IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.No.1907 of 2017
and
C.M.P.No.10253 of 2017

S.Santhi ...Appellant/Petitioner

vs.

1. The Chief Revenue Controlling Authority and Inspector General of Registration Tamilnadu Santhome High Road, Chennai - 28.

2. The Special Deputy Collector, (Stamps), Salem, Namakkal, Dharmapuri District.

... Respondents/Respondents

Civil Miscellaneous Appeal is filed under 47-A(10) of the Indian Stamps Act, 1899 to set aside the impugned order in Na.Ka.11180/N2/2015 dated 16.03.2017 passed by the 1^{st} respondent and thereby further direct the respondents to cause return of the sale deed registered as Doc.No.1034 of 2005 on the file of the Joint Sub Registrar - II, Namakkal to the appellant.

For Appellant : Mr.N.Subramaniyan

For Respondents : Mr.M.Venu Gopal
Special Government Pleader (C.S.)

J U D G M E N T

This appeal has been filed under Section 47 A (10) of the Indian Stamps Act against the order of the first respondent namely the Chief Controlling Revenue Authority dated 16.03.2017, confirming the order of the Special Deputy Collector (Stamps), Salem dated 15.05.2006, fixing the value of the lands purchased by the appellant under a sale deed dated 27.04.2005 at Rs.84 per Sq.ft.

The facts leading to this appeal are as follows :

2. The appellant had purchased an extent of 2643 sq.ft of land in Namakkal town under a sale deed dated 27.04.2005. The Sub-Registrar referred the documents on the ground of undervaluation to the second respondent namely the Special Deputy Collector, (Stamps), Salem. The Special Deputy Collector issued Form - I notice on 17.05.2005 to which the appellant sent a reply on 08.06.2005. The provisional order as required under Rule 6 along with Form - II notice fixing value at Rs.84 per sq.ft. was passed on 04.10.2005. The appellant sent her objection on 26.10.2005. The Special Deputy Collector (Stamps), Salem - second respondent herein passed final order determining the market value under Rule 7 on 15.05.2006.

3. Aggrieved, the petitioner filed an appeal before the first respondent namely the Chief Controlling Revenue Authority. The Chief Controlling Revenue Authority by an order dated 23.03.2009 fixed the value of the lands purchased by the petitioner at Rs.100 per sq.ft. Since the said fixation amounted to an enhancement of the value fixed by the Special Deputy Collector, (Stamps), the petitioner filed an appeal in CMA.No.1306 of 2009 under Section 47 A (10) in this Court.

4. This Court by an order dated 12.03.2012 held that the Chief Controlling Revenue Authority has no power to enhance the valuation in appeal filed by the purchaser and the orders of the Chief Controlling Revenue Authority were set aside and the matter was remitted to Chief Controlling Revenue Authority by this Court on 12.03.2012.

5. Pursuant to the said remand the order impugned in this appeal has been passed by the Chief Controlling Revenue Authority accepting the valuation fixed by the Special Deputy Collector, (Stamps) and dismissing the appeal filed by the appellant under Section 47 A (5) of the Indian Stamp Act.

6. Heard Mr.N.Subramaniyan, learned counsel for the appellant and Mr.M.Venugopal, learned Special Government Pleader (C.S.) for the respondents.

7. Mr.N.Subramaniyan, learned counsel for the appellant would point out that under Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of Instruments) Rules, 1968, a

final order has to be passed within a period of 3 months from the date of issue of the first notice. Pointing out that the Form – I notice was issued on 17.05.2005 and the final order came to be passed only on 15.05.2006, that is after the statutory three months period fixed under the Rules, he would contend that the proceedings are vitiated due to non compliance of the statutory time limit.

8. He would further contend that with reference to document No.1035 of 2005 under which the petitioner purchased the adjacent property, the Special Deputy Collector Revenue, Salem had fixed the value at Rs.84/- and the same was confirmed by the Appellate Authority namely the Chief Controlling Revenue Authority by an order dated 15.05.2012. The said order was challenged before this Court in CMA.No.2820 of 2012.

