IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.1034 OF 2014
AND MP NO.1 OF 2014

D. Selvakumar ... Appellant

Vs.

1. The Inspector General of Registration
   Santhome High Road,
   Chennai - 28.

2. The Collector (Stamps)
   The District Revenue Officer (Stamps)
   Coimbatore - 18.

3. The Sub Registrar
   Sub Registrar Office
   Aval Poondurai,
   Erode District. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A(10) of the Indian Stamp Act, 1899, against the order passed by the first respondent in and by her order No.Pa.Mu.No.3154/N2/2013 dated 04.12.2013.

For Appellant :Mr.V.S.Kesavan
For Respondents :Ms.A.Madhumathi
Additional Government Pleader

J U D G M E N T

The appellant presented a document for purchase of the agricultural land, which was registered as document No.5763 of 2010. The Sub Registrar referred it for determination of market value to the second respondent on 18.08.2010. The second respondent determined the market value of the property as Rs.520/- per sq.mt., and demanded payment of deficit stamp duty and registration charges. The appellant preferred an appeal complaining non-service of notice for enquiry and violation of

Rule 15 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (shortly "the Rules") and violation of principles of natural justice. The appellate authority by its order dated 04.12.2013 has confirmed the order of the second respondent, considering the property as a house site. Challenging the same, the appellant is before this Court.

2. The learned counsel for the appellant would contend that the order passed by the respondents below are in clear violation of Rules 4, 7 and 15 of the rules. The authorities have not served any notice under Form-I, Form - 2 to the appellant. There is no notice with respect to inspection of property also. Further, from the report relied on by the first respondent, it is clearly seen that the property is an agricultural land, whereas considering the future development, the market value has to be fixed on sq.ft rate. Therefore, the order passed by the first respondent is liable to be set aside.

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

4. On perusal of the materials available before this Court, it is seen that the second respondent has passed final order as per Rule 7 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968, (shortly "the Rules") on 22.11.2012. A reading of the order does not disclose any specific date of issuance of Form - I notice and there is no reference at all with regard to issuance of Form - 2 notice. Final order came to be passed on the basis of the inspection conducted by the second respondent.

5. As per the above said rules, it is mandatory on the part of the District Collector or any other Authority to issue notice under Rule 4 of the said rules in Form - I to inform the genuineness of value set forth by the party in his document and to make a representation in this regard. Thereafter, as per Rule 5 of the Rules, the Authority has to proceed with the determination of the market value of the property on the criteria laid down therein. Again it is mandatory for the Authority to communicate the provisional market value determined by him as per Rule 6 of the Rules and call for the objections from the parties concerned. Thereafter, he is expected to pass final orders as per Rule 7 of the Rules within a period of three months from the date of issuance of the first notice.

6. But a perusal of the final order passed by the second respondent dated 22.11.2012, it is clear that the mandatory procedure as laid down under Rules 4, 5 and 6 have not been complied with properly. Rule 15 of the above said rules laid down the manner in which the notice shall be served. But in the instant case, the grievance of the appellant is that no notice

either under Form - I or Form - II was served on him. The failure to issue notice under Rules 4 and 6 of the Rules, which are mandatory in nature, will amount to violation of principles of natural justice and vitiate the entire proceedings.

7. Further, a reading of the final order passed by the second respondent would go to show that an inspection was conducted by him, wherein the property was found to be a vacant site and no agricultural activities were going on. It was surrounded by cart track, coconut grove, pond and house sites. Therefore, on the basis of the registration done in the adjacent lands, the market value was fixed on square feet basis. The second respondent fixed the market value at Rs.40/- per sq.ft. On appeal, the first respondent has enhanced the market value from Rs.40/- to Rs.48/-. The appellate authority while exercising his power under Section 47-A(5) of the Indian Stamp Act, shall scrutinise the correctness of the order passed by the original authority namely, the District Collector. He can either confirm or set aside the value assessed by the authority below. But there is no enabling provision under Section 47-A(5) of the Act while deciding the appeal to enhance the market value of the property.

8. This Court in RAJENDRAN VS. THE INSPECTOR GENERAL OF REGISTRATION AND OTHERS [2012 (3) CTC 589] has held as under:

> "36. Enhancement of market value of the property on the appeals preferred by the land owners under Section 47(5) is not contemplated under the scheme of the Act, without recourse to sub section 6 of section 47, wherein the statute has contemplated a procedure of conducting an inquiry and reasonable opportunity. No doubt, the statute empowers the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, to exercise suo-motu powers under Section 47(6) of the Act, within five years, from the date of passing of an order, under Section 47(2) and (3) of the Act, as the case may be, but the Statute mandates, consideration of the records, in terms of the objective, specifically incorporated in the Section and that he should arrive at a subjective satisfaction, as to whether, the order passed under sub-Sections (2) and (3) of Section 47-A of the Act, is prejudicial to the interests of Revenue. He must record reasons for arriving at the satisfaction."

