IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3271 of 2009 and
M.P.Nos.1, 2 and 3 of 2009

1. S. Krishnan (Deceased)
2. Anadallammallee
3. Arummozhi
4. Anandy
5. Vanathy
6. Lakshmipathy ... Appellants
(Appellants 2 to 6 are brought on record as LRS of the sole appellant as per order dated 17/11/2017 made in CMP.17095 to 17097/17 and MP.1103/2009.

Vs.

1. The Inspector General of Registration and Chief Controlling Revenue Authority Chennai - 600 028.

2. The Special Deputy Collector (Stamps), Cuddalore.

3. The Joint Sub Registrar, Cuddalore. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899, against the order dated 20.07.2009 passed in No.57533/N3/06 by the Inspector General of Registration and the Tamil Nadu Principal Revenue Controller, Chennai - 28 against the orders of Special Deputy Collector (Stamps), Cuddalore, in C.P.No.4917/02-03 dated 30.09.2006.

For Appellants : Mr.T.Sezhian

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

J U D G M E N T

Aggrieved over the order passed by the 1st respondent/Inspector General of Registration-cum-Chief Controlling Revenue Authority, Chennai, dated 20.07.2009 in No.57533/N3/06, the appellants have come before this Court with this Civil Miscellaneous Appeal.

2. The deceased appellant purchased an agricultural land vide document No.2811/02, which was registered by the 3rd respondent/Joint Sub Registrar, Cuddalore. The 3rd respondent referred the document for proper valuation for the purpose of stamp duty under Section 47-A(1) of the Indian Stamp Act, 1899, to the 2nd respondent/Special Deputy Collector (Stamps), Cuddalore. The 2nd respondent issued Form-I notice on 06.01.2003 under Rule (4) of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, and thereafter, Form-II notice on 13.06.2003. After inspecting the property, the 2nd respondent passed final order on 30.09.2006. Aggrieved over the order passed by the 2nd respondent, the deceased appellant preferred an appeal under Section 47-A(5) of the said Act to the 1st respondent. The 1st respondent has passed the order dated 20.07.2009 on the appeal preferred by the appellant, based on the inspection, which was done by the District Registrar, against which, the present appeal is filed.

3. According to the appellants, the order passed by the 2nd respondent is violative of Rule (7) of the said rules and the order passed by the 1st respondent is violative of principles of natural justice and other statutory provisions.

4. Heard the submissions made by the learned counsel appearing both parties.

5. On a perusal of the materials before this Court, it is seen that the land in question is classified as an agricultural land as per the Revenue records. On inspection, the 2nd respondent has also found that there were 11 coconut trees and three palm trees standing on the property and on the enquiry, it was found that coconut trees were there. The property is very near to burial and cremation grounds, without any access to water and electricity. The 2nd respondent has also considered that it will take minimum five years for the property to get developed. However, considering the development of surrounding areas as house sites, he assessed the value at Rs.40/- but determined as Rs.80/- per sq.ft. There is absolutely no discussion for redetermining the market value at Rs.80/- per sq.ft., after satisfying himself that the value will be around Rs.40/- per sq.ft.

6. The order passed by the appellate authority, based on the report of the District Registrar, reveals that on the instructions of the Deputy Inspector General of Registration, the District Registrar has conducted the site inspection and recommended the market value of the property at Rs.60/- per sq.ft. Even though the deceased appellant has submitted that the

land in issue is an agricultural land, the 1st respondent has rejected the contention on the ground that no supporting documents were produced to substantiate the same. As recommended by the District Registrar and the 2nd respondent, the 1st respondent fixed the market value at Rs.60/- per sq.ft. He also relied on the documents registered in the year 2001 at the rate of Rs.52.40 per sq.ft. for fixing the market value.

7. But, on consideration, it is seen that the site inspection, which is mandatory requirement, while deciding the appeal, was not carried out by the 1st respondent. Rule 11-A of the Tamil Nadu (Prevention of Under Valuation 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.

8. As per the above Rule, the appellate authority while deciding the appeal shall conduct the site inspection after giving notice to the parties concerned. But, in the instant case, he has deputed the District Registrar to conduct the site inspection. The District Registrar is not an authority under the Indian Stamp Act, rather he is an officer under the Registration Act. He was informed to conduct the site inspection and recommend the market value to the 1st respondent.

9. Secondly, the report of the District Registrar was not also furnished to the appellant to defend the case effectively. Thus, the order is violative of principles of natural justice.

10. Thirdly, even assuming that the District Registrar is an officer, who is competent to conduct the site inspection, Rule 11-A of the said Rules clearly specified that the appellate authority shall conduct the site inspection after notice to the parties. The appellate authority cannot delegate his power to his subordinates. In a similar circumstances, this Court in C.M.A.No.2820 of 2012 dated 05.06.2015 (S.Santhi Vs. The Chief Revenue Controlling Authority & Inspector General of Registration, Chennai and two others) 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.

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."

11. Further, even though there is clear finding by the 2nd respondent that the property is an agricultural land, the 1st respondent has not applied his mind to that effect, but, rejected the contention on the ground that the appellant has not submitted necessary documents. In fact, it is the duty of the appellate authority as per Rule 11-A of the said Rules to collect the materials from local authority, record the statement and conduct the site inspection. He has to arrive at subjective satisfaction on the basis of material available before him. It is also mandatory for him to furnish all the materials, which are relied on by him for redetermining the market value to the appellant also. But, in the instant case, the appellate authority has not only failed to supply the materials but also failed on the materials to apply his mind available before him.

12. All these aspects show that the order passed by the 1st respondent lacks application of mind, violative of principles of natural justice and contrary to the statutory provisions.

13. Further more, the order passed by the 2nd respondent itself vitiates the entire proceedings, as per Rule (7) of the said Rules, which 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."

14. As per the above Rule, the 2nd respondent should have passed final order within a period of three months from the date of first notice. But, in the instant case, first notice was issued on 06.01.2003, whereas, the final order came to be passed on 30.09.2006 i.e. after three years and nine months. This Court in a judgment 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 delay in passing final orders vitiates the entire proceedings. On this ground also, the entire proceedings is vitiated.

15. Above all those observations, the value has been redetermined on the basis of the future development. The Hon'ble Division Bench of this Court in judgment reported in (2015) 6 MLJ 129 (Special Deputy Collector (Stamps), Chennai Collectorate, Singaravelar Maligai, Chennai, Vs. Thajunnisa and others) 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. 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."

16. As per the above judgment, the classification of the land, and the date of registration shall be taken into consideration for arriving at market value, whereas, the order of the 1st respondent is based on future development, converting the agricultural land as house sites. The order passed by the 1st respondent is contrary to the ratio laid down by the Hon'ble Division Bench of this Court.

17. In such circumstances, I am inclined to set aside the order passed by the 1st respondent/Inspector General of Registration-cum-Chief Controlling Revenue Authority, Chennai, dated 20.07.2009 in No.57533/N3/06 and accordingly, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

Inspector General of Registration/The Chief Controlling Revenue Authority,
100, Santhome High Road,
Chennai - 600 028.

copy to:

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

+1cc to MS.R.Meenal, Advocate sr.no.11479
+1cc to Special Government Pleader(CS), SR.11131

C.M.A.No.3271 of 2009 and
M.P.Nos.1, 2 and 3 of 2009

VGI(CO)
NR 16/05/2018