IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2681 OF 2012
AND MP NO.1 OF 2012

M/s.Hindustan Petroleum Corporation Limited
No.1, Gandhi Irwin Road,
Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008. ... Appellant

Vs.

1.The Principal Revenue Control Authority
and Inspector General of Registration
100, Santhome High Road,
Chennai - 600 028.

2.The Special Deputy Collector (Stamps)
District Collector Office
Rajaji Salai,
Chennai - 600 001.

3.The District Revenue Officer (Stamps)
Singaravelar Maligai,
5th Floor, Rajaji Salai,
Chennai - 600 001.

4.The Sub Registrar
Sub Registrar's Office
Saidapet,
Chennai - 600 015. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899, against the order of the first respondent under Reference No.30135/N1/2010 dated 14.06.2012 confirming the order of the District Revenue Officer (Stamps) dated 08.04.2010 made in file Reference No.A1/30/06.

For Appellant : Mr.O.R.Santhanakrishnan
For Respondents : Ms.A.Madhumathi
Additional Government Pleader

J U D G M E N T

Aggrieved over by the order passed by the first respondent / Principal Revenue Control Authority and Inspector General of Registration, the appellant is before this Court.

2. The appellant purchased a land measuring an extent of 12991 sq.ft. in T.S.No.10, Block No.9, Door No.806, Anna Salai, Chennai - 35 and presented the document for registration before the fourth respondent valuing the same at Rs.1,675.53 per sq.ft. The fourth respondent referred the same for fixation of market value, to the third respondent, who fixed the value at Rs.2,587/- per sq.ft. Against which, the appellant preferred an appeal under Section 47-A(5) of the Indian Stamp Act, 1899 (shortly "the Act") to the first respondent. The first respondent has also confirmed the value and rejected the appeal. Challenging the same, the appellant is before this Court.

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

4. From a perusal of the impugned order, it is seen that the land in question was purchased by the appellant from the vendor, pursuant to an order passed by this Court in A.No.947/99 in C.S.No.906/1998 dated 30.12.2004. The market value was fixed at Rs.40,00,000/- per ground, by appointing an Advocate Commissioner for valuing the property. According to the decree of this Court, the appellant has purchased the property.

5. When a property is purchased pursuant to the order of this Court or any other competent Court, it shall be presumed that the purchase is bonafide that too when a Public Sector Undertaking is purchasing the property. In the absence of any intention to evade the stamp duty, invocation of Section 47-A of the Act, will not be proper. Even though the fact has been presented before the Appellate Authority, he failed to appreciate the same in proper perspective.

6. The learned counsel appearing for the appellant would also submit that the Appellate Authority while disposing of the appeal, has failed to follow the procedure laid down under Section 47-A of the Indian Stamp Act.

7. 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."

As per Rule 11-A of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, 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 on the basis of the inspection, he shall arrive at a decision as to whether the order passed by the District Registrar is correct or not. In so far as the issuance of notice is concerned, it is mandatory, and failure to do so, is violative of principles of natural justice.

8. Further, it is well settled that the District Registrar is not a competent authority to value the property. He is only an Officer under the Registration Act and not a competent authority under the Indian Stamp Act. In the instant case, the order passed by the Appellate Authority is totally based on the report of the District Registrar (Administration) Chennai South.

9. 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.

10. It is also held by this Court that the guideline rate is only an indicator of the market value of the property in a particular area and that is not final and the value shall be fixed on the basis of the inspection conducted by the authorities as well as on the basis of the evidence gathered therein. But in the instant case, the authorities below solely relied on the guideline register.

11. The Hon'ble Supreme Court in a similar occasion while dealing Section 3 of the Tamil Nadu Stamp (Prevention of under Valuation of Instruments) Rules, 1968, in R.SAI BHARATHI VS. J.JAYALALITHA [2003 (4) CTC 577 (SC)] has held that the guideline value is not final but only a prima facie rate prevailing in that area. It is open to the registering authority as well as person seeking registration to prove the actual market value of the property.

12. Following the judgment of this Court in ASMATHULLAH KHAN VS. THE CHIEF CONTROLLING REVENUE AUTHORITY-CUM-INSPECTOR GENERAL OF REGISTRATION, CHENNAI AND TWO OTHERS [2010 (6) CTC 567] the issue of exercising the power under Section 47-A(6) is dealt with by this Court in the case of RAJENDRAN VS. THE INSPECTOR GENERAL OF REGISTRATION AND TWO OTHERS [2012 (3) CTC 589] wherein, it is held that the first respondent has power

to redetermine the market value of the property, but he is bound to follow the principles of natural justice. It is mandatory to issue notice to the other side, otherwise the parties would be deprived of their right to offer their explanation, if any. But, curiously in this case no such procedure as contemplated under Rule 11(A) of the Tamil Nadu Stamp (Prevention of under Valuation of Instruments) Rules, 1968, and Rule 12 were followed. The first respondent had went on to fix the same rate as found in the guideline register without recording any reasons thereof. In such circumstances, this Court has no hesitation to set aside the order, as contrary to Rule 11(A) and Rule 12 of the said Act and violative of the principles of natural justice.

13. Further, in view of the judgment of the Hon'ble Supreme Court in R.SAI BHARATHI VS. J.JAYALALITHA [2003 (4) CTC 577 (SC)] cited supra, the order is liable to be set aside. When the purchaser presents the documents with the market value of the property, if the authority is not satisfied, an opportunity to prove the market value shall be accorded to the purchaser before deciding the market value. Since such element governing the principles of natural justice is absent in the instant case, the impugned order dated 14.06.2012 passed by the first respondent in Reference No.30135/N1/2010 is set aside.

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

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

TK

To

1.The Principal Revenue Control Authority
and Inspector General of Registration
100, Santhome High Road, Chennai - 600 028.

2.The Special Deputy Collector (Stamps)
District Collector Office
Rajaji Salai, Chennai - 600 001.

3.The District Revenue Officer (Stamps)
Singaravelar Maligai,
5th Floor, Rajaji Salai, Chennai - 600 001.

4.The Sub Registrar
Sub Registrar's Office
Saidapet, Chennai - 600 015.

+1cc to Special Government Pleader SR.NO.8574

RJI(CO)
sm:13.11.2018