IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/03/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.30787 of 2013 &

M.P.No.1 of 2013

N.Ganesan .. Petitioner

Vs.

1.The Chief Controlling Revenue Authority and Inspector General of Registration, Santhome High Road, Mylapore, Chennai.

2.The Special Deputy Collector (Stamps), Collectorate, Salem.

3.The District Registrar, Namakkal.

4.The Sub Registrar, Joint No.1, Namakkal. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order passed by the first respondent herein dated 30.10.2012 in his proceedings No.57567/Uo 4/Uo 2/2006 and quash the same.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.N.Inbanathan
Additional Government Pleader



O R D E R

The petitioner challenges the order passed by the first respondent directing the petitioner to pay a sum of Rs.2,12,715/- towards deficit stamp duty and registration charge by exercising a suo motu power under Section 47 A (6) of Indian Stamp Act, 1899 (In short "the Act").

2. According to the petitioner, he purchased a property measuring to an extent of 1.63 acres in T.S.No.19/1 of Namakkal Village through a registered sale deed dated 16.08.2005 registered in the Office of the fourth respondent as Document No.2078 of 2005. The fourth respondent having felt that the true value was not set forth in the document, referred the matter to the second respondent for determination of the correct value under Section 47-A of the Act. The second respondent fixed the guideline value at Rs.876/- per sq.ft. and directed the petitioner to pay a sum of Rs.41,720/- as deficit stamp duty. The petitioner accepted the same and paid the difference amount on 16.11.2005.

3. The grievance of the petitioner is that after lapse of 7 years, the first respondent issued the impugned order without providing an opportunity to the petitioner and in violation of the Section 47 A(6) of the Act.

4. The third respondent has filed a counter stating that the sale deed of the petitioner was executed showing the lesser value of the property (Rs.2,14,724/- per acre) and hence, the fourth respondent referred the document to the Special Deputy Collector (Stamps) and after considering the matter, the second respondent has fixed the value of the said property as Rs.5,50,000/- per acre, vide his proceedings dated 03.11.2005. Subsequently, the Accountant General, in his proceedings dated 26.05.2006 stated that the market value fixed for the property had caused loss of revenue to the Government and hence, the first respondent herein initiated suo motu review in respect of the suit document.

5. It is further stated that the first respondent fixed the value of the property as Rs.114/- per sq.ft. and issued a notice to the petitioner in letter No.57567/Oo4/2006, dated 10.05.2010 seeking his explanation, but the petitioner failed to submit his reply. However, he appeared for personal enquiry on 31.07.2012 and requested the first respondent to fix the value as Rs.10,00,000/- per acre. The adjacent land of the property in question have been sold for Rs.40,00,000/- per acre and the lands without proper approach road have been sold for Rs.20,00,000/- per acre and hence, the value of the property in question has fixed Rs.20,00,000/- per acre.

6. Heard Mr.R.Nalliyappan, learned counsel for the petitioner; Mr.N.Inbanathan, learned Additional Government Pleader for the respondents and perused the records.

7. The learned counsel for the petitioner assailed the impugned order mainly contending that the suo motu power under Section 47 A (6) of the Act could be exercised within a period of five years, but in the case on hand, the suo motu proceedings were initiated after lapse of 7 years and on that ground alone, the order is liable to be set-aside, by relying of the decision of this Court in 2013 (4) LW 964. The first respondent fixed Rs.20 Lakhs per acre based on the report submitted by the third respondent dated 10.05.2010, but the petitioner was not provided with an opportunity at the time of inspection said to have been done by the third respondent and the amount has been arrived without any basis, but purely on surmises and assumptions and that the respondents are demanding deficit stamp duty on the ground that the land in dispute could be developed as a lay out in future. According to the learned counsel for the petitioner, the reasons given in the impugned order could not be sustained.

8. The learned Additional Government Pleader contended that the petitioner was issued with a show cause notice and he also appeared for an enquiry conducted by the first respondent on 31.07.2012 and he agreed for fixation of the land value per acre at Rs.10 Lakhs.

9. The issues arise for consideration in this Writ Petition as to whether the suo motu proceedings were initiated in time as per Section 47 A(6) of the Act and the order is sustainable.

10. Sub-Sections (6),(7) & (8) of Section 47 A of the Act deal with exercise of suo motu power, which reads as follows:-

> "47 A (6) The Chief Controlling Revenue Authority may, suo motu, call for and examine an order passed under sub-section (2) or sub-section (3) and if such order is prejudicial to the interests of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit.
>
> 47 A (7) The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) of sub-section (3) if, -
>
> (a) the time for appeal against that order has not expired; or
>
> (b) more than five years have expired after the passing of such order.
>
> 47 A (8) No order under sub-section (6) adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard."

11. In the case on hand, as already observed above, the fourth respondent having entertained doubt over the market value of the property as set forth in the sale deed, referred the matter to the Special Deputy Collector (Stamps) under Section 47 A of the Act. On such reference, the second respondent determined the market value of the property by an order dated 03.11.2005. In the counter affidavit, it is stated that the first respondent initiated suo motu proceedings by issuing a show cause notice dated 10.05.2010 in view of the report submitted by the Accountant General, dated 26.05.2006 and after considering the location and usage of the property fixed the value of the property per acre as Rs.20,00,000/-.

12. From the perusal of the records, it is evident that the first respondent initiated proceedings within a period of five years. So, the submission of the learned counsel for the petitioner that the proceedings were initiated beyond the period of limitation is rejected.

13. Admittedly, before fixing the value of the property at Rs.20,00,000/- per acre, no notice was issued to the petitioner and it was decided behind the back of the petitioner. The perusal of the impugned order further reveals that re-determination of the value of the property was made mainly on the basis that in future the land in question could be used as a house site.

14. The Hon'ble Supreme Court in (2012) 3 MLJ 714 (State of UP and others Vs. Ambrish Tandon and another) has held that merely because the property could be used for commercial purpose at a later point of time, may not be a relevant criterion for assessing the value for the purpose of stamp duty and the nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty.

15. This Court in 2013 (4) LW 964 (supra), held that the intending use of the land in future cannot be the basis for adopting the value by relying on the decisions reported in (2004) 1 CTC 187, (2009) 1 CTC 698.

16. A bare perusal of the above rules would make it clear that the first respondent shall not pass order under Sub Section 6 of Section 47 A without providing an opportunity to the petitioner. Though it is contended by the respondents that the petitioner had agreed to fix Rs.10,00,000/- per acre during the personal hearing, no materials have been placed in support of their contention.

17. For the reasons stated above, the petitioner is entitled to succeed in this Writ Petition. In such view of the matter, the order impugned in this Writ Petition is set-aside and the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Chief Controlling Revenue Authority and
Inspector General of Registration,
Santhome High Road, Mylapore, Chennai.

2.The Special Deputy Collector (Stamps),
Collectorate, Salem.

3.The District Registrar,
Namakkal.

4.The Sub Registrar,
Joint No.1, Namakkal.

+1cc to Mr.R.NALLIYAPPAN, Advocate, S.R.No.21361
+1cc to the Government Pleader, S.R.No. 22365

W.P.No.30787 of 2013 &
M.P.No.1 of 2013

SR(CO)
TR(11/06/2018)