IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.GOVINDARAJ

C.M.A.NO.2229 OF 2012

R.Kandasamy .... Appellant

Vs.

1. The Chief Controlling Revenue Officer
and Inspector General of Registration
Santhome High Road, Chennai - 600 028.

2. The District Revenue Officer (Stamps)
Chennai Collectorate
Singaravelar Maaligai,
Rajaji Salai, Chennai - 600 001.

3. The Sub Registrar
Red Hills, Chennai. .... Respondents

PRAYER: Civil Miscellaneous Appeal filed under section 47A (10) of the Indian Stamp Act, 1899 r/w Rule 12 of Tamil Nadu Stamps (Prevention of Under Valuation Rules, 1968, this Court may be pleased to set aside the order of the first respondent passed in Pa.Mu.No.13993/N1/2010, dated 12.04.2012, whereby the land value fixed by the second respondent in Na.Ka.C.Pa.No.389/2008/A4 dated 15.03.2010 has been confirmed and to direct the respondents to accept the value of the Appellant as set forth in the sale deed, dated 09.06.2008 bearing Document No.5396 of 2008 of the office of the third respondent.

For Appellant : Mr.B.K.Sreenivasan

For Respondents : Mr.M.Venkadesh Kumar
Government Advocate (Civil Side)

J U D G M E N T

Aggrieved over the order passed by the Inspector General of Registration/Chief Controlling Revenue Officer, dated 12.04.2012, (on the file of the District Revenue Officer (Stamps), Chennai), the appellant, who is the purchaser of the property, vide Doc.No.5396 of 2008, has preferred this appeal under Section 47(A) (5) of the Indian Stamp Act, 1899.

2. The appellant purchased two pieces of agricultural land under two registered Sale Deeds, vide Doc.Nos.5395 and 5396 of 2008. The third respondent referred the document for proper valuation of the property to the second respondent. The second respondent, in his proceedings Ci.Pa.No.389 of 2008, A4/2010 issued Form I notice under Rule 4 of the Tamil Nadu Stamps (Prevention of Undervaluation Rules) 1968 on 06.10.2008 and thereafter, issued Form - II notice on 27.01.2009 and passed final order on 11.03.2010.

3. Aggrieved over the order passed by the second respondent, the appellant has preferred an appeal under Section 47(A) (5) of the Act, to the first respondent. The first respondent confirmed the order of the second respondent on the basis of the report obtained from the District Registrar (Administration) North Madras, dated 30.12.2010. According to the appellant, the order passed by the first respondent is in violation of principles of natural justice, statutory provisions and without application of mind. He would further contend that the entire property in Survey No.17/1, is in possession of the appellant himself and there is a factual error in the said order with regard to the extent of land.

4. Per Contra, learned Government Advocate appearing for the respondents would contend that the value was fixed by following the guideline rate prevailing on the date of registration. In fact, the guideline value available in the Sub Registrar's Office was Rs.500/- per sq.ft. However, considering the location of the property, the respondent has fixed the value at Rs.400/- per sq.ft. The order cannot be said to be without application of mind or without considering the materials. Therefore, he would submit that the order passed by the first respondent is a well considered order and does not require any interference.

5. Heard both sides.

6. On a perusal of the final order passed by the second respondent/DRO, It is clear that the documents were registered in the year 2008 vide Document Nos.5395 and 5396 of 2008. Form-I notice was issued on 06.10.2008. Thereafter, Form-II notice was issued on 27.01.2009 and final order was passed on 11.03.2010.

7. Rule 7 of the Tamil Nadu Stamps (Prevention of Undervaluation) 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 the above Rule, the Authority concerned shall pass orders within a period of three months from the date of first notice. Whereas, the instant case, the order came to be passed after a period of one and half years, from the date of first notice. The Authority ought to have passed the order before January 2009, but actually the order was passed only in the year 2010, which is beyond the mandatory period of three months. Therefore, the entire proceedings stands vitiated on account of delay in passing the order in contravention of the statutory rules.

9. It is seen that the order passed by the first respondent is based on the report submitted by the District Registrar (Administration) North Madras, dated 30.12.2010. It has been held in various judgments of this Court that the District Registrar is an Officer under Registration Act and not an authority under Indian Stamp Act. The first respondent ought not to have relied on the report submitted by any incompetent authority. 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."

10. Rule 11 (A) of the Tamil Nadu Stamp (Prevention of 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 or authority under the Government or the local authority; and

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

11. The first respondent is expected to conduct site inspection after giving notice to the parties concerned. The site inspection was conducted by the District Registrar, but the order does not reveal that it was done after giving notice to the parties. In such an event, the order shall be considered as violative of principles of natural justice contravening the mandatory requirements of Rule 11 (A) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

12. According to appellant, the authority should have valued the property as per the classification shown in the revenue records, which, in the present case an agricultural land. Fixing the market value of the property by considering future development and considering it as house site is illegal. The Hon'ble Division Bench of this Court in the judgment reported in SPECIAL DEPUTY COLLECTOR (STAMPS), CHENNAI COLLECTORATE, SINGARAVELAR MALIGAI, CHENNAI, VS. THAJUNNISA AND OTHERS [2015 (6) MLJ 129] has 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."

13. The land should have been registered as it stood on the date of the registration. The authorities shall not presume that it will be converted into house site in future. Therefore also, the order passed by the respondent is not sustainable in law. Even assuming there are chances of the land being converted into lay out, it is not prejudicial to the revenue of the State as conversion charges for converting the agricultural land into house sites, at 3% of the property value has to be paid as per new legislation. Therefore also, the revenue due to the Government will not be affected.

14. In such circumstances, the order passed by the first respondent in his proceedings in Pa.Mu.No.13993/N1/2010, dated 12.04.2012, confirming the order of the second respondent dated 15.03.2010 is set aside and the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Controlling Revenue Officer and
Inspector General of Registration
Santhome High Road,
Chennai - 600 028.

2. The District Revenue Officer (Stamps)
   Chennai Collectorate
   Singaravelar Maaligai,
   Rajaji Salai,
   Chennai - 600 001.

3. The Sub Registrar
   Red Hills,
   Chennai.

+1cc to Mr.B.K.Sreenivasan, Advocate, S.R.No.11097

+1cc to the Government Pleader, S.R.No.11132

LRS(CO)

RRK(03/04/2018)