IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N. SESHASAYEE

CMA.No. 2138 of 2016
and
CMP.Nos.15400 of 2016 and 12081 of 2017

M. Maragathavalli .. Appellant

Vs.

1. The Chief Controlling Revenue Authority- Cum-Inspector General of Registration,
   Tamilnadu,
   Santhome High Road,
   Chennai - 600 004.

2. The Special Deputy Collector (Stamps),
   Collectorate,
   Salem.

3. The Special Registrar,
   Athur, Salem District .. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 47A (10) of Indian Stamp Act against the order of the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Tamil Nadu in D.Dis. No. 23925/ N2/2012 dated 20.01.2014, partially modifying the Order of the Special Deputy Collector (Stamps), Salem in S.R. No.98/04/ATR dated 29.09.2006.

For Appellant : Mr. T.M. Hariharan

For Respondents : Mr. T.M. Pappiah,
Special Government Pleader (CS)

JUDGMENT

This appeal is directed against the order of the first respondent, the Chief Controlling Revenue Authority, dated

20.01.2014, whereunder he has directed the appellant to pay the differential stamp duty on the property that she has purchased under sale deed dated 15.04.2004, by determining the market price of the property at Rs.4,55,500/-.

2.1. The brief facts are:

- On 15.04.2004, the appellant had purchased a block of land measuring 3.87 acres. The extent is made up of 0.72 cents in Survey No. 697/7 and another 3.15 acres in Survey No.699/1.

- On 11.05.2004, the Special Deputy Collector (Stamps) Salem, has issued a notice in Form 1, Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968. In this notice, he has estimated the value of the property as Rs.1,74,17,010/- and required the appellant to pay the differential stamp duty of Rs. 13,69,368/-. An objection was given by the appellant in which she had detailed the character of the property as a dry barren piece of land, where some dry crops could alone be occasionally grown. She has also indicated that she is being provided with free electricity by the Government, which is a benefit extended only to agriculturists, and asserted that the consideration paid under the sale deed was fair.

- In ordinary course of events, if the authority concerned does not accept the objection, it must proceed with a notice in Form 2 by determining the value of the property in terms of Rule 5 and invite objections. But no notice in Form-2 was received served on the appellant. Therefore, she had issued a reminder under letter dated 04.07.2011, informing the authority that she had not been served with any notice in Form-2. In the reply dated 12.03.2012, the Special Deputy Collector (Stamps) Salem, enclosed a copy of the final order dated 29.09.2006, have mentioned that the market price for the property in question has been marginally reduced to Rs.1,55,61,000/-, with a direction to pay the differential stamp duty of Rs.12,20,800/-. The appellant would thereafter appeal to the first respondent.



3. The first respondent in his order has conceded the fact that the property was an agricultural piece of land, and proceeded to state that the guideline value of the properties adjacent to the property in question ranges anywhere between 1,60,000/- per acre to 4,55,500/- per acre, and opted for the higher of the two values and fixed the market price of the properties which the appellant has purchased under her sale deed dated 15.04.2004 at Rs. 4,55,500/- per acre, and required the appellant to pay the

deficit stamp duty on this value, within a period of two months. This is now in challenge.

4. The learned counsel appearing for the appellant would argue ;

- For invoking Section 47-A of Indian Stamp Act, the authority concerned must have materials to believe that the property transacted was deliberately undervalued to defraud the revenue. In none of the notices, or in the final order passed it is indicated that in the sale dated 15.04.2004, the sale consideration was deliberately fixed low to defraud the revenue. This would be demonstrated by the very fact that difference in the market price as was originally indicated in Form-1 and the one mentioned in the final order passed by the first respondent. In other words, it would mean, when proceedings under Section 47-A was initiated, the Special Deputy Collector (Stamps) Salem, has no clue about the character of the property by even when he issued the notice under Form-1, where he was seen to have treated the property as house site, and not as an agricultural piece of land. So far as the order now impugned is concerned, the first respondent has not subscribed to the character of the property as claimed by the Special Deputy Collector (Stamps) Salem, but concedes that it is an agricultural property. If the fact that the property in question is a dry agricultural piece of property, the substantial part of which is either barren or uncultivable remains indisputable, then, for the first respondent, to fix the market price as Rs. 4,55,500/- itself is arbitrary. The impugned order does not even care to indicate the material that has supported the decision of the first respondent. Reliance was placed on the authority in V.N. Devadoss vs. Chief Revenue Control Officer-cum-Inspector & Ors., [(2009) 7 SCC 438].

