

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.2820 of 2012

M.P.No.1 of 2012

S.Santhi

... Appellant/Appellant

vs.

1. The Chief Revenue Controlling Authority,
& Inspector General of Registration, Tamil Nadu,
Santhome High Court, Chennai-28.

2. The Special Deputy Collector (Stamps),
Salem, Namakkal, Dharmapuri Districts, Salem-1.

3. Thiru.Darmendra Pradap Yadav, I.A.S.,
Inspector General of Registration, Tamil Nadu,
Santhome High Court, Chennai-28.

...

Respondents

Civil Miscellaneous Appeal filed under Section 47-A(10) of the Indian Stamp Act, against the order, dated 15.05.2012 made in Pa.Mu.No.25264/N2/2010, passed by the 1st respondent and further direct the respondents to cause return of the sale deed registered as Doc.No.1035 of 2005, on the file of the Joint Sub Registrar-II, Namakkal, to the appellant and to direct the 3rd respondent to pay the cost of this proceedings to the appellant.

For Appellant :

Mr.N.Subramaniyan

For Respondents :

G.Venkatachalam,

Government Advocate

J U D G M E N T

Aggrieved by the order, dated 15.05.2012, made in Pa.Mu.No.25264/N2/2010, passed by the 1st respondent, the present appeal has been filed. The appellant has further sought for a

direction, directing the respondents to return of the sale deed, registered as Doc.No.1035 of 2005, on the file of the Joint Sub Registrar-II, Namakkal, to her, and direction to the 3rd respondent to pay costs.

2. Brief facts of the case are as follows:

The Appellant has purchased two house sites, adjacent to each other and executed sale deeds for the same on 27.04.05, registered as Document Nos. 1034 and 1035 of 2005, at the rate of Rs.22 per sq.ft., in Joint-II Sub-Registrar's office. But the Sub-Registrar registered the said Documents under Section 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act"), on the same day, without conducting any enquiry and refused to return the documents. Against which, appeals under Section 47-A have been filed. C.M.A.No.1306 of 2009, relates to the property registered under Document No.1034 of 2005 and the same has been disposed by this Court on 12.03.2012, quashing the orders of the 1st respondent, with a direction to decide the Appeal afresh. The present appeal relates to the property registered under Document No.1035 of 2005.

3. It is the contention of the appellant that Form-I notice was issued to her, by the second respondent on 17.05.2005 and that the same was received on 24.05.2005. A reply has been sent by the appellant on 08.06.2005. Form-II notice, fixing provisional Market value, as Rs.84/- per Sq.ft was sent to the appellant on 04.10.2005, for which, a reply has been sent on 26.10.2005. The first respondent passed the final order, confirming the provisional Market value on 15.05.2012, against which, the present appeal has been filed.

4. Mr.N.Subramanian, learned counsel for the appellant submitted that the Stamp duty imposed under the Act, is nothing but a tax imposed by the State. According to him, Article 265 of the Constitution of India, prohibits the State, from imposing any tax, without authority of law. He submitted that the term "law", referred to in Article 265, is only the Act of competent legislatures, i.e., Parliament and State legislatures, pursuant to Entry No.44 of the concurrent list. Accordingly, Indian Stamp Act has been enacted by the Parliament. Section 47-A of the Act mandates that the respondents 1 and 2 have to decide the market value and the appeal thereunder, in accordance with the rules framed thereunder. He further submitted that a conjoint reading of Article 265 of the Constitution of India, the Indian Stamp Act, 1899 and the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (hereinafter referred to as "the Rules"), would clearly show that no one has jurisdiction to

collect stamp duty, otherwise than, in accordance with the Act or the rules made thereunder and hence, while proceeding under Section 47-A, the moment, the procedure stipulated thereunder, is violated, the authority loses its jurisdiction to proceed further and any further proceedings issued after such violations, becomes void and without jurisdiction and hence, he prayed to quash the proceedings, for the violation of the statutory procedures and remit the matter back to the authorities to proceed afresh.

