



C.M.A(MD)No.1042 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
12.07.2024	22.08.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1042 of 2014 and
M.P.(MD).Nos.1 to 3 of 2014

Saranathan Academy of Higher Education
Represented by its Secretary,
S.Ravindran,
Venkateswara Nagar,
Panjappur, Tiruchirappalli-620 012.

... Appellant

Vs.

1. The Inspector General of Registration /
Chief Controller of Revenue Authority,
Santhome, Chennai.
2. The Special Deputy Collector (Stamps)
Collectorate Campus,
Trichy.
3. The Sub Registrar,
Registration Department,
K.Sathanur, Trichy.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 47-A (10) of the Indian Stamp Act, 1899, against the order, dated 27.08.2014, passed in Pa.Mu.No. 50753/N4/2013 by the 1st respondent.

For Appellant : Mr.T.Antony Arul Raj
For Respondents :Mr.C.Baskaran
Additional Advocate General
assisted by Mr.M.Muthumanikkam
Government Advocate



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JUDGMENT

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The Civil Miscellaneous Appeal is preferred against the order dated 27.08.2014 passed by Inspector General of Registration.

2. The brief facts are that the appellant is a Registered Society having Educational Institution. The Society had purchased properties under three sale deeds and the details are given below:

S. No.	Document Number and measurement	Valuation stated in the document
1	Doc.No.1327/2013 1 acre 20 cents (Per acre Rs.54,88,333/-)	Paid for site Rs.65,86,000/- Building-Rs.30,14,000/- Total Rs.96,00,000/-
2	Doc No. 1328/2013 24 acres 49½ cents (Per acre Rs.54,88,333/-)	Paid for site Rs.13,44,37,000/- Building-Rs.09,05,63,000/- Total Rs.22,50,00,000/-
3	Doc. No.1329/2013 14 acres 39 cents (Per acre Rs.54,88,333/-)	Paid for site Rs.07,89,77,000/- Building-Rs.29,33,14,000/- Electrical equipment-Rs. 3,63,59,000/- Mechanical equipment-67,50,000/- Total Rs.41,54,00,000/-

3. The sale deeds were referred to Special Deputy Collector (Stamps) under section 47-A, wherein an order dated 10.09.2013 was passed fixing the Rs.



190/- per square feet. Aggrieved over the same the Society had preferred an appeal to the 1st respondent Inspector General of Registration. After perusing the documents and the report from the concerned authorities, the 1st respondent had passed the impugned order confirming the order passed by the 2nd respondent. Aggrieved over the same the present Civil Miscellaneous Appeal is preferred.

4. The primary contention of the appellant is that the valuation adopted by the respondents is not based on any comparative statistical data but instead based on their own arbitrary estimate. The total purchase of property is 40 acres, in which 37 acres still retains its agriculture character. Only in 3 acres there is building and the same is an abortive industrial venture and even now the construction is not complete and the construction occupies only 10% of land. Moreover, the area is surrounded by water bodies on three sides and the entire locality remains undeveloped. When the appellant had purchased larger extent of 40 acres and there are no plots of small size, hence the land ought to be valued as “agricultural land per acre” and not “residential area per square feet”. Moreover, the appellant had included the value of movable like generators, power panel and electrical materials that are lying with contractors in “other value” in Doc. No. 1329/2013 amount to Rs.4,31,09,000/-, which would show the transparency in the sale and the appellant never intended to undervalue the property for registration



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purposes.

