

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.03.2023

PRONOUNCED ON : 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)Nos.106 of 2020 & 166 of 2023

and

CMP(MD).No.1841 of 2023

1.J.Suseela ...Appellant C.M.A(MD).No.106 of 2020

2.Jeyablan ... Appellant C.M.A(MD).No.166 of 2023

Vs

1.The Tamil Nadu Principal Revenue Control Officer
Cum Inspector General of Registration
Chennai-28

2.The Special Deputy Collector
Stamp Duty
Office of District Collectorate
Thanjavur

3.The Joint Sub Registrar No.1
Thanjavur

....Respondents in both appeal

PRAYER in CMA(MD).No.106 of 2020:- Civil Miscellaneous Appeal
filed under Section 47-A (10) of the Indian Stamp Act, to call for the

records and set aside the order passed by the 1st respondent in Ref.No.Pa.Mu.46882/N5/2007 dated 13.10.2010 confirming the order of the 2nd respondent in Ref.No.Ci.Pa.No.1355/2005-A1 dated 20.07.2007.

PRAYER in CMA(MD).No.166 of 2023:- Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899 r/w Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules R.9(5)(a) and Order 43 Rule 1 (U) of C.P.C, to call for the records and set aside the order passed by the 1st respondent in Ref.No.46880/N5/2007 dated 16.06.2010 confirming the order of the 2nd respondent in Ref.No.Ci.Pa.No.1353/2005-A1 dated 20.07.2007.

For Appellants : Mr.V.K.Vijayaragavan
in both appeals

For Respondents : Mr.N.GA.Natraj
Government Advocate
in both appeals

COMMON JUDGMENT

The present appeals have been filed by the husband and wife who have purchased the adjacent properties challenging the orders passed by the Inspector General of Registration under Section 47-A(5) of the Indian Stamp Act, 1899.

CMA(MD).No.106 of 2020:

2.The appellant had purchased the agricultural land measuring 99 cents in T.S.No.1356/1 and 1356/2 by way of registered sale deed dated 27.03.2004 at the rate of Rs.6350/- per cent. As per Government records, the lands have been classified as Punja lands. After registration, the Sub-Registrar had referred the document under Section 47-A of the Indian Stamp Act, 1899 to the Special Deputy Collector (Stamps) for determination of market value of the lands and for payment of deficit stamp duty.

3.The Special Deputy Collector (Stamps) determined the value of the property at the rate of Rs.160/- per sq.ft. According the said authority, he relied upon the inspection report has arrived at a finding that the lands have to be valued at the rate of per square feet.

4.The appellant herein had filed an appeal before the Chief Revenue Controller and the Inspector General of Registration. The Inspector General of Registration had sought for a report from the Special Deputy Collector (Stamps). As per the report of the Special Deputy Collector (Stamps), the town survey number is located $\frac{3}{4}$ kilo meter away from the residential area located in Adakara Street. In the

said report, it was also recorded that on the western side of the property, Christian cemetery is located. On the eastern side, the cremation ground of Hindus is located. On the southern side, the cremation ground of Muslims namely Tharka is located. The area is in a highly insanitary condition and the sewage water stagnation is also there. Though the lands are agricultural lands, now they are vacant.

5.A report was submitted by the District Registrar after inspection to the effect that there are no housing plots, commercial establishment or residential area in and around the survey number. Since there are cemeteries and burial ground around the property, there is no likelihood of developing the said property as a residential area in the near future. That apart, the lands are 3 feet below the main road and it is used as a dumping yard. Though the report of the Special Deputy Collector (Stamps) and the report of the District Registrar are referred to in the impugned order, the Inspector General of Registration proceeded to increase the market value of the property to Rs.200/-per sq.ft considering the fact that they remained as vacant land and they are likely to be used in future for better purpose. This order is under challenge in the present appeal.

CMA(MD).No.166 of 2023:

6.The appellant had purchased 40 cents of lands in T.S.No. 1356/1A and 1356/1B at the rate of Rs.7,500/- per cent by way of a registered sale deed dated 11.07.2005. The Special Registrar had referred the document for fixation of correct market value and payment of deficit stamp duty to the Special Deputy Collector (Stamps) under Section 47-A of the Act. The Special Deputy Collector (Stamps) has passed an order on 20.07.2007 fixing the market value at the rate of Rs.160/- per sq.ft. Challenging the said order, the appellant herein had filed an appeal before the Inspector General of Registration and the Appellate Authority had passed an order on 16.06.2010 confirming the order of fixation of Rs.160/- per sq.ft.

