IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NOS.2607 TO 2611 OF 2007

M/s.M.S.K. Construction Pvt. Ltd.,
Rep. by its Director
No.220, E.V.R.Periyar Salai,
(Poonamallee High Road)
Kilpauk, Chennai - 600 010. ... Appellant in all CMAs'

Versus

1.The District Revenue Officer (Stamps)
Collectorate Building
Chennai - 600 001.

2.The Inspector General of Registration
Chief Controller of Revenue (Registration)
Chennai - 600 028.

3.The Sub-Registrar
Purasawalkkam,
Chennai. ... Respondents 1 to 3 in all CMA's

COMMON PRAYER: Civil Miscellaneous Appeals filed under Section 47-A(10) of the Indian Stamp Act, 1899, to set aside the order in Appeal Pa.Mu.No.22745/N5/2006 dated 10.05.2006 passed by the second respondent, in respect of Document Nos.2510/95, 2517/95, 2878/95, 2881/95 and 2882/95.

For Appellant : Mr.M.Selvaraju

For Respondents: Ms.M.Jayasree
Government Advocate (CS)

COMMON JUDGMENT

Challenging the order dated 10.05.2006 passed by the second respondent / Inspector General of Registration, the appellant is before this Court.

2. Originally, the appellant has registered some of the properties in the State of Kerala. The appellant wanted to register yet another sale deed by one of the owners who was left out in the previous sale deed. According to him, since the sale has suffered stamp duty at Kerala, he is not liable to pay stamp duty at Tamil Nadu. The document presented by the appellant to the third respondent was referred for valuation to the first respondent. The first respondent fixed the market value at Rs.910/- per sq.ft. Against which, the appellant preferred appeals before the second respondent. According to the appellant, the second respondent / appellate authority has failed to follow the rules under Rules 4 and 12 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968 and therefore, the order passed by the second respondent / appellate authority is liable to be set aside.

3. Heard the submissions made on either side and perused the materials available on record.

4. From a perusal of the impugned order, it is seen that the appellate authority has obtained a report from the District Registrar, North Madras, as to the guideline value of the property. He has also relied on the order passed by the first respondent District Revenue Officer (Stamps) and fixed the value at Rs.866/- per sq.ft.

5. It is well settled that the second respondent / appellate authority has failed to adhere to the mandatory requirement of Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968. Under Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968, certain mandatory procedures are laid down, which reads as under:-

> "11-A. Decision of the appellate authority. - The appellate authority may, for the purpose of deciding an appeal,-
>
> (a) call for any, information or record from any public office, officer or authority under the Government or any local authority;
>
> (b) examine and record statements from any member of the public officer of authority under the Government or the local authority; and
>
> (c) inspect the property after due notice to the parties concerned."

As long as the appellate authority has failed to conduct site inspection, it is violative of Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968.

6. Further, site inspection was conducted by the District Registrar, North Madras, and the decision was taken by the second respondent / appellate authority on the basis of the report submitted by the District Registrar. There is no enabling provision for the second respondent / appellate authority, under Section 47-A(5) of the Act, to delegate the powers conferred on him to any of his subordinates. Such sub-delegation is without jurisdiction. Further, even assuming that he has power to delegate the same to his subordinates, it shall be conferred on a competent authority. In so far as the District Registrar is concerned, this Court in various judgments has held that the District Registrar is an Officer under the Registration Act and not at all an Officer under the Indian Stamp Act. In such view of the matter, the District Registrar is an incompetent authority.

7. In similar circumstances, this Court in S.SANTHI VS. THE CHIEF REVENUE CONTROLLING AUTHORITY & INSPECTOR GENERAL OF REGISTRATION, CHENNAI AND TWO OTHERS [C.M.A.NO.2820 OF 2012 DATED 05.06.2015] has held as follows:-

> "17. The Authority conferred with certain functions under a statute has to carry out the same on its own such function and cannot delegate the same to another in the absence any contemplation for such delegation under the Act. In the present case, under rule 4 (3) (c) and rule 11-A of the rules, 2nd respondent-Collector and the first respondent Inspector General of Registration respectively, have to inspect the property and there is no enabling provision under the rules or under the Act to delegate such power. Therefore, inspections by other officers at the behest of the respondents vitiate the entire proceedings.
>
> 18. The failure on the part of the 2nd respondent to pass a final order within 3 months from the date of Form-I notice as mandated under rule 7 of the rules vitiates the entire proceedings. Form - I notice was issued on 17.05.2005 and the final order was passed on 05.12.2006, after 1 1/2 years, i.e., after 3 months and hence the entire proceedings are vitiated.
>
> 19. The impugned order has been passed by the first respondent purely based on inspection reports of the District Registrar / Deputy Thasildar, who are not

> authorised under the Act and hence the said inspection reports are not materials collected by the authorities, entitled under the Act. Hence, the proceedings of the second respondent and first respondent are vitiated."

Therefore, the delegation of powers to the District Registrar and the decision taken on the basis of his report is not all sustainable in the eyes of law.

8. Even assuming that the appellate 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 second respondent is illegal and is liable to be set aside.

9. Accordingly, the order dated 10.05.2006 passed in Appeal Pa.Mu.No.22745/N5/2006 by the second respondent is set aside and the matter is remitted back to the second respondent and the second respondent is directed to reconsider the claim of the appellant in compliance with principles of nature justice and Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instrument) Rules. Such exercise shall be completed by the second respondent within two months from the date of receipt of a copy of this order.

10. The Civil Miscellaneous Appeal is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dsa/tk

To

1.The District Revenue Officer (Stamps)
Collectorate Building
Chennai - 600 001.

2.The Inspector General of Registration
Chief Controller of Revenue (Registration)
Chennai - 600 028.

3.The Sub-Registrar
Purasawalkkam,
Chennai.

+5cc to Mr.M.Selvaraju, Advocate Sr.84572,
84573,74574,84575,74576

+1cc to the Government Pleader Sr.84520

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