IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3442 of 2011
and M.P.No.1 of 2011

T.S.Gopalakrishnan ... Appellant/Appellant

Vs.

1. The Inspector General of Registration,
   Santhome High Road, Chennai - 28.

2. The Special Deputy Collector (Stamps),
   Office of Collectorate, Kovai.

3. The Sub Registrar,
   Gandhipuram, Kovai. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899, against the order dated 18.10.2003 in proceedings No.3768/N2/2002 passed by the Inspector General of Registration-cum-Chief Controlling Revenue Authority, Chennai, revising the order dated 27.11.2001 passed by the Special Deputy Collector (Stamps), in his proceedings No.514/CN/97 in pursuance of the order dated 23.06.2011 passed in W.P.No.3017 of 2004.

For Appellant : Mr.S.Natana Rajan

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

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J U D G M E N T

Aggrieved over the order passed by the Inspector General of Registration, Chennai, dated 18.10.2003 in his proceedings No.3768/N2/2002 under Section 47-A(5) of the Indian Stamp Act, the appellant has come before this Court.

2. According to the appellant, he presented the documents for registration, which were registered as Document

Nos.2403/1997 and 2406/1997. He purchased the properties for laying road to have access to his own property. According to him, he does not know the value of the layout, since the same had already been sold out. The purchase will be only to facilitate his access and therefore, there can be no value for the path way. Further, notice under Rule (4) and (6) of the Tamil Nadu (Prevention of Undervaluation of Instruments) Rules, 1968, were not served on him. But, based on the demand made by the 2nd respondent, Special Deputy Collector (Stamps), he preferred an appeal before the 1st respondent under Section 47-A(5) of the said Act. Even though the point was raised as to non-service of noticeas per Rule (4) and (6) of the said Rules, the appellate authority has not considered the same and passed orders on the basis of the inspection conducted by the Deputy Inspector General of Registration and report submitted on him on 21.05.2003. The 1st respondent while passing the order on the appellant's appeal has enhanced the market value of the property, which is illegal.

3. Heard the rival contentions made by the learned counsel appearing for parties.

4. On a perusal of the appeal, it is seen that the registration has taken place in the year 1997. The notice was issued by the 2nd respondent on 27.11.2001. Section 33-A of the Indian Stamp Act, mandates that an enquiry with regard to recovery of deficit stamp duty shall be commenced within three years from the date of registration of the instruments. But, in the instant case, reference made in the order would go to show that the proceedings were initiated by the 2nd respondent by himself only on 27.11.2001 i.e. after a period of around four years from the date of registration.

5. Be that as it may.

6. The appellant has raised the grounds that no notice under Rule (4) and (6) was served on him and there is violation of Rule 7(2) of the said Rules. But, 1st respondent has not considered the objection raised by the appellant and has not recorded any reasons on those grounds. The order passed by the 1st respondent is without application of mind and solely based on the report submitted by the Deputy Inspector General of Registration, Coimbatore, dated 21.05.2003.

7. Even assuming that the 1st respondent can cause site inspection to be conducted by subordinates to him, the principles of natural justice requires the copy of such report to be furnished to the appellant. The non-service of the report or materials relied on by him while deciding the appeal will amount to violation of principles of natural justice. On this ground also, I hold the order passed by the 1st respondent is not sustainable in law.

8. Further, Rule 11-A of the Tami Nadu (Prevention of Undervaluation of Instruments) Rules, 1968, mandates that site inspection shall be done by the appellate authority while deciding the appeal under notice to the parties concerned. He cannot delegate those powers to anybody else. 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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> 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."

9. In the judgment reported in 2012 (3) CTC 589 (Rajendran Vs. The Inspector General of Registration, Chennai, and two others), this Court has held that while deciding the appeal under Section 47-A(5) of the Act, the appellate authority has to decide the correctness of the order passed by the District

Collector. He is not empowerred to enhance the market value as if the appeal was preferred by Government or like exercising his power under Section 47-A(6) of the Act.

10. Therefore, I find that the order passed by the 1st respondent is not sustainable in law. The proceedings of the respondents stand vitiated for violation of the mandatory procedures laid under Rule 4, 6, 7, 11-A and 15 of the said Rules. Therefore, the order passed by the 1st respondent is also not sustainable for the violation of principles of natural justice and statutory provisions.

11. Accordingly, the order passed by the 1st respondent/Inspector General of Registration, Chennai, dated 18.10.2003 in his proceedings No.3768/N2/2002 is set aside.

12. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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

2. The Special Deputy Collector (Stamps),
Office of Collectorate, Kovai.

3. The Sub Registrar,
Gandhipuram, Kovai.

+ 1 cc to Mr.S.Natana Rajan Advocate,SR.9632
+ 1 cc to The Special Govt.Pleader, SR.9919

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sj(co)
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