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CMA No.1861 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1861 of 2022
and CMP No.13499 of 2022

1.D.Loganathan

2.D.Munirathinam

..Appellants/Land owners

.Vs.

The Tamil Nadu Chief Revenue Controlling
Officer and Inspector General of Registration
100, Santhome High Road
Chennai 600 028.

..Respondent/Suo motu Authority

Prayer : Civil Miscellaneous Appeal filed under Section 47 A (10) of the Indian Stamp Act, 1899, to set aside the order proceedings No.56779/E1/2016 dated 7.6.2022 passed by the respondent.

For Appellants : Mr.N.Manoharan

For Respondent : Mr.A.Edwin Prabakar
State Government Pleader
Asst.by
Mr.V.Ramesh
Government Advocate



JUDGMENT

This Civil Miscellaneous Appeal has been filed against the impugned order dated 7.6.2022 passed by the respondent in exercising the suo motu powers under Section 47A(6) of the Indian Stamp Act, 1899 (hereinafter referred as 'the Act').

2. The petitioners jointly purchased the subject property through a registered sale deed dated 29.10.2013. The sale deed was registered as Document No.9717/2013, by the Sub Registrar, Gudiyatham. At the time of registration, the Sub Registrar had directed the petitioners to pay the stamp duty at Rs.76,464/- per cent when the guideline value was prevailing at the rate of Rs.12,775 per cent. Besides, the petitioners also paid the registration charges. Thereafter, the Special Deputy Collector initiated proceedings under Section 47A(2) of the Act and directed the petitioners to pay deficit stamp duty of Rs.32,186/- and the registration charges of Rs.4,600/- by order dated 13.3.2014. This order was complied with by the petitioners and thereafter, the original sale deed was also released in favour of the petitioners.

3. After nearly 4 ½ years, the respondent issued a notice dated 5.3.2018, exercising powers under Section 47A(6) of the Act. The petitioners were directed to show cause as to why the stamp duty must not be fixed at the rate of Rs.350/- per sq.ft. This notice became a subject matter of challenge in W.P.No.7717 of 2018. The Writ Petition was allowed by an order dated 1.3.2021 mainly on the ground that



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the petitioners were not given any opportunity to submit their objections and therefore there is violation of principles of natural justice. This Court also made it clear that it will be left open to the respondent to initiate proceedings under Section 47A(6) of the Act and proceed further in accordance with law.

4. Pursuant to the above order, the respondent issued a notice dated 18.10.2021. This notice was once again put to challenge in W.P.No.25790 of 2021. This Court dismissed the writ petition and directed the petitioners to submit their explanation within a period of two weeks for the notice that was issued by the respondent. In the light of the above order, the petitioners submitted their objections dated 9.12.2021 and had also appeared for enquiry before the respondent. The respondent through the impugned order dated 7.6.2022 has fixed the value of the land at Rs.175 per sq.ft and directed the petitioners to pay the deficit stamp duty and registration expenses within 60 days. This order has been put to challenge in this appeal filed under Section 47A(10) of the Stamp Act.

5. Heard Mr.N.Manoharan, learned counsel for the appellants and Mr.A.Edwin Prabakar, learned State Government Pleader for the respondent.

6. The primary ground that was raised by the learned counsel for the petitioners is that the respondent nowhere in the impugned order has indicated as to how the interests of the revenue is being affected. It was further contended that



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the respondent has gone ahead and fixed the rate at Rs.175/- per sq.ft mainly on the ground that the property will be converted as house sites in future. The learned counsel submitted that as on the date when the sale deed was executed, the property in question was an agricultural land. That should be the criteria while deciding the issue and after nearly 9 years, the respondent cannot assume that the lands have not been put to use and therefore it will be utilised as house sites. The learned counsel in order to substantiate his submissions, relied upon the Division Bench judgment of the this Court in **Sundaram Medical Foundation .v. Inspector General of Registration and Ors** reported in **MANU/TN/2676/2018**. The learned counsel also relied upon the Full Bench judgment of the Allahabad High Court in **Pushpa Sareen v. Sate of U.P** reported in **2015 (2) MWN (Civil) 129**.