9. This Court by an order dated 05.06.2015 allowed the appeal on the following grounds:

1. The proceedings are vitiated for the non compliance of 3 months time fixed under the Rule 7 of the Tamil Nadu Stamps (Prevention of undervaluation of Instruments) Rules, 1968.

2. The order impugned had been passed purely based on the investigation by the District Registrar/ Deputy Tahsildar who are not Authorities under the Act. Hence, the inspection reports are not materials collected by the Authorities and are not entitled under the Act. Hence, the proceedings of the Second respondent and the first respondent are vitiated.

3. The delay of more than 5 years in passing order was also taken into account by this Court.

Therefore, according to the learned Counsel for the appellant the decision in CMA.No.2820 of 2012 will cover the issues in this proceedings also.

10. Per contra Mr.M.Venu Gopal, learned Special Government Pleader (C.S.) appearing for the respondents would contend that the delay caused in passing the final orders by the second respondent is an administrative delay. Therefore, the same cannot vitiate the proceedings.

11. He would further contend that under the Rules, the procedure for hearing of the appeal has been strictly followed by the Appellate Authority.

Therefore, in the absence of violation of any of the Rules prescribed, the proceedings cannot be said to be vitiated. On the 3rd ground namely the delay, the learned Special Government Pleader, (C.S.) would point out that insofar as this appeal is concerned the final order passed by the Appellate Authority was on 23.03.2009 i.e., within three years from the date of final order passed by the Original Authority namely the second respondent. Therefore, there is no question of delay on the part of the first respondent.

12. The fact that the appeal was filed against the final order dated 23.03.2005 and the matter came to be remitted was pointed out by the learned Special Government Pleader, (C.S.). I have considered the rival submissions.

13. The Appellate Authority namely the Chief Controlling Revenue Authority had opined that the order passed in CMA.No.2820 of 2012 will not apply to the facts of the present case, since the appellate Authority had disposed of the appeal within three years from the date of the order of the Original Authority and the present proceedings that was before the Appellate Authority namely the first respondent arises out of the remand order made by this Court in CMA.No.1306 of 2009.

14. Of Course, the 3rd ground on which the CMA.No.2820 of 2012 was allowed by this Court do not apply to the present case. But it cannot be said that the entire order of this Court in CMA.No.2820 of 2012 will not apply to the proceedings. As already pointed out there is breach of statutory time limit fixed under Rule 7 which results in proceedings vitiated.

15. Further the Appellate Authority in this case also while passing the present impugned order relied upon the inspection reports made by the District Registrar/ Deputy Tahsildar who are not authorized under the Rule. Hence the said inspection reports are not materials collected by the Authorities.

16. These two grounds are very much available to the appellant in the present case also, while so the Chief Controlling Revenue Authority had picked the ground of delay which is not applicable to this case and concluded that entire order in CMA.No.2820 of 2012 cannot apply to the facts of the present case.

17. I am unable to pursuade myself to agree with such an interpretation made by the Chief Controlling Revenue Authority. Admittedly there is violation of time limit fixed under Rule 7 and the copies of the so called inspection reports which are

relied upon by the Appellate Authority were not furnished to the appellant apart from the fact that those inspection reports were collected by the persons who are not authorized under the Act to collect such materials. Hence, the very basis of the order of the first respondent goes.

18. Therefore, in my considered opinion the entire proceedings of the respondents under Section 47 A are vitiated. Hence, the appeal is allowed and the orders of the Authorities are set aside. The Authorities are directed to return the document No.1034 of 2005 after completing any registration formalities that may remain within four weeks from the date of receipt of a copy of this order.

19. It is made clear that the time limit fixed above shall be adhered strictly and any lapse on the part of the Officials in adhering to follow the time limit will be viewed seriously. However, there will be no orders as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

dsa
To

1. The Chief Revenue Controlling Authority
and Inspector General of Registration Tamilnadu
Santhome High Road, Chennai - 28.

2. The Special Deputy Collector, (Stamps),
Salem, Namakkal, Dharmapuri District.

+1cc to Mr.N.Subramaniyan, Advocate Sr. 65319
+1cc to the Special Government Pleader Sr. 65501

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AK(CO)
VR(10/10/2017)