IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A. No.1244 of 2011
and M.P. No.1 of 2011

Indusind Bank,
Formerly known as Ashok Leyland,
No.115/116, New No.34, G.N.Chetty Road,
T.Nagar, Chennai - 600 017. .. Appellant

versus

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

2. The District Revenue Officer (Stamps),
   Office of the District Collector, 5th Floor,
   M.Singara Vellar Building,
   32, Rajaji Salai, Chennai - 600 001.

3. The Sub-Registrar,
   Adyar,
   Chennai - 600 020.

4. D.Sabitha, I.A.S.,
   Inspector General of Registration &
   Chief Controlling Revenue Authority,
   Chennai - 600 028. .. Respondents

Civil Miscellaneous Appeal filed under Section 47-A(10) of Indian Stamps Act, 1899 against the orders passed dated 25.02.2011 and received on 12.04.2011 in D.Dis.No.44647/A1/2008 on the file of the Chief Controlling Revenue Authority against the orders of District Revenue Officer (Stamps), Chennai-1 dated 18.07.2008 made in SPL.R.A1/9/08.

For Appellant : Mr.R.Yashod Vardhan
for Mr.K.Moorthy

For Respondents : Mr.T.M.Pappiah
Spl.Govt. Pleader (Registration)

J U D G M E N T

Aggrieved over the order passed by the Inspector General of Registration, the first respondent herein dated 25.02.2011, the appellant herein has preferred this appeal.

2. On 30.04.1990, the appellant/Bank entered into an development agreement with one P.Nataraja Sastri for the development of the property situated at No.51, 1st Main Road, Gandhi Nagar, Adyar, Chennai - 600 020 measuring a total extent of 5 grounds and 1050 sq.ft for a sum of Rs.30,81,700/-. Before presenting the sale deed for registration both the vendor and the purchaser (appellant herein) approached the Income Tax Department for getting no objection certificate in their favour. The Income Tax Department passed an order dated 13.07.1990 refusing to issue no objection certificate and requested the transferor to hand over the property to the department. Challenging the same, the vendor Nataraja Sastri filed W.P.No.12608 of 1990 and the writ petition was allowed by this Court on the ground that before passing the order no opportunity was given to the writ petitioner and therefore directed the department to pass an order after affording an opportunity of hearing to the petitioner/Nataraja Sastri. Thereafter the showcause notice was issued to the vendor and after considering the reply, the department (Union of India) passed an order dated 23.02.1993, holding that this is a fit case for acquiring the property as contemplated under Chapter XX-C of the Income Tax Act. Challenging the said order both the appellant and his vendor have filed writ petitions in W.P.Nos.4584 and 4700 of 1993. The writ petition was dismissed by the learned Single Judge against which W.A.Nos.487 & 495 of 1997 were filed before the Division Bench of this Court. In paragraph 30 of the judgment in writ appeal No.487 of 1997 dated 12.12.2006 in Ashok Leyland Finance Limited rep. by its Managing Director S.Nagarajan vs. Appropriate Authority, Income Tax department and P.Nataraja Sastry, it was held as under:-

> "30. The analysis of various instances pointed out by the appellants clearly show that all of them are relevant factors in valuing the property. The power vested in the authority under Chapter XX-C of the Act is a special power which is required to be exercised with great care and with almost fairness. When the provisions enable the Government to take over any property, the authorities cannot exercise the power in an arbitrary manner. The object for which the provision was introduced cannot be ignored. It is needless to mention that it is meant to disclose the true price for the property brought to sale and thereby to prevent evasion of tax by parties to transaction. It is not in dispute that

that Chapter XX-C of the Act itself had been deleted from the statute book with effect from 01.07.2002. Further, failure to tender or deposit the amount of consideration within the prescribed period, the order to purchase immovable property by the Central Government under Sub-section (1) of Section 269UD shall stand abrogated and the property shall stand revested in the transferor. Having regard to the materials before the appropriate authority, it is clear that the market value of the property at the time of transaction could not be said to have been higher than the rate at which the appellants had agreed to sell and purchase the property. We are satisfied that the learned single Judge failed to take note of all the above mentioned relevant aspects but merely approved the order of the appropriate authority, which cannot be sustained on facts and on the basis of statutory provisions referred to above."

3. Aggrieved by the order passed by the Division Bench, the Union of India preferred SLP No.CC 1191-1192 of 2008. The Hon'ble Supreme Court by order dated 04.02.2018 dismissed the SLP.

4. In the meantime on the strength of the order dated 12.12.2006 passed by the Division Bench of this Court, the sale deed dated 11.01.2008 was presented for registration. After registration of the sale deed the Sub-Registar/third respondent herein referred the sale deed 11.01.2008 to the second respondent for determining the correct market value of the property as contemplated under Section 47(A) of the Indian Stamp Act.