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5. The said contention of the appellant is refuted by the Learned Additional Advocate General and submitted that the rate is fixed as Rs.190 per square feet after taking all the factors into consideration. Infact earlier the report of the inspection authority suggested Rs.350/- per square feet, but after considering the construction in a portion of land and agricultural nature of the remaining lands the 2nd respondent had fixed the same as Rs.190/- and the same is confirmed by the 1st respondent. Further the Learned Additional Advocate General had relied on the Circular dated 06.01.2007 issued by the 1st respondent. In the said Circular it has been clarified how to fix the value for lands when the nearby plots are registered as housing plots but the land is sold as agricultural. The relevant portion is extracted hereunder:

“14) சார்பதிவாளரால் மனையிட மதிப்பில் கணக்கிட்டு அனுப்பப்பட்டு விவசாய நிலம் என நிலத்தின் தன்மை உள்ள நிலையில் விவசாய நில மதிப்பினை நிர்ணயம் செய்ய தனித்துணை ஆட்சியருக்கு பதிவுத்துறை தலைவர் ஆணை எண்: 48497/ எல்1/2003/12.11.2003-ல் ஆணையிட்டிருந்தும் தனித்துணை ஆட்சியரிடமிருந்து மனை மதிப்பாக சந்தை மதிப்பு நிர்ணயம் செய்யும் நிலையில் மு.ச.பிரிவு 47ஏ(5)-ன் கீழ் மேல்முறையீடு செய்யப்படும் வழக்குகளில் இட ஆய்வு அறிக்கைகள் கோரப்படும் போது விசாரணை அலுவலர்கள் இவ்விவரங்களை கண்டறிந்து பிரஸ்தாப சர்வே எண்ணிற்கு மனை மதிப்பு ஏற்பட்ட விதம் மற்றும் அதிலுள்ள பதிவுப் புள்ளி விவரங்கள் ஆகியவற்றை தெளிவாக விளக்கி அறிக்கை அனுப்ப வேண்டும். ஒரு சர்வே எண்ணில் மனை மதிப்பில்



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பதிவுகள் இருந்து தற்போது விவசாய நில மதிப்பு பரிந்துரை செய்யப்படும் நிகழ்வுகளில் பதிவுத்துறை தலைவர் எண்: 67623/எல்1/92 நாள் 20.01.1993-ன் படி (வழிகாட்டி புத்தகம்) அச்சர்வே எண்ணின் உட்பிரிவில் உள்ள மொத்த விஸ்தீரண விவரம் அதில் மனையாக பதிவு செய்யப்பட்டுள்ள விஸ்தீரண விவரம் தற்போது விவசாய நிலமாக பதிவு செய்யப்படும் விஸ்தீரண விவரம் ஆகியவை தெரிவிக்கப்பட வேண்டும். இத்தகைய நிகழ்வுகளில் அடங்கல் பதிவேட்டின் வடிப்பு கட்சிக்காரர் மூலம் பெற்று அனுப்ப வேண்டும். பரிந்துரை செய்யப்படும் விவசாய நில மதிப்பு எந்த சான்றாவணத்தின் அல்லது வேறு ஆதாரத்தின் அடிப்படையில் பரிந்துரைக்கப்படுகிறது என்பதையும் தெரிவிக்க வேண்டும்.”

It is seen that the circular states that when the nearby plots are registered as housing plots, if there is a recommendation to register the land in question as agricultural land, then the factors to be taken for consideration are that the total extent of land in the said survey number, total extent of land registered as housing plots, total extent of agricultural land which is registered in the document in question and other relevant evidence. In the present case the report of the respondent states that 80% of the lands in the survey numbers are still used as agricultural lands, some portion of the land was taken by the National Highways. The report has not stated that there are housing plots. In such circumstances, even according to the aforesaid circular, the abandoned construction in 3 acres of land cannot be taken as a factor to value the remaining 40 acres of land property. Infact the said Circular is favouring the appellant.



