IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A. No. 2993 of 2007
and M.P.No.1 of 2008

Nanji Patel ... Appellant

Versus

1. The Chief Controlling Revenue Authority,
No.120, Santhome High Road,
Chennai - 600 028.

2. The District Revenue Officer (Stamps),
"M.Singaravelar Maligai", 5th Floor,
No.32, Rajaji Salai, Chennai - 1.

3. The Sub Registrar,
Sembiam. ... Respondents

Appeal filed under Sub Section 10 of Section 47-A of Indian Stamps Act against the order passed in Order No.53161/N1/2004, dated 13.04.2006 on the file of the Chief Controlling Revenue Authority, Chennai.

For Appellant : Mr. A. Thiagarajan, Senior Counsel for Mr. S. Ramesh Kumar

For Respondents : Ms. M. Jayashree Government Advocate

J U D G M E N T

Aggrieved over the order dated 13.04.2006 passed by the first respondent, the appellant is before this Court.

2. The appellant had purchased the property and presented the document for registration before the third respondent and the same was registered as document No.2576/04. After registration, the third respondent referred the same for redetermination of market value of the property. The second respondent issued Form-I notice on 20.04.2004, wherein, the market value was fixed at Rs.400/- per sq.ft. Subsequently, Form-II notice was issued by the second respondent on 15.07.2004 re-fixing the market value at Rs.350/- per sq.ft. and final order was passed on 10.08.2004, directing the petitioner to pay deficit stamp duty for a sum of Rs.1,80,664/-, against which, the appellant preferred an appeal before the first respondent / appellate authority. The first respondent conducted site inspection through the District Registrar, North Madras and based on the report of the District

Registrar, the first respondent passed the order impugned in this appeal.

3. According to the appellant, the first respondent, while dealing with an appeal filed under Section 47-A (5), should not enhance the market value fixed by the second respondent/District Revenue Officer and the market value of the property was re-determined by the first respondent without giving proper opportunity to the appellant, as specified in Rule 11-A and 12 of Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968. Therefore, the order passed by the first respondent is liable to be set aside.

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

5. On perusal of the impugned order, it is noted that the first 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 and the decision was taken by the first respondent / appellate authority on the basis of the report submitted by the District Registrar. There is no enabling provision for the first 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.
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> 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.
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> 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. Further, there are no reasons recorded for re-determining the market value. The market value fixed by the second respondent is at Rs.350/- per sq.ft., whereas on the appeal filed by the presentant of the document, it is enhanced to Rs.400/- per sq.ft. While deciding the appeal preferred by the presentant of the document, the appellate authority cannot enhance the market value, more than what is fixed by the original authority.

9. 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 first 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.

10. 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 first respondent is illegal and is liable to be set aside.

11. Accordingly, the order dated 13.04.2006 passed in Order No.53161/N1/2004 by the first respondent is set aside. The first 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 first respondent within two months from the date of receipt of a copy of this order.

12. The Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rsi/tk

To

1. The Chief Controlling Revenue Authority,
   No.120, Santhome High Road,
   Chennai - 600 028.

2. The District Revenue Officer (Stamps),
   "M.Singaravelar Maligai", 5th Floor,
   No.32, Rajaji Salai, Chennai - 1.

3. The Sub Registrar,
   Sembiam.

+ 1 cc to Mr. S. Ramesh Kumar, Advocate sr.78713
+ 1 cc to Mr. the Special Government Pleader Sr.78537

C.M.A.NO.2993 OF 2007

EV(CO)
EU(29/10/2018)