IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-01-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.671 OF 2011
M.P.NO.1 OF 2011

M.Pushpalatha ... Appellant/ petitioner

-vs-

1.The Tamil Nadu Chief Controlling Revenue Authority-cum-
Inspector General of Registration,
Santhome High Road,
Chennai - 600 004.

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

3.The Sub-Registrar,
Guddalore. ... Respondents

Appeal against the order, dated 06.01.2011, passed in Pa.Mu.No.68124/N2/05, on the file of The Tamil Nadu Chief Controlling Revenue Authority-cum- Inspector General of Registration, Chennai.

For appellant : Mr.R.Gandhi,
Senior Counsel, for Mr.R.G.Narendhiran.

For respondents: Mr.S.Jaganathan,
Govt.Advocate (CS)

J U D G M E N T

Aggrieved over the order passed by the first respondent-Inspector General of Registration, the appellant is before this Court.

2. According to the appellant, he purchased an agricultural land and presented the document for registration; the Sub-Registrar, third respondent, referred the same for determination of market value to the second

respondent; the second respondent issued a notice in Form-I to the appellant on 13.10.2004 and, after issuing another notice in Form-II, passed final orders on 02.11.2005, fixing the market value of the property at Rs.6,94,000/- @ Rs.4,00,000/- per acre. Aggrieved over the order passed by the second respondent, the appellant preferred an appeal to the first respondent on 30.11.2005, raising objections of violation of Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules,1968, in short, "the Rules". The first respondent, in her proceedings in Pa.Mu.No.68124/N2/05, dated 06.01.2011, redetermined the market value of the property at Rs.6.00 lakhs per acre. Challenging the said order, the present appeal is filed.

3. According to the learned counsel for the appellant, the impugned order passed by the first respondent is without jurisdiction; the first respondent, being an appellate authority, while deciding the appeal, shall scrutinise the correctness and legality of the order passed by the second respondent; and the first respondent is not entitled to exercise the power conferred on her under Section 47 (A) (6) of the Indian Stamp Act, 1899, in short, "the Act", while deciding the appeal under Section 47 (A) (5) of the Act. But, in the instant case, the second respondent has determined the market value of the property at Rs.4.00 lakhs per acre, whereas, on appeal by the presentant of the document, it has been enhanced by the first respondent to Rs.6.00 lakhs per acre. He would also contend that redetermination of the market value was not based on any material, but only on assumptions; the first respondent also failed to note that the order passed by the second respondent is contrary to the time limit specified under Rule 7 of the afore said Rules. Therefore, the learned counsel would seek to set aside the order passed by the first respondent.

4. Per contra, the learned Government Advocate, appearing for the respondents, would submit that the property in question is situated near the Bus Stand; it is a fertile land; and, based on the market value, the first respondent has determined the value at Rs.6.00 lakhs per acre, which is very much reasonable and, therefore, the impugned order need not be interfered with.

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

6. On a perusal of the impugned order, it is very clear that the property, which is sought to be registered, is an agricultural property. The second respondent has categorically given a finding that Beans is being cultivated in the said land. However, he fixed the market value at Rs.4,00,000/- per acre. The determination of market value by the second respondent is not supported by any document. On appeal by the presentant of the document, the first respondent enhanced the rate to Rs.6,00,000/- per acre. Even this enhancement is based only on the report submitted by the District Registrar.

7. 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 empowered 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.

8. Further, it is well settled that as per Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968, it is incumbent on the part of the appellate authority, to conduct site inspection and after gathering all the details and after arriving at subjective satisfaction, to fix the market value. But, in the instant case, the first respondent has not conducted site inspection. Therefore, the order passed by the first respondent is vitiated for non-compliance of the mandatory requirement.

9. A Division Bench of this Court had an occasion to consider the determination of market value of the property on the basis of future development, in the case of SPECIAL DEPUTY COLLECTOR (STAMPS), CHENNAI COLLECTORATE, SINGARAVELAR MALIGAI, CHENNAI, VS. THAJUNNISA AND OTHERS [2015 (6) MLJ 129] and 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.”

10. The property which is sought to be conveyed in this appeal is no doubt an agricultural land. There is a categorical finding by the second respondent on his inspection that Beans is being cultivated. Once the land is found to be an agricultural land, based on future development, as found in the judgment cited above, the market value cannot be fixed. Thirdly, the District Registrar, is not an Officer under the Indian Stamp Act. The first respondent is conferred with the powers to conduct site inspection by himself, to arrive at the subjective satisfaction. He has no power to sub-delegate the same in favour of his subordinates. But, in excess of his powers, the first respondent has delegated the power to the District Registrar, who is not at all an Officer under the Indian Stamp Act.

11. 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. 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 1/2 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."

Therefore, the delegation of powers to the District Registrar and the decision taken on the basis of his report is not all sustainable in the eyes of law. Apart from this, there is a delay in passing orders, contrary to Rule 7 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968. On this count also, the impugned order is liable to be quashed.

12. In such circumstances, the impugned order passed by the first respondent in Pa.Mu.No.68124/N2/05 dated 06.01.2011 is set aside and the matter is remitted back to the first respondent for fresh consideration under Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968.

13. In fine, the Civil Miscellaneous Allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/--
Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

dixit/tk

To

1.The Tamil Nadu Chief Controlling Revenue Authority-cum-
Inspector General of Registration,
Santhome High Road,
Chennai - 600 004.

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

3.The Sub-Registrar,
Guddalore.

+1 CC TO GOVERNMENT PLEADER SR.NO.7234
+1cc to M/S.R.G.NARENDHIRAN , Advocate SR.No. 7051

C.M.A.No.671 OF 2011

ASK(08/11/2018)