IN THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2013

CORAM :

THE HONOURABLE Mr.JUSTICE G.M. AKBAR ALI

Civil Miscellaneous Appeal (MD) Nos.180 and 181 of 2013 and M.P.(MD) Nos.1 and 2 of 2013

B.J.Radhakrishnan ... Appellants in both the appeals

vs.

1.The Chief Controlling Revenue Authority,
Head of Department of Registration,
Santhome, Chennai - 28.
2.The Special Deputy Collector (Stamps)
Collector's Office,
Thanjavur.
3.The Joint Sub-Registrar - I,
Office of the Sub-Registrar,
Thanjavur Town. ... Respondents in both the appeals

Civil Miscellaneous Appeals filed against the order of the first respondent in proceedings Nos.6231/No.5/06 dated 19.11.2008 and 6232/No.5/06 dated 21.11.2008 with respect of Registered Document Nos.264 of 1999 and 1967 of 1999 sale deeds respectively and to direct the third respondent to hand over the registered Document Nos.264 of 1999 and 1967 of 1999 to the appellant.

For Appellant : Mr.M.S.Suresh kumar
For Respondents : Mr.K.Mahesh Raja
Government Advocate

COMMON JUDGMENT

The appeals are filed against the orders of the first respondent in proceedings Nos.6231/No.5/06 dated 19.11.2008 and 6232/No.5/06 dated 21.11.2008 confirming the orders of the 2nd respondent.

2.The appellant has purchased the subject property under two separate sale deeds dated 23.07.1998 in document Nos.264 and 1967 of 1999 before the Joint Sub Registrar-1, Thanjavur Town. The sales were executed in favour of the appellant. The properties comprised of an extent of 13319 sq.ft. in S.Nos.2976/1A and 2978/1 and an extent of 1680 sq.ft. in S.Nos.1976 and 2976/6. When the documents were presented, the Joint Sub Registrar-1, Thanjavur Town found that they were under valued and therefore, forwarded the same to the Original authority to fix the correct value.

3.The Original authority viz., the Special Deputy Collector (Stamps) passed an order dated 25.10.2005 after calling for the report from the Tahsildar, Stamps. The Original authority fixed the value for the document No.264 of 1999 at Rs.11,89,500/- and directed the vendee to pay the deficit stamp duty of Rs.10,02,200/-. Similarly, for the document No.1967 of 1999, he fixed the value at Rs.1,71,480/- and directed the vendee to pay the deficit stamp duty of Rs.1,22,280/-.

4.The appellant preferred appeals before the Appellate Authority who had also confirmed the value fixed by the Original Authority. Challenging the orders passed by the Appellate Authority the present appeals have been filed.

5.Since the question raised in both the appeals are common, the matters were heard together and they are disposed of by a common judgment.

6.The learned counsel for the appellant submitted that the provisions of the Stamp Act were not properly followed for fixing the market value. As per Rule 4 (2) of the Prevention of Under Valuation of Instruments Rules 1968 the Original Authority has to arrive at market value based on the records and evidence. There is no notice of inspection as required by the Rules. The learned counsel further contended that the Original Authority has taken into consideration the guideline value and fixed the market value at 80% of the guideline value which is not correct.

7.The learned counsel also submitted that as per the Rules, the Appellate Authority ought to have issued notice of hearing to the appellant but the appellants were not given an opportunity in the appeal to present the case.

8.The learned counsel also pointed out that there is no suppression of the sale value and therefore, the orders passed by the Original Authority which was confirmed by the appellate authority are bad in law and has to be set aside.

9.Contrary to the said arguments, Mr.K.Mahesh Raja, learned Government Advocate would submit that sufficient opportunity was given at the time of inspection and also at the time of the appeal. The learned Government Advocate submitted that only based on the report of Village Administrative Officer as well as the Tahsildar and on physical verification and also considering the potentiality of the land, the Original authority has fixed the market value which is confirmed by the appellate authority. Therefore, the learned Government Advocate submitted that there is no need to interfere with the decision of the appellate authority.

10.Heard and perused the materials available on record.

