IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3235 of 2009
and M.P.Nos.1 and 2 of 2009

B.Ramachandran ... Appellant

Vs.

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

2.The District Revenue Officer (Stamps),
Collectorate Office, 5th Floor,
No.32, Rajaji Salai,
1st Line Beach, Chennai 600 001.

3.The Sub-Registrar,
Kodambakkam,
Chennai 600 024. ... Respondents

Prayer: Civil Miscellaneous Appeal filed under sub-Section (10) of Section 47-A of the Indian Stamp Act, to set aside the order passed by the first respondent in order No.44387/N5/08 dated 23.03.2009 and the consequent notice issued by the second respondent in Na.Ka.C.Pa.No.325/03/A3, dated Nil June 2009.

For Appellant : Mr.A.V.Bharathi

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 proceedings No.44387/N5/08 dated 23.03.2009 issued by the 1st respondent/the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai.

2. The appellant has purchased the properties in question and registered the same with the third respondent, the Sub-

Registrar, Kodambakkam and the same was referred to the second respondent, the District Revenue Officer (Stamps), Chennai, for proper valuation under Section 47-A of the Indian Stamp Act, 1899. The second respondent issued Form No.I notice under Rule 4 (1) of the Tamil Nadu Stamp (Prevention of under Valuation of Instruments) Rules on 01.06.2005 and thereafter Form No.II notice was issued on 13.01.2006 and the final order was passed by the second respondent on Nil.03.2007. As against the order passed by the second respondent, the appellant preferred an appeal before the first respondent which culminated in the impugned order dated 23.03.2009.

3.The learned counsel for the appellant submitted that the order passed by the second respondent is contrary to Rule 5, 6 and 7 of the Tamil Nadu Stamp (Prevention of under Valuation of Instruments) Rules, 1968. The second respondent has not sent any notice before conducting inspection or before arriving at the decision. The first respondent has called for report from the District Revenue Officer and the District Registrar for re-determination of the market value of the property. Originally, the second respondent has fixed the value at Rs.660/- per sq.ft, whereas, the first respondent decided the appeal enhancing the value at Rs.689 per Sq.ft. without any justification. Therefore, the order passed by the first respondent is liable to be set aside.

4.Per contra, the learned Government Advocate (C.S) submitted that the property is situated at commercial locality and the value fixed by the first respondent itself is very low when compared with the present market value. Therefore, the appeal has to be dismissed confirming the order passed by the first respondent.

5.Heard the learned counsel for the appellant, learned Government Advocate (C.S) and perused materials available on record.

6.On a perusal of the order passed by the second respondent, it is seen that the Form No.I notice was issued on 01.06.2005 and Form No.II notice was issued on 13.01.2006 and final orders came to be passed in March 2007. As per Rule 7 of the above said Rules, the authorities must have passed the order within three months from the date of issue of first notice viz., Form No.I notice. But, the second respondent failed to pass the final order within three months from the date of Form No.I notice as mandated under Rule 7 of the Tamil Nadu Stamp (Prevention of under Valuation of Instruments) Rules, 1968, but passed the order after a period of one year nine months.

7. 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.Further, the first respondent, while deciding the appeal, is expected to comply with the procedure adhered under Rule 11 (A) of the Tamil Nadu Stamp (Prevention of under Valuation of Instruments) Rules, 1968. It is expected that the first respondent shall conduct the inspection of the property after giving notice to the person concerned. In the instant case, the first respondent has received a report of inspection from the District Registrar. The District Registrar without giving any notice to the parties, conducted inspection and submitted his report. Insofar as Rule 11(A) of the Tamil Nadu Stamp (Prevention of under Valuation of Instruments) Rules, 1968 , the District Registrar has no authority to conduct the inspection. The first respondent has passed the order, after obtaining the report from the incompetent authority and therefore, he failed to adhere to the mandatory provisions under Rule 11(A) of the Tamil Nadu Stamp (Prevention of under Valuation of Instruments) Rules, 1968 and principles of natural justice.

9. 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."

10. Further, as held by this Court RAJENDRAN VS. THE INSPECTOR GENERAL OF REGISTRATION AND OTHERS [2012 (3) CTC 589] the appellate authority has no power to enhance the market value of the property on an appeal preferred by the presentant of the document. He can do so when the appeal is filed by Government. When the statute does not confer such a power, the appellate authority shall restrict himself with scrutinising the correctness of the order and shall not exceed his jurisdiction. Therefore, it can be inferred that the order passed by the first respondents stand vitiated for violation of Rules 7 and 11-A of the Rules and also for violation of principles of natural justice for want of notice of inspection. Therefore, this Court has no hesitation to set aside the order passed by the first respondent.

11. Accordingly, the order passed by the first respondent in proceedings No.44387/N5/08, dated 23.03.2009 is set aside and the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

cla/tk

To

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

2.The District Revenue Officer (Stamps)
Collectorate Office, 5th Floor,
No.32, Rajaji Salai,
1st Line Beach,
Chennai 600 001.

3.The Sub-Registrar
Kodambakkam,
Chennai 600 024.

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

+ 1 cc to Mr.A.V.Bharathi Advocate,SR.7897

+ 1 cc to The Special Govt.Pleader(CS), SR.8558

C.M.A.NO.3235 OF 2009

NMI(CO)
NR 06/04/2018