of Bardez Taluka.

That, by virtue of the said document, a property comprising admeasuring 1900 sq.mts. is sold for the price of Rs. 68,40,000/- (Rupees Sixty Eight Lakhs Forty Thousand only) that is at the rate of Rs. 3600/- approximate per sq.mts.

That the base rate of Village Socorro is Rs. 4800/- per Sq.mts.

Statistics about some past transactions of properties are given here under:

Nature of document	Reg. No.	Village	Market Value	Area in sq.mts.	Rate per sq.mt.
Deed of Sale	BRZ-1-1396-2020	Socorro	12,00,000.00	235	5106.00
Deed of Sale	BRZ-1-1351-2020	Socorro	28,00,000.00	527	5313.00
Deed of Sale	BRZ-1-1632-2020	Socorro	40,00,000.00	500	8000.00
Deed of Sale	BRZ-1-1724-2020	Socorro	63,00,000.00	675	9333.00
Deed of Sale	BRZ-1-2566-2020	Socorro	25,00,000.00	304	8224.00

Therefore, the document is hereby referred under Section 47 (A) of Indian Stamp Act, 1899 for further necessary action.

*Yours faithfully,
Sd/-
(Arjun S. Shetye)
Civil Registrar-cum-Sub Registrar, Bardez
Mapusa-Goa.”*

15. To appreciate the challenge, reference to the provisions of Section 47-A and Rule 4(6) of the 2003 Rules becomes necessary.

16. Section 47-A of the Stamp Act, as applicable in the State of Goa, reads as follows:-

"47A. Instruments of conveyance, etc. undervalued how to be dealt with-. (1) If the registering officer appointed under the Registration Act, 1908 (Central Act 16 of 1908) while registering any instrument of conveyance, exchange, gift, certificate of sale, deed of partition, power of attorney, deed of settlement or transfer of lease by way of assignment has reason to believe that the market value of the property which is the subject matter of conveyance, exchange, gift, certificate of sale, deed of partition, power of attorney, deed of settlement or transfer of lease by way of assignment has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under sub-section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance, exchange, gift, certificate of sale, deed of partition, power of attorney, deed of settlement or transfer of lease by way of assignment and the duty as aforesaid, and, thereupon, the difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may on his own motion or otherwise, within two years from the date of registration of any instrument of conveyance, exchange, gift, certificate of sale, deed of partition, power of attorney, deed of settlement or transfer of lease by way of assignment not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property as set forth in such instrument, which is the subject matter of conveyance, exchange, gift, certificate of sale, deed of

partition, power of attorney, deed of settlement or transfer of lease by way of assignment and the duty payable thereon and if after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2) and, thereupon, the difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered before the date of the commencement of the Indian Stamp (Goa, Daman and Diu Amendment) Act, 1975.

Provided that nothing in this sub section shall apply to any instrument of certificate of sale, deed of partition, power of attorney, deed of settlement or transfer of lease by way of assignment registered before the date of commencement of the Indian Stamp (Goa Amendment) Act, 2013.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3), may appeal to the Civil Judge, Senior Division and all such appeals shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

Explanation:- For the purposes of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the Civil Judge, Senior Division, as the case may be, such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance, exchange, gift, certificate of sale, deed of partition, power of attorney, deed of settlement or transfer of lease by way of assignment.”

17. Similarly, Rule 4 of the 2003 Rules, as applicable in the State of Goa, reads as follows:-

“4. Annual statement of rates of immovable property.- (1) The Collectors shall prepare an annual statement of rates showing average rates of lands, and a Working Group Committee constituted by the Government shall prepare an annual statement of rates showing average rates of built up properties, situated in every Taluka, Municipality or local body area in their respective district with the help of such other officers as may be appointed by the Government from time to time and submit the same for approval to the Government, latest by 31st October of each year.

(2) The data in respect of average rates of lands and built up properties in every Taluka, Municipality or local body area shall be arranged in the annual statement of rates as far as possible in ward-wise/zonewise manner in respect of urban properties and in respect of rural, developing and coastal properties, taluka-wise and villagewise, as the case may be. For the purpose of average annual rates, properties may be divided into groups, sub-groups or classes after taking into account the type of the land, types of construction, location and situational advantages or disadvantages of property. While working out such average rates the Collectors and the Working Group Committee shall take into account the established principles of valuation and any other details that are deemed necessary.

