BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.12.2017
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
C.M.A.(MD)No.15 of 2017

Thomas Spinning Mills India Private Limited,
Represented by it Managing Director,
M.Soosaimanickam,
Vellaikinaru,
Thudiyalur,
Coimbatore. ... Appellant

/Vs./

1. The Chief Revenue Control Officer /
   Inspector General of Registration,
   Santhome High Road,
   Chennai.

2. The Special Sub Collector (Stamps),
   Madurai.

3. The Assistant Inspector General of Registration,
   Madurai.

4. The District Registrar Administrative,
   Dindigul District,
   Dindigul.

5. The Sub Registrar,
   Chinnalapatti,
   Dindigul District,
   Dindigul. ... Respondents

Prayer: Appeal filed under Section 47-A(10) of Indian Stamp Act, 1899, to set aside the order passed by the first respondent in his proceedings Na.Ka.No.33723/N3/2016 dated 17.11.2016 by allowing this Civil Miscellaneous Appeal.

For Appellant : Mr.T.Mohan
for Mr.D.Venkatesh
For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader

JUDGMENT

The appellant purchased a spinning mill owned by one Cibi Exports India Private Limited comprised in Kalikkampatti Village, Dindigul District on 15.09.2014. The sale consideration was for a sum of Rs.8,50,00,000/-. The appellant paid stamp duty and registration charges on the said sale consideration. Sale deed was presented for registration before the Sub-Registrar, Chinnalapatti. The registering authority registered the sale deed, he, however, took the view that there was under valuation and that the market value of the property in question was much higher. The matter was therefore referred under Section 47 A(2) of the Indian Stamp Act. After issuing notice in Form-1 and after obtaining the report of the Stamp Tahsildar, the Special Deputy Collector (stamps) passed the order dated 04.07.2016, holding that the market value of the property on the date of registration was for a sum of Rs.13,30,36,000/- and therefore the registrant must pay the deficit stamp duty for a sum of Rs.33,52,520/-. Aggrieved by the same, the appellant filed an appeal before the Chief Controlling Revenue Authority / Inspector General of Registration, Santhome, Chennai.

2. The appellate authority, by order dated 17.11.2016, modified the order passed by the Special Deputy Collector (Stamps). The appellate authority held that the land value must be calculated at the rate of Rs.150 per sq.ft. and that the building will have to be valued for a sum of Rs.6,25,78,340/-. The registrant was directed to pay deficit stamp duty by computing the market value on the basis as indicated in the order dated 17.11.2016. Aggrieved by the same, this statutory appeal has been filed before this Court under Section 47-A(10) of the Indian Stamp Act, 1899.

3. Heard Mr.T.Mohan for Mr.D.Venkatesh, learned counsel for the appellant and Mr.V.R.Shanmuganathan, learned Special Government Pleader for the respondents.

4. The learned Special Government Pleader drew the attention of this Court to Annexure 1(a) signed by the registrants themselves along with the sale deed. In the said Annexure, which has been signed both by the vendor as well as the purchaser / appellant herein, the land value has been calculated at Rs.150 per sq.ft. In the order passed by the appellate authority, the very same value has been adopted. Therefore, there can be no controversy about this aspect of the matter. What is to be assessed is the building value alone. According to the registrants, the value of the building is Rs.1,89,29,704/-. But, in the order passed by the appellate authority, value of the building has been fixed at Rs.6,25,78,340/-.

5. The learned Special Government Pleader pointed out that this value has not been arbitrarily fixed. This was finalised only after obtaining reports from the competent authorities. If the valuation in respect of the super structures cannot be questioned, there is no need to interfere with the impugned order. He, therefore, called for dismissal of this appeal.

6. The learned Special Government Pleader further invoked the principle of estoppel. Section 27 of the Indian Stamp Act, 1899 mandates that not only the consideration, but also the market value and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of the duty with which it is chargeable, shall be fully or truly set forth in the instrument. He wanted this Court to appreciate the entries made in Annexure 1(a). In the light of the Section 27 of the Indian Stamp Act, he pointedly argued that contrary to the grievance now projected, there was no protest regarding the land valuation at the earliest point of time.

7. The learned counsel appearing for the appellant submitted that the authorities cannot take advantage of the entries made by the registrants in Annexure 1(a) filed along with the sale deed. The appellant had purchased the property for a huge sum of Rs.8,50,00,000/- and therefore they were in a hurry to conclude the transactions by execution and registration of the sale deed. When the sale deed was presented for registration, it was suggested to them that the survey numbers, in which the land in question is located have carry the guideline value at Rs.150/- per sq.ft. and that therefore the same must be duly reflected in the Annexure 1(a). It is a matter of common knowledge that if the dictates of the registering authority are not complied with, the document would not be registered. The appellant was therefore left with no other option but to distribute the sale consideration in the manner suggested by the registering authority. That is how, the land value was shown as Rs.6,60,70,296/- and the building value was shown as Rs.1,89,29,704/-.

