IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2015

CORAM:

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

C.M.A.No.3765 of 2010

M/s.Ankur Foundations Pvt. Ltd.,
Rep. by its Director,
Mr.Siddharth Maher,
No.25, Barnaby Road,
Kilpauk, Chennai - 600 010. ... Appellant

Vs.

1. The Chief Controlling Revenue Authority and the Inspector General of Registration,
Chennai - 600 028.

2. The District Revenue Officer (Stamps),
Chennai - 600 001.

3. The Sub Registrar,
Purasaiwakkam
Chennai-7 … Respondents.

Prayer : This Appeal filed under Section 47A(10) of the Indian Stamp Act, 1899, against the order dated 15.12.2005 made in 9931/N4/2005 passed by the Chief Controlling Revenue Authority and Inspector General of Registration.

For Appellant : M/s.Jayesh Dolia
for M/s.Aiyar and Dolia

For Respondents : Mr.T.Jayaramaraj,
Government Advocate (CS)

JUDGMENT

The present Civil Miscellaneous Appeal is filed by the appellant - purchaser of the property, against the order of the first respondent-Inspector General of Registration, confirming the order of the second respondent-District Revenue Officer, thereby fixing the value of the property purchased by the appellant M/s.Ankur Foundations Pvt. Ltd. at Rs.3,000/- per sq. ft. for the land and Rs.13,60,650/- for the building and demanding Rs.79,41,661/- as the deficit duty from the appellant.

2. The property in question is measuring 41,243 sq.ft. of land and building in S.No.3123/6 in Poonamallee High Road, Purasalwakkam. The property originally belonged to one Meenakshi and the same was let out to one Multi National company, namely, M/s.Greaves Ltd. and the appellant herein agreed to purchase the property along with the tenant and agreed to initiate legal proceedings for evicting the tenant at his own cost and entered into an agreement with the owner on 06.03.2003 for purchasing the property for the sale consideration of Rs.5,76,00,000/- and the parties agreed for completion of the sale within six months on or before 07.09.2003.

3. Thereafter, sale deed was executed between the parties on 04.09.2003, for the sale consideration of Rs.6,40,00,000/- at the rate of Rs.1,550/- per sq. ft. and the same was presented for registration before the 3rd respondent-Sub-Registrar, Pursaiwakkam, who registered the document as Document No.3421/2003. However, the document was not released by saying that the document was undervalued and by demanding deficit stamp duty from the appellant-purchaser for the sale consideration of Rs.3,636/- per sq.ft. The third respondent-Sub-Registrar also referred the document to the second respondent-District Revenue Officer, under Section 47-A of the Indian Stamp Act for determination of the actual market value of the property and actual stamp duty payable thereon.

4. The second respondent, after reference, issued Form-I notice to the petitioner on 25.09.2003, thereby fixing the value of the land at Rs.3,636/- per sq. ft. equivalent to Rs.14,99,59,548/- and value of the building at Rs.13,60,650/- by demanding the deficit Court Fee of Rs.1,13,51,626/-. The same was followed by Form-II notice, dated 05.07.2004, thereby calling upon the appellant to appear for enquiry along with the records. On receipt of the enquiry notice, the appellant filed his objection and after considering the objection, the land value was reduced to Rs.3,100/- sq. ft. and the deficit Court Fee of Rs.84,77,820/- was demanded.

5. Aggrieved against the same, the appellant preferred an appeal before the first respondent-Inspector General of Registration under Section 47-A(5) of the Indian Stamp Act.

6. The appellant also sent his objection in writing stating as to how the value fixed by the District Revenue Officer is arbitrary and on higher side and without any basis and how the market value of the property cannot be more than what is mentioned in the document. The appellant also explained the circumstances under which the appellant agreed to purchase the property along with the tenant, Multi National Company, having the lease hold rights for more than 30 years. The appellant also produced the copies of sale deed dated 30.06.2003 and 29.08.2005, relating to two properties situated in the same locality, wherein, the market value fixed was

at Rs.2030/- per sq. ft. and Rs.1014/- per sq. ft. respectively. However, the first respondent-Inspector General of Registration passed the impugned order, dated 15.12.2005, determined the market value of the land at Rs.3000/- per sq. ft. and directed the appellant to pay the deficit stamp duty of Rs.79,41,661/- with interest at 24% p.a.