(3) The Government shall, by an order, notify annual statement of rates showing average rates of land and built up properties situated in every Taluka, under the heads "urban, developing, coastal, rural and similar areas" (hereinafter called the "annual statement of rates") as soon as they are made for the first time, and, thereafter, every year on the 1st day of January, taking into account the average rates of lands prepared and submitted by the Collectors and the Working Group Committee.

(4) (a) If the Government is not in a position to notify the annual statement of rates as mentioned in sub-rule (3) above, on the 1st day of January in any year due to any unforeseen administrative difficulties or otherwise, the rates mentioned in

the annual statement of rates for the year immediately preceding thereto shall continue to be in force as modified by interim orders to be similarly notified as and when deemed necessary, keeping in view the change in market rates of immovable properties.

(b) Pending the completion of preparation of the annual statement of rates as laid out in sub-rule (3) above, the Government may, by order, issue interim statement of rates by classifying the land and built up properties under different categories like municipal areas, developing areas, rural areas, coastal areas and other categories which shall remain in force till the coming into force of the annual statement of rates in terms of sub-rule (3) of rule 4.

(5) The Collectors and the Working Group Committee shall annually supply to the Registering Officers in the district, a copy of the above annual statement showing the average rates of lands and built up properties, as the case may be. Every registering officer shall cause a copy of such statement to be affixed at the notice board of the Registration Office.

(6) Every Registering Officer, shall, while registering any instrument produced before him for registration, verify the market-value of land and built up property from the above statement and if the market-value as stated in the instrument is less than the minimum value prescribed in the statement, he shall refer the same to the Collector of the District for determination of true market-value of the land/built up property which is the subject matter of the instrument and for determination of the proper duty payable thereon.

(7) All the Registering Officers shall, by the 30th of the following month, send to the Collector for revision of the annual statement of rates, in which consideration for the subject property is stated to be more than the notified annual statement of rates.

(8) All the Land Acquisition Officers (other than Collector) appointed under the Land Acquisition Act, 1894 (1 of 1894) or any other Act for the time being in force in respect of acquisition of lands and properties for public purpose shall,

whenever the amount of compensation awarded by them is higher than the rates in the annual statement of rates issued by the Government under this rule, send a copy of such award to the Collector for taking it into consideration while making revision of annual statement of rates, referred to in sub-rule (3), within 30 days from the date of payment of compensation.”

18. Mr Mulgaonkar stressed on Rule 4(6), which provides that every Registering Officer shall, while registering any instrument produced before him for registration, verify the market value of land and built-up property from the above statement and if the market value as stated in the instrument is less than the minimum value prescribed in the statement, he shall refer the same to the Collector of the District for determination of the true market value of the land/built-up property which is the subject matter of the instrument and for determination of the proper duty payable thereon. Mr Mulgaonkar argued that since the market value, as stated in the sale deed, was not less than the minimum value prescribed in the annual statement of rates, the Sub-Registrar was not at all competent to make a reference to the Collector. Accordingly, Mr Mulgaonkar submitted that the reference dated 29.12.2020 was incompetent, and the impugned orders made in such reference were nullities.

19. The reference order dated 29.12.2020 makes no reference to Rule 4(6) of the 2003 Rules. Instead, this reference order refers to Section 47-A of the Stamp Act as applicable in the State of Goa. Section 47-A(1) in terms provides that if the registering officer appointed under the Registration Act, 1908 (Central Act 16 of 1908) while registering any instrument of conveyance,

exchange, gift, certificate of sale, deed of partition, power deed of settlement or transfer of lease by way of assignment has reason to believe that the market value of the property which is the subject matter of conveyance, exchange, gift, certificate of sale, deed of partition, power of attorney, deed of settlement or transfer of lease by way of assignment has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

20. Therefore, on a plain reading of Section 47-A(1), it is seen that there is no restriction on the registering officer making a reference to the Collector for determination of the market value where he has reason to believe that the market value of the property which is the subject matter of the instrument has not been truly set forth in the instrument. Section 47-A neither makes any reference to the annual statement of rate prepared under Rule 4 of the 2003 Rules nor does it state that a reference under Section 47-A can be made only if the market value stated in the instrument is less than the minimum value prescribed in the annual statement of rates prepared by the Government. Therefore, by relying upon Rule 4(6) of the 2003 Rules, it would not be correct to hold that the reference dated 29.12.2020 made by the Sub-Registrar under Section 47-A of the Stamp Act was not competent.

