

## **Guidelines for Determination of Market Value for Computing the Stamp Duty on a Sale Certificate – Bombay High Court**

Recently, the Bombay High Court in ***Pinak Bharat & Co. V. Anil Ramrao & Co.***, has laid down the general guidelines to arrive at the market value of a property to compute the stamp duty payable under the Maharashtra Stamp Act, on a sale certificate issued by the Court. It has been held that for computation of stamp duty on a sale certificate the market value of the property cannot be different from the market value recognised and accepted by the Court after obtaining a valuation of the property. Thus, the market value of the property will be the highest valuation of the property recognised and accepted by the Court for the purpose of sale or the sale price mentioned in the sale certificate, whichever is higher. In effect, it has been held that the Stamp Duty Authorities cannot sit in appeal over the orders of the Court.

**Facts:** In execution of a decree an immovable property was sold by the Bombay High Court (**Court**). The sale was affected by an auction sale. The decree holders Pinak Bharat & Co & Bina V Advani, offered a price of Rs.15.30 Crore. Their bid was accepted, and a sale certificate was issued in their favour.

A sale certificate being a document conveying title, requires to be stamped and registered. Accordingly, when the auction purchaser approached the Collector of Stamps, the property was assessed at Rs.155 Crore. However, after considering some additional material the market value of the property was re-assessed at Rs. 35 approximately.

**Issues:** The question that arose in the execution application was that: when the sale certificate is issued by inviting bids and obtaining the valuation of the property, how should the Collector of Stamps assess the market value of the property?

In other words, is the Collector of Stamps required to accept the valuation stated in the sale certificate issued by the Court or conduct an independent inquiry to assess the valuation of the immovable property?

**Judgment:** Before answering the question, the Court considered Article 16 of the Maharashtra Stamp Act (**Act**) which reads as follows:

<b><u>Description of Instrument</u></b>	<b><u>Proper Stamp Duty</u></b>
16. 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 the property by public auction.	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 <b><u>market value of the property.</u></b>

**Emphasis supplied**

It was observed that Article 25 referred to in Article 16 deals with a conveyance of movable and immovable property. However, the rates specified are a percentage of the 'market value of the property'. The phrase 'market value of the property' appear in both Article 16 and Article 25 of the Act.

Further, as per Section 31(3) of the Act, if the Collector of Stamps has reason to believe that the

market value of the property (the subject matter of the instrument) has not been truly set out, then he must determine '*the true market value of such property*' as laid down in the Maharashtra Stamp (Determination of True Market Value of the Property) Rules 1995 (**Rules**). Thus, the Collector of Stamps is not bound to accept the valuation stated in the instrument as correct and accurate.

As per Rule 4(6), once the instrument is presented for registration, the registering officer is required to verify the market value of the lands and building. If the registering officer finds the market value stated in the instrument below the market value, he is required to refer the matter to Collector of Stamps for determination of true market value of the property which is the subject matter of the instrument.

Notably, for the present purpose, the first proviso of Rule 4(6) carves out an exception in favour of Government or Semi Government body or a Government Undertaking or a Local Authority, the proviso reads as follows:

*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.*

In other words, where the sale is by one of the government entities, then the Collector of Stamps must accept the value stated in the instrument as the correct market value. No further inquiry is required to be made. Pertinently, the first proviso leaves out a sale through court.

The court-supervised sales 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. In a sale by public auction, there is

assurance of an open bidding process. To set the reserve price the Court always obtains a valuation. The reserve price set by the Court is generally close to the market value of the property. Given the same, it was observed that a court-supervised sale, especially by public action, should also stand on the same footing as government-body sales under the proviso to Rule 4 (6).

The Court observed that to maintain consistency in government-body sales at predetermined prices and court-supervised sales, the correct course for the Collector of Stamps would be 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 valuation which is the most recent of the valuation is to be accepted as the true market value.

**Analysis:** Considering the scheme of the Act, the Court held that it is not open for Collector of Stamps to inquire into the market value of the property, when the property is sold through Court by public auction by following the due process. The validity or very basis of the sale cannot be 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 the Court, which is impermissible and entirely beyond the remit of the Stamp Duty Authority.

However, the above proposition will only apply to a situation where the Court has 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 valuation is submitted along with the sale certificate, then the Collector of Stamps must resort to the usual provisions mentioned in the Rules and in the Act.

**Conclusion:** Thus, upon analyzing the situation the Court concluded by formalizing the following general guidelines:

- 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.*

*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.*

The aforesaid guidelines will be useful to determine of Market Value of an immovable property conveyed by a sale certificate for the purpose of computing the stamp duty and will thus bring about some degree of certainty to such matters.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*