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6. The Learned Additional Advocate General also relied on another Circular issued in Lr.No.61270 / N1/2010 dated 10.11.2010 for “fixing the market value by the Chief Controlling Revenue Authority under sections 47A(5) and 47A(6) based on the reports of Enquiry Officers”. In the said Circular it is stated that when the District Revenue Officers / Special Deputy Collectors (Stamps) had received reference under section 47A(1), then the said officer ought to physically inspect the particular property and then fix the market value. In the said Circular it has been stated that the said District Revenue Officers / Special Deputy Collectors (Stamps) are not physically inspecting the lands, but simply arriving at a hypothetical figure as market value merely with the help of a calculator at the rate of 80% or 85% of the referred proposed value. Hence it was directed to fix “true market value” after inspecting the land in question. It further states that though the guideline value is one of the indicators to fix the market value (but guideline value would be revised only after substantial period of time, by that time the true market value would have been increased) but the said authorities are always fixing the market value lesser than the guideline value. It is for this purpose it has been advised to carry on inspection of the property, thereafter to fix the market value. Again, this Circular is favouring the appellant. Had the appellants inspected the property they would have seen 37 acres are left as agricultural land (barren land) and only 3 acres there is building. Further in the sale deed it has been recorded the



age of the building as “four years”, which would indicate that there was construction but the said building was abandoned and not put to use at all. In other words, the seller had tried to put up building in the agricultural land, but the same was abandoned.

7. The said Circular further states that the guideline value would be fixed after considering the facts whether the area is underdeveloped, railway tract is nearby, burial ground is nearby etc and hence while determining the market value the same need not be considered again. In the present case the Special Deputy Collectors (Stamps) vide his proceedings dated 10.09.2013 had recorded that,

“There are no housing plots in the land in question. Further had stated that in and around the land in question there are only agricultural lands. If the land is developed by laying roads, street lights, pathway, drainage, water, park etc. then in future the land would fetch more value. Even if the 40 acres of land is developed, then 40 % of land would be allocated for the roads and other purpose and hence only remaining portion can be valued”.

From the above proceedings of the Special Deputy Collectors (Stamps), it is evident that the land is underdeveloped and not developed as housing plots. If so, then as per the said Circular the valuation ought to be lesser one and not as stated by the respondents in the impugned order. Further if the land is divided into housing plots, then only rate ought to be fixed based on square feet. But when the



land is still retained as agricultural lands / barren land, the valuation ought to be on acre basis only. As stated earlier, in the present case 80% of the lands in the survey numbers are still used as agricultural lands, some portion of the land was taken by the National Highways and there are housing plots at all. Therefore, this Court is of the considered opinion that the impugned order ought to be interfered.

8. The next contention of the respondents is that in future the appellant would repair the existing building and use the same for education institution. Also submitted that as on date the lands are not used as agricultural and left as barren, hence the same ought to be assessed as per square feet. This Court is of the considered opinion even if the land is not used as agricultural, the land will not cease to be an agricultural land. The land can be considered as housing site only if the area is developed with laying roads / streets, drainage, drinking water facilities etc. In the present case even according to the respondents the land is not divided into housing plots, in such circumstances the land is only agricultural land even though the land are barren lands.

9. Even if the contention of the respondents is taken for argument's sake, then the land for 40% cannot be taken for calculating the valuation, since if the land is developed as housing plots, then there will be reduction of 40% of land



from the existing land for providing amenities like road, parks etc. In such circumstances, 40% land would be left out for common purpose, then the said 40% land cannot be taken for calculating valuation of the land. If this proposition is applied for all cases, then the respondents would fix the valuation as per their whims and fancies. Therefore, the said contention of the respondents is illogical and the same ought to be rejected.

10. It is seen that the respondents had issued revised guideline value on 01.04.2012. Based on the same if the barren lands are valued at the rates applicable for Punja Lands, then it comes to Rs.25,01,000/- per acre. Whereas the appellant had paid Rs.54,83,000/- per acre. Therefore, this Court is of the considered opinion that the appellant had paid over and above the guideline value applicable for the agricultural lands. Infact it is double the rate as stated in the guideline value.

11. Interestingly the Special Deputy Collector (Stamps) had stated that based on the secret enquiry the rate has been adopted. The Court fail to understand the necessity to conduct secret enquiry and fix the rate. As rightly pointed out by the Learned Counsel, if the rate is fixed based on the secret enquiry report, then the same would amount to violation of principles of natural justice.



