IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2454 OF 2014
AND MP NO.2 OF 2014

M/s.Allcargo Logistics Limited
(Previously known as Allcargo Global
Logistics Ltd.) Rep. herein by its
Senior Manager - Legal & Authorised Signatory
Ganesh Naidu
Having its Regd. Office at
6th Floor, "Avashya House" C.S.T. Road,
Kalina, Santa Cruz East,
Mumbai - 400 098. ... Appellant

Vs.

1.The Tamil Nadu Chief Controlling Revenue
Authority & Inspector General of Registration
No.100, Santhome High Road,
Santhome, Chennai - 600 028.

2.The District Revenue Officer (Stamps)
5th Floor, Office of the District Collector
"M.Singaravelar Maaligai"
No.32, Rajaji Salai, Chennai - 600 001.

3.The Sub Registrar
Thiruvottiyur
No.21/8, Market Street,
Kaladipet, Thiruvottiyur,
Chennai - 600 019. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A(10) of the Indian Stamp Act, 1899, read with Rule 9(5) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, read with Section 96 of the Civil Procedure Code, 1908, to call for the records in Appeal No.41125/N1/2012 and set aside the final orders bearing Pa.Mu.No.41119/N1/2012 dated 20.02.2014 passed in Appeal No.41125/N1/2012 on the file of the first respondent herein and further confirm that the market value adopted by the appellant in its Deed of Sale dated 21.03.2007 bearing Document No.10081 of 2007 is the correct market value.

For Appellant : Mr.T.Madhusudhan Reddy
For Respondents : Mr.S.R.Rajagopal
Additional Advocate General - IX
assisted by Mr.M.Venkadesh Kumar
Government Advocate (CS)

J U D G M E N T

Aggrieved over the order passed by the first respondent Inspector General of Registration, in Proceedings Pa.Mu.No.41119/N1/2012, dated 20.02.2014 in Appeal No.41125/N1/2012, the appellant is before this Court.

2. According to the appellant, they purchased the property under Deed of Sale dated 21.03.2007, registered as Document No.10081 of 2007 The third respondent referred the same for determination of market value under Section 47-A(1) of the Indian Stamp Act, 1899, to the second respondent. The second respondent issued notice in Form-I, dated 26.09.2007, under Rule 4 of the Tamil Nadu Stamp (Prevention of undervaluation of instrument) Rules, 1968 (shortly "the Rules"). Thereafter, final order came to be passed on 24.04.2012, without issuing Form-2 notice. After sending so many representations and legal notices, the appellant states that they could receive final order, only on 20.06.2012 and thereafter, preferred an appeal under Section 47-A(5) of the Indian Stamp Act, 1899. The first respondent without considering the grounds of delay, in violation of Rule 7 of the above said Rules, passed the impugned order, dated 20.02.2014.

3. While deciding the appeal, the first respondent has not conducted any inspection, on the other hand, enhanced the market value determined by the second respondent. The appellant prefers the above Civil Miscellaneous Appeal for the violation of the statutory provisions and principles of natural justice.

4. The learned Additional Advocate General appearing on behalf of the respondents would submit that final order was passed on 24.04.2012 and it was communicated to the appellant. However, in view of the letters submitted by the appellant, again they have communicated the order on 20.06.2012. After considering the materials on record and the relevant data pertaining to the land value, the first respondent has passed the order. Since the order came to be passed after taking into consideration all the material documents, it is a well considered order, which does not require any interference.

5. Heard the submissions made on either side.

6. From the perusal of the impugned order passed by the first respondent, it could be seen that the document was registered on 21.03.2007 and it was referred for determination of market value, to the second respondent under Section 47-A(1) of the Indian Stamp Act. The second respondent, issued Form-I notice to the appellant on 26.09.2007.

7. It is relevant to refer Rule (7) of the Tamil Nadu Stamp (Prevention of under valuation of instrument) 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."

8. As per the aforesaid rule, the authority shall pass orders within three months from the date of issuance of the first notice. In the instant case, Form-I notice was issued on 26.09.2007, but final order came to be passed on 24.04.2012, i.e., after a period of five years. The delay in passing the final order by itself vitiates the entire proceedings.

