IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3262 of 2011
and M.P.No.1 of 2011

1. S.Mahalingam
2. S.Kumaravel ... Appellants

Vs.

1. The Tamil Nadu Chief Revenue Controlling Officer
and Inspector General of Registration
Chennai 600 028.

2. The District Revenue Officer,
(Stamps), Coimbatore 600 018.

3. The Sub Registrar,
Pollachi, Coimbatore District. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 47-A (10) of Indian Stamps Act, against the order dated 26.02.2011 in proceedings Pa.Mu.No.3806/N2/2010 (Served on 16.05.2011) on the file of the Tamil Nadu Chief Revenue Controlling Officer and Inspector General of Registration, Chennai 600 028 confirming the order dated 09.12.2009 made in Mu.Pa.No.732/P/09 on the file of the District Revenue Officer (Stamps) Coimbatore and set aside the same.

For Appellants : M/s.N.Manokaran
For Respondents : Mr.A.Devnarenderam
Government Advocate (C.S)

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J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order dated 26.02.2011 in proceedings Pa.Mu.No.3806/N2/2010 (Served on 16.05.2011) on the file of the Tamil Nadu Chief Revenue Controlling Officer and Inspector General of Registration, Chennai 600 028 confirming the order dated 09.12.2009 made in Mu.Pa.No.732/P/09 on the file of the District Revenue Officer (Stamps) Coimbatore.

2. The appellant purchased an agricultural land vide document No.2823 of 2009. The second respondent issued Form I notice on 18.06.2009 and Form-II notice on 21.10.2009 and passed final order on 09.12.2009. Against which the appellant preferred the appeal and the first respondent, based on the report submitted by the District Registrar, has confirmed the order passed by the second respondent by his order dated 26.02.2011.

3. The learned counsel for the appellant would contend that the order passed by the second respondent is contrary to the Rules 7 and 11-A of Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules 1968.

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

5. A perusal of the order passed by the second respondent goes to show that Form I notice was issued on 18.06.2009 and the final order came to be issued on 09.12.2009. Rule 7 of the Tamil Nadu (Prevention and Undervaluation of Instruments) Rules, 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."

6. The authority should pass the order within a period of three months from the date of the first notice. Therefore, the order passed is beyond the limitation period as mandated under Rule 7 of the said Rules.

7. Further, the second respondent has found on inspection that the property which is sought to be conveyed is an agricultural property and saplings of coconut tree were planted and also found that it is an agricultural land. Considering the future developments and the potentiality to convert the property into housing site the second respondent has redetermined the value on the basis of future development, by his order dated 09.12.2009. The first respondent on an appeal by the appellants herein has confirmed the same.

8. In a judgment of the Hon'ble Division Bench of this Court in SPECIAL DEPUTY COLLECTOR (STAMPS), CHENNAI COLLECTORATE, SINGARAVELAR MALIGAI, CHENNAI, VS. THAJUNNISA AND OTHERS [2015 (6) MLJ 129] it has been found that the classification of the land and the nature of use of the land on the date of registration shall be taken as criteria for fixing the market value and the authority shall not fix the value on the basis of future development. The relevant paragraph of the said judgment is extracted hereunder:-

" 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.

9. Further, the District Registrar is not an authority under the Indian Stamp Act. 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. .....

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."

The first respondent totally relied on the report submitted by the District Registrar, Tirupur, for arriving at the value of the property.

10. As per Rule 11-A of Tamil Nadu Stamp (Protection of under violation of Instruction) Rules, 1968, the appellate authority has to follow the certain procedures. Rule 11(A) of the said Rules 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."

11. It is well settled by various judgment of this Court that the appellate authority, while deciding the appeal, shall conduct site inspection by giving notice to the parties concerned. But in the case on hand, the first respondent had delegated the power to his subordinate authorities.

12. Therefore, the impugned order is not sustainable in the eyes of law for the following reasons:

(i) Site inspection was not conducted by the first respondent / appellate authority;

(ii) The first respondent has delegated his powers to somebody else, who is not competent under Section 47 of the Indian Stamp Act.

(iii) The District Registrar, who is not an officer under the Indian Stamp Act, was delegated to conduct site inspection and the impugned order came to be passed on the basis of his report;

(iv) Even though Rule 7 of the Tamil Nadu (Prevention and Undervaluation of Instruments) Rules stipulates only three months period for completion of the process, there was much delay in passing final orders.

13. For the foregoing reasons, the order passed by the first respondent dated 26.02.2011 in proceedings Pa.Mu.No.3806/N2/2010 is set aside and the matter is remitted back to the first respondent for fresh consideration under Rule 11-A of the Tamil Nadu (Prevention and Undervaluation of Instruments) Rules. The Civil Miscellaneous Appeal is allowed with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dpq/tk

To
1. The Tamil Nadu Chief Revenue Controlling Officer
    and Inspector General of Registration
    Chennai 600 028.

2. The District Revenue Officer,
    (Stamps), Coimbatore 600 018.

3. The Sub Registrar,
    Pollachi, Coimbatore District.

+1cc to M/s.N.Manokaran , Advocate SR.No. 9104
+1 CC TO GOVERNMENT PLEADER SR.NO. 8960

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and M.P.No.1 of 2011

ASK(14/11/2018)