5. The second respondent passed an order dated 18.07.2008 enhancing the market value of the property at Rs.10,000/- per sq.ft. Challenging the same the appellant has filed the appeal before the first respondent. The first respondent passed impugned order dated 25.02.2011 confirming the market value fixed by the second respondent and rejected the appeal, as against the same the present Civil Miscellaneous Appeal is filed.

6. At the first instance, the learned Senior Counsel appearing for the appellant would submit that in the absence of any intention on the part of the executant of a deed to suppress the true market value to evade stamp duty, the document cannot be referred to the second respondent for assessment of the market value. The value disclosed in the document was true and correct which was also considered by the Division Bench of this Court in the Judgment dated 12.12.2006 in W.A.Nos.487 and 495 of

1997 mentioned supra and which was affirmed by the Honourable Supreme Court in the Special Leave Petition filed by the Income Tax Department. Further, the learned senior counsel would rely upon the judgment of Hon'ble Supreme Court reported in 2009 14 SCC 716 in Residents Wefare Association, Noida vs. State of Uttar Pradesh and others, wherein it was held in para 50 as under:

> "50. As is evident from the records placed before us, the appellant could not execute the sale deed because of the failure of Respondent 4 i.e. Noida authorities, to execute transfer memorandum due to the orders of injunction passed in pending litigations before the different Courts. Therefore, the appellant cannot be faulted for not executing the same."

7. In the instance case also the appellant presented the document for registration after a long gap, due to long pending litigation before the Courts. The litigation was between the appellant and the Income Tax department as the Income Tax Department refused to issue No Objection Certificate to the vendor of the appellant. Therefore, the appellant could not present document for registration. When once it is held that there is no intention on the part of the appellant to suppress the real market value or an intention to evade stamp duty, the reference made under Section 47(A)(1) of the Stamp Act, 1899 is not proper. Therefore, I am of the considered opinion that the market value of the property covered in the document in question has to be accepted in the absence of any intention on the part of the appellant to evade the payment of stamp duty. In this context, reference can be made to the decision of the Hon'ble Supreme Court in V.N.Devadoss vs. Chief Revenue Control Officer-cum-Inspector and others reported in 2009 7 SCC 438, wherein it has been held as follows:-

> ".....There is no scope for exercising power under Section 47-A of the Act as there is no basis for even entertaining a belief that the market value of the property which is the subject matter of conveyance has not been truly set forth with a view to fraudulently evade payment of proper stamp duty."

8. Thus, when there is no wilful under valuation of the property with a fraudulant intention to evade stamp duty, it is not proper to refer the matter under Section 47-A(1) of the Indian Stamp Act. The exercise of power by the first and second respondent does not arise in a case of this nature. In so far as the appellant is concerned they have disclosed the real market value and has not evaded payment of stamp duty. The delay was caused due to litigation not between private parties but against the Government represented by the Income Tax Department, which

has prerogative right of granting No Objection or clearance for registering the property. In such view of the matter, the value of the market value as projected by the appellant has to be accepted.

9. Above all, even assuming that the Sub-Registrar/third respondent is jusified in referring the matter for proper valuation, the second respondent has failed to take note of the statutory requirements contemplated under the Indian Stamp Act and Rules made thereunder. As per Rule 7 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968, the authority has to pass an order within a specified time stipulated therein. In this case, Form-I notice was issued on 05.03.2008 and Form-II was issued on 19.06.2008 and final orders were passed in 18.07.2008. The order came to be passed beyond the period of three months, which is mandated under Rule 7. Further, the first respondent while considering the appeal under Rule 11 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968 mandated to conduct spot inspection, whereas, he has delegated the power to District Registrar, South Chennai. The Act & Rules do not confer any power on the first respondent to delegate his powers under the relevant provision. In the absence of any power of delegation, the first respondent delegated the matter to the District Registrar to conduct a spot inspection, which is ultravires and there by illegal. Secondly, the District Registrar is not an officer under Stamp Act. If at all inspection should be conducted, it should have been done by an officer designated under the Indian Stamp Act. In the instance case the inspection was conducted by the District Registrar, South Chennai, who is not a designated authority, much less an authority under the Act. Therefore, also the order passed by the first respondent is not sustainable.

10. 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.

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.

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."

For the above reasons, the impugned order passed by the first respondent is not sustainable.

11. Accordinlgy, the Civil Miscellaneous appeal is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

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To

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

2. The District Revenue Officer (Stamps), Office of the District Collector, 5th Floor,

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Inspector General of Registration &
Chief Controlling Revenue Authority,
Chennai - 600 028.

+2cc to Mr.K.Moorthy, Advocate SR.No.41957

+1cc to Government Pleader SR.No.43220

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GMY(17/10/2018)