7. The appellant after having remitted the deficit stamp duty as demanded, filed a writ petition in W.P.No.6523 of 2006, to set aside the order of the first respondent and to give a direction to the third respondent to release the document. This Court has, by an order dated 07.03.2006, disposed of the writ petition, after recording the payment of deficit court fee partly in cash and partly by furnishing Bank Guarantee by the appellant, directed the respondent authorities to release the sale deed. It is made clear in the order passed in the writ petition that the payment of deficit stamp duty and the bank guarantee furnished by the appellant shall be kept alive till the statutory appeal against the order of the first respondent is disposed of.

8. In this appeal, the main grievance raised by the learned counsel appearing for the appellant is that Section 47-A of the Indian Stamp duty (herein after referred to as 'Act') provides for the manner in which the undervalued conveyance be dealt with, where under, the Registering Authority, before exercising the power under Section 47A for referring a matter to the appropriate authority for determination of the market value of the property and for proper duty payable thereon, has to record the reasons to arrive at belief, the purchaser has not set out correct value of the property in the document and in the present case , as no such reasons are recorded in writing by the Sub Registrar office, the act of reference by the third respondent-Sub Registrar, to the second respondent-District Revenue Officer is totally in non compliance of the mandatory requirement and the same renders the reference matter and enquiry followed and impugned orders passed thereon to be null and void and not enforceable.

9. The learned counsel appearing for the appellant as well as the learned Government Advocate appearing for the respondent Department have, for and against their argument advanced herein, cited the following authorities.

10. The following authorities are submitted on the side of the appellant.

(i) 2007 (5) CTC 737 (FB) (G.Karmegam and others vs. The Joint Sub-Registrar, IV, Gowri Plaza, Bye Pass Road, Madurai and others)

(ii) 2001 (2) MLJ 458 (DB) (The District Collector, Erode District, Erode and others vs. M.Ponnusamy)

(iii) An unreported judgment of this Court made in C.M.A.No.1863 of 2004 dated 04.03.2010.

(iv) An unreported judgment of this Court made in C.M.A.(NPD) No.1415 of 2004 dated 24.04.2009.

(v) 2010 (6) CTC 35 (KK Flats (P) Ltd., Rep. by its Managing Director, D.Muthumukar, 1K, No.6, Mandapam Cross Road, Kilpauk, Chennai - 10 vs. The Inspector General of Registration, Chennai - 28 and another)

(vi) An unreported judgment of this Court made in C.M.A.No.1443 of 2006 (S.Sivasubramaniam vs. Chief Controlling Revenue Authority cum Inspector General of Registration, Santhome High Road, Chennai - 600 028 and others).

(vii) 2009 (7) SCC 438 (V.N.Devadoss v. Chief Revenue Control Officer-cum-Inspector General of Registration and others)

11. The Judgment relied on the side of the respondents Department is 2008 (4) CTC 661 (P.Mahalingam and another vs. The Registrar of Documents, Registration Office, Thirumangalam, Madurai District and others)

12. The learned counsel appearing for the appellant would rely on the judgments above cited to put forth his contention that failure on the part of the Registering Officer to perform the statutory obligation by recording the reasons to believe that the true market value has not been set forth in the document, before referring the document for determination of the market value, has prejudiced the valuable rights of the parties concerned causing serious injustice.

13. Before going into the factual issue involved herein, the legal principles laid down regarding the procedure adopted under Section 47A of the Act can be looked into. The Hon'ble Supreme Court in the judgment reported in 2009(7) SCC 438 cited above has after extracting the relevant provisions of law, observed as follows:

> "Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject-matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue."

14. The Full Bench of our High Court in para 7 of the decision reported in 2007(5)CTC 737 observed as follows:

> 7. …. The Registering Officer cannot make a roving enquiry to ascertain the correct market value of the

property by examining the parties. However, it is expected that he has to give reasons for his conclusion for undervaluation, however short they may be. He can neither delay nor refuse registration of the instrument, merely because the document does not reflect the real market value of the property. In order to reach a conclusion, there is no bar for the Registering Officer to gather information from other sources, including official or public record. Valuation guidelines, prepared by the revenue officials, periodically, are intended with an avowed object of assisting the Registering Officer to find out prima facie whether the market value set out in the instrument has been set forth correctly.