8. He strongly contested the stand of the learned Special Government Pleader that the appellant lodged their protest only belatedly. In fact, as early as on 11.02.2015, the appellant had written a letter to the registering authority that the land in question could not have been classified as a residential area. Since it was an industrial site, valuation must be accordingly refixed. This was reiterated in their subsequent letter dated 21.04.2015 addressed to the Chief Revenue Controlling Authority / Inspector General of Registration, Chennai. Again, on 09.05.2015, the appellant took up the matter with the first respondent herein. The appellant pointed out that when the sale deed was presented for registration, registering authority had insisted that the land value must be indicated as Rs.150/- per sq.ft. Since they were under compulsion, they had to submit to the said demand of the registering authority. Once again, the appellant wanted the re-fixation of the land value by treating it as an industrial site. The learned counsel appearing for the petitioner submitted that the sale consideration paid by the appellant reflected the correct market value of the property in question.

9. This Court must first dispose of the contention raised by the learned Special Government Pleader by invoking the plea of estoppel. Section 115 of the Indian Evidence Act, 1872 can be invoked only when the other person has believed a thing to be true and acted upon such belief. In the present case, when a document is presented for registration, it is the duty of the registering authority to receive the same. Therefore, the registering authority cannot be held to say that they believe the entries made in Annexure 1(a) to be true and that is why they were led to register the document in question. The functions performed by the registering authority are statutory in character. Therefore, the question of applying the principle of estoppel at the instance of the registering authority and against the registrant cannot arise.

10. The registering authority formed its opinion that the market value of the property has not been truly set forth in the instrument in question. Therefore after registering the instrument, he referred the same to the Special Deputy Collector (stamps) for determination of the market value and the proper duty payable thereon.

11. It is settled law that the onus to establish that the market value of the property has not been duly set forth in the instrument lies only on the department. This cannot be shifted to the registrant. In this case, the appellant had purchased a spinning mill. The mill was spread over more than 10 acres. It is not a case, where the property comprises an extensive stretch of land, but, the structure occupies only a miniscule physical space. The buildings are also spread all over and therefore in this case, the land and building constitute one unit. The land is one kind of property, land and building altogether constitute a different kind of property. Therefore, they must be valued as one unit.

12. The learned counsel appearing for the appellant would place reliance on the decision of the Hon'ble Supreme Court reported in ***(1988) 2 SCC 150*** in the case of ***Administrator General of West Bengal*** Vs. ***Collector, Varanasi*** for this proposition.

13. This Court is in full agreement with the submission of the learned counsel. This Court must now see if the authorities are justified in valuing the land at the rate of Rs.150/- per sq.ft. and the building at Rs.6,25,78,340/- and calling upon the appellant to pay stamp duty on that basis.

14. The learned Special Government Pleader pointed out that 47-AA has been introduced by way of State amendment with effect from 01.06.2010 and the Valuation Committee was constituted. The Valuation Committee, after undertaking due exercise has finalised the market value guidelines of the properties in the State. In this case, the survey numbers in question have been classified as

falling under the residential house site category. The valuation is at the rate of Rs.150/- per sq.ft.. He would therefore contend that the valuation of the land cannot therefore be faulted. It is his further contention that the competent authority namely the Public Works Department has valued the building. The final figure was arrived at by applying the departmental norms and after giving due allowance for depreciation.

15. While the submission of the learned Special Government Pleader with regard to the statutory character of the market value guidelines register is correct, this Court must necessarily hold that while the entries made therein are binding on the department, it is open to the registrant to contend that the valuation set forth by him in his instrument is correct and that the guidelines value set out in the market value guideline register should not be followed.

