IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

CMA.NO.605/2006
& CMP.No.2498/2006

S.Manickam ..Appellant

..Vs.

1.The Chief Controlling Revenue Authority and
Inspector General of Registration,
Chennai-600 028.

2.The District Collector rep.by
Special Deputy Collector (Stamps),
Cuddalore.

3.The Registering Authority, rep.by
Joint Sub Registrar-II, Kallakuruchi.

..Respondents

PRAYER :- Appeal filed under section 47.A(10) of the Indian Stamp Act, against the order of the first respondent made in No.46364/N3/04, dated 28.10.2005 fixing the market value of the property in S.Nos.146/1, 146/2 and 146/3 (totaling 30,298 ¾ sq.ft) of Kallakuruchi Village and Taluk, at Rs.50/- per sq.ft., purchased by the appellant at Rs.10/- per sq.ft., on 09.12.1997.

For Appellant : Mrs.Radha Gopalan

For Respondents: Mr.M.Venugopal
Special Government Pleader (CS)

JUDGMENT

This appeal is by the purchaser challenging the order of the first respondent viz., The Inspector General of Registration, and the order of the second respondent viz., The Special Deputy Collector (Stamps), Cuddalore, in and by which, the Special Deputy Collector (Stamps) had fixed the market value of the property at Rs.31/- per sq.ft. as against the value of Rs.10/- per sq.ft., shown in the sale deed. The petitioner purchased an extent of 30,298¾ sq.ft., of land under a sale deed registered on 09.12.1997 as document No.1920/97 before the Joint Sub Registrar No.2, Kallakuruchi. Claiming that the property has been under valued, the Joint Sub Registrar had made a reference to the 2nd respondent/Special Deputy Collector (Stamps) on 09.12.1997 itself. Thereafter, it appears that notice in Form No.I was issued to the appellant on 01.12.98, which was followed by Form No.II notice dated 11.01.2001. Claiming that none of these proceedings were communicated to him, the appellant demanded return of the document by his letter dated 13.08.2003. Almost one year, thereafter on 28.07.2004, The Special Deputy Collector (Stamps), Cuddalore passed an order fixing the value of the property at Rs.31/-per sq.ft. Aggrieved by the said fixation, the appellant filed an appeal before the first respondent viz; The Chief Controlling Revenue Authority. The first respondent by his order dated 28.10.2005 increased the value to Rs.50/- per sq.ft., and directed the appellant to pay the additional stamp duty and the registration charges with interest at 2% per month i.e., 24% per annum till date of payment. It is the said order that is under challenge.

2.I have heard Mrs.Radha Gopalan, learned counsel appearing for the appellant, and Mr.M.Venugopal, learned Special Government Pleader (CS) appearing for the respondents.

3.The main contention of the learned counsel appearing for the appellant is that Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, has not been complied with. Therefore, the entire proceedings are bad. The scheme of the rules is as follows: Rule 3 enables the registering officer to make a reference if the document presented to him for registration does not reflect the market value of the property. Upon receipt of the said reference, the Special Deputy Collector is expected to issue a notice in Form I, to every person by whom, and every person in whose favour the instrument has been executed under Rule 4(1) a notice under Form I provides for a period of 21 days to the owner or the purchaser or the seller to file their representation. If no representation is received after issuing notice, after examining the records, the Collector is expected to pass orders in writing provisionally determining the market value of the properties and the duty payable. Rule 4(4) requires the Collector to state the basis on which the provisional market value is determined also in the order. Rule 6 makes it incumbent on the Collector to communicate the provisional order along with a notice in Form II calling upon the parties to lodge their objections after receipt of the provisional order along with notice under Form II. The Collector shall pass final orders after considering the objections received under Rule 7 after hearing the parties. If no objection is received the Collector after a careful consideration of all the relevant factors and evidence available with him, shall pass the final order, within three months from the date of the first notice, determining the market value. Rule 7 (1) reads as follows:

> "(1)The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation in person at the time of hearing in any case after careful consideration of all the relevant factors and evidence available with him [pass an order within three months from the date of first notice] determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the maount of stamp duty, if any."
>
> (emphasis supplied)

4.Therefore, the mandatory requirement of Rule 7 is that the Collector should pass the final order within three months from the date of the Form I notice. The sale deed is dated 09.12.1997. The Form I notice was issued on 01.12.1998, and the provisional order along with Form No.II notice was issued on 11.01.2001. The final orders came to be passed only on 28.07.2004, viz; nearly 3 ½ years after the provisional order. Rule 7 (1) mandates the Special Deputy Collector (Stamps) to pass an order within three months from the date of the first notice. The first notice namely; the Form I notice is dated 01.12.1998. Therefore, the final orders should have been passed within three months from 01.12.1998, i.e. on or before 28.02.1999. It is clear that there is a violation of Rule 7(1). In K.Vijayalakshmi .Vs. Chief Controlling Revenue Authority of Tamil Nadu cum Inspector General of Registration, Chennai and Others reported in [2012] 3 MLJ 41, this Court had held that such violation would result in the entire proceedings being vitiated. After referring to the judgment of this Court in Tata Coffee Limited, rep., by its Company Secretary M.K.C.Pai .V. State of Tamil Nadu, rep., by the Secretary to Government, Commercial Taxes & Registration, Government of Tamil Nadu, Fort St.George,Chennai reported in 9[2011] 1 MLJ 455, the learned Judge who decided K.Vijayalakshmi's case observed as follows:

"Therefore, in the light of the above decision, it is clear that the second respondent has not specified the criteria viz; passing the final order within the time stipulated under the Act and rules"

5.This position was also reiterated by this Court in Periasamy .V. The Chief Controlling Revenue Authority, State of Tamil Nadu, reported in [2009 (6) CTC 632] .

6.In view of the above categorical pronouncements of this Court, the orders impugned in the Civil Miscellaneous Appeal will have to be set aside, and are accordingly set aside. The Appeal is allowed. However, there will be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

KP

To:

1.The Chief Controlling Revenue Authority and
Inspector General of Registration,
Chennai-600 028.

2.The District Collector rep.by
Special Deputy Collector (Stamps),
Cuddalore.

3.The Registering Authority, rep.by
Joint Sub Registrar-II,
Kallakuruchi.

4.The Section Officer,
VR Section, High Court, Madras.

+1cc to M/s.S.Radha Gopalan, Advocate sr.49980

+1cc to special Government Pleader (CS)sr.49738

CMA.No.605 of 2006

skv(co)
ss(17/8/2017)