IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-02-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1346 OF 2008

Dr.Krishnamurthy ... Appellant

-vs-

1.The Registrar,
Office of Inspector General of Registration,
120, Santhome High Road,
Chennai – 600 028.

2.The Deputy Collector (Stamps),
Chennai-1.

3.The Sub-Registrar,
Office of the Sub-Registration,
Ashok Nagar,
Chennai-600 083. ... Respondents

Appeal filed Under Section 47(A) R/W Under order 43 Rule 1A CPC against the order, dated 31.01.2008, passed in Order No.61114/E1/2003, passed by the First Respondent.

For appellant : Mr.K.Rajasekaran

For respondents : Mr.M.Venkadesh Kumar,
Govt.Advocate (CS)

JUDGMENT

The appellant has preferred this appeal against the order passed by the first respondent, dated 31.01.2008. Originally, the appellant presented the document for registration, which was referred to the second respondent for determination of the market value under Section 47-A (1) of the Indian Stamp Act,1899, in short, "the Act". The second respondent, by his order, dated 12.07.2002, redetermined the market value of the property at Rs.1031/- per sq.ft. The appellant remitted the amount, demanded as per the order of the second respondent. Thereafter, the first respondent has initiated suo-motu revision under Section 47-A (6) of the Act. After getting a report of site inspection from the Deputy Inspector General of Registration, the first respondent passed the impugned order on 31.01.2008, fixing the market value of the property at Rs.2313/- per sq.ft. Aggrieved over the said order passed by the first respondent, the appellant is before this Court with this appeal.

2. Learned Government Advcoate, appearing for the respondents, would submit that the second respondent has failed to consider the existence of the building in the property and determined the value at Rs.1031/- per sq.ft., which is prejudicial to the interest of the Government, thereby causing revenue loss; the first respondent has rightly initiated suo-motu proceedings and determined the correct market value of the property; the order passed by the first respondent is legal and based on material; and, therefore, it need not be interfered with.

3. Heard the submissions of both the parties.

4. From a perusal of the impugned order, it is seen, that the first respondent has called for a report from the Deputy Inspector General of Registration; on the basis of the inspection conducted by the Deputy Inspector General of Registration so also the report submitted by him, the order came to be passed. In this connection, it is necessary to refer to Rule 11-A of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules,1968, which 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 or authority under the Government or the local authority; and

(c) inspect the property after due notice to the parties concerned."

As per the above Rule, the appellate authority, while deciding the appeal, shall conduct site inspection, after giving notice to the parties concerned. It is a mandatory requirement. But, in the instant case, it is complained that no notice was given to the parties, before conducting site inspection, that too by the Deputy Inspector General of Registration. In a similar circumstance, this Court, in a decision in C.M.A.No.2820 of 2012, dated 05.06.2015, has held in Paragraph 17, as under :

> "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 1st 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."

5. Therefore, it can be easily inferred that the first respondent has not followed the procedure laid down under Rule 11-A of the Rules. Since no notice was given to the parties, the order passed by the first respondent is violative of principles of natural justice. Considering all these violations, this Court is of the considered opinion that the impugned order passed by the first respondent is not legally sustainable in law and, it is, accordingly, set aside. The matter is remitted back to the first respondent for fresh consideration.

6. The learned Government Advocate would submit that the Government has announced Samadhan Scheme in G.O.Ms.No.189, Commercial Taxes and Registration (J1) Department, dated 29.12.2017, wherein, the appeals pending before the High Court as on 08.06.2017 under Section 47-A (10) of the Indian Stamp Act,1899, are also covered; and, therefore, it is open to the appellant to approach the authority to avail the benefits of the Scheme.

7. Learned counsel for the appellant would submit that the apellant has already paid the deficit stamp duty, as demanded by the second respondent. In such circumstances, it is open to the appellant to avail the benefit of Samadhan Scheme, referred to above, if he so chooses, in which event, the first respondent shall dispose of the appeal preferred by the appellant within a period of three months from the date of receipt of a copy of this order. If the appellant is not satisfied with the order so passed by the first respondent, it is open for himi to avail further legal course in the manner known to law.

8. While the matter is taken up on appeal, on the direction of this Court, the appellant has remitted 50% of the deficit stamp duty, demanded by the first respondent.

Therefore, if the appellant chooses to avail the benefit of Samadhan Scheme, the first respondent need not insist on conditional payment, as specified in the G.O.

9. Civil Miscellaneous Appeal is ordered accordingly. No costs. Consequently, the connected M.P.No.1 of 2008 is closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

dixit

To

1.The Registrar,
Office of Inspector General of Registration,
120, Santhome High Road,
Chennai - 600 028.

2.The Deputy Collector (Stamps),
Chennai-1.

3.The Sub-Registrar,
Office of the Sub-Registration,
Ashok Nagar,
Chennai-600 083.

4.The Section Officer,
VR Section,
High Court, Madras.

+ 1 cc to Mr.K.Rajasekaran Advocate,SR.7689

+ 1 cc to The Govt.Pleader, SR.8527

C.M.A.No.1346 OF 2008

NRJK(CO)
NR 05/04/2018