IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.2418 of 2012
and M.P.No.1 of 2012

J. Sethuraman ... Appellant/Appellant

Vs.

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

2. The District Revenue Officer (Stamps), Chennai - 1.

3. The Deputy Inspector General of Registration, Chennai - 28.

4. The Sub-Registrar, Thirukazhikundram, Kancheepuram District. ... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899, to set aside the proceedings of the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, dated 11.05.2012 made in Pa.Mu.No.16865/N1/2011, rejecting the appeal against the proceedings of the District Revenue Officer (Stamps), in Na.Ka.C.Pa.No. 25 of 2009.

For Appellant : Mr.B.Manoharan

For Respondents : Mr.A.Dev Narenderan
Government Advocate

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the order passed by the 1st respondent/Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, dated 11.05.2012 made in Pa.Mu.No.16865/N1/2011.

2. The appellant registered the property vide document No.3186/2009. The 4th respondent/Sub-Registrar, Thirukazhikundram, Kancheepuram District, has referred it for proper valuation under Section 47-A(1) of Indian Stamp Act, 1899, to the 2nd respondent/ District Revenue Officer (Stamps),

Chennai. The 2nd respondent has issued Form-I notice under Rule (4) of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, on 24.12.2009 and final order in September, 2010. Aggrieved over the same, the appellant preferred an appeal to the 1st respondent, which was disposed of on 11.05.2012, on the basis of the report dated 08.08.2011 submitted by the District Registrar (Administration), Chengalpet. The appellant challenges the order of the first respondent on the ground of violation of Rule (7) and Rule 11-A of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

3. Heard the learned counsel appearing for both parties.

4. On a perusal of the order passed by the 2nd respondent, it is seen that the first notice was issued on 24.12.2009 and final order was passed in September, 2010. As per Rule (7) of the said Rules, the order should have been passed within a period of three months from the date of first notice issued by the District Revenue Officer. In the instant case, there is a delay of about six months in passing the order. Rule (7) of the said Rules 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."

5. This Court, in the 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 alone, the entire proceedings stand vitiated.

6. On a perusal of the order passed by the 1st respondent, it is pertinent to note that by his letter dated 30.05.2011, he directed the District Registrar to conduct the site inspection and determine the value of the property. It is well settled that the District Registrar is an officer under the Registration Act and he can only issue a certificate of registration and refer it for fixing proper value to the authorities under the Indian Stamp Act. He is not an officer under the Indian Stamp Act.

7. Rule 11-A of the Rules 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. It is mandatory on the part of the 1st respondent to conduct the site inspection after giving notice to the parties concerned. He cannot delegate the power conferred on him to any other officer. 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."

9. The appellate authority cannot delegate the power to any other authority. But, in the instant case, he delegated the power to another authority, who is not authorised under the Indian Stamp Act. Further, the report submitted by the District Registrar has not been furnished to the appellant. Non-furnishing of the report would also amount to violation of principles of natural justice.

9. The order passed by the 1^{st} respondent is totally based on the report submitted by the District Registrar and without recording any reasons for the same. Therefore, the impugned order passed by the 1^{st} respondent is legally not sustainable, for violation of Rule (7) and Rule 11-A of Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 ; for delegation of power conferred on him to an unauthorised officer; for violation of principles of natural justice.

10. In such circumstances, the impugned order dated 11.05.2012 in proceedings Pa.Mu.No.16865/N1/2011 passed by the 1^{st} respondent/Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, is set aside.

11. In the result, this Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

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

2. The District Revenue Officer (Stamps), Chennai - 1.

3. The Deputy Inspector General of Registration,
   Chennai - 28.

4. The Sub-Registrar, Thirukazhikundram,
   Kancheepuram District.

+1 CC to Govt. Pleader sr 12566.

C.M.A.No.2418 of 2012
and M.P.No.1 of 2012

SKS(CO)
SP(07/05/2018)