21. Section 47-A of the Stamp Act and Rule 4(6) of the 2003 Rules operate in different spheres. The learned AG contended

that under Rule 4(6), if the registering officer, while registering an instrument, finds that the market value as stated in the instrument is less than the minimum value prescribed in the annual statement of rates, then the registering officer is bound to refer the matter to the Collector for determination of true market value. That does seem to be the import of Rule 4(6) of the 2003 Rules.

22. However, Section 47-A of the Stamp Act is not concerned with the rate reflected in the annual statement of rates notified by the Government under the 2003 Rules. A reference under Section 47A is competent where the registering officer “has reason to believe” that the market value of the property, which is the subject matter of the instrument, has not been truly set forth in the instrument. Thus, in a given case, though the market value set forth in the instrument is higher than the minimum value prescribed in the annual statement of rates published by the Government under the 2003 Rules, still, the registering officer, if he has reason to believe that the market value has not been truly set forth in the instrument, he can make a reference under Section 47A of the Stamp Act.

23. Unlike the provisions under Rule 4(6) of the 2003 Rules, there is no mandate as such cast upon the registering officer to make a reference no sooner it is found that the market value in the instrument is less than the minimum value prescribed in the annual statement of rates published by the Government under the 2003 Rules. The power under Section 47A is to be exercised

upon the registering officer having reason to believe that there has been undervaluation and that the market value reflected in the instrument does not truly set forth the market value of the property in question.

24. As noted earlier, provisions of Section 47A and Rule 4(6) operate in different spheres, and there is no conflict between the two. The two provisions can be harmoniously construed without doing any violence to each of the provisions. However, if the construction suggested by Mr Mulgaonkar is accepted, then some conflict might arise between the provision under Rule 4(6) of the 2003 Rules and Section 47A of the Stamp Act. In case of any conflict between the provision of any Legislative Act and the provisions contained in the Rules made thereunder, it is trite that the former would prevail and the latter would have to yield.

25. In *S.T.O. Moradabad (supra)*, the Hon'ble Supreme Court noted a conflict between Section 7(3) of the U.P. Sales Tax Act, 1948 and Rule 41(3) of the Rules under the said Act. The Court, on noticing such a conflict, held that it could not interpret the rule in a way so as to come into conflict with the Parent Act, in which case the Act would prevail. The Court held that the rule was only supplemental to the provisions of the Parent Act. This rule employed that whether the assessee filed a return or not, the assessing authority will have the power to make a provisional assessment. The Court, therefore, found no real inconsistency between Section 7(A) and Rule 41(3) of the Rules framed under

the said Act upon a harmonious construction of the two provisions.

26. Applying the principles explained in *S.T.O. Moradabad (supra)*, the provisions in Rule 4(6) of the 2003 Rules and Section 47A of the Stamp Act would have to be construed harmoniously. In any case, if the construction that results in a conflict is to be preferred, the provisions in Rule 4(6) of the 2003 Rules would have to yield to the provisions of Section 47A of the Stamp Act and not the other way around.

27. For the above reasons, Mr Mulgaonkar's first contention about the reference dated 29.12.2020 being incompetent will have to be rejected.

28. Mr Mulgaonkar's second submission focuses entirely on the annual statement of rates prepared by the Government on 05.08.2020 under Rule 4 of the 2003 Rules. This contention proceeds on the premise that this annual statement of rates is almost sacrosanct, and as long as the rate reflected in the instrument presented for registration is not less than the minimum prescribed under the annual statement of rates, the registering officer can make no reference under Section 47A, and consequently, the Collector has no jurisdiction to determine whether the rate reflected in the instrument corresponds to the true market value of the property. Such premise, with respect, is misconceived given the provisions of the Stamp Act, the 2003 Rules and the precedents on the subject.

