IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.51 OF 2009
AND M.P.NO.1 OF 2009

M/s.Athmajothi Public Welfare Trust
Represented by its Secretary and
Founder - Trustee Mr.K.R.Viswanathan
No.3/407, National Highways,
Uchipuli Post - 623 634.
Ramanathapuram. ... Appellant

Versus

1.The Inspector General of Registration
(T.N.) cum Chief Controlling Revenue Authority
No.120, Santhome High Road (Stamps)
Chennai - 600 028.

2.The Special Deputy Collector (Stamps)
O/o. The District Collector
Virudhunagar - 626 001.

3.The Sub-Registrar
Velipattinam,
Ramnad District. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A(10) of the Indian Stamp Act, 1899, read with Rule 9 of the Tamil Nadu Stamps Rules, 1968, to set aside the order dated 15.10.2008 passed in proceedings No.54453/N4/2007, by the Inspector General of Registration - cum - Chief Controlling Revenue Authority, Chennai.

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

J U D G M E N T

Aggrieved over the order dated 15.10.2008 passed by the first respondent, the appellant is before this Court.

2. The appellant had purchased the property and presented the document for registration before the third respondent. The third respondent referred the same for determination of market value of the property. The second respondent issued Form-I notice on 16.12.2002 and Form - II notice on 08.07.2005 and final order came to be passed on 07.09.2007 directing the petitioner to pay the deficit stamp duty for a sum of Rs.12,98,949/-, against which, the appellant preferred an appeal before the first respondent/appellate authority. The first respondent/appellate authority conducted site inspection through the District Registrar, Ramanathapuram, and based on his report, the first respondent passed the order impugned in this appeal.

3. According to the appellant, the first respondent, while dealing with an appeal filed under Section 47-A (5), should not enhance the market value fixed by the second respondent and the market value of the property was re-determined by the first respondent without giving opportunity to the appellant, as specified in Rule 11-A and 12 of Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968. Therefore, the order passed by the first respondent is liable to be set aside.

4. The learned counsel for the appellant would contend that the order passed by the second respondent is contrary to the Rules 7 and 11-A of Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules 1968.

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

6. A perusal of the order passed by the second respondent goes to show that Form I notice was issued on 16.12.2002 and the final order came to be passed on 07.09.2007, i.e., beyond the period of limitation. Rule 7 of the Tamil Nadu (Prevention and Undervaluation of Instruments) 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."

The authority should pass the order within a period of three months from the date of the first notice. Therefore, the order passed is beyond the limitation period as mandated under Rule 7 of the said Rules.

7. This Court in S.MANICKAM VS. THE CHIEF CONTROLLING REVENUE AUTHORITY AND INSPECTOR GENERAL OF REGISTRATION [CMA No.605 of 2006 dated 14.07.2017] following various other judgments, has held that violation of Rule 7 of the Tamil Nadu Stamp (Prevention of under valuation of instrument) Rules, 1968, would result in the entire proceedings being vitiated. Therefore also, the order passed by the first respondent is not sustainable in law.

8. On perusal of the impugned order, it is noted that the first respondent / appellate authority has failed to adhere to the mandatory requirement of Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968. Under Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968, certain mandatory procedures are laid down, which 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 long as the appellate authority has failed to conduct site inspection, it is violative of Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968.

9. Further, the District Registrar, Ramanathapuram, has found on inspection that the property which is sought to be conveyed is an agricultural property. Considering the future developments and the potentiality to convert the property into housing sites, the second respondent has redetermined the value on the basis of future development, by his order dated 07.09.2007. The first respondent on an appeal by the appellant herein, has confirmed the same.

10. In a judgment of the Hon'ble Division Bench of this Court in SPECIAL DEPUTY COLLECTOR (STAMPS), CHENNAI COLLECTORATE, SINGARAVELAR MALIGAI, CHENNAI, VS. THAJUNNISA AND OTHERS [2015 (6) MLJ 129] it has been held that the classification of the land and the nature of use of the land on the date of registration shall be taken as criteria for fixing the market value and the authority shall not fix the value on the basis of future development. The relevant paragraph of the said judgment is extracted hereunder:-

> " 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.

11. Further, site inspection was conducted by the District Registrar and the decision was taken by the first respondent / appellate authority on the basis of the report submitted by the District Registrar. There is no enabling provision for the first respondent / appellate authority, under Section 47-A(5) of the Act, to delegate the powers conferred on him 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 various judgments has held that the District Registrar is an Officer under the Registration Act and not at all an Officer under the Indian Stamp Act. In such view of the matter, the District Registrar is an incompetent authority.

12. 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.
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> 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.
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> 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."

Therefore, the delegation of powers to the District Registrar and the decision taken on the basis of his report is not all sustainable in the eyes of law.

13. This Court in RAJENDRAN VS. THE INSPECTOR GENERAL OF REGISTRATION AND OTHERS [2012 (3) CTC 589] has categorically held that the Inspector General of Registration shall not enhance the value of the property when an appeal is made by the purchaser. In the absence of any appeal or reference from the Registration Department, the first respondent ought not to have enhanced the market value determined by the District Collector / District Revenue Officer. As a quasi judicial authority, he is supposed to test the correctness of the determination of the market value made by the District Collector. His powers to fix higher market value is under Section 47-A(6) of the Indian Stamp Act, 1899.

14. Even assuming that the appellate authority has powers to do so, it is mandatory on his part to adhere to the requirements of principles of natural justice as contemplated in Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instrument) Rules. In the instant case, I do not find any evidence as to the procedure contemplated under the rules is adopted by the respondents. In so far as the order passed is in violation of principles of natural justice and without assigning any reasons, this Court considers that the order passed by the first respondent is illegal and is liable to be set aside.

15. Accordingly, the order dated 15.10.2008 passed in Proceedings No.54453/N4/2007, by the first respondent is set aside. The first respondent is directed to reconsider the claim of the appellant in compliance with principles of nature justice and Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instrument) Rules. Such exercise shall be completed by the first respondent within two months from the date of receipt of a copy of this order.

16. The Civil Miscellaneous Appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

rsi/tk
To

1.The Inspector General of Registration

(T.N.) cum Chief Controlling Revenue Authority
No.120, Santhome High Road (Stamps)
Chennai - 600 028.

2.The Special Deputy Collector (Stamps)
O/o. The District Collector
Virudhunagar - 626 001.

3.The Sub-Registrar
Velipattinam, Ramnad District.

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

+1cc to Mr.M.A.Sadanand, Advocate SR.No.7938

+1cc to Government Pleader SR.No.8524

C.M.A.NO.51 OF 2009

KJI (CO)

GMY(31/10/2018)