11.Under Sec.47-A (1) of the Indian Stamps act and also under the Prevention of Undervaluation of Instrument Rules, 1968, the sale deeds of the appellants were subjected for fixing of the correct market value. Initially, a sum of Rs.829.20/- per sq.ft was fixed by the Joint

Sub Registrar - 1, Thanjavur Town on which objections were called for. The appellant objected since he has purchased the property only at Rs.193/-per sq.ft. Only thereafter, the Original authority has passed the orders dated 19.11.2008 and 21.11.2008. The Original authority has stated that the subject matter property is situated 1/2 km away from the bus stand and it is a developed area. The Original authority has relied on the guideline value and has taken 80% of the guideline value to fix the value of the property at Rs.800/-per sq.ft.

12.Aggrieved by the same, the appellant preferred an appeal under Sec.47(A)(1) of the Act. The appellate authority considered the appeal and also the order of the Original Authority and came to the conclusion that the amount fixed was reasonable. Obviously, no opportunity was given to the appellant for personal hearing.

13.The learned counsel for the appellant relied on an unreported judgment dated 10.8.2011 in C.M.A No.289 of 2011, wherein the learned Single Judge of this Court held that in a case where there is no ground for collusion between the appellant and his vendor for fraudulently evading the stamp duty, the order of the Appellate Authority has to be set aside.

14.The learned counsel for the appellant also relied on a decision reported **in *2009 1 CTC 698 (Ezhilarasi and another vs The Inspector General of Registration and another)*** wherein the learned single Judge of this court has held that the onus is on the department to establish the market value of the property not truly set forth in the document.

15.The learned counsel for the appellant also relied on a decision reported **in *2008 3 CTC 614 (Tata Coffee Limited vs The State of Tamil Nadu),*** wherein in a batch of writ petitions, the learned single Judge of this court laid down certain guidelines in case of under valuation.

16.**In *2009 1 CTC 698 (Ezhilarasi and another vs The Inspector General of Registration and another)*** cited supra, the learned single Judge of this court has analysed Sec.47(A) of the Indian Stamps Act and Rule 3 and 5 of the Prevention of Undervaluation of Instrument Rules, 1968 and has held as follows:

> *"9. On going through the impugned order of the first respondent in both the cases, it is apparent that the authority has proceeded to refix the market value mainly on the basis of the guideline value. Though reference is made to certain documents which are bereft of details and particulars, the mainstay of the Department's case is the guideline value. The Guideline value, as such, cannot be the market value and the respondents have proceeded on that wrong premise. As to the relevance of the guideline value in determining the market value, the following decision need to be*

considered"

17.Holding as stated above, the learned Single Judge invoked the decisions reported in the following cases viz. (i) **Collector of Nilgiris vs M/s Mahavir Plantations Pvt Ltd, (AIR 1982 MAD 138)**, *(ii)* **S.P Padmavathi vs The State of Tamil Nadu rep by its Secretary to Government, (1997 (2) CTC 617** ***and*** *(iii)* ***R. Sai Bharathi v J Jayalalitha and others (2003 (4) CTC 577 (SC) : 2003 (4) LW*** **825)** in support of the decision. Therefore, from various decisions cited supra, it is evident that the guideline value cannot be the basis to determine the market value.

18.As rightly pointed out by the learned counsel for the appellant there must be a suppression of the sale value and in that case the onus is on the authority to prove that the market value has not been truly set forth in the instrument. Moreover, there is no evidence to show that the appellant was given an opportunity for personal hearing and as such, the value fixed by the Original Authority, which was confirmed by the Appellate Authority, are not correct and they are liable to be set aside.

19.In the result, both the Civil Miscellaneous Appeals are allowed and the order of the first respondent in proceedings Nos.6231/No.5/06 dated 19.11.2008 and 6232/No.5/06 dated 21.11.2008, confirming the orders of the 2nd respondent are set aside. The authorities are directed to release the documents, if not done already. No costs.

Sd/-
Deputy Registrar

/True Copy/

Assistant Registrar

To
1.The Chief Controlling Revenue Authority,
Head of Department of Registration,
Santhome, Chennai - 28.
2.The Special Deputy Collector (Stamps)
Collector's Office,
Thanjavur.
3.The Joint Sub-Registrar - I,
Office of the Sub-Registrar,
Thanjavur Town.
+1cc to Mr.M.S.Suresh Kumar, Advocate(Sr.No.22405)
+1cc to the Spl.Govt.Pleader (Sr.No.22884)
sj
AA/06.06.2013/4p-6c/

Common Judgment
in C.M.A.(MD)Nos.180 and 181 of 2013
19.04.2013