- Under Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, final order has to be passed within three months from the date of issuance of the first notice in Form-1, and this is held mandatory by the authorities of this Court in K. Vijayalakshmi Vs. The Chief Controlling Revenue Authority of Tamil Nadu cum Inspector General of Registration [2012 (1) MWN (Civil) 126], which is relied on by this Court in S.Shanmuga Raja Vs. Tamil Nadu Chief Revenue Controlling Officer cum Inspector General of Registration & Ors. [2017 SCC Online Mad 22400].

- In the instant case, Form-1 was issued on 11.05.2004 and Form-2 was never served, and final order admittedly was passed only on 29.05.2006. If the same is tested for its validity in terms of Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the very initiation of proceedings under Section 47-A of the Indian Stamp Act ought to be held as lapsed.

5. Heard Mr. T.M. Pappiah, learned Special Government Pleader (CS) for the respondents. He would contend that one of the indicia indicated under Rule 5 for fixing the market price of the property is the guideline value, and this has been adopted by the first respondent. By no stretch of imagination can it be contended, argued the learned counsel, that the first respondent has not applied his mind, since he has reduced the market price from Rs.1,55,61,000/- for the entire extent of 3.87 acres to Rs. 4,55,500/- per acre. He has also taken note of the fact that the property is an agricultural piece of property.

6. The point here is not about the first respondent scaling down the value of the property in his order now impugned from the one indicated in the Form-1, or in the order of the Special Tahsildar, but it is all about how he arrived even at this value. Here this Court is in agreement with the submission made by the learned counsel for the appellant. It is not just adequate for the first respondent to arbitrarily fix a certain Rs.4,55,500 per acre, but to justify that whatever that has been done by him is in conformity with the statute on materials that go beyond a plea of his charitableness in valuing the property several times lower than the one fixed by the Special Tahsildar. Here this court finds that the impugned order fails on two scores: First, on ignoring the ingredients of Sec.47-A of the Indian Stamp Act; and second, why preferred the higher of the two guideline values of the property - the rationale behind his choice.

7. To elaborate the first point, the entire proceedings initiated has lost sight of the ingredients essentially for invoking Section 47-A of the Stamp Act. Why, how and on what material has the authority concerned come to a reasonable belief that the value stated in the sale deed dated 15.04.2004, is deliberately under-valued. In V.N. Devadoss vs. Chief Revenue Control Officer-cum-Inspector & Ors., [(2009) 7 SCC 438], the Hon'ble Supreme Court has brought out the essence of Section 47-A in paragraph 13 :-

> " 13. Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject-matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for

registration without any evidence to show lack of bonafides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance wiht a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty."

8. Moving to the next aspect, without going into any other material it can be decided that the proceedings has lapsed, as the final order has been passed, well beyond the three months stipulated in Rule-7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, which this court has successfully held as mandatory in the above said judgments.

9. In conclusion, this court finds the appeal deserves to be allowed and accordingly it is allowed, and the order of the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Tamil Nadu in D.Dis. No. 23925/N2/2012 dated 20.01.2014, is set aside. No costs. The third respondent is directed to release the sale deed to the appellant forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

avr/ hvk

To

1. The Chief Controlling Revenue Authority-
Cum-Inspector General of Registration,
Tamilnadu, Santhome High Road,
Chennai - 600 004.

2. The Special Deputy Collector (Stamps),
Collectorate, Salem.

3. The Special Registrar, Athur,
Salem District.

4.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.T.M.Hariharan, Advocate Sr.51673
+1cc to the Government Pleader Sr.52473

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srg 18/09/2018