7. Per contra, the learned State Government Pleader appearing on behalf of the respondent submitted that the guideline value at the relevant point of time in the year 2013 was Rs.350/- per sq.ft, and whereas the rate has been fixed at Rs.32/- per sq.ft and therefore, there was obviously a loss of revenue which impelled the respondent to exercise the power and jurisdiction under Section 47A(6) of the Act. The learned State Government Pleader submitted that the petitioners had given their explanations on 30.3.2018, 9.12.2021 and 18.3.2022 and all these explanations were considered and only thereafter, the impugned order was passed by the respondent. Therefore, it was contended that sufficient opportunity was given to the petitioners and thereafter the order was passed. The learned State Government



Pleader relied upon the judgment of the Apex Court in the case of **The Inspector General of Registration, Tamil Nadu and Ors v. K.Baskaran** in **Civil Appeal No.2587 of 2020, dated 15.6.2020** and submitted that while exercising the suo motu power under Section 47A(6), it is always left open to the authority to collect the information from the concerned authority before passing the final orders. In the instant case, the respondent before passing the order has relied upon the report submitted by the District Registrar, who conducted an inspection and submitted a report. The respondent took that into consideration and even though the guideline value at the relevant point of time was Rs.350/- per sq.ft, the respondent had fixed the value only at Rs.175/- per sq.ft. This fixation of value is reasonable and the same does not require the interference of this Court. Accordingly, the learned State Government Pleader sought for the dismissal of the appeal.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. On carefully going through the scheme of the provisions under Section 47A of the Act, it is seen that there is a marked difference between the scope of power exercised under Section 47A(5) of the Act and Section 47A(6) of the Act. The power that is exercised under Section 47A(5) of the Act is more in the nature of an appeal filed against the order passed under sub Section (2) or sub Section (3) of Section 47A of the Act. However, while exercising the power under Section 47A(6),



the prerequisite for passing the order must be that the order that was passed under sub Section (2) or sub Section (3) of Section 47A is prejudicial to the interests of revenue.

10. The scope of the power under Section 47A(6) was dealt with by the Division Bench of this Court in Sundaram Medical Foundation case referred supra. The relevant portions are extracted hereunder:

18. Undoubtedly, as per Section 47-A (6) of The Indian Stamp Act, 1989, the first respondent is conferred with suo motu powers to review, vary, modify or set aside an order passed by his subordinates, if it is shown that by reason of such order passed by his subordinates, under [Section 47-A \(2\)](#) and [47-A \(3\)](#) of The Indian Stamp Act, interest of the revenue is prejudiced. For arriving at such conclusion, the first respondent has to make an enquiry or cause his subordinates to make such enquiry to gain information before hand that the market value of the property, on the date of registration of the instrument, was either under valued or not properly valued befitting the guideline value of the property.

19. The principal object with which [The Indian Stamp Act, 1899](#) was enacted is to ensure generation of revenue and to protect the interest of revenue by adopting fiscal measures. For achieving the objects of this Act, certain yardsticks have to be adopted to ensure that the interest of the revenue is not in any manner prejudiced by reason of under quoting the value of a property or improper valuation of the property. [Section 47-A \(2\)](#) and [47-A \(3\)](#) of the Act empower the authorities under the Act to cause appropriate enquiry, if, they have



