IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2015

CORAM:

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

C.M.A.No.309 of 2006

R.Asaithambi ... Appellant/Appellant

Vs.

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

2. The District Revenue Officer (Stamps), Coimbatore - 641 018.

3. The Sub Registrar, Gobichettipalayam, Erode District, Registering Officer. … Respondents/Respondent

Prayer : This Appeal filed under Section 47A of the Indian Stamp Act, 1899 r/w. Rule 9(5)(A) of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, against the order dated 12.11.2005 made in the Proceedings No.46336/N2/2004 on the file of the Tamil Nadu Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai - 600 028 modifying the order dated 08.04.2003 made in Mu.Pa.No.4030/2000G on the file of the District Revenue Officer (Stamps), Coimbatore.

For Appellant : Mr.N.Manokaran

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

JUDGMENT

The purchaser of the property is the appellant herein. The present Civil Miscellaneous Appeal is filed challenging the order of the second respondent-District Revenue Officer (Stamps) as confirmed by the first respondent-Inspector General of Registration, thereby fixing the value of the property in question as Rs.5,00,000/- per acre and demanding additional stamp duty accordingly.

2. The appellant purchased an agricultural land measuring 1 acre in S.No.61/1 and 23A2, at Modachur Village, Gobi Taluk. The sale consideration for the land was fixed at Rs.1,75,000/- as per the guideline value. The document was presented for registration and the same was registered as Document No.1244/2000 on 04.07.2000. However, the document was not released demanding additional stamp duty of Rs.2,77,584/- treating the property as house site. The document was also referred to by the third respondent Sub Registrar to the second respondent District Revenue Officer (Stamps) under Sec.47A of the Stamps Act for determination of true value of the property. The second respondent issued Form-I notice and the same is followed by Form-II notice, wherein, the property value was fixed at Rs.24,93,200/- per acre and additional stamp duty was calculated at Rs.2,77,584/-. Aggrieved against the same, the appellant preferred further appeal before the first respondent-Inspector General of Registration. The first respondent by order dated 12.11.2005 treated the property as agricultural land and fixed the value at Rs.5,00,000/- per acre as suggested by District Registrar in his report. Hence, this Civil Miscellaneous Appeal before this Court by the appellant-purchaser.

3. The appellant-purchaser has in this appeal seriously questioned the correctness of the impugned order fixing the value of the property at Rs.5,00,000/- per acre and demanding additional stamp duty on the following grounds:

i) The Third respondent-Sub Registrar, has in non-compliance with the statutory mandatory requirement under Section 47A of the Indian Stamp Act, failed to record any reasons to arrive at the decision that value of the property has not been truly set forth in the document and on such failure, the proceedings initiated under Section 47-A by referring the document to the second respondent for determination of the true market value is vitiated.

(ii) The market value of the property fixed at Rs.5,00,000/- per acre is not based on any material but only on assumption and presumption.

(iii) The market value is fixed on the basis of the report of the District Registrar and the copy of which is not furnished to the appellant and the same amounts to violation of principles of natural justice.

(iv) The market value of the property set forth in the document is correct value for the agricultural land on the date of registration of the document.

4. Heard the rival submissions made by both sides and perused the records.

5. Here is a case, wherein, the document was referred for determination of true market value on the ground that the value set forth in the document was not reflecting the correct value

of the property. However, the learned Government Advocate appearing for the respondents is unable to explain the reason on which the third respondent-Registering authority arrived at such conclusion and no material is made available by the respondents 1 to 3 for reaching such decision and no record is also produced herein, recording the reasons for arriving at such conclusion. It is well settled law that failure to do so will amount to non-compliance of the statutory requirement and reference made under Sec.47A of the Act in pursuance of the same is to be necessarily held vitiated.