Therefore, it is clear that while the appellate authority exercising the suo motu powers of revision, can fix the correct market value, after recording the reasons that the order passed by the authority is prejudicial to the interest of the appellant.

9. Rule 11-A of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, 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."

10. As per Rule 11-A of the Rules, it is mandatory on the part of the appellate authority to conduct site inspection after due notice to the parties concerned. On the basis of his inspection, he shall redetermine the market value and on the basis of the inspection, he shall arrive at a decision as to whether the order passed by the District Collector is correct or not. In so far as the issuance of notice is concerned, it is mandatory, and failure to do so, is violative of principles of natural justice.

11. In the instant case, the authority has not conducted inspection, but relied on the report of the District Registrar (Administration) Erode. The authority under Section 47-A(5) of the Act, there is no enabling provision to delegate the powers conferred on the appellate authority 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 he is an Officer under Registration Act and not at all an Officer under the Indian Stamps Act. In such view of the matter, the District Registrar is an incompetent authority.

12. 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."

13. As found in the above referred judgment, the delegation of power to subordinate authority and the order passed by the appellate authority based on the report of the District Registrar vitiate the entire proceedings. As stated supra, the land in question is an agricultural land. The second respondent has found that agricultural activities are going on. But there is no clear statement as to the classification of the property in the revenue records. The market value came to be determined on the basis of future development. The future user shall not be the criteria for fixing the market value. The nature and classification of the land on the date of registration shall be

considered for determination of the market value.

14. A Division Bench of this Court also had an occasion to consider the determination of market value of the property on the basis of future development, in the case of SPECIAL DEPUTY COLLECTOR (STAMPS), CHENNAI COLLECTORATE, SINGARAVELAR MALIGAI, CHENNAI, VS. THAJUNNISA AND OTHERS [2015 (6) MLJ 129] and held as under:-

> " 10. It is to be borne in mind that the Deputy Inspector General of Registration's Report dated 22.03.2002 does not indicate any conclusion which was arrived at to the effect that the Respondents / Petitioners lands in question were not agricultural lands. Just because the lands in question are having the potential of being converted as house sites in future, the authorities in this regard cannot allow their imagination to run riot or to indulge in assumptions, presumptions, surmises and conjectures etc., in the considered opinion of this Court."

Therefore also, it could be seen that the determination of the market value of the property made by the first and second respondents are based on the potentiality of the property being converted into house sites in future and not on the basis of actual user on the date of registration.

15. Above all these points, it is incumbent on the part of the appellate authority to furnish the materials relied on by him to the parties concerned, much less, the inspection report. In the instant case, there is no indication that the mandatory procedures were not followed before passing the order in appeal.

16. To sum up:

> (i) the second respondent has failed to follow the procedure of issuing mandatory notices under Rules 4 and 6 of the said rules;
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> (ii) the first respondent has failed to follow the procedure with respect to issuance of notice as contemplated under Rule 11-A of the Rules;
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> (iii) the first respondent, while deciding the appeal, has enhanced the market value of the property, which act in excess of his jurisdiction under Section 47-A(5) of the

Indian Stamp Act, 1899;

(iv) there is no enabling provision to sub delegate the powers conferred on the appellate authority under Section 47-A(5) of the Act. In the absence of any power, such delegation of power to conduct inspection is not sustainable in law;

(v) even assuming that the authority can cause an inspection be done, it shall be done only by the competent authority designated in the Indian Stamp Act, 1899 and it cannot be to an incompetent authority or non-authority under the Act; and

(vi) the authority, while deciding the appeal, shall follow the principles of natural justice.

But, in the order passed by the respondents 1 and 2, there is violation of the statutory provisions, mandatory procedures and principles of natural justice, as explained above. In such circumstances, the order passed by the respondents 1 and 2 are not sustainable.

17. Accordingly, the order dated 04.12.2013 passed by the first respondent in Pa.Mu.No.3154/N2/2013 is set aside and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

TK

To

1.The Inspector General of Registration
Santhome High Road,
Chennai - 28.

2.The Collector (Stamps)
The District Revenue Officer (Stamps)
Coimbatore - 18.

3.The Sub Registrar
Sub Registrar Office
Aval Poondurai, Erode District.

+1 CC to Mr.V.S. Kesavan, Advocate sr 8016.
+1 CC to Spl. Govt. Pleader sr 8579.

C.M.A.NO.1034 OF 2014

SP(30/05/2018)