IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2856 of 2011 and
M.P.Nos.1 of 2011 and 1 of 2015

Durai Veerannan ... Appellant/Petitioner

Vs.

1. The Chief Controlling Revenue Authority-cum-
Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2. The Special Deputy Collector (Stamps),
Thanjavur.

3. The Sub Registrar No.1,
Sub Registrar Office,
Thanjavur. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899, against the order dated 26.02.2011 in proceedings Pa.Mu.No.30468/N5/2008, passed by Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai.

For Appellant : Ms.P.T.Ramadevi

For Respondents : Mr.M.Venkadesh Kumar
Government Advocate (C.S)

J U D G M E N T

Aggrieved over the order passed by the 1st respondent/Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, dated 26.02.2011 in proceedings Pa.Mu.No.30468/ N5/2008, the appellant has come before this Court with this Civil Miscellaneous Appeal.

2. By virtue of registered sale deed No.2188/2007, the appellant purchased 2 acres 50 cents of punja lands. The 3rd respondent, Sub Registrar No.1, Thanjavur, referred the document for proper valuation for the purpose of stamp duty under Section 47-A(1) of the Indian Stamp Act, 1899, to the 2nd respondent/Special Deputy Collector (Stamps), Thanjavur. The 2nd respondent issued Form-I notice on 06.06.2007 and Form-II notice on 25.01.2008. The 2nd respondent, after conducting the site inspection in the presence of the appellant, has redetermined the market value at Rs.130/- per sq.ft.

considering the surrounding areas, which were converted into house sites. Aggrieved over the order passed by the 2nd respondent, the appellant preferred an appeal to the 1st respondent, which came to be disposed of on 26.02.2011.

3. The appellate authority has confirmed the oder passed by the 2nd respondent on the basis of the report submitted by the District Registrar, Thanjavur. The claim of the appellant is that his land was not accepted as an agricultural land and considering the location, nature of the property and usage, the market value redetermined by the 2nd respondent was confirmed, against which, the present appeal has been preferred.

4. Heard the learned counsel appearing for both parties.

5. The sale deed bearing registration No.2188/2007 also reveals that the property is an agricultural land and on enquiry of the residents of that area, it was found that gingili crops were cultivated during February, 2008, and it was spoiled due to the rains. The classification in the Revenue records was found to be punja lands. Despite finding that the property conveyed was an agricultural land, considering the surrounding areas, the 2nd respondent fixed the market value at Rs.130/- per sq.ft.

6. On a perusal of the order passed by the 2nd respondent, it is seen that it is in violation of Rule (7) of Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, which reads as under:-

> 7. Final order determining the market value. - 1) The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case after careful consideration of all the relevant factors and evidence available with him [pass an order within three months from the date of first notice] determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty, if any.
>
> (2) A copy of the order shall be communicated to the registering officer concerned for his record.
>
> (3) The difference in the amount of

> duty determined by the Collector shall be paid within two months from the date of final order passed under sub-section (2) or sub section (3) of section 47-A.
>
> (4) The Collector shall, after collecting the difference in amount of stamp duty and interest, if any, under section 47-A, give a certificate in Form III by endorsement on the instrument."

7. The 2nd respondent issued Form-I notice under Rule (4) of the said Rules on 06.06.2007 and a final order was passed on 23.04.2008. The order of the 2nd respondent came to be passed after a period of around 10 months from the date of first notice. This Court in a judgment reported in 2009 (6) CTC 632 (Periasamy and other Vs. The Chief Controlling Revenue Authority, State of Tamil Nadu, Chennai and 2 others) has categorically held that delay in passing final orders vitiates the entire proceedings. On this ground the entire proceedings is vitiated.

8. Secondly, even though the 2nd respondent, during his site inspection has found that a classification in the Revenue records remains as an agricultural land and recorded the statement of residents of that area that gingili crops were cultivated, has not given any reasons for redetermining the rate at square feet. Only because, surrounding area was converted into house sites, it cannot be presumed that the land in question will also be converted into house sites. The Hon'ble Division Bench of this Court in the judgment reported in (2015) 6 MLJ 129 (Special Deputy Collector (Stamps), Chennai Collectorate, Singaravelar Maligai, Chennai, Vs. Thajunnisa and others) has 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. Even the Suo Moto power as envisaged under Sub Section (3) of the Section 47(A) of the Indian Stamp Act ought to have been exercised within two years from the date of Registration of the documents. As a matter of fact, the Suo Moto power of revision should have been exercised well before 11.04.1999 not at a later point of time. As

such, it is candidly clear that the impugned order dated 08.04.2002 is without jurisdiction whatsoever and resultantly, Form II notices issued were invalid and illegal in the eye of law.”

9. The determination of the market value shall not be based on the assumptions and presumptions of future user. But in this case, considering the location and surrounding areas, and based on future development, the value was fixed. Therefore, the order passed by the 1st respondent is not sustainable.

10. The 1st respondent while passing final orders has delegated the duty of conducting site inspection to the District Registrar. Rule 11-A of the said Rules clearly specified the procedures to be followed, which 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.

As per Rule 11-A of the said Rules, it is mandatory on the part of the appellate authority, while deciding appeal, to conduct an inspection under notice to the parties concerned. He cannot delegate the power conferred under the Act to anybody else. This Court in C.M.A.No.2820 of 2012 dated 05.06.2015 (S.Santhi Vs. The Chief Revenue Controlling Authority & Inspector General of Registration, Chennai and two others) has held as under:-

> 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.

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."

12. Further, even assuming that he has power to delegate the power, it shall be delegated to a competent authority. This Court has also repeatedly held that the District Registrar is an officer under the Registration Act and not an authority under the Indian Stamp Act. Therefore, any violation done on the basis of the report submitted by the incompetent officer is also not sustainable.

13. The appellate authority shall apply his mind to the factual aspects and record reasons for arriving at subjective satisfaction. In the instant case, he has simply confirmed the order based on the reasons stated by the 2nd respondent. Even though the evidence was produced by the presentant vide 'A' Register and adangal for fasli years 1415 and 1416, that the land was classified as an agricultural land, there is no discussion by the 1st respondent as to the above facts and objections raised by the appellant.

14. The 1st respondent has also failed to furnish the inspection report submitted by the District Registrar to the appellant. Non-furnishing of materials relied on by the appellate authority before deciding the appeal would also amount to violation of principles of natural justice.

15. For the foregoing reasons, I am of the considered view that the order passed by the 1st respondent/Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, dated 26.02.2011 in proceedings Pa.Mu.No.30468/N5/2008, is not sustainable and accordingly, it is set aside.

16. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

asi

To
1.The Chief Controlling Revenue Authority/
Inspector General of Registration,
Santhome High Road,
Chennai - 600 028.

2.The Special Deputy Collector,
Stamps, Thanjavur

3.The Sub Registrar No.1,
Sub Registrar Office,
Thanjavur.

+1cc to Ms.P.T.Ramadevi, Advocate Sr.nO.11903
+1cc to Government Pleader Sr.No.11908

GII(CO)
sm:28.3.2018

C.M.A.No.2856 of 2011 and
M.P.Nos.1 of 2011 and 1 of 2015