15. The learned brother Judge of this Court, who is also one of the members of the Full Bench in his judgment, reported in CDJ 2010 MHC 6496 Tata Coffee Limited v. The State of Tamil Nadu rep. by its Secretary to Government, Commercial Taxes and Registration and others, in para 14 following the Full Bench judgment, has held that recording of reasons by the second respondent for initiation of proceedings under Section 47A of the Indian Stamp Act, 1899, referring the matter for finding out the correct value of the property mentioned in the document, to the third respondent is mandatory. It is further held by the learned brother Judge by applying his view expressed in another judgment reported in 2010 (4) TLNJ 170 (Civil) - G.Gunasekaran vs. The Inspector General of Registration, Chennai - 28, that the third respondent/District Revenue Officer (Stamps), being a quasi judicial authority, must state reasons, while issuing notice calling for explanation from the person in whose favour the document is registered.

16. The learned brother Judge Justice R.Subbiah in para 6 of his judgment made in CMA.29/2009 dated 16.08.2011 reported in MANU/TN/3105/2011 Ceebros Developers rep. by its Managing Partner C.Subba Reddy vs. The State of Tamil Nadu, rep. by its Inspector General of Registration, referred to another Judgment of this Court, reported in 2008 (5) CTC 239 Mapillai Mohadeen vs. The Sub Registrar, Registration Department, wherein, it is held that power under Section 47A can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance has not be truly set forth, with a view to fraudulently evade the payment of property stamp duty. Unless there is fraudulent attempt on the part of the parties to the document, the authority cannot exercise his power arbitrarily without any basis and such power should be exercised with great caution and care. The same view is expressed by the learned brother Judges, Justice A.Arumughaswamy and Justice R.Subbiah in their unreported judgments made in C.M.A. above referred to.

17. The learned single Judge, Justice Chitra Venkataraman, in the judgment reported in 2010 (6) CTC 35, has referred to other judgments dealing with the same issue in paras 8, 14 and 16 of her decision. The other judgments referred to are: (i) 2009 (1) CTC 698 (Ezhilarasi v. The Inspector General of Registration); (ii) 2004 (1) CTC 187, (The Special Deputy Collector (Stamp) vs. Chemicals and Plastics Ltd); (iii) 2006 (2) CTC 433 (Sakthi & Co. vs. Shree Desigachary).

18. The Full Bench decision of this Court reported in 2006(2) CTC 433 (Sakthi & Co. vs. Shree Desigachary), is referred to for the legal proposition that the market value is not determined by the guideline value. The Full Bench of this Court, after considering catenna of decisions, held the concept of the market value as follows:

> "(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned thereunder in instrument brought for registration.
>
> (2) Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or similar advantageous features would furnish basis to determine the market value."

19. In Ezhilarasi's case reported in 2009 (1) CTC 698, it is held by this Court that onus is on the Department to establish that the market value of the property has not been truly set forth and the market value as claimed by the Department is contemporaneous to the document tendered for registration and when there is a doubt that the market value has not been truly set forth in the instrument, the guideline value is only a prima facie guide for ascertaining the market value and the Department will have to go by the various parameters set down in the rules for determination of the market value, if they have a reasonable belief that the market value of the property has not been truly set forth in the said document.

20.It is further held therein

> "16. …. It must be noted that a mere fact of difference in value stated in the instrument and the market value, per se, does not justify the invoking of the provisions under Section 47-A of the Indian Stamp Act, that only if and when the authorities have a reasonable belief that the market value of the property has not been truly set forth in the document that the Registering Officer, after registration the document, may refer the same to the Collector for determination of the market value of the property. Thereupon, as per Section 47-A(2) of the Indian Stamp Act, the Collector holds an enquiry as prescribed under the rules and determine the

market value of the property. Thus, in all cases of Section 47-A proceedings, law requires that there are prima facie materials at the hands of the Registering Authority to form an opinion as to the market value not truly set forth in the instrument and this leads to an enquiry and a final order passed depending on the outcome of the enquiry. The invoking of the jurisdiction on a sheer difference in price stated in the instrument with the market price, would only make the exercise an automatic and ritualistic exercise opposed to the very scheme of the provisions of Section 47-A of the Indian Stamp Act.”