7.In the impugned order, the Appellate Authority has referred to the report of Special Deputy Collector (Stamps) and the District Registrar which disclosed that there are cemeteries and burial grounds around the disputed property and there is a stagnation of sewage water and dumping of waste materials is taking place in the property. Though the property was originally an agricultural land, now it remains a vacant land. Considering the fact that the property in dispute is located just $\frac{3}{4}$ kilo

meter from Adakara Street and it reminds as a vacant land, the Appellate Authority has fixed the market value at Rs.160/- per sq.ft. This order is under challenge in the present appeal.

Discussion:

8.Since the common issues have arisen for consideration and the properties are located adjacent to each other, being purchased by the husband and wife, the appeals are tagged together and common submissions were made on either side.

9.The learned counsel for the appellants had contended that even as per the report of the District Registrar and the Special Deputy Collector (Stamp), the properties in dispute are surrounded on three sides by cemeteries and burial grounds belonging to the three different religions. Therefore, there is no immediate scope for development of the said property.

10.The learned counsel for the appellants had further contended that the market value of the property has to be determined by the authorities only based upon the classification of the lands and the purpose of the land for which it is put to use on the date of registration of the sale deed. The authorities have no power whatsoever to decide the

market value of the property based upon the potential value of the property to be developed into house plots in future.

11.The learned counsel had further contended that as far as CMA.No.106 of 2020 is concerned, the Original Authority had fixed the value at Rs.160/- per sq.ft. The land owner had filed the appeal challenging the said fixation. In the said appeal, the Appellate Authority had enhanced the same to Rs.200/- per sq.ft. The authorities have no power whatsoever to enhance the market value of the property in the appeal filed by the land owner. There was no indication whatsoever that the authority is exercising his suo motu power for enhancing the market value. The land owner was not put on notice that the Appellate Authority is attempting to increase the market value.

12.The learned counsel for the appellants had relied upon a Division Bench Judgment of our High Court reported *in 2018-3-L.W. 516 (Sundaram Medical Foundation Vs.Inspector General of Registration, Santhome High Road, Chennai and others)* to contend that when no reason is recorded by the Appellate Authority for enhancing the market value, the Appellate Authority is not justified in invoking the

suo-motu power to modify or vary the order passed by the Original Authority.

13.The learned counsel had relied upon a judgment of the Hon'ble Supreme Court reported *in 2012 (1) CTC 556 (State of Utter Pradesh & others Vs. Ambrish Tandon and another)* to contend that merely because a property is being used for a commercial transaction at a later point of time may not be relevant criterion for the purpose of calculation of stamp duty. Nature of user is relatable to date of purchase and it is relevant for purpose of calculation of stamp duty.

14.The learned counsel had further relied upon a judgement of the Hon'ble Supreme Court reported *in 2012-3-L.W.606 (Rajendran Vs. The Inspector General of Registration, Chennai and others)* to impress upon the Court that the Appellate Authority has no power to enhance the market value of the property, while considering the appeal preferred by the land owners, without recourse to Section 47-A(6) of the Act within the time provided under the Act.

15. The learned counsel had further contended that the property in dispute is located at the fag end to Adakara Street and even as per the

report, it is $\frac{3}{4}$ kilo meter away from the residential area in the said street. Therefore, the authorities were not right in taking into consideration the market value that is prevailing in the residential area located in the said street. There are no residential houses or any other constructions nearer to the properties in dispute and the report also points out that across the road still cultivation activities are going on. Therefore, the learned counsel for the appellants had prayed for allowing the appeals and to set aside the orders passed by the Appellate Authority and to return the documents.

16.The learned Government Advocate appearing for the respondents had contended as follows:

(i).The property in dispute is located facing Adakara street and therefore, the authorities were right in arriving at a finding that the market value meant for the said street would equally apply to the property purchased by the appellants herein

(ii).Though the property in dispute is surrounded on three sides by cemetery and burial grounds of three different religions, there is a lay out in the nearby survey number which would clearly indicate that the present property is having a potential of being formed a lay out. He relied

upon the encumbrance certificate to show that the adjacent survey numbers have been sold on square feet basis.

(iii).He further placed his reliance upon the Field Report said to have been submitted by the Special Deputy Collector, Thanjavur on 11.05.2007. As per the said report, the property in dispute is falling within the municipal limits and there are houses here and there and therefore, the properties covered under the sale deeds cannot be considered to be agricultural properties. Hence, he prayed for sustaining the orders passed by the Appellate Authority in both the appeals.

17.I have considered the submissions made on either side and perused the materials available on record.

18.The wife has purchased 99 cents in Survey Nos. 1356/1 and 1356/2 by way of a registered sale deed dated 27.03.2004 which has culminated in C.M.A(MD).No.106 of 2020. A perusal and the order of the Original Authority does not disclose any reason whatsoever for fixing the value of the property per square feet. The Appellate Authority has called for a report from the Special Deputy Collector (Stamps) and from the District Registrar. Both their reports clearly point out that the property in dispute is surrounded on three sides by cemetery and burial

grounds belonging to three different religions. The report also points out that there is stagnation of sewage water and the property is used as dumping yard when they have inspected the property. The report further indicates that the property in dispute is located $\frac{3}{4}$ kilo meters away from the residential area located on Adakara Street. In the said report, it has been pointed out that across the road, still agricultural activities are being carried on.