5. Learned counsel for the appellant further submitted that the Sub-Registrar had mechanically presumed undervaluation of the property and referred the Document to the second respondent, under Section 47-A of Act, purely based on the Guideline value and he did not conduct any enquiry, as mandated under Rule 3(3) of the Rules, before arriving at the conclusion that the instrument is undervalued and hence, the said reference is contrary to the said rules.

6. To support the above contention, learned counsel for the appellant further submitted that in Form-I notice, the Sub-Registrar did not disclose any conduct of enquiry, under Rule 3(3) of the abovesaid Rules and on the contrary, Form-I notice itself states that the sub-Registrar fixed the market value, based on the Guideline Value Register and hence, the very reference by the Sub-Registrar itself, is not in accordance with the Rules and hence, without jurisdiction.

7. Learned counsel for the appellant further contended that fixing of provisional market value at Rs.84/- per sq.ft., based on the inspection on 16.09.2005, by the Special/Deputy Thasildar, though has jurisdiction to inspect the property, made inspection, without issuing notice to the appellant, as mandated under rule 4(3) of the rules, which mandates the second respondent to inspect the property, after issuing notice to the party, with an object to have fairness in the enquiry and in consonance with the principles of natural justice. But the provisional market value has been assessed, without considering the objections raised by the appellant, in her reply to Form-I notice.

8. He further submitted that the final order of second respondent, confirming the provisional market value, issued in Form-II notice, is vitiated, on the grounds that the second respondent has not inspected the property and also failed to furnish, either the inspection report of the Special/Deputy Thasildar, referred to in Form-I Notice or the alleged inspection report of the second respondent, disclosing the names of persons enquired etc., inspite of the specific demands of the

appellant. Non-passing of the said order, within 3 months from the date of notice, as mandated under rule 7 of the rules and hence, the said order of second respondent, passed after 3 months, is without jurisdiction.

9. Assailing the impugned order of the Chief Revenue Controlling Authority & Inspector General of Registration, Chennai, first respondent herein, learned counsel for the appellant further submitted that the first respondent has failed to consider or adjudicate all the grounds specifically urged by the appellant in the Appeals, while passing the impugned order and even without recording the arguments and also referring to or considering the decisions relied on by the appellant, the said order has been passed, on the basis of inspection reports.

10. According to the learned counsel for the appellant, the Chief Revenue Controlling Authority & Inspector General of Registration, Chennai, first respondent herein, has failed to note that public auction conducted by the lower court, in respect of another property, is very near to Namakkal Town and this property about 1 KM., away from the Town, fetches only Rs.26.95 in the open market for which the guideline values stipulate Rs.250/- as Market value which on the face of it would show the abnormally the arbitrariness of the guideline values maintained at sub- Registrar office. Therefore, the market value stated by the appellant is perfectly in tune with the sais rate and hence there is no reason to believe that the appellant had undervalued the property. Non-furnishing the copies of the inspection reports of the District Registrar/ Thasildars referred to and relied upon, by the first respondent in the impugned order, is contrary to the basic principles of natural justice by the first respondent.

11. Learned counsel for the appellant further submitted that neither the second respondent nor the first respondent has stated, as to, what are the basis, viz., nearness to town, roads, etc., as enlisted in Rule 5 of the Rules for determining the Market Value, as Rs.84/- per sq.ft., in the orders passed by them. In respect of the adjoining property, purchased by the appellant, on the same day, along with this property, the first respondent has fixed Rs.100/- per sq.ft., in the appeal preferred by the appellant and fixed Rs.84 per sq.ft, which would clearly show that the inspection reports are made to suit the values, pre-determined by them and that is why, no notice has been sent to the parties. In respect of other documents, this Court has already quashed the same.

