BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.574 of 2015
and
M.P.(MD) No.1 of 2015

Dr.Kurien Abraham ... Appellant

Vs.

1.Chief Controlling Revenue Authority
cum Inspector General of Registration,
Door No.120, Santhome High Road,
Chennai - 600 028.

2.Special Deputy Collector for Stamp Duty,
Collector Office Campus, Madurai - 625 020.

3.Sub Registrar,
Kodaikanal,
Dindigul District. ... Respondents

Prayer: Appeal filed under Section 47A(10) of the Indian Stamp Act, 1899, to set aside the impugned order dated 05.05.2015 passed by the Chief Controlling Revenue Authority cum Inspector General of Registration in proceedings number Pa.Mu.No.46820/N4/2013 and thus hold that the value of the property mentioned in the sale deed dated 18.07.2005 is correct.

For Appellant : Mr.J.Barathan for
Mr.T.R.Jeyapalam
For Respondents : Mr.D.Muruganantham, AGP

JUDGMENT

Heard the learned counsel for the appellant and the learned Additional Government Pleader for the respondents.

2.The appellant herein purchased the property comprised in R.S.No.10, Old S.No.190/3, Kodaikanal, Kodaikanal Taluk, Dindigul District measuring an extent of 132 cents on 18.07.2005 for a sale consideration of Rs.13,20,000/-. But, the registering authorities took the stand that there was under valuation. Proceedings under Section 47(A)(1) of the Indian Stamp Act, 1899 were initiated. The appellant lodged his objections and contended that the market value of the property has been truly set forth in the document in question. But, the Special Deputy Collector (Stamps) Madurai, by order dated 31.08.2009 in S.R.No.49/05 fixed the market value of the property at Rs.56,40,096/- and called upon the appellant to pay the deficit stamp duty of Rs.3,45,608/-. Aggrieved by the same, the appellant filed appeal before the first respondent under Section 47 (A)(5) of the Act. The same was dismissed by the first respondent on 26.02.2011. The appellant herein filed C.M.A.(MD) No.693 of 2011. This Court, by order dated 20.02.2012 set aside the same. The matter was remitted to the original authority for fresh enquiry. Thereafter, the second respondent herein by order dated 08.07.2013 fixed the value of the property at Rs.43,16,400/-. The appellant was directed to pay deficit stamp duty of Rs.2,39,712/-. Feeling still aggrieved, the appellant moved the first respondent by filing appeal under Section 47(A)(5) of the Act. The first respondent vide order dated 04.05.2015 sustained the valuation of the second respondent. This is impugned in this appeal.

3.The counsel for the appellant submitted that during the relevant period, the guideline value for 132 cents was at Rs.1,45,068/-. But, in the sale deed, the appellant had shown the correct market value of Rs.13,20,000/- and paid stamp duty accordingly. The Government has been periodically revising the guideline value. For the period 01.08.2007 and 31.03.2012, the guideline in this survey number for the same extent was at Rs.1,98,000/-. For the next block period commencing from 01.04.2012 to 08.06.2017, the guideline value was revised to Rs.10,00,000/- per acre in S.No.190/3. From 09.06.2017, it became Rs.6,70,000/- per acre. If the current guideline value is to be applied, the property purchased by the appellant could only be valued at Rs.8,84,000/-.

4.It is true that the authority under the Stamp Act cannot determine the stamp duty payable based on the entries in the guideline value register. But, at the same time, this Court cannot lose sight of the fact that when there was an exercise of periodical revision from time time and even according to the respondents for the subsequent block years, the guideline value did not exceed what was mentioned in the sale deed in question, this Court will have to necessarily hold that the sale consideration mentioned in the sale deed in question was true and valid.

5.The Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 were issued in exercise of the powers conferred under Sections 47(A) and 75 of the Indian Stamp Act, 1899. Rule 3 (4) states that the registering officer may also look into the "Guidelines Register" containing the value of properties supplied to them for the purpose of verifying the market value. Explanation appended to the said Rule states that the "Guidelines Register" supplied to the officers is intended merely to assist them to ascertain, prima facie, whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price. Such entries will not foreclose the enquiry of the Collector under section 47-A of the Act or fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the documents. That is why Courts have consistently held that guideline value is not market value and mechanical adoption of the guideline value by the authorities while exercising their jurisdiction under Section 47-A of the Act has been criticised.