21. In the Special Deputy Collector's case reported in 2004 (1) CTC, our High Court has observed as follows:

> “12. What is the market value of the land is what a willing buyer is ready to pay to a willing vendor at the price agreed to. It may be that the lands may be used for the purpose of letting industrial effluent and for treatment and it may incidentally be part of an industrial activity. But that cannot constitute a ground to value the land as industrial site.”

22. That being the legal position, if the contentions raised on the side of the learned counsel appearing for the appellant is appreciated in the legal proposition, as above laid down by the Supreme Court, Full Bench, Division Bench and Single Judges of our High Court, it would compel this court to hold that the proceedings referring the document for determination of the market value, without performing the statutory obligation, cast upon the third respondent Registering Officer, to record such reasons to arrive at a decision that the document is undervalued and the same is required to be referred to the authority concerned to determine the actual market value of the property, is contrary to the procedure laid down under law and is ex facie, illegal. Furthermore, no material is made available to show that the third respondent/Registering Officer, on the basis of such material, arrived at the conclusion that the true value is not set forth in the document. In the absence of one such material, the proceedings initiated under Sec.47A is legally unsustainable, as such, the proceedings initiated for determination of the market value and the out come of such proceedings, fixing the value of the property at Rs.3,000/- per sq. ft. and demanding additional stamp duty, on the basis of such exorbitant value fixed, is hence arbitrary and bad in law and null and void.

23. Further, as per the procedure laid down under Section 47 (A)(2) of the Act, the Collector shall, on receipt of the reference, give the parties reasonable opportunity of being heard and hold an enquiry and after holding the enquiry, shall determine the market value of the property and call upon the person to pay the difference, if any, in the amount of duty.

24. In this case, the document was registered on 04.09.2003, whereas the Form-I notice was issued on 25.09.2003. Form-I notice did not reflect the reasons, for which, the value mentioned in the document is treated as undervalued and the material based on which the value is fixed at Rs.3636/- per sq. ft. The order of the District Revenue Officer dated 26.11.2004 did not indicate the basis on which the value fixed is reduced to Rs.3275/- per sq. ft.

25. The second respondent/District Revenue Officer, except stating that the due enquiry is held on the objection and due spot inspection is made, has not held any detailed discussion as to what is the outcome of the spot inspection and reasons for disagreeing with the objection raised by the appellant and for arriving at the market value of Rs.3275/- as against Rs.3636/- per sq. ft. mentioned in Form-I notice. The order of the second respondent/District Revenue Officer is in short indicative of total non-application of mind and is a non speaking order. Further, the purchaser is not given any notice for the spot inspection as contemplated under relevant rules.

26.As far as the order passed by the first respondent is concerned, the order reads as if he called for a report from the Joint Inspector General of Registration and the Joint Inspector General of Registration has, in his report suggested to accept the market value at Rs.3,100/- sq. ft., having regard to the prime commercial location, in which, the property is situated with other facilities. The first respondent has rejected the value of Rs.3,100/- per sq. ft. as fixed by the District Revenue Officer on the ground that the same is not based on any sale transaction of the same area and neighbouring area. The first respondent has also, in his order, observed that the sale transaction effected in respect of the property in the same area having been referred for valuation under section 47(A) cannot be considered. Having rejected the value of Rs.3,100/- per sq. ft. and Rs.3,050/- per.sq. ft., the first respondent proceeded to fix the value at Rs.3,000/- per sq. ft. saying the property is vast in extent and that there is potential of the property for further development and it is adjacent to multi-storied building.

27. Our High Court, in the Judgment reported in 2010 (6) CTC 35, was of the view that such fact by itself does not decide on the issue regarding the value of the property. In the case cited above, the first respondent arrived at a value of Rs.355/- more or less on the same ground, as mentioned herein, without any other basis to arrive at such value and under such circumstances, the learned sister Judge was of the view that the assumption of jurisdiction under Section 47A of the Indian Stamp Act is totally without any basis and adoption of such value as the market value is without any basis. It is also held by the sister Judge that the nearby property is a multi-storeyed building and the future possibility of

the usage for commercial purpose, by itself, cannot lead one to an inference that the present value declared in the instrument is not a true value and does not justify as affording good ground to fix the market value on the higher side as had been done by the respondents and such observation is squarely applicable to the facts of the present case.