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reason to believe that interest of revenue is in any way prejudiced by reason of under valuing the property or improperly valuing the property while registering an instrument before the competent registration authority. On the contrary, [Section 47-A \(6\)](#) of the Act empowers the Inspector General of Registration to cause suo motu enquiry if he was of the opinion, after arriving at a subjective satisfaction, that interest of revenue is prejudiced by reason of any order passed by his subordinates in exercise of the powers conferred on them under [Section 47-A \(2\)](#) and [47-A \(3\)](#) of the Act. In other words, for invoking the powers conferred under [Section 47-A \(6\)](#) of the The Indian Stamp Act, the Chief Controlling Authority/ Inspector General of Registration has to record his subjective satisfaction that by reason of an order passed by his subordinates, interest of revenue is prejudiced or affected. Thus, by and large, the Act confers power upon the authorities under the Act largely to ensure that interest of revenue is fully and adequately protected. It is needless to mention that the suo-motu powers conferred on the Inspector General of Registration/Chief Controlling Revenue Authority can be exercised only on examination of the records of any proceedings under this Act and after arriving at a subjective satisfaction that the order passed by his subordinate is erroneous and he considers such an order passed is prejudicial to the interest of the revenue. Thus, only upon arriving at a subjective satisfaction as regards the prejudice caused to the interest of the revenue, the Inspector General of Registration can invoke the powers conferred under [Section 47-A \(6\)](#) of The Indian Stamp Act.

20. In the present case, a sale deed was presented for registration by the appellant on 11.09.2002 in which the appellant has valued the property at Rs.526/- per square feet and the total value of



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the property was arrived at Rs.4,68,00,000/-. According to the appellant, the guideline value of the property, at the time of presentation of the sale deed dated 11.09.2002 itself was Rs.325/- per square feet, however, the market value of the property was fixed at Rs.526/- per square feet. In spite of the same, upon registration of the instrument, the third respondent doubted the value indicated thereon and therefore, he referred the instrument to the second respondent, as contemplated under [Section 47-A](#) of The Indian Stamp Act for determination of the correct market value. The second respondent, after conducting an enquiry, enhanced the market value from Rs.536/- per square feet to Rs.625/- per square feet, whereby the appellant was called upon to pay additional deficit stamp duty. The appellant also paid the sum of Rs.10,01,000/- being the differential stamp duty payable on the instrument on 08.11.2002. Notwithstanding the above, the first respondent, in exercise of his suo motu powers conferred under Section 47-A (6) of The Indian Stamp Act, 1989 has proposed to enhance market value and accordingly, by the order dated 06.10.2008, enhanced the market value from Rs.625/- per square feet to Rs.1,250/- per square feet. However, no reason was assigned as to how the interest of revenue is prejudiced by reason of the order passed by the second respondent enhancing the market value of the property to Rs.625/- per square feet.

21. On perusal of the order dated 06.10.2008, we find that the first respondent has not assigned any reason as to what prompted him to enhance the market value of the land from Rs.625/- to Rs.1,250/- per square feet. Absolutely, there is no material to show that the first respondent has arrived at a subjective satisfaction that interest of revenue has been prejudiced by reason of the order passed by the



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second respondent in determining the market value of the property. The order passed by the first respondent is bereft of any material particulars and it was mechanically passed. The first respondent also did not take any effort to compare the documents that might have been registered during the period when the appellant had presented the sale deed dated 11.09.2002. In fact, in the impugned order, the first respondent had discussed about the opportunity given to the appellant on various dates and the submissions made by the Legal Officer of the appellant as against the proposal to enhance the market value. However, no where, the first respondent has discussed as to what was the prevailing guideline value or market value at the time of presentation of the sale deed dated 11.09.2002 and whether the valuation of the property disclosed in the sale deed dated 11.09.2002 reflects the then prevailing guideline value. The first respondent also did not refer about any other instrument presented for registration in respect of the same locality during the relevant time. The first respondent also did not cause any enquiry, as required under Section 47-A (6) of The Indian Stamp Act, 1989. After discussing about the factual matrix of the case, in the impugned order it is only stated that the property is located in a prominent locality and therefore fixing the guideline value at Rs.1,250/- per square feet is proper. The relevant portion of the order passed by the first respondent can usefully be extracted:-

(Editor: The text of the vernacular matter has not been reproduced.)