12. Learned counsel for the appellant further

submitted that for violation of the Indian Stamp Act and the rules made thereunder, the entire proceedings of respondents 1 and 2 are vitiated and the 2nd respondent may proceed afresh, by conducting enquiries, under Rule 3(3), which could not be done, after a period of 5 years from the date of registration. Even if it has to be proceeded by the second respondent, exercising suo motu power under Section 47-A, it could be done only within 5 years, from the date of registration and since 7½ years have already elapsed, after the registration of the document, it is impossible for the second respondent to proceed afresh. According to learned counsel for the appellant, even if this Court presumes that Form-I notice is correct and decided to proceed further afresh, the same cannot be done, as per Rule 7, the second respondent has to pass orders, within a period of three months, from the date of issue of Form-I notice, but in the present case, more than 7 years elapsed. Further, the first respondent has suo motu power, under Section 47-A(6) of the Act, that too, only within 5 years from the date of issue of the final order by second respondent and hence, in the absence of any order passed by the second respondent, the first respondent has no power to initiate proceedings afresh on their own and that too, after 7½ years from the date of registration.

13. Learned counsel for the appellant further submitted that the conduct of the Sub-Registrar in not conducting the enquiry, as per Rule 3(3) and the conduct of second respondent in not inspecting the site, instead sending the Deputy Tahsildar, to inspect the property to decide the Market value, behind the back of the appellant, are contrary to the Rules. Adjudication of the appeal by the first respondent is against the principles of natural justice. Refusal to deliver the document, in spite of various judgments of this Court, abridging her right to sell the property, is nothing but extracting money in an unlawful manner.

14. Per contra, taking this Court, through the material on record, learned Government Advocate, appearing for the respondents submitted that there is no procedural violation and hence, prayed to sustain the orders impugned.

Heard the learned counsel appearing for the parties and perused the materials available on record.

15. A Hon'ble Full Bench of this Court in Karmegam, G. v. The Joint Sub-Registrar, IV, Madurai reported in 2007 (5) CTC 737, held that the registering officer should perform his statutory obligation within the reasonable time, which should not in any manner deprive the rights of the parties

to the document causing injustice. The Hon'ble Full Bench having found that there is no provision under the Indian Stamp Act, prescribing period of limitation for the registering authority to refer valuation under Section 47A(1) of the Indian Stamp Act, by relying upon the judgment of the Supreme Court in Union of India v. Fillip Tiago De Gama [(1990) 1 SCC 277], wherein it has been held that in such circumstances the paramount object of statutory interpretation is to discover the legislative intention, has also taken note of Section 47A(3) of the Act which prescribes a period of limitation of five years for the Collector to exercise his suo motu powers and observed as follows:

"25. Sub-section (3) to Section 47A provides for a limitation of five years from the date of registration of any instrument of conveyance for the Collector to initiate either suo motu action or otherwise to determine the market value of the property. Earlier, the provision contained a time limit of two years and, by means of a subsequent amendment, the said time limit was enlarged as five years. At the two stages viz., the time of passing the Act and of passing of the Amending Act, the legislature was more conscious about prescribing the time limit for exercise of powers by the Collector and, on both the occasions, the provision i.e., sub-section (1) was left untouched. Hence, it cannot be stated that there was inadvertence on the part of the legislature to provide time limit in sub-section (1). The intention of the legislature was to clothe the Collector with ample powers in two ways viz., firstly, allowing five year period for him to exercise his power to initiate action and, nextly, to determine the market value of the property after holding an enquiry as per the procedures stipulated in sub-section (2).

At Paragraph 35, the Hon'ble Full Bench in G.Karmegam's case (cited supra), further held as follows:

"35. We are of the considered view that no additions could be made to a statute by the Court, if it passes three tests, as adumbrated above in this order. In our opinion, sub-section (1) of Section 47A has passed through the said tests and there is no need for the Court to supplement or suggest its view, as a suffix to it. In this respect, we could not subscribe our accent to the view taken by the learned Single Judge in his decision in M.Krishnan v. The District Collector, Erode, 1998 (3) CTC 366, as approved by the Division Bench in the District Collector, Erode v. M.Ponnusamy, 2001(2) CTC 449: 2001 (2) MLJ 458."

