IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1860 of 2013
and M.P.Nos.1 and 2 of 2013

T.Sudha ... Appellant

Vs.

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

2. The Special Deputy Collector (Stamps), District Collectrate's Office, Cuddalore - 1.

3. The Sub Registrar of Assurances, Panruti, Cuddalore District. ... Respondents

PRAYER:
Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamps Act, 1899, to set aside the order of the first respondent dated 24.02.2011 in proceedings D.Dis.No.13146/N3/2008 on the file of the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, against the orders of Special Deputy Collector (Stamps), Cuddalore No.Spl.R.No.466/07-08 dated 03.03.2008.

For Appellant : Mr.K.Moorthy

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

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order passed by the 1st respondent/Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, 24.02.2011 in proceedings D.Dis.No.13146/N3/2008.

2. The appellant had registered an agricultural land vide Document No.1665/2007 and the same was referred for valuation to the 2nd respondent/ Special Deputy Collector (Stamps), Cuddalore,under Section 47-A(1) of the Indian Stamp Act, 1908. The 2nd respondent issued Form-I notice under Rule (4) of the Tamil Nadu Stamp (Prevention of under valuation of instrument) Rules, 1968, on 14.08.2007, and Form-II notice on 13.12.3007, and passed a final order on 03.03.2008. Aggrieved over the same, the appellant preferred an appeal under Section 47-A(5) of the Act to the 1st respondent and the same was disposed of on 24.02.2011, confirming the order passed by the 2nd respondent. Against the order of the 1st respondent, the present appeal has been filed.

3. The learned counsel appearing for the appellant would contend that the order passed by the 2nd respondent itself is vitiated due to delay in passing the order. Secondly, the land is admittedly an agricultural land as found by the 2nd respondent during his inspection. The District Registrar, who inspected the property, has also found that it is an agricultural land, but considering the future use, has recommended the market value of the property at Rs.85/- per sq.ft. The 1st respondent, without application of mind, has confirmed the order of the 2nd respondent on the basis of the report submitted by the District Registrar.

4. It is contended that the order passed by the 1st respondent is without application of mind in violation of principles of natural justice and statutory provisions.

5. The learned Government Advocate for the respondents, controverting the contentions made by the learned counsel for the appellant, submitted that the appellant himself has presented certain other documents for registration treating the property as a housing site. Therefore, the 1st respondent has considered all these aspects and thereafter only, the impugned order came to be passed. The order does not suffer from any infirmity and therefore, has to be confirmed.

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

7. From a perusal of the order passed by the 2nd respondent dated 03.03.2008, it is seen that Form-I notice was given on 14.08.2007 and From-II notice on 13.12.2007 and final order came to be passed on 03.03.2008. Rule (7) of the Tamil Nadu Stamp (Prevention of under valuation of instrument) Rules, 1968, 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 Rule (7) of the said Rules, it is mandatory on the part of the 2nd respondent to pass orders within a period of three months from the date of first notice. But, in the instant case, the order came to be passed after a period of seven months. A judgment rendered by this Court reported in 2009 (6) CTC 632 (Periasamy and other Vs. The Chief Controlling Revenue Authority, State of Tamil Nadu, Chennai and 2 others) has categorically held that the order passed beyond the limitation period specified would vitiate the entire proceedings. In the instant case also, there is a delay of seven months in passing the final order. Therefore, the order passed by the 1st respondent is violation of Rule 7 of the said Rules and the judgment.

9. Even from the order passed by the 1st respondent, it could be seen that the land is sought to be valued as an agricultural land. Once it is admitted as an agricultural land, the value of the property should be done on the basis of classification made in the Revenue records. The appellant had also produced the revenue records showing the property as an

agricultural land and it was also admitted by the 2nd respondent during the inspection that it is an agricultural property. But, contrary to the observation, respondents have fixed the market value considering its future use and future development. A judgment of the 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, can be referred to, wherein, it has been held that the classification of the land, the nature of use on the date of registration shall be taken as criteria for fixing the market value. But, the authority shall not fix the value on the basis of future development. The relevant paragraph of the said judgment is extracted hereunder:-

> "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."

10. It could be inferred from the above judgment of the Hon'ble Division Bench that the value of the property shall be assessed as per the nature and classification as it stood on the date of registration. The authorities cannot fix the value on the basis on the future development. But, in the instant case, the market value has been fixed by the respondents considering the commercial importance and future development of the area. Moreover, the order is passed on the basis of the recommendation made by the District Registrar, Cuddalore. This Court in various judgements has held that the District Registrar is not an authority under the Indian Stamp Act. Rule 11-A of the Tamil Nadu (Prevention and Undervaluation of Instruments) Rules, 1968,

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 of authority under the Government or the local authority; and
>
> (c) inspect the property after due notice to the parties concerned.

11. As per Rule 11-A, it is mandatory on the part of the appellate authority while deciding appeal to conduct an inspection under notice to the parties concerned. He cannot delegate the power conferred under the Act to anybody else. Secondly, notice of inspection shall be given before conducting the site inspection.

12. In the present case, the power has been delegated to the District Registrar, who is not an authority under the Indian Stamp Act and the report, relied on by the appellate authority, has not been served to the appellant. Therefore, it is a clear case of violation of principles of natural justice.

13. Considering all these aspects, I hold that the order passed by the 1st respondent/Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, dated 24.02.2011 in proceedings D.Dis.No.13146/N3/2008 is not sustainable in law and accordingly, it is set aside.

14. In the result, this Civil Miscellaneous Appeal is allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Controlling Revenue Authority/
The Inspector General of Registration,
Office of the Inspector General of Registration,
No.120, Santhome High Road,
Chennai - 600 028.

2. The Special Deputy Collector (Stamps),
District Collectrate's Office,
Cuddalore - 1.

3. The Sub Registrar of Assurances,
Panruti, Cuddalore District.

+1cc to Mr.K.Moorthy, Advocate, S.R.No.10650
+1cc to the Government Pleader, S.R.No.10581

C.M.A.No.1860 of 2013
and M.P.Nos.1 and 2 of 2013

SAI(CO)
CS/26/04/18