IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.519 of 2009

S.Abdul Samath ... Appellant/Opp Party

Vs.

1.The Chief Controlling Revenue Authority of Tamil Nadu -cum- Inspector General of Registration, Santhome High Road, Chennai – 600 028.

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

3.The District Registrar, Chidambaram.

4.The Joint Sub-Registrar - I, Chidambaram.

... Respondents/landlord

Prayer : Civil Miscellaneous Appeal filed under Section 47-A(10) of the Indian Stamp Act, 1899, against the order passed in No.39941/No.3/2005, dated 15.10.2008 on the file of the Chief Controlling Revenue Authority Tamil Nadu cum Inspector General of Registration, Chennai 28 (served on the appellant on 22.10.2008) in modifying the order passed in C.Pa No.4060/99-2000, dated 27.10.2004 on the file of Special Deputy Collector (Stamps), Cuddalore.

For Appellant : Mr.A.Muthukumar
For Respondent : Mr.M.Venkadesh Kumar Government Advocate (C.S)

J U D G M E N T

The appellant challenges the order of the first respondent, namely, Chief Controlling Revenue Authority of Tamil Nadu cum Inspector General of Registration, dated 15.10.2008, aggrieved over the enhancement of market value of the property.

2. The appellant presented the document before the third and fourth respondents. They have referred the matter for

determination of market value under Section 47(A)(1) of the Indian Stamp Act to the second respondent. The guide-line value was fixed at Rs.211/- per sq.ft. in the year 1997-1998, whereas the second respondent fixed it as Rs.270/- per sq.ft and passed the final orders on 27.10.2004. Aggrieved over the same, the appellant preferred the appeal before the first respondent, wherein, the first respondent on the basis of the report received from the District Registrar and the Special Deputy Collector has redetermined the market value of the property at Rs.375/- per sq.ft.

3. The learned counsel for the appellant submitted that Form No.I notice under Rule 4(1) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, (hereinafter referred to as "the Rules") was issued on 13.03.2000, whereas the second respondent passed final orders only on 27.10.2004 after a lapse of four years. The appellant filed an appeal under Section 47(A)(5) of the Indian Stamps Act before the first respondent. The first respondent has not issued any notice for conducting spot inspection of the property, on the other hand, on the basis of the report submitted by the Deputy Registrar passed the final order dated 15.10.2008. The second respondent and the first respondent have not followed the statutory rules, which are in force and therefore, the impugned order is liable to be set aside.

4. On the other hand, the learned Government Advocate (Civil side) submitted that the order passed by the first respondent is very much legal. As the market value fixed by the second respondent at Rs.270/- is fairly low. The first respondent, considering the location of property, the guideline value of Rs.593/- and other materials, fixed the market value at Rs.375/-. The order came to be passed after considering all the material evidence and therefore, the order passed by the first respondent need not be interfered with.

5. Heard the learned counsel for the appellant, the learned Government Advocate (Civil Side) and perused the materials available on record.

6. On a perusal of the materials available before this Court, it is seen that in the instant case, the second respondent, issued Form No.I notice dated 13.03.2000. There is no reference in issuing Form No.II notice to the appellant. Thereafter, final order came to be passed on 27.10.2004 without giving opportunity to make any objections. The appellate authority also has not considered these aspects. Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 reads as under:

"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."

7. 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 order as per Rule (7) of the said Rules, shall be passed within a period of three months and failure to do so vitiates the entire proceedings.

8. It is well settled that the Deputy Registrar has no authority under the Indian Stamp Act. The first respondent ought not to have relied on the report of the Deputy Registrar, who is an incompetent authority and any decision taken based on the report of the incompetent authority, is not sustainable. Moreover, the first respondent has not complied with Rule 11-A of the Rules and the principles of natural justice by giving notice to inspect the property. In the instant case as stated supra, the order came to be passed based on the report of the Deputy Registrar. Therefore, the order of the first respondent cannot be sustained.

9. The learned Government Advocate would submit that the Government has announced Samadhan Scheme in G.O.Ms.No.189, Commercial Taxes and Registration (J1) Department, dated 29.12.2017, wherein, the appeals pending before the High Court

as on 08.06.2017 under Section 47-A (10) of the Indian Stamp Act,1899, are also covered and therefore, it is open to the appellant to approach the authority to avail the benefits of the Scheme.

In the result, the civil miscellaneous appeal is allowed. The order passed by the first respondent in proceedings No.39941/No.3/2005 dated 15.10.2008 is set aside and the matter is remitted back to the authority for fresh consideration. However, it is open to the appellant to avail the benefits of Samadhan Scheme, mentioned above, and, if he is not so satisfied, he can avail further legal course in the manner known to law. In any event, the first respondent is directed to pass orders within a period of three months from the date of receipt of a copy of this order. No costs.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

cla
To
1. The Chief Controlling Revenue
   Authority of Tamil Nadu -cum-
   Inspector General of Registration,
   Santhome High Road,
   Chennai - 600 028.

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

3. The District Registrar,
   Chidambaram.

4. The Joint Sub-Registrar - I,
   Chidambaram.

5. The Record Keeper
   VR Section, High Court, Madras.

+1 CC to Mr.A. Muthukumar, Advocate sr 7870.
+1 CC to The Govt. Pleader sr 8523.

C.M.A.No.519 of 2009

KJ(CO)
SP(28/03/2018)