29. The provisions of Section 47A of the Stamp Act inter alia provide that the stamp duty has to be paid by reference to the market value of the property which is the subject matter of the instrument which is sought to be registered. The expression "market value" has been defined under Section 2(16B) of the Stamp Act, and the same reads as follows:-

"(16B) "market value", in relation to any property which is the subject matter of an instrument, means the price which such property would have fetched if sold in open market on the date of execution of such instrument, or the consideration stated in the instrument, whichever is higher."

30. Thus, it is clear that the proper stamp duty payable on an instrument must be determined based on the market value of the property, which is the subject matter of the instrument. In the exercise of powers conferred by Section 75 of the Stamp Act, the Government has made the Goa State (Determination of True Market Value of Property) Rules, 2003 (2003 Rules).

31. Rule 4 of the 2003 Rules, as quoted above, requires the Collectors to prepare an annual statement of rates showing average rates of lands, and a Working Group Committee constituted by the Government which prepare an annual statement of rates showing average rates of built-up properties, situated in every Taluka, Municipality or local body area in their respective district with the help of such other officers as may be appointed by the Government from time to time and submit the

same for approval to the Government, latest by 31st October of each year.

32. Sub-Rule 3 of Rule 4 of the 2003 Rules provides that The Government shall, by an order, notify annual statement of rates showing average rates of land and built-up properties situated in every Taluka, under the heads "urban, developing, coastal, rural and similar areas" as soon as they are made for the first time, and, after that, every year on the 1st day of January, taking into account the average rates of lands prepared and submitted by the Collectors and the Working Group Committee.

33. Thus, the annual statement of rates is a sort of guideline which helps the registering authority to assess the true valuation of a transaction in an instrument. This statement gives the registering authority some material to test *prima facie* whether the description of valuation in an instrument is proper or not. The rate fixed in the annual statement of rates is not final but only a *prima facie* determination of the rate of the area concerned only to give a guideline to the registering authority to test *prima facie* whether the instrument has properly described the value of the property.

34. The rate reflected in the annual statement of rates under Rule 4(3) is neither final for the registering authority nor for the one subjected to pay the stamp duty. This rate does not take away the right of any person to show that the property in question is correctly valued. So also, it would not be correct to

hold that the rate reflected in the annual statement of rates is completely binding on the registering authority or that the registering authority cannot even make a reference to the Collector under Section 47A, where the rate in the instrument is more than the minimum rate reflected in the annual statement of rates for a particular area. If the registering authority has reasons to believe that there has been undervaluation, then, under Section 47A, the registering authority is very much competent to refer the matter to the Collector for determination of the true market value.

35. *Ramesh Chand Bansal (supra)* relied upon by Mr Mulgaonkar was concerned with the provisions of Section 47A (as introduced in U.P. in 1969) and the U.P. Stamp Rules, 1942. The provisions of Section 47A(1) of the U.P. Act were almost akin to the provisions contained in Rule 4(6) of the 2003 Rules as applicable in the State of Goa. Section 47A(2) was almost akin to the provisions of Section 47A(1) of the Stamp Act as applicable in the State of Goa. To avoid any conflict, the Legislature provided that the registering officer could exercise the powers under Section 47A(2) without prejudice to the provisions of Section 47A(1).

36. In the Indian Stamp Act as applicable in the State of Goa, there was no necessity to clarify that the powers under Section 47A (1) operated without prejudice to the provisions of Rule 4(6) of the 2003 Rules because it is trite that the provisions of the said Act would always prevail over any provisions in the rules made

under the said Act. Besides, as noted earlier, the two provisions operated in different spheres. There was no conflict between the provisions of Section 47A(1) of the Goa Act and Rule 4(6) of the 2003 Goa Rules upon a harmonious construction of the two provisions.

37. *Ramesh Chand Bansal (supra)* also explains that the object of the Indian Stamp Act is to collect proper stamp duty or conveyance on an instrument or conveyance on which such duty is payable. This is to protect the State's revenue. It is a matter of common knowledge that in order to escape such duty by unfair practice, many a time undervaluation of a property or lower consideration is mentioned in a sale deed. The imposition of stamp duty on sale deeds is on the actual market value of such property, not the value described in the instrument.