9. The learned counsel appearing for the appellant would contend that as per Rule 6 of the above said rules, it is mandatory on the part of the respondents to call for objections over the fixation of the provisional market value of the property. But, in the instant case, I do not find Form - 2 notice in the records at all. Non-issuance of Form-2 notice will amount to violation of statutory provision as well as principles of natural justice.

10. While considering the order passed by the first respondent, the records reveal that, he had obtained inspection report from the District Registrar (Administration) North Madras. This Court in its various judgments has held that the District Registrar is not an Authority under Indian Stamp Act, whereas he is an Authority, under the Registration Act. He has no power in the matters of determination of market value. It shall be done only by the competent authority under Indian Stamp Act, namely, the District Collector and Inspector General of Registration. Since the District Registrar is not an authority under the Indian Stamp Act, the site inspection and the report filed by him, does not require consideration.

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."

That is, there is no power in the statute enabling the first respondent to delegate his power to his subordinates. Therefore also, the order passed by the first respondent is not sustainable. Even assuming that there is a power to sub-delegate, the first respondent must have furnished the inspection report submitted by the District Registrar to the appellant, before deciding the appeal. I do not find any reference in the order passed by the first respondent that such an opportunity was given to the appellant after furnishing the materials relied on by him for deciding this appeal.

12. Further, the first respondent, while deciding the appeal, must have conducted site inspection, as per Rule 11-A of the above said Rules, after giving notice to the parties concerned. As stated supra, the first respondent has failed to conduct site inspection, much less, given notice to the parties. In so far as the issuance of notice is concerned, it is a mandatory requirement and non-issuance of notice will amount to violation of principles of natural justice.

13. It is seen that the first respondent, while deciding the appeal, had enhanced the market value determined by the second respondent and fixed a higher value. As per Section 47-A(5) of the Indian Stamp Act, the first respondent shall only scrutinize the correctness of the order passed by the second respondent, as an appeal has been preferred by the presentant concerned. In the appeal preferred by the presentant, the Inspector General of Registration, has no power to enhance the market value.

14. This Court, in its judgment in RAJENDRAN VS. THE INSPECTOR GENERAL OF REGISTRATION AND OTHERS [2012 (3) CTC 589] has held that while deciding the appeal preferred by the presentant, unlike the suo motu revision under Section 47-A(6) of the Indian Stamp Act, the appellate authority is not empowered to enhance the market value of the property and he can

only decide on the correctness of the order passed by the District Collector or District Revenue Officer. Therefore, it is clearly seen that the order passed by the first respondent is in total violation of Rules 6, 7 and 11-A of the above said rules and in excess of powers conferred under Section 47-A(5) of the Indian Stamp Act. In such circumstances, I have no hesitation to set aside the impugned order passed by the first respondent.

15. The learned counsel appearing for the appellant would submit that by virtue of the interim order dated 08.09.2014, passed in M.P.No.2 of 2014, in C.M.A.No.2454 of 2014, by this Court, they have deposited a sum of Rs.15,00,000/- towards stamp duty, in respect of the sale deed. Therefore, the appellant is entitled to get refund of the same.

16. In the result, the order passed by the first respondent in Pa.Mu.No.41119/N1/2012, dated 20.02.2014, passed in Appeal No.41125/N1/2012, is set aside and the Civil Miscellaneous Appeal is allowed. The respondents are directed to refund the amount, if any, deposited by the appellant, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Tamil Nadu Chief Controlling Revenue
Authority & Inspector General of Registration
No.100, Santhome High Road,
Santhome, Chennai - 600 028.

2. The District Revenue Officer (Stamps)
5th Floor, Office of the District Collector
"M.Singaravelar Maaligai"
No.32, Rajaji Salai,
Chennai - 600 001.

3. The Sub Registrar
Thiruvottiyur
No.21/8, Market Street,
Kaladipet, Thiruvottiyur,
Chennai - 600 019.

4. The Section Officer,
VR Section, High Court,
Madras-104.(2 copies)

+1cc to M/s.P.J.George, Advocate in sr.no.20834
+1cc to Special Government Pleader(cs), in sr.no.20679

C.M.A.NO.2454 OF 2014

AD(CO)
CS/27/03/18