IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.10.2017
CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

C.M.A.NO.2095 OF 2014
AND M.P.NO.1 OF 2014

R. Sreedher ... Appellant

Vs.

1. Sub Registrar,
Virugambakkam,
Chennai.

2. District Revenue Officer (Stamps),
32, Rajaji Salai, Singaravelar Maaligai,
Chennai.

3. The Chief Controlling Revenue Authority
& Inspector General of Registration,
Chennai. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 47-A (10) of the Indian Stamp Act 1899, against the order dated 07.01.2014 (Received on 29.01.2014) in Appeal Pa.Mu.No.11661/N1.2013 passed by R-3/ The Chief Controlling Revenue Authority & Inspector General of Registration, Chennai reversing the order dated 30.03.2012 of the 2nd respondent in Ref.Na.Ka.Si.Pa.No. 19/08/A4.

For Appellant : Mr.Yashod Vardhan
Senior Counsel for Mr.R. Sunil Kumar

For Respondents : Ms. M.Jayasree
Government Advocate

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the order passed by the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai dated 07.01.2014.

2. The appellant has purchased 21 acres of agricultural land with standing mango and other trees and well in old Patta

No. 28 and new Patta No. 61 comprised Survey Nos. 432/1, 452/1A, 453/1, 453/2, 454/1, 455 and 456/1A of Old village No.82/99, New No.73, Maduravoyal Village, old Saidapet Taluk, Chengleput District, now Ambattur Taluk, Thiruvallur District for sale consideration of Rs.9,65,00,000/-. (Nine Crores Sixty five lakhs only). The market value as projected by the appellant was not accepted and the matter was referred to the second respondent (District Revenue Officer) for fixing the market value. The second respondent has fixed the market value as Rs. 254/- per sq. ft and demanded a deficit stamp duty of Rs. 1,09,36,744/- (One Crore nine lakhs six thousand and seven hundred forty four only).

3. Challenging the same the appellant has filed appeal under Section 47 A (5) of the Indian Stamp Act 1899 before the third respondent. The finding of second respondent is on the basis of the surrounding properties as well as future development of that area. According to the second respondent the surrounding areas are well developed, surrounded with well laid roads, street lights and all other amenities. Even though, the property which was sought to be sold was classified as Mango grove and continued to be an agricultural land, in the revenue records, the prospect of future development actuated the second respondent to fix the market value at Rs.250/-sq.ft. On appeal, the third respondent (The Chief Controlling Revenue Authority & Inspector General of Registration) has called for the registered documents from the Sub Registrar Office with regard to various areas within the jurisdiction of the Sub Registrar. Accordingly, he fixed the rate of Rs.300/- per sq.ft enhancing the rate from Rs.252/- per sq.ft. Considering the guideline value of the adjacent properties and also nature and usage of property, the third respondent has fixed market value of the property at Rs. 300/- per sq.ft.

4. Aggrieved over the action of the third respondent, the appellant is before this Court.

5. Mr.Yashod Vardhan, learned Senior Couseal appearing for Mr.R.Sunil Kumar, learned counsel appearing for the appellant would submit that the property which was registered in the year 2006 still continues to be an agricultural property. To prove the same, revenue documents like Chitta Nos. 1416, 1418, 1419, 1422 and 1427 issued by the Village Administrative Officer, Maduravoyal, corresponding to the years 2008 to 2017 were produced. Relying on the judgments of this Court in THAJUNISSA AND ANOTHER VS. THE SPECIAL DEPUTY COLLECTOR (STAMPS), CHENNAI COLLECTORATE AND OTHERS [2013 (5) CTC 577] and SPECIAL DEPUTY COLLECTOR (STAMPS) CHENNAI COLLECTORATE VS. THAJUNNISA AND OTHERS [2015 (6) MLJ 129] he would contend that when the property is classified as an agricultural land and sought to be registered as such, the market value shall not be

fixed on the basis of future development, existence of commercial or industrial establishment, surrounding the property, availability of the amenities and future usage is illegal.

6. The learned Senior Counsel for the appellant would further contend that the nature of usage is relatable to the date of purchase and it is irrelevant for the purpose of calculation of stamp duty as held by the Hon'ble Supreme Court in STATE OF U.P. AND OTHERS VS. AMBRISH TANDON AND ANOTHER [2012 (3) MLJ 714].

7. The learned Senior Counsel would also contend that as held by this Court in RAJENDRAN VS. THE INSPECTOR GENERAL OF REGISTRATION AND OTHERS [2012 (3) CTC 589] when an appeal is made by the land owner, the Inspector General of Registration cannot enhance the market value over and above the value determined by the Collector / District Revenue Officer. Further, in view of the rules framed under the Tamil Nadu Town and Country Planning Act, 1971, namely, the Tamil Nadu Change of Land Use (From Agriculture to Non-Agriculture Purposes in Non-Planning Areas) Rules, 2017, for conversion of the property from agriculture to non-agriculture purposes, 3% of the market value has to be paid as per Section 47-AA of the Indian Stamp Act, 1899. In that event also, the registration of the property as agricultural land will not be prejudicial to the fiscal interest of the State. Therefore, he would pray that the order passed by the third respondent is illegal as it contravenes the statutory provisions and principles of natural justice.