38. The Court explains that, thus, an obligation is cast on the authority to properly ascertain its true value for which the apparent tenor of the instrument does not bind him. He has to truly decide the real nature of the transaction and the value of such property. For this, the Act empowers an authority to charge stamp duty on the instrument presented before it for registration. The market value of a property may vary from village to village, from location to location and even may differ from the size of the area and other relevant factors. This apart there has to be some material before such authority as to what is the likely value of such property in that area. In its absence, it would be very difficult for such registering authority to assess the valuation of

such instruments. It is to give such support to the registering authority that Rule 340-A is introduced. Under this, the Collector has to satisfy himself based on various factors mentioned therein before recording the circle rate, which would, at best, be the *prima facie* rate of that area concerned.

39. The Court held that the circle rate is merely a guideline which helps the registering authority assess the true valuation of a transaction in an instrument. This gives him material to test *prima facie* whether the description of valuation in an instrument is proper or not. Section 47-A, introduced by the U.P. Act 11 of 1969, conveys how a registering authority is to deal in a case where there is a divergence in the valuation between what is described in an instrument and in the circle rate and that reading Section 47-A with the aforesaid Rule 340-A, it is clear that the circle rate fixed by the Collector is not final but is only a *prima facie* determination of the rate of the area concerned only to give guidance to the registering authority to test *prima facie* whether the instrument has properly described the value of the property.

40. The Court finally held that the circle rate under this rule is neither final for the authority nor to one subjected to pay the stamp duty. So far, sub-sections (1) and (2) are concerned; they are very limited in their application as they only direct the registering authority to refer to the Collector for determination in case the property is undervalued in such an instrument. The circle rate does not take away the right of such a person to show that the property in question is correctly valued as he gets an

opportunity in case of undervaluation to prove it before the Collector after the reference is made. This also marks the dividing line for the exercise of power between the registering authority and the Collector. In case the valuation in the instrument is the same as recorded in the circle rate or is truly described, it could be registered by the registering authority. Still, if it is undervalued in terms of sub-section (1) or sub-section (2), it has to be referred to and decided by the Collector. Thus, the circle rate, as aforesaid, is merely a guideline and is also indicative of a division of exercise of power between the registering authority and the Collector.

41. The Hon'ble Supreme Court reiterated the above position in the case of *R. Sai Bharathi (supra)*. The Court held that the guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus, the guideline value fixed is not final but only a *prima facie* rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of the property. The authorities cannot regard the guideline valuation as the last word on the subject of market value.

42. The Hon'ble Supreme Court further held that the scheme of the enactment and the Rules contemplate that guideline value will only afford a *prima facie* basis to ascertain the true or correct market value, with undue emphasis on the guideline value without reference to the setting in which it is to be viewed will obscure the issue for consideration. It is clear, therefore, that

guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken note of, if at all available, in respect of an area in which the property transferred lies.

43. *Jawajee Nagnatham (supra)* and *State of Punjab v/s. Muhabir Singh – (1996) 1 SCC 609* also explains that there is nothing sacrosanct about the guideline rates or, the circle rates, or the annual statement of rates prepared by the State Governments under the Rules framed under the Stamp Act. Such rates only give guidance to the registering authority to test *prima facie* whether the instrument has properly described the value of the property.

44. Therefore, upon considering the scheme of the Stamp Act, the 2003 Rules and the above precedents directly on the subject, Mr Mulgoankar's second contention about some sort of sacrosanctity of the rates reflected in the annual statement of rates prepared under Rule 4 of the 2003 Rules would have to be rejected.

45. Mr Mulgaonkar's third contention concerns mainly the proceedings before the Additional Collector on any reference under Section 47A of the Stamp Act.