The Hon'ble Full Bench, by holding that the Court cannot fix time frame, since it is the duty of the legislature and that in the absence of time frame fixed in the provision, it must be within the reasonable time and ultimately held that,

"38. On a conspectus of the facts and circumstances of the matter and following the ratio laid down by the Apex Court, we answer the questions (1) and (ii) as follows:

"(i)The court cannot fix or suggest a time frame to a statute in the normal course, if the statute is silent with regard to it.

(ii)No guideline, in this regard, shall be introduced by the Court. However, it is mandatory on the part of the statutory authority, namely, Registering Officer, to perform his statutory obligations within a reasonable time, which should not be viewed as a one, that has deprived the rights of the parties to the document, causing injustice."

16. In *Tata Coffee Limited v. State of Tamil Nadu* reported in 2008 (3) CTC 614, this Court, at Paragraph 23(d), held that non-conducting enquiry before referring the document by Sub-Registrar to the Collector u/s 47-A vitiates entire proceedings. At Paragraph 23(c), this Court further held that failure to follow the procedures contemplated under the statutory rules, especially rule 4(3)(c) and rule 11-A of the rules, which are mandatory, is illegal and liable to be quashed. In the present case, the respondents caused inspection of the property behind the back of the Appellant in blatant violation rule 4(3)(c) and 11-A of the rules according to which, prior notice ought to have been given to the Appellant, which is not done.

17. The Authority conferred with certain functions under a statute has to carry out the same on its own such function and cannot delegate the same to another in the absence any contemplation for such delegation under the Act. In the present case, under rule 4(3)(c) and rule 11-A of the rules, 2nd respondent-Collector and the 1st respondent-Inspector General of Registration respectively, have to inspect the property and there is no enabling provision under the rules or under the Act to delegate such power. Therefore, inspections by other officers at the behest of the respondents vitiate the entire proceedings.

18. The failure on the part of the 2nd respondent to pass a final order within 3 months from the date of Form-I

notice as mandated under rule 7 of the rules vitiates the entire proceedings. Form-I notice was issued on 17.05.2005 and the final order was passed on 05.12.2006, after 11/2 years, i.e., after 3 months and hence the entire proceedings are vitiated.

19. The impugned order has been passed by the 1st respondent purely based on inspection reports of the District registrar /Deputy Thasildar, who are not authorised under the Act and hence the said inspection reports are not materials collected by the authorities, entitled under the Act. Hence the proceedings of the 2nd respondent and 1st respondent are vitiated.

20. When the 47-A proceedings are delayed and vitiated for violation of mandates of the rules and the Act, it is impermissible to permit the authorities to carry out the exercise afresh after 5 years from the date of registration. Going through the material on record, it could be deduced that all the proceedings of respondents are in blatant violation of the statutory rules and hence, they are deemed to be as non-est, in the eye of law and hence the respondents cannot initiate afresh the proceedings, as already more than 71/2 years elapsed from the date of registration of the Document.

21. Finally, the impugned order of 1st respondent having been passed based on the inspection reports of the subordinate authorities without furnishing copy of such reports to the Appellant is also against the principles of natural justice vitiating the entire proceedings. The appellant has made only a strong case on the grounds raised. Contentions of the respondent do not merit consideration.

22. In the result, the Civil Miscellaneous Appeal is allowed. Relief sought for is granted. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Revenue Controlling Authority,
& Inspector General of Registration, Tamil Nadu,
Santhome High Court, Chennai-28.
2. The Special Deputy Collector (Stamps),
Salem, Namakkal, Dharmapuri Districts, Salem-1.
3. Inspector General of Registration, Tamil Nadu,
Santhome High Court, Chennai-28.

1 cc to The Special Government Pleader, sr.28263

C.M.A.No.2820 of 2012

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