IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2480 OF 2012
AND MP NO.1 OF 2012

Kumaran ... Appellant/Respondent

Vs.

The Special Deputy Collector (Stamps)
Cuddalore. ... Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899, against the order passed by the Inspector General of Registration, Chennai, in his proceedings in Pa.Mu.No.47916/N3/2010 dated 14.06.2012 modifying the order dated 13.07.2010 in C.Pa.No.1828/08-09 on the file of Special Deputy Collector (Stamps) Cuddalore.

For Appellant : Mr.J.Jayan
for Mr.D.Ravichander

For Respondent : Mr.M.Venkadesh Kumar
Government Advocate

J U D G M E N T

The purchaser of the land is the appellant before this Court. He purchased land to an extent of 0.38 cents in S.No.1381/2, within the registration district of Cuddalore. The Joint Sub Registrar, Cuddalore-I, referred the document for determination of the market value to the respondent. The respondent, on inspection, found that the land purchased by the appellant is a low lying area and adjacent to graveyard and river. In view of the unsuitability of the usage for residence and agriculture, he fixed the rate at Rs.965/- per sq.mt. Against which, the appellant preferred an appeal to the Inspector General of Registration under Section 47-A(5) of the Indian Stamp Act. The appellate authority directed the District Registrar, Cuddalore, to submit the valuation report. Accordingly, the District Registrar, Cuddalore, in his proceedings Na.Ka.No.9135/A1/2010 dated 18.10.2010 submitted his report. The appellate authority, considering the order passed by the respondent, the Special Deputy Collector (Stamps) dated 13.07.2010 and report of the District

Registrar, Cuddalore, dated 18.10.2010, fixed the value at Rs.19,620/- per cent. Aggrieved over the same, the appellant is before this Court.

2. Heard the submissions made on either side and perused the materials available on record.

3. On a perusal of the impugned order, it is seen that the appellate authority, while deciding the appeal, has not conducted site inspection as contemplated under Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968, (shortly "the Rules"). Secondly, he has deputed the District Registrar, Cuddalore, for inspection and on the basis of the report submitted by him, had taken the decision. Thirdly, the District Registrar, Cuddalore, assessed the market value of the property on the basis of future development.

4. 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."

5. As per Rule 11-A of the Rules, it is mandatory on the part of the appellate authority to conduct site inspection after due notice to the parties concerned. On the basis of his inspection, he shall redetermine the market value and arrive at a decision as to whether the order passed by the District Registrar is correct or not.

6. In the instant case, the authority has not conducted site inspection, but relied on the report of the District Registrar, Cuddalore. The authority, under Section 47-A(5) of the Act, there is no enabling provision to delegate the powers conferred on the appellate authority to any of his subordinates. Such sub-delegation is without jurisdiction. Further, even assuming that he has power to delegate the same to his subordinates, it shall be conferred on a competent authority. In so far as the District Registrar is concerned, this Court in its various judgments has held that he is an Officer under Registration Act and not at all an Officer under

the Indian Stamps Act. In such view of the matter, the District Registrar is an incompetent authority.

7. Further, it is well settled in various judgments of this Court that inspection of the property by the appellate authority is a mandatory requirement and failure to do so, will vitiate the entire proceedings. 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."

As found in the above referred judgment, the delegation of power to subordinate authority and the order passed by the appellate authority based on the report of the District Registrar vitiates the entire proceedings.

8. Further, while deciding the market value, the authority should take the nature and classification of the land as on the date of registration, but it cannot be on the basis of future development. The future user shall not be the criteria for fixing the market value. A Division Bench of this Court also had an occasion to consider the determination of market value of the property on the basis of future development, in the case of SPECIAL DEPUTY COLLECTOR (STAMPS), CHENNAI COLLECTORATE, SINGARAVELAR MALIGAI, CHENNAI, VS. THAJUNNISA AND OTHERS [2015 (6) MLJ 129] and 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."

9. Considering the facts and circumstances of the case, this Court is of the view that the order passed by the respondent is not sustainable. Accordingly, the order dated 14.06.2012 passed by the Inspector General of Registration, Chennai, in his proceedings in Pa.Mu.No.47916/N3/2010, modifying the order dated 13.07.2010 passed in C.Pa.No.1828/08-09 by the Special Deputy Collector (Stamps) Cuddalore is set aside and the matter is remitted back to the respondent for fresh consideration. This exercise shall be completed by the respondent, within a period of two months from the date of receipt of a copy of this order.

10. In fine, the Civil Miscellaneous Appeal is allowed with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Special Deputy Collector (Stamps)
Cuddalore.

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

+ 1 cc to Mr.D. Ravichandran, Advocate Sr.9676
+ 1 cc to Mr. Government Pleader Sr.9513

C.M.A.NO.2480 OF 2012

NM(CO)
EU(13/11/2018)