16. In this case, the Government of Tamil Nadu issued G.O.Ms.No.75, Commercial Taxed and Registration (J1), dated 01.06.2010 promulgating the Rules of Tamil Nadu Stamp (Constitution of Valuation Committee for Estimation, Publication and Revision of Market Value Guidelines of Properties) Rules, 2010. The relevant Rules read as under:

> *"Guidelines for the estimation of the market value by the valuation sub-committee- Each valuation sub-committee shall prepare the statement showing average rates of agricultural and non-agricultural lands, residential, commercial and industrial sites in the sub-district and municipal or local body area, considering the following general guidelines:-*
>
> *(1)(a) In the case of lands other than house sites-*
>
> *(i) Classification of land as dry, garden, wet and the like;*
>
> *(ii) Classification under various classes of soil in the survey records;*
>
> *(iii) Other factors which influence the valuation of the land in question;*
>
> *(iv) Value of adjacent land or lands in the vicinity;*
>
> *(v) As far as practicable the nature of crop and average annual yield from the land for five consecutive years till the determination and nearness to road and market, distance from village site, its location in general, level of land, transport facilities, facilities available for irrigation such as tanks, well and pumpsets.*
>
> *(b) In the case of house sites-*

(i) The general value of house site in the locality;

(ii) Nearness to road, railway station, bus route;

(iii) Nearness to market, shops and the like;

(iv) Amenities available in the place like public offices, hospitals and educational institutions;

(v) Development activities, industrial improvements in the vicinity;

(vi) Land tax and valuation of sites with reference to taxation records of the local authorities concerned;

(vii) Any other features having a special bearing on the valuation of the site;

(viii) Any other special features like bore-well in addition to public water supply, lawn, garden and swimming pool.

(c) Properties other than lands, house sites and buildings-

(i) The nature and conditions of the property;

(ii) Purpose for which property is being put to use; and

(iii) Any other special features having a bearing on the valuation of the property.

(2) (a) The value of agricultural lands may be classified as dry, wet or garden, generally and nearness to the village may be considered for fixing the rates to each class.

(b) The rate for the lands with coconut or arecanut plantations may be estimated as garden lands instead of land plus number of trees.

(c) Data provided by the concerned Superintending Engineers of the Public Works Department shall be the norm for valuation of buildings.

(d) All the market value guidelines statements approved by the valuation sub-committee are public records and shall be preserved as permanent records in the office of the concerned District Registrar."

17. In case of category (c) that the nature and conditions of the property, purpose for which property is being put to use and any other special features having a bearing on the valuation of the property must be taken into account.

18. In the present case, admittedly the mill has been in existence for almost 30 years. It is spread over an area of 10 acres. Therefore, it is neither a mere land nor a house site. It would obviously fall under the category referred to in rule 5(1)(c). But, the Valuation Sub Committee has mechanically categorised the same as a residential / house site. It is patently incorrect. Therefore, on this sole ground the valuation made by the respondent authorities by treating it as house site to be valued at Rs.150/- per sq.ft., is liable to be interferred with.

19. As already pointed out that the onus lies only on the department. This onus has not at all been discharged. Except going by the entry in the market value guideline register and the classification set out therein, there is no other justifiable reason for taking a different view from the one set forth in the instrument. There is also one other aspect. What was purchased by the appellant is spread over 10 acres. Such a large area can never be valued on a square feet basis. Whenever the Government (of course, we are talking of pre- 2014 land acquisitions) acquired lands and the affected land owners contended that the valuation must be made on square feet basis, this standard response of the Government would be that when acquisitions are made on a large scale, square feet valuation is not the appropriate method. But, when it comes to collection of stamp duty on land transactions, the Government sings a different tune. What is sauce for the goose must be sause for the gander also.

20. The learned Special Government Pleader would place reliance on the recent decision of the Division Bench of Madurai Bench of Madras High Court in ***W.P.(MD)No.3575 of 2017,*** *dated* ***07.06.2017*** in the case of ***M.Gajanandam*** *Vs.* ***The Competent Authority and another***. The Hon'ble Division Bench held that the Stamp Act being a fiscal statute must be construed as such. This Court is bound by the said decision but then nothing set out in this order runs counter to the principles laid down therein.

21. In as much as the respondents have not demonstrated that the value set forth by the appellant in the sale deed dated 15.09.2014 does not reflect the market value, this Court has no hesitation to set aside the order dated 17.11.2016 passed by the first respondent. The respondents are directed to return the registered sale deed dated 15.09.2014 to the appellant forthwith. This Civil Miscellaneous Appeal stands allowed accordingly. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Chief Revenue Control Officer /
   Inspector General of Registration,
   Santhome High Road, Chennai.

2. The Special Sub Collector (Stamps), Madurai.

3. The Assistant Inspector General of Registration, Madurai.

4. The District Registrar Administrative,
   Dindigul District, Dindigul.

5. The Sub Registrar, Chinnalapatti,
   Dindigul District, Dindigul.

6. The Record Keeper, Vernacular Section,(2 copies)
   Madurai Bench of Madras High Court, Madurai.

+1cc to The Spl. Government Pleader Sr.No.50410

SM/KMI

VB/JC/SAR1/13.04.2018/8P/9C

C.M.A.(MD)No.15 of 2017
12.12.2017