IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3326 of 2011
and M.P.Nos.1 and 2 of 2011

A.G.Syed Mohideen ... Appellant

Vs.

1. The Tamil Nadu Chief Controlling Revenue Authority cum the Inspector General of Registration, Santhome, Chennai - 28.

2. The District Registrar, Cuddalore District, Cuddalore.

3. The Special Deputy Collector (Stamps), Cuddalore District, Cuddalore.

4. The Sub Registrar No.2, Cuddalore.

... 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.9133/N3/2008 on the file of the Chief Controlling Revenue Authority cum the Inspector General of Registration, Chennai.

For Appellan : Ms.Hema Sampath, Senior Counsel for Mrs.R.Meenal

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

J U D G M E N T

This Civil Miscellaneous Petition has been filed against the order dated 26.02.2011 made in Pa.Mu.No.9133/N3/2008 by the Chief Controlling Revenue Authority and the Inspector General of Registration, Chennai, 1st respondent.

2. The sale deed presented by the appellant was registered as Document No.1397/2006 and was referred to the 3rd respondent, the Special Deputy Collector (Stamps), Cuddalore, for redetermination of market value of the property under Section

47-A(1) of the Indian Stamp Act, 1899. The 3rd respondent issued Form-I notice on 26.05.2006 and Form-II on 01.09.2007. The appellant has submitted his representation on 12.04.2006 and objections against provisional determination of value of the property on 10.09.2007. Based on the report submitted by the Special Tahsildhar (Stamps), the final order was passed on 14.12.2007. The 3rd respondent, considering the future development of the property, has fixed the market value of the property at Rs.7,000/- per cent. Aggrieved over the order, the appellant preferred an appeal to the 1st respondent, which was disposed of on 26.02.2011 on the basis of the site inspection report submitted by the District Registrar, Cuddalore, 2nd respondent. Against which, the present Civil Miscellaneous Appeal has been filed.

3. Ms.Hema Sampath, learned Senior Counsel appearing for the appellant would contend that the order passed by the 3rd respondent is contrary to Rule 7 of the Tamil Nadu (Prevention and Undervaluation of Instruments) Rules, 1968, (hereinafter called Rules). As per the said Rule, the final order shall be passed by the authority within a period of three months from the date of first notice. But, in the instant case, the first notice was issued on 26.05.2006 and the final order was passed on 14.12.2007 i.e., after a lapse of one year and six months. This delay itself vitiate the entire proceedings because of the violation of the statutory provisions.

4. Secondly, it is the contention of the learned Senior Counsel that even though the property is an agricultural property, the 3rd respondent has fixed the value on the basis of future development that there are chances of establishing the colleges, hospitals or industries. The authority ought not to have fixed the value on the basis of future development, but must have redetermined the value based on the nature of the property on the date of registration. Even though these objections were raised before the 1st respondent, he has not considered any of these points. But, without applying his mind, he confirmed the valuation made by the 3rd respondent on the basis of the inspection report submitted by the 2nd respondent. No site inspection was made by the 1st respondent and therefore, the order passed by the 1st respondent is liable to be quashed.

5. Per contra, the learned Government Advocate would submit that the site inspection was done and it was found that the land in question is very near to Cuddalore to Chidambaram Main Road. Considering the commercial importance of the land, the 1st

respondent has redetermined the value on the basis of the reports submitted by the Special Deputy Collector (Stamps), Cuddalore, and the District Registrar, Cuddalore. The Special Deputy Collector (Stamps), and the District Registrar are the authorities under the Indian Stamp Act, and therefore, the order passed by the 1st respondent does not require any interference.

6. Heard the rival contentions made by the counsel appearing for both parties.

7. From a perusal of the order passed by the 3rd respondent, it is seen that Form-I notice was given on 26.05.2006 and the final order came to be passed on 14.12.2007. Admittedly, there is statutory violation in passing the order under Rule 7 of the Tamil Nadu (Prevention and Undervaluation of Instruments) Rules, 1968. Rule (7) of the said 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.
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> (2) A copy of the order shall be communicated to the registering officer concerned for his record.
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> (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.
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> (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."

8. The authority should pass the order within a period of three 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) categorically held that the order passed beyond the limitation period specified under Rule 7 of the Rules will vitiate the entire proceedings. In the instant case Form-I notice was issued on 26.05.2006 and final order on 14.12.2007. There is a delay of one year and six months in passing the final order. Therefore, the order passed by the 3rd respondent is violation of Rule 7 of the said Rules.

9. Secondly, Rule 11-A of the said Rules mandates the procedure while deciding the appeal filed under Section 47A(5) of the Act. As per sub-clause (c) of Rule 11-A of the said Rules, it is a mandatory requirement to conduct site inspection after giving notice to the parties. The appellate authority cannot delegate his power to his subordinates. In a similar circumstance, 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 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 ½ 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."

10. The District Registrar is not an officer under the Stamp Act, 1899, for determination of the market value. But in the present case the first respondent passed the impugned order on the basis of recommendation of the District Registrar. Therefore, the order is not legally sustainable.

11. During the site inspection cultivation of casuanina trees was noticed and the guideline value for S.No.11/1,2, 10/3 and 18/4 was ranging between Rs.40,000/- and Rs.78,000/- per acre. While so the market value ought to have been fixed considering the nature of property on the date of registration, but it was fixed at Rs.7,00,000/- per acre considering chances of future development. A Hon'ble Division Bench of this Court in the case of Special Deputy Collector (Stamps), Chennai Collectorate, Singaravelar Maligai, Chennai, Vs. Thajunnisa and others reported in (2015) 6 MLJ 129, held that the classification of the land, the nature of user on the date of registration shall be taken as criteria for fixing the market value. The authority shall not fix the value on the basis of future development. The relevant paragraph of the said judgment is reads 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."

12. From the above observations, it is clear that the order passed by the 3rd respondent was in violation of Rule 7 of the rules and the impugned order came to be passed in violation of Section 47A(5) of the Act and Rule 11-A of the Rules and also in violation of principles of natural justice.

13. Considering all these, the impugned order dated 26.02.2011 in Pa.Mu.No.9133/N3/2008 passed by the Inspector General of Registration-cum-Chief Controlling Revenue Authority, Chennai/1st respondent, is set aside and accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1. The Tamil Nadu Chief Controlling Revenue Authority cum the Inspector General of Registration, Santhome, Chennai - 28.

2. The District Registrar, Cuddalore District, Cuddalore.

3. The Special Deputy Collector (Stamps), Cuddalore District, Cuddalore.

4. The Sub Registrar No.2, Cuddalore.

5. The Section officer
   VR Section, High Court, Madras.

+1 CC to Mrs. R. Meenal, Advocate sr 8652.
+1 CC to The Spl. Govt. Pleader sr 8663.

C.M.A.No.3326 of 2011
and M.P.Nos.1 and 2 of 2011

NMI(CO)
SP(22/05/2018)