6. Regarding the valuation of the property the second respondent-District Revenue Officer (Stamp) valued the property at Rs.24,93,200/- by treating the same as house site. However, the first respondent-Inspector General of Registration was not inclined to accept the same and to adopt the value as fixed by the second respondent-District Revenue Officer. But, the first respondent has fixed the value at Rs.5,00,000/- per acre. The order of the first respondent except stating that the first respondent is inclined to accept the report of the District Registrar and to adopt the value mentioned in the same, did not indicate independent application of mind of the first respondent in accepting the value of the District Registrar. The first respondent has not assigned any reason in his order as to why the District Registrar's report is agreeable. In the absence of such reason mentioned in the order, the valuation made by the authority can be construed only as on surmise. Further, the petitioner was also not furnished the copy of the report of the District Registrar and the failure to furnish the copy to the petitioner and the failure to give an opportunity to the petitioner to raise his objection against the contents of the same, would render the impugned order as one sided and in violation of the principles of natural justice.

7. The respondents 1 and 2, being quasi judicial authorities, ought to have arrived at a decision regarding the true value of the property by independently making a comparative study of the value set forth in the document, guideline value and the value mentioned in the document, if any, in respect of any other property of the same area. When the department raised an issue as to the correct value of the property, the burden is on the department to prove that the value set forth in the document is not correct one and the burden cannot be discharged by simply referring to the report of the some other authority and by simply adopting the value as mentioned by some other authority.

8. The learned counsel appearing for the appellant has, in this regard, cited a decision of the learned brother Judge of this Court, reported in 2009 (3) MLJ 672 (R.V.Refractories Rep. by its Managing Partner, R.Sathia Vageeswaran @ R.V.S.Eshwar vs. District Revenue Officer (Stamps), Collectorate, Chennai and another), wherein, the learned brother Judge has observed as follows:

> "…. The registering authority has not shown any material as to how they come to the conclusion that the market value has not been truly set forth or that there is reason to believe that the market value of the property has not been truly set forth with the intention to evade payment of proper stamp duty. The ingredients of Section 47-A(1) of the Indian Stamp Act, 1899, has not been satisfied in the present case. ....
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> …. The Inspector General of Registration has placed reliance on the opinion of his subordinate, viz., the Deputy Inspector General of Registration to come to the conclusion that the market value of the property in question is not the price of the property purchased in open tender. It will amount to surrendering his power as judicial or quasi judicial to a subordinate authority. Opinion obtained behind the back of the appellant cannot be relied upon and it will amount to violation of principles of natural justice....
>
> …. It is clear that the second respondent has clearly abdicated his function and proceeded to confirm the appeal on the basis of the opinion of the Deputy Inspector General of Registration and the earlier proceedings passed by his predecessor and on the basis of the guideline value which is also bereft of details.
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> .... The determination of the market value cannot be in the realm of conjectures or surmises....
>
> … In other words, if the registration department is of the view that true market value has not been set forth, then they have to establish that the value as shown in the document is not the market value and for that there should be sufficient and an acceptable reason....
>
> … Hence, this Court is of the view that the respondents have not made out the case as against the appellant that the market value of the property has not been truly set forth and they had the reason to believe so. In such view of the matter, the demand made by the respondents for higher stamp duty cannot be sustained."

9. The view expressed by the learned brother Judge is squarely applicable to the facts of the present case and the same would render the impugned order fixing the market value at higher rate than the one mentioned in document and demanding additional stamp duty as arbitrary, bad in law and legally unsustainable.

10. In the result, the appeal is allowed by setting aside the orders of the respondents 1 and 2. The respondents are directed to release the sale deed registered as document No.1244

of 2000 dated 04.07.2000 to the appellant within a period of one week from the date of receipt of a copy of this Judgment. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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

2. The District Revenue Officer (Stamps),
Coimbatore - 641 018.

3. The Sub Registrar,
Gobichettipalayam,
Erode District,
Registering Officer.

+1 cc to Mr.N.Manokaran, Advocate, sr.48296
+1 cc to Government Pleader, sr.48152

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