46. Section 47A(2) of the Stamp Act provides that on receipt of a reference under sub-section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an inquiry in such manner as may be prescribed by rules

made under this Act, determine the market value of the property which the subject matter of conveyance, exchange, gift, certificate of sale, deed of partition, power of attorney, deed of settlement or transfer of lease by way of assignment and the duty as aforesaid, and, thereupon, the difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

47. Similarly, Rule 5 of the 2003 Rules provides for the procedure to be followed by the Collector of the District for determining the true market value of the property under Sections 31 and 47A of the Stamp Act. Rule 5 of the 2003 Rules reads as follows:-

“5. Procedure to be followed by the Collector of the District for determining true market- value of property under sections 31 and 47-A.- Where any instrument of the nature described in section 31, or as the case may be, in section 47-A,-

(a) is referred to the Collector of the District for determination of the true market-value of the property which is the subject-matter of such instrument and for the proper duty payable thereon, or

(b) where the Collector of the District on his own, proposes to examine the instrument under sub-section (3) of section 47-A for the purpose of satisfying himself as to the correctness of the market-value of the property which is the subject-matter of the instrument and for the proper duty payable thereon, the Collector of the District shall hold an inquiry and for that purpose follow the following procedure, namely:-

(i) Upon receipt of the reference or upon his deciding to proceed in the matter on his own, the Collector of the District shall issue a notice to every person by whom, and in whose favour, the instrument is executed, requiring every such person to submit, within thirty days from the date of service of notice upon him, his representation in writing, justifying the market-value of the property set forth in the instrument.

(ii) The Collector of the District may,-

(a) record the statement of the person on whom the notice has been served; or

(b) call for any information or record from any public office, officer or authority under the State Government or any local authority; or

(c) record statement from any member of the public, officer or authority under the State Government or any local authority; or

(d) call upon the parties to be present on the date specified in the notice and any such other dates as may be fixed by him from time to time and at the same time intimating that the matter would be heard ex parte if the party fails to appear on the due date.

(iii) On hearing the parties and after considering the objections, if any, and all the relevant factors and evidence placed before him, the Collector of the District shall pass a final order determining the true market-value of the property, the duty payable on the instrument and penalties, if any, imposed and communicate the order to the parties. Thereafter, he shall

take steps to collect the difference in the amount of stamp duty and the penalty, if any, as recovery of arrears of land revenue, if necessary.

(iv) A copy of the order together with the records received shall, thereafter, be returned by the Collector to the authorities or persons concerned for record.”

48. In this case, there could be no complaint that the Additional Collector issued notices to the Sub-Registrar who made the reference and to the petitioners and granted them thirty days time to make their representation in writing, justifying the market value of the property set forth in the instrument. The petitioners filed a detailed representation before the Additional Collector attempting to justify the valuation reflected in the Sale Deed dated 16.12.2020. The Sub-Registrar, apart from forwarding the sales statistics about past transactions of properties in Socorro, Bardez, Goa, did not produce any further material or did not make any representation before the Additional Collector.

49. Rule 5 of the 2003 Rules, as quoted above, refers to the issue of notice to every person by whom and in whose favour the instrument is executed, requiring such person to submit within thirty days of notice upon him his representation in writing, justifying the market value set forth in the instrument. Thus, it was for the petitioners to justify the market value of the property set forth in the instrument.

50. From the perusal of the petitioners' representation, it is clear that the petitioners did not bother to place any material before the Additional Collector to justify the market value reflected in the Sale Deed dated 16.12.2020. The petitioners also did not bother to produce any material to contradict the sales statistics submitted by the Sub-Registrar or to suggest how the sales statistics were not the instances of comparable properties. The entire representation proceeds on the basis that the annual statement of rates prepared by the Government under Rule 4 of the 2003 Rules is almost sacrosanct, and since the rate of ₹3,600/- per sq. mt. was in consonance with the minimum rate reflected in the annual statement of rates, the same should be accepted by the Additional Collector. Even in the written arguments filed by the petitioners, it was urged that the only point decided was whether the calculations made by the Sub-Registrar without taking into consideration the appendix to the annual statement of rates published by the Government on 05.08.2020 were correct or not.

51. Accordingly, this is not a case where the petitioners were denied any opportunity or that the Additional Collector failed to make any inquiry or consider the material placed before him for determining the true market value of the property, which was the subject matter of the Sale Deed dated 16.12.2020. The Additional Collector considered the sales statistics, which were in respect of sales from Village Socorro, Bardez, and Goa itself. All these sales statistics were in respect of the sale deeds executed and registered before 16.12.2020. Though these sale instances were in

respect of the plots ranging between 235 and 675 sq. meters., it is not as if the Additional Collector went by the maximum rate reflected or took into account the rate in respect of the smallest plot area. The Additional Collector went by the averages and concluded that the market value of a plot in Socorro village, Bardez, Goa, would be in the range of ₹7,195/- per sq.mtr. as of 16.12.2020.