Further such secret enquiry is unnecessary when the Indian Stamp Act and Registration Act has provisions to fix the same. Also, the rules under Prevention of Under Valuation of Instruments and guidelines issued through government orders have stated the relevant factors to be taken for fixing the rate for the property.

12. The next contention of the appellant is that the future potentiality of the land cannot be basis for valuation. Hence if the land is valued as house site by considering the future potentiality, the same would be contrary to the principles of valuation as stated in Rule 5 of Prevention of Under Valuation of Instruments Rules and the relevant portion is extracted under:

“5. Principles for determination of market value;-

The Collector shall, as far as possible, have also regard to the following points in arriving, at the provisional market value;-

(a) In the case of lands-

(i) classification of the land as dry, manavari, wet and the like;

(ii) classification under various tarams in the settlement register and accounts;

(iii) the rate of revenue assessment for each classification;

(iv) other factors which influence the valuation of the land in question;

(v) points, if any, mentioned by the parties to the instrument or any other person which requires special consideration;

(vi) value of adjacent lands or lands in the vicinity;



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(vii) average yield from the land, nearness to road and market, distance

from village site, level of land, transport facilities, facilities available for irrigation such as and tank, wells and pumpsets;

(viii) the nature of crops raised on the land; and

(ix) the use of land, domestic, commercial, industrial or agricultural purposes and also the appreciation in value when an agricultural land is being converted to a residential, commercial or an industrial land.

(b) In the case of house sites-

(i) the general value of house sites in the locality;

(ii) nearness to roads, railway station, bus route;

(iii) nearness to market, shops and the like;

(iv) amenities available in the place like public offices, hospitals and educational institutions;

(v) development activities, industrial improvements in the vicinity;

(vi) land tax valuation of sites with reference to taxation records of the local authorities concerned;

(vii) any other features having a special bearing on the valuation of the site; and

(viii) any special feature of the case represented by the parties.

(c) In the case of buildings-

(i) type and structure;

(ii) locality in which constructed;

(iii) plinth area;

(iv) year of construction;

(v) kind of materials used;

(vi) rate of depreciation;

(vii) fluctuation in rates;

(viii) any other features that have bearing on the value;



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(ix) property tax with reference to taxation records of local authority concerned;

(x) the purpose for which the building is being used and the income if any, by way of rent per annum secured on the building; and

(xi) any special feature of the case represented by the parties.

(d) Properties other than lands, house sites and buildings-

(i) the nature and condition of the property;

(ii) purpose for which the property is being put to use; and

(iii) any other special features having a bearing on the valuation of the property.”

In said Rule 5 the lands are divided into four categories. Sub-clause 5(a) deal with lands, sub-clause 5(b) deals with the house sites, sub-clause 5(c) deals with land along with buildings and sub-clause 5(d) deals with properties other than lands, house sites and buildings. Under sub-clause 5(a) for determining the value of land, the respondents ought to take the classification and the usage of the land. Specifically, under sub-clause 5(a)(ix), it has been stated only when the agricultural land is being converted into residential, commercial and industrial land, the respondents are empowered to fix the land as house site. Further it is seen that to convert the land from agricultural to non-agriculture purpose, then orders ought to have been passed by the government. In the present no such orders are passed.



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13. In the present case the sale is in the year 2013 and hence the Tamil Nadu Change of Land Use (From Agriculture to Non-agriculture Purposes in Non-Planning Areas) Rules, 2017 may not be applicable, which Rules are enacted subsequent to the registration of the sale deed. But any conversion of land, then the government is the appropriate authority to pass orders. When no such order is passed for conversion of land, then the land ought to be considered as agricultural land only. Consequently, the valuation ought to be as agricultural land only.

14. The said issue of fixing the valuation of land based on “future usage” was considered in ***Pushpa Sareen Vs State of Uttar Pradesh*** reported in **2015 (2) MWN (Civil) 129** wherein the question that was considered by the Hon'ble Full Bench of High Court of Allahabad is that

“1.....