19.The Appellate Authority has proceeded to enhance the market value from Rs.160/- to Rs.200/- per sq.ft without assigning any reason whatsoever. It is an admitted fact that the Appellate Authority has not exercised his suo motu power or put the land owner on notice that he is attempting to exercise his suo motu power. As rightly pointed out by the learned counsel for the appellants, as per the judgement of our High Court reported in ***2012-3-L.W.606 (Rajendran Vs. The Inspector General of Registration and others)***, the Appellate Authority will not have any power whatsoever to enhance the market value of the property while considering the appeal filed by the land owner.

20.Admittedly, in the present cases, the Appellate Authority has not taken recourse to Section 45-A(6) of the Act. Therefore, the

enhancement made by the Appellate Authority from Rs.160/- to Rs.200/- clearly illegal and not legally sustainable.

21.The Original as well as the Appellate Authority were not right in fixing the value of the property in square feet when the lands have been purchased at the rate of Rs.6,350/- per cent. Though it has not been stated in so many words, it could be deduced from the order that the authorities were under the impression that the lands are having potential value of being converted into a house site in future. The authorities have been carried away by the fact that this is located in Adakara Street, though $\frac{3}{4}$ kilo meter away from the residential locality.

22.As rightly contended by the learned counsel for the appellants, the Hon'ble Supreme Court in its judgement reported in **2012 (1) CTC 556 (State of Uttar Pradesh & others Vs. Ambrish Tandon & another)** has held that merely because the property is being used for commercial purpose, at a later point of time, it cannot be a relevant factor for the purpose calculating the stamp duty. The Hon'ble Supreme Court further held that the nature of user of land is relatable only to the date of purchase.

23. The Division Bench of our High Court in a judgement reported ***in 2015 SCC Online Mad 13855 (Special Deputy Collector (Stamps) Vs. Thajunnisa and others)*** in Paragraph No.9 has held as follows:

9.It is to be borne in mind that the Deputy Inspector General of Registration's Report dated 22.03.2002 does not indicate any conclusion which was arrived at to the effect that the Respondents/Petitioners lands in question were not agricultural lands. Just because the lands in question are having the potential of being converted as house sites in future, the authorities in this regard cannot allow their imagination to run riot or to indulge in assumptions, presumptions, surmises and conjectures etc., in the considered opinion of this Court....”

24. Therefore, the property being purchased as an agricultural land, just because the agricultural activities are not being carried out, it can never be considered to be a house side. Considering the fact that the property is being surrounded on three sides by cemeteries and burial grounds belonging to three different religions, the presumption of authorities that there is likelihood of said property being converted into housing site in the near future is also without any basis whatsoever. Therefore, the order of the Original Authority as well as the Appellate Authority fixing the market value at the rate of per square feet

considering it to be a housing site, is not legally sustainable and the same is liable to be set aside.

25.In CMA.No.166 of 2023, the appellant had purchased the agricultural lands of 40 cents in T.S.No.1356 /1A and 1356/1B by way of a registered sale deed dated 11.07.2005 at the rate of Rs.7,500/- per cent. The Original Authority has treated it as house sites and fixed the market value at the rate of Rs.160/- per sq.ft and the same has been confirmed by the Appellate Authority. This property is adjacent to the property purchased by the appellant in CMA.No.106 of 2020. Even as per the report of the Special Deputy Collector (Stamps) and the District Registrar, this property is also surrounded on all three sides by cemeteries and burial grounds. Therefore, in view of the discussion in CMA(MD).No.106 of 2020, this Court is of the view that the Original Authority as well as the Appellate Authority have erroneously fixed the market value on square feet treating it as a house site.

26.In view of the above said deliberations, the orders of the Original Authority and the Appellate Authority in both the appeals are set aside and the Civil Miscellaneous Appeals are allowed. The Joint Sub-Registrar No.1, Thanjavur is directed to return the documents

forthwith to the respective purchasers. No costs. Consequently,
connected miscellaneous petition is closed.

30.03.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The Tamil Nadu Principal Revenue Control Officer
Cum Inspector General of Registration
Chennai-28

2.The Special Deputy Collector
Stamp Duty
Office of District Collectorate
Thanjavur

3.The Joint Sub Registrar No.1
Thanjavur

4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

CMA(MD).No.106 of 2020 & 166 of 2023

R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
C.M.A(MD)Nos.106 of 2020 & 166 of 2023
and
CMP(MD).No.1841 of 2023

30.03.2023