52. The Additional Collector has not ignored the annual statement of rates but quite correctly concluded that the rate reflected therein did not preclude him from determining the true market value based on the material placed before him. Still, by following the annual statement of rates published by the Government on 05.08.2020, the Additional Collector made a deduction of 25% because the subject property was in the S3 Zone and measured between 1001 and 4000 sq. mtrs. This was in terms of the appendix to the annual statement of rates published by the Government on 05.08.2020, upon which even the petitioners relied by claiming that the same is quite sacrosanct. By this reasoning, the Additional Collector determined the market value of the property at ₹5,397/- per sq. mt. and directed the petitioners to pay the differential stamp duty of ₹2,22,043/-.

53. Now, merely because the Additional Collector could have adopted a better procedure for determining the market value or merely because the law of averages may not always accurately reflect the precise market value, no case is made out to interfere

with the Additional Collector's determination in the exercise of jurisdiction under Article 227 of the Constitution of India. In the exercise of such jurisdiction, this Court does not act as an appellate authority. Besides, it is not as if the procedure and methodology adopted by the Additional Collector were perverse or arbitrary or the decision-making process was vitiated for failure to comply with the principles of natural justice and fair play.

54. The petitioners, despite the opportunity, failed to produce any material to justify the value of the property as reflected in their Sale Deed dated 16.12.2020. The Additional Collector, based on the material placed by the Sub-Registrar before him and after taking some guidance from the annual statement of rates published by the Government on 05.08.2020, determined the market value of the property. Such a decision does not warrant interference in the exercise of judicial review under Article 227 of the Constitution of India.

55. Accordingly, for all the above reasons, Mr Mulgaonkar's third contention will also have to be rejected.

56. Mr Mulgaonkar's fourth contention concerns the order dated 10.01.2022 made by the Civil Judge, Junior Division at Mapusa (Appellate Authority), dismissing the petitioners' appeal against the Collector's order dated 13.07.2021. Now, Mr Mulgaonkar is right in his submission that the order of the Appellate Authority has certain flaws. However, in my opinion, such flaws do not constitute any sufficient cause for interference

with the Additional Collector's order dated 13.07.2021 or the conclusion reached therein.

57. The Appellate Authority has almost entirely focussed on the annual statement of rates dated 05.08.2020 and, based thereon, held that the market value of the subject property is ₹4,800/- per sq. mt. because this is the figure which was reflected in the said statement. The Appellate Authority failed to come into close quarters with the reasoning of the Additional Collector or even look into the material before the Additional Collector in the context of the sales statistics provided by the Sub-Registrar. If all this were looked into, then there would be no occasion to disturb the rate of ₹5,397/- determined by the Additional Collector. Further, the Appellate Authority, after relying upon the annual statement of rates dated 05.08.2020, refused to look into the appendix, which had clearly provided for a 25% deduction from such rate in case of a plot in S3 Zone having an area between 1001 and 4000 sq. meters.

58. Normally, in such a situation, the order of the Appellate Authority would have to be set aside, and the matter remanded to the Appellate Authority for reconsideration of the appeal. However, as noted earlier, in this case, the petitioners had produced no material whatsoever before the Additional Collector because the petitioners were convinced about the sacrosanctity of the annual statement of rates published by the Government on 05.08.2020. The petitioners' entire case was based on this statement of rates. Even before the Appellate Authority, most of

the arguments now advanced in this Court were not even advanced. Accordingly, no purpose would be served by a remand. The Additional Collector has not only considered the material that was available but further given the petitioners the benefit of the appendix to the annual statement of rates published by the Government on 05.08.2020. Accordingly, even the fourth contention of Mr Mulgaonkar will have to be rejected.

59. For all the above reasons, this petition is liable to be dismissed and is hereby dismissed.

60. The Rule is discharged without any order for costs.

M. S. SONAK, J.