8. Per contra, the learned Government Advocate would submit that the subject property is situated within the Corporation limits, in Chennai City. The property is surrounded by industrial establishments and except this property, all properties have been developed as housing sites. Therefore, the order passed by the third respondent is very much reasonable and the third respondent is empowered under Section 47-A(6) of the Indian Stamp Act to do so.

9. I have heard the rival contentions.

10. The contention of the appellant that the property is continued to be an agricultural land and still, the Mango tress were standing in the property and it is not used for housing or other purposes. When the property continued to be an agricultural land, the authorities cannot on their own imagination assume that it will be converted as a commercial property and redetermine the market value.

11. This Court in THAJUNISSA AND ANOTHER VS. THE SPECIAL DEPUTY COLLECTOR (STAMPS) CHENNAI COLLECTORATE AND

OTHERS [2013 (5) CTC 577] has observed that 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., and the redetermination of market value on the basis of sq. ft. rate was depreciated.

12. In a judgment of the Hon'ble Supreme Court in STATE OF U.P AND OTHERS VS. AMBRISH TANDON AND ANOTHER [2012 (3) MLJ 714 (SC)] it has been held as follows:-

> "Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is irrelevant for the purpose of calculation of stamp duty."

13. Considering the dictums laid down by the Hon'ble Supreme Court as well as this Court, the property belonging to the appellant should have been registered as an agricultural land, as it stood as such, on the date of registration and not on the basis of the future usage. Therefore, the contention of the learned Senior Counsel appearing for the appellant has much force. This Court also considers that the redetermination of the market value on the basis of future usage is totally irreleant for the purpose of calculation of stamp duty. The other contention of the learned Senior Counsel that as per the Tamil Nadu Change of Land Use (From Agriculture to Non-Agriculture Purposes in Non-Planning Areas) Rules, 2017, the local authorities are entitled to collect conversion charges at the rate of 3% of the market value fixed under Section 47-AA of the Indian Stamp Act, 1899. Therefore, the reasoning given by the third respondent on the basis of revenue loss which is prejudicial to the interest of the State cannot be sustained. The third respondent ought to have determined the market value corresponding to the nature of the land viz., in the instant case, the agriculture. Therefore, redetermination of market value on the basis of future development by the respondents is illegal and not sustainable.

14. Further, this Court in RAJENDRAN VS. THE INSPECTOR GENERAL OF REGISTRATION AND OTHERS [2012 (3) CTC 589] has categorically held that the Inspector General of Registration shall not enhance the value of the property when an appeal is made by the purchaser. In the absence of any appeal or reference from the Registration Department, the third respondent ought not

to have enhanced the market value determined by the District Collector / District Revenue Officer. As a quasi judicial authority, he is supposed to test the correctness of the determination of the market value made by the District Collector. His powers to fix higher market value is under Section 47-A(6) of the Indian Stamp Act, 1899.

15. Even assuming that the authority has powers to do so, it is mandatory on his part to adhere to the requirements of principles of natural justice as contemplated in Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instrument) Rules. In the instant case, I do not find any evidence as to the procedure contemplated under the rules is adopted by the respondents. In so far as the order passed is in violation of principles of natural justice and without assigning any reasons, this Court considers that the order passed by the respondents is illegal and is liable to be set aside.

16. As discussed above, the third respondent should have assessed and determined the value of the property, as it was classified as agricultural land in the revenue records. He should not have redetermined the value on the basis of future usage. The enhancement of the market value from the one fixed by the District Collector, without recording reasons, is also not sustainable. The order of the third respondent is not sustainable, more so, when it contravenes Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instrument) Rules.

17. For the foregoing reasons, this Court finds that the order passed by the third respondent does not stand scrutiny of law and is illegal. Accordingly, the order passed by the second respondent in e/f/rp/g/vz;/:19/08/A4/2000 dated 30.03.2012 as well as the order of the third respondent in Pa.Mu.No.11661/N1.2013 dated 07.01.2014 stand quashed.

18. In fine, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bsm/tk

To
1. The Sub Registrar,
Virugambakkam, Chennai.

2. District Revenue Officer (Stamps),
32, Rajaji Salai, Singaravelar Maaligai,
Chennai.

3. The Chief Controlling Revenue Authority
& Inspector General of Registration, Chennai.

copy to

The Record Keeper
VR Section
High Court, Madras

+1 cc to Mr.R.Sunil kumar Advocate sr 75609
+1 cc to Special Govt Pleader sr 75690

C.M.A.NO.2095 OF 2014

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