

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1498 of 2009

M.Rathinasamy

... Appellant

Vs.

1. Sub Registrar,
Nallur, Tirupur.
 2. The District Revenue Officer (Stamps),
Coimbatore.
 3. The Chief Controlling Revenue Authority and
Inspector General of Registration, Mylapore,
Chennai - 600 004.
- ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 47-A(10) of the Indian Stamps Act, 1899, read with Section 104 of the Code of Civil Procedure, against the order dated 10.02.2009 passed in Pa.Mu.No.15232/No.2/2006 on the file of the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai, confirming the order dated 03.02.2006 passed in Mu.Pa.No.1634, 1635/T/2005 on the file of the District Revenue Officer (Stamps), Coimbatore.

For Appellant : M/s.S.K.Rakhunathan

For Respondents : Ms.M.Jayasree
Government Advocate

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order dated 10.02.2009 in Pa.Mu.No.15232/No.2/2006 passed by the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai.

2. The appellant had purchased two agricultural lands of 1.85 acres and 2.23 ½ acres in S.Nos.78 and 79 in Nallur Village, Tiruppur District, by virtue of registered document Nos.2962 and 2963 of 2005 for value of Rs.1,20,000/- each.

3. The valuation of the property was not accepted by the registering authority and it was referred to the District Revenue Officer (Stamps), Coimbatore, 2nd respondent, under Section 47-A(1) under the Indian Stamps Act. The value was fixed at Rs.32/- per sq.ft. by the 2nd respondent, after issuing notice under Form - I and II, for conducting the enquiry.

4. According to the appellant, the land has been classified as an agricultural land and corn was cultivated in the land and the property cannot be equated to house sites and the value shall not be determined on the basis of the guideline rate for the layouts surrounding the property.

5. The other ground raised by the appellant before the 3rd respondent, Chief Controlling Revenue Authority and Inspector General of Registration, is that Form - I notice was issued after the directions of the High Court in Writ Petition and Contempt Petition, on 18.08.2005 and the 2nd respondent ought to have passed the orders within a period of three months. Whereas, the final orders were passed only on 03.02.2006, which is beyond the three months period and therefore, the order passed by the 2nd respondent is violation of Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

6. The 3rd respondent directed the Deputy Inspector General of Registration, Coimbatore, to conduct the inspection. The inspection report described the property as not in the nature of an agricultural land, and it appeared to be a vacant land. It was also reported that the residential buildings were constructed therein. On perusal of the encumbrance certificate, it was found that in the year 2003, a settlement deed bearing registration No.3006 of 2003, settled a property at sq.ft. rate in S.No.78. Thereafter, in the year 2005, in respect of the same survey number, the property was registered as an agricultural land. But the second respondent, District Revenue Officer, while redetermining the market value of the property, in his inspection report has observed that corn was cultivated in one part and the other part had remained uncultivated. In view of the potentiality of converting the land into the house sites, the order passed by the District Revenue Officer was confirmed by the 3rd respondent, fixing the market value of the property at Rs.32/- per sq.ft. and Rs.10,000/- for the well. Aggrieved over the order passed by the 3rd respondent, the appellant has come before this Court with this Civil Miscellaneous Appeal.

7. Heard both sides. The learned counsel for the appellant, who would vehemently contend that the 3rd respondent has not considered the issue regarding the violation of Rule 7 of the said Rules as well as the nature of the property on the date of

registration. On the other hand, the value was fixed on the basis of the potentiality of user in future. Therefore, on the basis of artificial value, the 3rd respondent had arrived at a conclusion and the appellant seeks to quash the order passed by the 3rd respondent.

8. The learned Government Advocate would contend that it is an admitted case that by virtue of registered document No.3006 of 2003 in the very same S.No.78, the property was registered as house site and valued at sq.ft rate. All the surrounding properties have been registered as house sites and therefore, the appellant cannot disprove the nature of the property, and the order passed by the 3rd respondent is very much legal and sustainable in the eyes of law.

9. It is seen from the documents that Form - I notice was issued by the 2nd respondent on 16.08.2005, Form - II was notice issued on 20.01.2006 and final order was passed on 03.02.2006. As contended by the learned counsel for the appellant, Rule 7 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the authority concerned shall pass the order within three months from the date of first notice, after considering the relevant factors and evidence available with him and communicate the order to the parties concerned. Whereas, in the instant case, the order came to be passed after a period of five months. In that event, there is violation of Rule 7 of the above-said Rules, which is mandatory in nature.

10. Secondly, the property, which was sought to be registered, on the date of inspection by the 2nd respondent, was found to be an agricultural land, where maize was cultivated and remaining land was lying vacant. Once the inspection report revealed that there are some agricultural activities going on, it is the duty of the authorities to ascertain the classification of the land from the Revenue records. There is no iota of evidence by way of document that the property was not an agricultural land, but developed as layouts. The 3rd respondent redetermined the value of the land based on future development.

11. A judgment of the Hon'ble Division Bench of this Court in the case of Special Deputy Collector (Stamps), Chennai Collectorate, Singaravelar Maligai, Chennai, Vs. Thajunnisa and others reported in (2015) 6 MLJ 129, wherein, it has been categorically held that the relevancy of the nature of the property shall be considered on the date of registration and future uses are irrelevant factors. The relevant paragraph of the judgment reads as under:-

"10. It is to be borne in mind that the Deputy

Inspector General of Registration's Report dated 22.03.2002 does not indicate any conclusion which was arrived at to the effect that the Respondents/Petitioners lands in question were not agricultural lands. 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., in the considered opinion of this Court. Even the Suo Moto power as envisaged under Sub Section (3) of the Section 47(A) of the Indian Stamp Act ought to have been exercised within two years from the date of Registration of the documents. As a matter of fact, the Suo Moto power of revision should have been exercised well before 11.04.1999 not at a later point of time. As such, it is candidly clear that the impugned order dated 08.04.2002 is without jurisdiction whatsoever and resultantly, Form II notices issued were invalid and illegal in the eye of law."

Whereas, the 3rd respondent has considered the potentiality of conversion of the agricultural land into house sites and redetermined the rate on that basis, which is not correct and it is based on assumption of the authority without any legal evidence.

12. The copy of the document bearing registration No.3006 of 2003 has been produced by the learned Government Advocate. On a perusal of the document, it is found that super structure made of cement sheet measuring an extent of 410 sq.ft. along with 2197 sq.ft was conveyed. Even for fixing, the rate on the basis of document, notice should have been given to the parties concerned.

13. Finally, it is also to be noted that while redetermining the market value of the property, where the authorities should have followed the mandatory requirement of Rule 11-A of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. The 3rd respondent, appellate authority, shall conduct inspection of the property after notice to the parties concerned. Failure to issue notice and conducting inspection through other officers is contrary to Rule 11-A of Rules and amounts to violation of principles of natural justice. In the instant case, the 3rd respondent has failed to adhere to the mandatory requirement stated above.

14. Therefore, this Court finds that the order dated 10.02.2009 in Pa.Mu.No.15232/N2/2006 passed by the 3rd respondent, Chief Controlling Revenue Authority and Inspector General of Registration, Chennai, is not sustainable in law and accordingly, is set aside.

15. In the result, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Registrar,
Nallur, Tirupur.
2. The Chief Controlling Revenue Authority/
Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 028.
3. The District Revenue Officer (Stamps)
Coimbatore.

Copy to
The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to M/s.S.K.Rakhunathan, Advocate, S.R.No.84307
+1cc to the Government Pleader, S.R.No.84164

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KJI (CO)
CS/05/04/18

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