28. Insofar as the Judgment reported in 2008 (4) CTC 661 referred to on the side of the respondent official is concerned, the same is on different issue that the market value of property on the date of presentation is correct to be adopted and the same is not applicable to the issue involved herein.

29. The appellant has, through out, taken a consistent stand that the value of the property as mentioned in the document is the true value of the property. It is also explained by the appellant that the property was in the occupation of the tenant, who is the Multi National Company, having turn over above Rs.1000/- crores and the vendor, being a lady, was not able to get the tenant evicted and the present purchaser agreed to purchase the property with the tenant and agreed to get them evicted, at his own expenses and having regard to the vast extent of the property and having regard to the situation in and the condition subject to which the property was agreed to be sold, the property cannot be expected to fetch higher rate. It is further argued before this Court that the property, being vast extent, the market value of such property cannot be equated to the market value of the property with lesser extent.

30. Such contentions raised on the side of the appellant, in my considered view, deserve merit and acceptance.

31. The learned counsel for the appellant has, also at this juncture, drawn the attention of this Court to two sale deeds dated 30.06.2003 and 29.08.2005 in respect of the adjacent properties, which are according to the learned counsel for the appellant, situated in the same area, but registration was accepted for lesser value of Rs.2,030/- per sq. ft. during June 2003 and Rs.1,014/- per sq. ft. during August 2005. In the typed set of papers filed herein, the rough plan of the property, which is the subject matter of the sale deed dated 30.06.2003, is enclosed, which reveals that the same is situated just behind the property which is the subject matter of present document in question. While the property of the sale deed dated 30.06.2003 is in Barnaby Road, Kilpauk, the property covered under the present sale deed is just behind Poonamallee High Road.

32.As far as other property covered under sale deed dated 29.08.2005 is concerned, the same is according to the appellant situated opposite to the land adjoining this property. It is also explained so in the petition submitted by the appellant to the first respondent.

33. However, the first respondent has simply rejected the same stating that the properties are not situated in the same area. The first respondent has not deemed it fit to ascertain through spot inspection as to whether the properties in question are situated near the property in question and without making any actual verification, the documents are rejected arbitrarily and without application of mind.

34. The discussion held above would only reveal that the determination of the market value of the property in question is in pursuance of the reference made by the third respondent - Registering Authority under Section 47A of the Stamp Act, without following the procedure laid down under the Act and without performing the statutory obligation cast upon the third respondent and the impugned orders of the Respondents 1 and 2, arriving at the market value of the property at Rs.3000/- per sq. ft. and Rs.3100/- per sq. ft. are without any basis and based on irrelevant consideration and assumption and presumption and without application of mind.

35. Further, there are four values adopted by the Authorities concerned, i.e. Rs.3,646/-, Rs.3,275/-, Rs.3,050/-, Rs.3,100/- and Rs.3,000/-. None of the value fixed by the Authorities is based on any sale transaction of the same area or nearby area. The value adopted by the authorities is according to their whims and fancies and simply on the suitability of the land for future development and such course adopted by both the authorities, is contrary to law and not in accordance with the procedure laid down by the Apex Court and our High Court.

36. In this context, the concept of market value as laid down by the Apex Court and our High Court in the judgments as above referred to, has to be necessarily recollected and it is also to be recollected that onus to prove that the instrument is undervalued, is on the department and the same has not been satisfactorily discharged by the respondents.

37. Viewing from any angle, the impugned orders are bad in law and legally unsustainable and liable to be set aside.

38. In the result, this Civil Miscellaneous Appeal is allowed by setting aside the impugned orders of the respondents 1 and 2 and the respondents are directed to release the document registered as Doc.No.3421 of 2003 dated 4.9.2003 and to refund the excess stamp duty within one week from the date of receipt of a copy of this judgment. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

ogy/rk

To

1. The Chief Controlling Revenue
   Authority and the Inspector
   General of Registration,
   Chennai - 600 028.

2. The District Revenue Officer (Stamps),
   Chennai - 600 001.

3. The Sub Registrar,
   Purasaiwakkam.
   Chennai-7

1 cc to M/s. Aiyar and Dolia, Advocate, Sr. 47488
1 cc to Government Pleader, Sr. 47238

C.M.A.No.3765 of 2010

RSK (CO)
kk 20/10