22. It is evident that the first respondent has merely stated that the property in question is situated in close proximity to Jawaharlal Nehru Road and therefore, it is desirable to fix the market value of the property at Rs.1,250/- per square feet. In our opinion, such reasons



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assigned by the first respondent cannot be sustained. When suo motu powers are exercised by the first respondent, as contemplated under [Section 47-A \(6\)](#) of The Indian Stamp Act, he has to satisfy himself that interest of the revenue has been prejudiced by reason of any order passed by his subordinates without considering the under valuation or improper valuation of the market value in the instrument presented for registration. Merely because a property is situated in close proximity to an arterial road, it is not sufficient for the first respondent to enhance the market value of the property that prevailed on the date of presentation of the instrument especially when there is no reason recorded by the first respondent that the market value of the property indicated in the instrument is far below than the guideline value maintained by the third respondent. Therefore, we feel that this is not a fit case where the first respondent is justified in invoking his suo motu powers to modify or vary the order passed by the second respondent.

11. A careful reading of the above judgment shows that Section 47A(6) of the Act empowers the Inspector General of Registration to initiate suo motu enquiry if he is of the opinion that the interest of the revenue is prejudiced by reason of any order passed by his subordinates in exercise of their powers under sub Section (2) or sub Section (3) of Section 47A of the Act. Therefore, the condition precedent for invoking Section 47A (6) is that the respondent must arrive at a subjective satisfaction as regards the prejudice caused to the interest of the revenue and the same must be reflected in the order passed. In the absence of the same, the order cannot be sustained. In other words, the order that is passed under Section 47A(6)



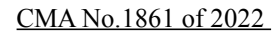
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of the Act is not akin to an order passed under Section 47A(5) of the Act. The legislature has thought it fit to impose an additional requirement while passing the order under Section 47A(6) of the Act. In the absence of the same, there will be no difference between the order passed under Section 47A(5) and an order passed under Section 47A(6) of the Act. This must be borne in mind while dealing with the impugned order that has been passed in this case.

12. on carefully reading the order passed by the respondent, it is seen that the respondent has merely extracted the facts of the case and the earlier proceedings which were challenged by way of writ petitions before this Court. When it came to the reasoning, the respondent after relying upon the report of the District Registrar, has only assigned the following reason:

பிரஸ்தாப ஆவண இடம் தனித்துணை ஆட்சியர் (முத்திரை) -ஆல் நிலமாக நிர்ணயிக்கப்பட்டு இருந்தாலும், இதில் விவசாயம் ஏதும் நடைபெறவில்லை இவ்விடம் பயர் செய்ய லாயக்கற்ற இடமாக உள்ளது. வருங்காலத்தில் மனை பிரிவு ஏற்பட வாய்ப்புள்ளது. ஆவணப்பதிவு நாளில் புல எண்ணிற்கு வழிகாட்டியில் மனை மதிப்பு உள்ளது. தனித்துணை ஆட்சியர் (முத்திரை) நிர்ணயம் செய்த மதிப்பு பொருத்தமற்றதாக உள்ளது. மேற்படி மனைக்கு சதுரடி ரூ.150/- முதல் ரூ.175/- கூரை நிர்ணயம் செய்யலாம் எனவும் பரிந்துரைக்கப்பட்டுள்ளது. பதிவுப்புள்ளி விவரங்கள், கோப்பில் உள்ள ஆதாரங்கள், ஆகியன கவனமுடன் பரிசீலிக்கப்பட்டன. பிரஸ்தாப ஆவண இடத்தை ஒட்டியுள்ள புல எண்கள் மனையிடமாக உள்ளது. ஆவண சொத்திற்கும் வழிகாட்டியில் மனை மதிப்பு உள்ள நிலையில், இவ்வாவண சொத்திற்கு சதுரடி 1-க்கு ரூ.175/- என மதிப்பு நிர்ணயம் செய்து ஆணையிடப்படுகிறது.