((2) Whether the Collector Stamps has power to fix the valuation of a plot on the assumption that the same is likely to be used for commercial purposes, and whether the presumed future prospective use of the land can be a criterion for valuation by the Collector;

The Hon'ble Court had considered the issued and has held as under:

....

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



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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.

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 v. Ambush Tandon and*



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another, 2012 (5) SCC 566. This is because the nature of the user is relatable 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.**

28. In the circumstances, we answer the second question as referred in the aforesaid terms”

15. The same issue was considered by the Hon'ble Division Bench of this Court in the case of **Deputy Collector (Stamps) Vs. Thajunnisa and others** reported (2015) 6 MLJ 129 and the relevant portion of the judgment is extracted hereunder:

“10. 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



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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.** Even the Suo Moto power as envisaged under Sub Section (3) of the Section 47(A) of the Indian Stamp Act ought to have been exercised within two years from the date of Registration of the documents. As a matter of fact, the Suo Moto power of revision should have been exercised well before 11.04.1999 not at a later point of time. As such, it is candidly clear that the impugned order dated 08.04.2002 is without jurisdiction whatsoever and resultantly, Form II notices issued were invalid and illegal in the eye of law.

11. At this juncture, at the risk of repetition, this Court pertinently points out that in the instant case on the date of registration, viz., on 11.04.1997, admittedly the lands in question are agricultural lands and only after 5 ½ years later, after the registration of the documents, the Deputy Inspector General of Registration was of the opinion that the lands were capable of being converted into house sites and made a representation for the revision of land value. Suffice it for this Court to pinpoint that in this case, no tangible materials were available before the authorities at least to come to a tentative conclusion that the value of the property described in the sale deeds were not properly described. Apart from that, even the Suo Moto power as contemplated under Sub-Section 3 of 47 A of the Indian Stamp Act, 1899 was clearly out of bounds of the limitation period specified there under. Viewed in that perspective, the order of the Second Appellant dated 08.04.2002 and the subsequent confirmation order of the First Appellant/First Respondent dated 09.01.2003 are invalid and illegal by



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this Court. In this regard, this Court is in complete agreement with the view taken by the Learned Single Judge in quashing the aforesaid two orders and allowing the Writ Petition. Consequently, the Writ Appeal fails.”

16. This Court has also considered the same issue in a batch of Civil Miscellaneous Appeals filed in C.M.A(MD)Nos.376, 440, 516 of 2023 and 17 of 2024 and vide order dated 15.02.2024, wherein it is held “when the lands are used as agricultural lands and there is no potential conversion of land in near proximity then the same ought to be considered as agricultural land. Further future conversion of land as house sites would be assumptions, presumptions, surmises and conjectures.”

17. In the aforesaid judgments, it has been categorically held that 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. The lands are having the potential to convert as house sites in future and it cannot be the reason to fix higher value and the authorities cannot be allowed to imagine and to indulge in assumptions, presumptions, surmises and conjectures. The test would be the land is having potential to form housing plots at the time of execution of the document or reasonably proximate time. In the present case, even according to the



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respondents, the appellant may use the barren lands for educational institution only and not as housing sites. Even for this reasoning, there are no authenticated evidence from the respondents. On the other hand, the report of the respondent favour the appellant wherein it states that 80% of the lands nearby the land in question are still agricultural lands.

18. Therefore, this Court is of the considered opinion that the fixing of valuation at Rs.190/- per square feet is without any basis and the impugned order is liable to be set aside. Based on the order, dated 04.03.2015, in M.P. (MD)Nos.1 and 3 of 2014, the appellant has already deposited 40% of the quantified amount and the same shall be returned back to the appellant.

19. Accordingly, the impugned order is set aside and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

22.08.2024

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

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To

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- 1.The Inspector General of Registration /
Chief Controller of Revenue Authority
Santhome, Chennai.
2. The Special Deputy Collector (Stamps)
Collectorate Campus, Trichy
3. The Sub Registrar,
Registration Department
K.Sathanur, Trichy.
- 4.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
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