IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3123 of 2013

Alagammal ... Appellant/Petitioner

Vs.

1. The Chief Controlling Revenue Authority
   (Inspector General of Registration),
   No.100, Santhome High Road,
   Chennai – 600 028.

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

3. The Sub Registrar,
   Manapparai Taluk,
   Tiruchirappalli District. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899, against the order dated 12.11.2008 in proceedings No.72638/N4/2005 passed by the Inspector General of Registration-cum-Chief Controlling Revenue Authority, Chennai.

For Appellant : Ms.S.Uma Maheswari

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

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order dated 12.11.2008 in proceedings No.72638/N4/2005 passed by the Inspector General of Registration-cum-Chief Controlling Revenue Authority, Chennai/1st respondent.

2. The appellant presented the document for registration, which was registered as Document No.2467/2002 and it was referred for valuation by the Sub Registrar, Manapparai Taluk, Tiruchirappalli/3rd respondent to the 2nd respondent/Special Deputy Collector (Stamps), Trichy, under Section 47-A(1) of the Indian Stamp Act, 1908. The 2nd respondent issued notices under Rule (4) of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, in Form-I on 23.10.2002 and Form-II notice was issued on 05.10.2005 and the final order came to be passed on 24.10.2005, against which, an appeal was preferred under 47-A(5) of the said Act by the

appellant to the 1st respondent, which was disposed of on the basis of the reports submitted by the District Registrar, Trichy, by his order dated 12.11.2008.

3. According to the appellant, the order passed on the basis of the reports submitted by the District Registrar, Trichy, is not legally sustainable and no notice on site inspection was given to the appellant. In the absence of any notice on inspection, the order passed is in violation of principles of natural justice and contrary to the said Rules. Further, as required under Rule (4) and (6) of the said Rules, Form-I and Form-II notices were not sent by registered post and no opportunity was given to the appellant for submitting his objections and therefore, the order passed by the authorities has to be set aside.

4. The learned Government Advocate denied the allegation and defended, the order that it is in consonance with the statutory requirement and therefore, the order of the 1st respondent has to be confirmed.

5. Heard the learned counsel appearing for both parties.

6. I have given my anxious consideration to the order passed by the 1st and 2nd respondents. At the first instance, it can be seen that Form-I notice was issued as early as on 23.10.2002, Form-II notice was issued only after a period of three years i.e. 05.10.2005, and final order came to be passed on 24.10.2005. Rule (7) of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, 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."

7. As per the above Rule, the order shall be passed within a period of three months from the date of first notice. But, in the instant case, it is seen that the 2nd respondent has taken three years time for passing final orders. 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. Secondly, the order passed by the 1st respondent would go to show that the order is based on the reports submitted by the District Registrar after conducting inspection of the property. This Court in various judgments has clearly held that the District Registrar is not an authority under the Indian Stamp Act, but, an officer under the Registration Act. The District Registrar can only issue a certificate of the registration and the redetermination of value shall be done by the competent authority under the Indian Stamp Act, viz., the District Collector/District Revenue Officer or Inspector General of Registration. In the instant case, incompetent authority viz., the District Registrar has conducted the inspection.

9. This Court in a judgment made in C.M.A.No.1907 of 2017 dated 08.09.2017 (S.Santhi Vs. The Chief Controlling Revenue Authority and Inspector General of Registration, Chennai and another) has held that the order passed on the basis of the report submitted by the District Registrar, is not sustainable in law.

10. Adding further, as per Rule 11-A of the Tamil Nadu (Prevention of Undervaluation of Instruments) Rule, 1968, the appellate authority shall conduct site inspection after giving notice to the parties concerned. Rule 11-A of the said 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.

11. Further, It is mandatory requirement that the inspection shall be conducted by the appellate authority and it cannot be delegated to subordinates. In a similar circumstance, 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.

12. Even assuming that an inspection was caused to be done by a subordinate of the appellate authority, the principles of natural justice requires the copy of the report submitted by the District Registrar to be furnished to the appellant. In fact, any of the materials, which are relied on by the 1st respondent before deciding the appeal has to be furnished to the appellant and any failure to furnish the report would vitiate the entire proceedings.

13. In such circumstances, I hold that the order dated 12.11.2008 in proceedings No.72638/N4/2005 passed by the 1st respondent/Inspector General of Registration-cum-Chief Controlling Revenue Authority, Chennai, is not sustainable in law and accordingly, it is set aside.

14. In the result, this Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1.The Chief Controlling Revenue Authority/
Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 028.

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

3. The Sub Registrar,
Manapparai Taluk,
Tiruchirappalli District.

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

+1cc to Special Government Pleader Sr.No.9920
+1cc to M/s.C.Jagadish, Advocate Sr.No.10076

PPA(CO)
sm:19.3.2018

C.M.A.No.3123 of 2013