13. A careful reading of the above reasoning shows that the respondent



14. The second issue that has to be gone into is the basis on which the respondent has taken the decision. The sale deed was executed in the year 2013. The inspection was conducted by the District Registrar just before the order was passed by the respondent. This means that the inspection was conducted after nearly 9 years. The report shows that no agricultural activities are taking place and the land has become useless for agricultural purposes. This determination in the year 2022 will not have any consequence since at the time of fixing the rate, what has to be seen is the status of the property as on the date of the execution of the sale deed. The determination cannot be on the basis of the presumption of future prospective use of the property.



15. The Full Bench of the Allahabad High Court had an occasion to deal with this issue in the case of Pushpa Sareen referred supra. The relevant portions are extracted hereunder:

25.The true test for determination by the Collector is the market value of the property on the date of the instrument because, under the provisions of the Act, every instrument is required to be stamped before or at the time of execution. In making that determination, the Collector has to be mindful of the fact that the market value of the property may vary from location to location and is dependent upon a large number of circumstances having a bearing on the comparative advantages or disadvantages of the land as well as the use to which the land can be put on the date of the execution of the instrument.

26.Undoubtedly, the Collector is not permitted to launch upon a speculative inquiry about the prospective use to which a land may be put to use at an uncertain future date. The market value of the property has to be determined with reference to the use to which the land is capable reasonably of being put to immediately or in the proximate future. The possibility of the land becoming available in the immediate or near future for better use and enjoyment reflects upon the potentiality of the land. This potential has to be assessed with reference to the date of the execution of the instrument. In other words, the power of the Collector cannot be unduly circumscribed by ruling out the potential to which the land can be advantageously deployed at the time of the execution of the instrument or a period reasonably proximate thereto. Again the use to which land in the area had been put is a material consideration. If the land surrounding the property in question has been put to commercial use, it would be improper to hold that this is a circumstance which should not weigh with the Collector as a factor which influences the market value of the land.



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27. The fact that the land was put to a particular use, say for instance a commercial purpose at a later point in time, may not be a

relevant criterion for deciding the value for the purpose of stamp duty, as held by the Supreme Court in *State of U.P. and others vs. Ambrish Tandon* and another¹¹. This is because the nature of the user is relateable to the date of purchase which is relevant for the purpose of computing the stamp duty. Where, however, the potential of the land can be assessed on the date of the execution of the instrument itself, that is clearly a circumstance which is relevant and germane to the determination of the true market value. At the same time, the exercise before the Collector has to be based on adequate material and cannot be a matter of hypothesis or surmise. The Collector must have material on the record to the effect that there has been a change of use or other contemporaneous sale deeds in respect of the adjacent areas that would have a bearing on the market value of the property which is under consideration. The Collector, therefore, would be within jurisdiction in referring to exemplars or comparable sale instances which have a bearing on the true market value of the property which is required to be assessed. If the sale instances are comparable, they would also reflect the potentiality of the land which would be taken into consideration in a price agreed upon between a vendor and a purchaser.

16. In the case on hand, the respondent seems to have gone on the presumption that the land has not been put to agricultural use and it has become unfit for agricultural use and therefore, it will be converted into a housing plot. This reasoning on the part of the respondent is not a relevant criteria for deciding the



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value for the purpose of stamp duty. I am in complete agreement with the above judgment rendered by the Allahabad High Court in this regard.

17. In the light of the above discussion, this Court finds that the impugned order passed by the respondent suffers from patent illegality which requires the interference of the Court. Accordingly, the impugned order of the respondent dated 7.6.2022, is set aside and this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

01.04.2024

Index : Yes
Speaking Order/Non-Speaking Order
Neutral citation : Yes
KP

To

The Tamil Nadu Chief Revenue Controlling
Officer and Inspector General of Registration
100, Santhome High Road
Chennai 600 028.

Copy to:-

The Section Officer
VR Section, High Court,
Chennai.



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