

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

CORAM

THE HON'BLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.155 of 2009

and

M.P.No.1 of 2009

Tmt.Perumayee

... Appellant/Respondent

vs.

1. The Chief Controlling Revenue Authority cum Inspector General of Registration, Santhome High Road, Chennai - 600 004.
2. The Special Collector (Stamps) Salem, Namakkal, Dharmapuri & Krishnagiri District.
3. The Sub Registrar, Komarapalayam, Namakkal District.

... Respondents

Prayer:- The Civil Miscellaneous Appeal was filed under Section 47A(10) of the Indian Stamp Act, against the judgment and decree dated 19.12.2008 passed by the Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai -4, in No.44289/N2/2006 which was received by the Appellant on 26.12.2008 confirming the order of the Special Collector (Stamps), Salem, Namkkal, Dharmapuri, Krishnagiri District in S.R.No.355/2001/KPM dated 11.07.2006.

For Appellant : Mr.A.K.Kumaraswamy

For Respondents : Mr.H.Venugopal for R1 to R3
Special Government Pleader (CS)

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JUDGMENT

This appeal is preferred against the order of the first respondent/the Inspector General of Stamps, dated 19.12.2008.

2. On 12.09.2000, the appellant had purchased a plot measuring 1,645 sq.ft of land with a building measuring 108.5 sq.mtrs for a total consideration of Rs.1,06,000/-. This property is

situated within Komarapalayam Municipality in Namakkal District. The correctness of the valuation of this property was doubted by the registering authority. The concerned Sub Registrar [the 3rd respondent herein] forwarded the matter to the second respondent, the Special Collector (Stamps) for verifying the correctness of market value of the property. The Special Collector (Stamps) invoked its jurisdiction under Section 47A of the Stamps Act and by his order dated 11-07-2006, determined the market value of the plot at Rs.174/- per sq.ft., retained the value of the building as stated in the sale deed, and assessed the marked value of the property at Rs.3,59,430/-. This order was challenged by the appellant before the Inspector General of Stamps [the 1st respondent herein]. In an appeal filed by the purchaser of the property, the first respondent suo motu enhanced the value of the plot from Rs.174/- per sq.ft., as determined by the second respondent to Rs.200/- per sq.ft. Aggrieved by what the appellant perceived as the unilateral act of the first respondent, he challenged his order before this court in C.M.A.No. 1869 of 2008. Vide its order dated 14.07.2008, this court held that since the appellant was not put on notice by the first respondent about his intention to enhance the market value for the property from Rs.174/- to Rs.200/- and was not granted an opportunity of being heard in the matter, there is a violation of principles of natural justice, and accordingly set aside the order of the first respondent impugned before it, and remanded the matter back to him for fresh consideration on merit. On 19.12.2008, the first respondent vide the order now impugned in this appeal again confirmed his earlier order. This is now under challenge.

3. A careful reading of the order under challenge reveals that since the remand of the matter the first respondent had served a notice dated 03.11.2008 on the appellant to participate in an enquiry and that the appellant had appeared through her counsel and submitted her submissions. However, in the records forwarded by the first respondent to this court neither the copy of the said notice nor the submissions of the learned counsel for the appellant as recorded in the impugned order find a place. This court, therefore, directed the counsel for the appellant to file the notice that was served on him. It was done.

4. The learned counsel for the appellant argued that the first respondent has only went through the motion mechanically and did not attempt to hold an enquiry consistent with the spirit of the order passed by this court in C.M.A.No.1869 of 2008. Expatiating it he submitted:-

- All that the notice dated 03.11.2008 required was appellant's appearance. It, however, did not state the first respondent's intention to enhance the market value

of the property in question suo motu from Rs.174/- per sq.ft., to Rs.200/- per sq.ft., nor it disclosed the material that was in his possession that prima facie warranted his intended enhancement of market value. The object of the enquiry therefore was not made clear which affected the appellant's right to effective hearing.

- So far as the order under challenge is concerned, the first respondent has relied on a document No.338/2000 as a data document for enhancing the market price to Rs.200/-. Copy of this document too was not served on the appellant at any time before or during the farcical enquiry that the first respondent had conducted.

5. Learned Special Government Pleader appearing for the respondents submitted that it was contemplated in the order in C.M.A.No.1869 of 2008 that an opportunity must be given to the appellant before deciding to enhance the market value of her property in question. This has been done and the first respondent is not required to do anything more.

6. How many times the administrative authorities who are entrusted with the powers to decide the civil right of a citizen should be reminded of their fundamental duty to hear those who are likely to be affected by their decision? Here, right to be heard must not be extended formally but effectively. This violation precisely was the reason for the appellant to approach this Court in C.M.A.No.1869 of 2008. The challenge then was all about the procedure adopted by the first respondent in suo motu increasing the market price in an appeal filed by the appellant. The order of this court though was instructive to the first respondent as to what he was required to do, still he faulted again. Was it a plain indifference to the order of this court or a determined defiance? Either way, the approach of the first respondent was not appreciable and it borders on contempt. In fitness of things, after remand, the first respondent should have put the appellant on notice as to what he proposes to do with the latter's civil right, and the nature of the material that he proposes to rely on for the purpose. A citizen cannot defend his right against a vacuum and where the quality of hearing falls short of affording an effective hearing for defending ones civil right, the whole exercise melts into meaninglessness. This precisely is the consequence of the quality of enquiry the first respondent has conducted pursuant to his notice dated 03-11-2008.

7. As already indicated, the property was purchased by the appellant in 2000, and after 17 years the controversy raised does not seem to find a culminating date yet. It is only hoped that the authority understands the seriousness of this state of affairs which in the instant case is a creation of first

respondent's sole contribution.

8.1. Today, this case comes after about eight years. This court does not see any meaning in remanding the matter back to the first respondent for yet another time for him to enquire afresh if the market value of the property of the property should be fixed at Rs.200/- per sq.ft. An opportunity has already been afforded to him earlier by this court but it was squandered by him. A litigant cannot be perennially be tied to a litigation for the inability of the first respondent to do that which he was under a direction to do. At least not on this case. Hence the order of the first respondent dated 19-12-2008 cannot be sustained and the same is set aside. There shall be no more enquiry on the first respondent's intended enhancement of market value of the property suo motu, and the said issue is foreclosed.

8.2. This however is only half the story. The first respondent has not taken a decision yet as to the correctness of the order of the second respondent in determining the value of the property at Rs.174/- per sq.ft for deciding which the appellant had approached him in appeal. The matter is therefore remanded back to the Inspector General, who will now determine if there is any justification for the second respondent in fixing he market value of the property at Rs.174/- per sq.ft and no more.

9. The order of the first respondent dated 19.12.2008 is hereby set aside and the matter is remanded for the limited purpose indicated in paragraph 8.2 above. No costs. Consequently connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

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सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Chief Controlling Revenue Authority cum
Inspector General of Registration,
Santhome High Road, Chennai - 600 004.
2. The Special Collector (Stamps) Salem,
Namakkal, Dharmapuri & Krishnagiri District.

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3. The Sub Registrar,
Komarapalayam, Namakkal District.

Copy to

The Section Officer,
V.R.Section, High Court, Madras

+1cc to Mr.A.K.Kumaraswamy, Advocate, S.R.No.6072

C.M.A.No.155 of 2009

SCD(CO)
CS/18/07/17



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