6.But, the parent Act has been amended by Tamil Nadu Act 13 of 2008 with effect from 01.06.2010. 47 AA has been incorporated. It provides for constitution of a valuation committee for estimation, publication and revision of market value guidelines of properties in any area in the State at such intervals and in such manner as may be prescribed, for the purpose of Section S.47-A. There is also a provision for constituting sub-committees in each districts. Pursuant to the power conferred by section 75 read with section 47 AA of the Act, the Government of Tamil Nadu issued Tamil Nadu Stamp (Constitution of Valuation Committee for Estimation, Publication and Revision of Market Value Guidelines of Properties) Rules, 2010 vide G.O.Ms.No.75, Commercial Taxes and Registration dated 01.06.2010 and published vide Tamil Nadu Government Gazette No.165 dated 01.06.2010.

7.Therefore, it is futile to contend that the respondents would ignore the valuation found in their own guideline registers. While the parties to the sale transactions can contend that the value set forth in their document alone has to be taken into account and not what is in the guideline register, the authority cannot say that he would not be bound by the same. The explanation to Rule 3 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, which states that the guideline register entries would not fetter the discretion authority may no longer hold good. This is because the parent Act has been amended as far as the State of Tamil Nadu is concerned. It is expressly set out in Section 47 AA that the valuation committee and the sub-committees functioning under it are to estimate, publish and revise market value guidelines for the purpose of section 47A. Rule 4 (2) of the Tamil Nadu Stamp (Constitution of Valuation Committee for Estimation, Publication and Revision of Market Value Guidelines of Properties) Rules, 2010 provides for publication of estimation or revision in the local news papers and also on the notice board of important offices and allowing a period of 15 days for receipt of objections and suggestions from the public and thereafter, placing the same before the committee in question. It is also open to the Registrar concerned to remit the matter to the valuation sub-committee for rectification, if he finds any discrepancy or omission. Thus, the whole exercise now partakes of a statutory flavour. The first respondent has issued instructions in this regard vide communication bearing Na.Ka.No.43413/L1/2010 dated 12.09.2011 and Na.Ka.No.29310/L1/2009-2 dated 26.03.2012. Therefore, this Court has to necessarily take note of the subsequent developments. The learned counsel for the appellant has made available the guideline value for the survey number in question for the block period

01.04.2012 to 08.06.2017 and the guideline value from 09.06.2017. These guideline values have been prepared obviously after G.O.Ms.No.75 dated 01.06.2010 came into force. The first respondent has passed the impugned order without taking note of the statutory amendments viz., incorporation of Section 47AA and his own instructions dated 12.09.2011 and 26.03.2012.

8.The learned counsel for the appellant also pointed out that even according to the impugned order, the land in question can be accessed only by walking on a Boosthuthi pathway for 9.5 kms. The first respondent has chosen to go by the value fixed by the Special Deputy Collector (Stamps), Madurai only on the premise that the land is situated in a tourist area. It is true that Kodaikanal is a great tourist spot. But, that alone cannot determine the value of the subject lands that are admittedly agricultural in character and located in a far away and rocky terrain and very difficult to access.

9.This Court has held in more than one decision that onus is on the department to establish that market value has not been truly set forth. It has again been consistently held that guideline value is only a guiding factor and that it cannot become market value. But, this principle can be invoked only when the guideline value contemporaneously prevailing is to be applied in favour of the department. But, where three subsequent revisions of guideline value have taken place and the same were shown as less than the value reflected in the sale deed in question, I am of the view that the appellant is entitled to take advantage of the same.

10.The order impugned in this appeal is set aside. This civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.Chief Controlling Revenue Authority
cum Inspector General of Registration,
Door No.120, Santhome High Road,
Chennai - 600 028.

2.Special Deputy Collector for Stamp Duty,
Collector Office Campus,
Madurai - 625 020.

3.Sub Registrar, Kodaikanal,
Dindigul District.

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JS/JC/SAR.3/16.11.2017/4P-4C

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