IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3370 of 2008
and
M.P.No.1 of 2008

Ms.Meena .R. ... Appellant / Appellant

Vs.

1.The Chief Controlling Revenue Authority/
Inspector General of Registration,
Mylapore,
Chennai - 600 028.

2.The District Revenue Officers (Stamps),
Singaravelan Building,
Chennai 600 001.

3.The Sub-Registrar,
Kodambakkam,
Chennai. ... Respondents / Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 47-A of the Indian Stamp Act, 1899 to call for the records on the file of the Chief Controlling Authority/Inspector General of Registration, Chennai 600 028 relating to appeal No.43585/N5/2004 and set aside the impugned order dated 28.06.2007 passed by the first respondent.

For Appellant : Mr.Anand Samy

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



J U D G M E N T

Aggrieved by the proceedings No.43585/N5/2004, dated 28.06.2007 passed by the 1st respondent/the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, the appellant has preferred the Civil Miscellaneous Appeal.

2.The appellant has purchased the property situated at Flat No.B4, No.8, Circular Road, United India Colony, Kodambakkam, Chennai 600 024 and the same was registered as document No.2098 of 2002 before the third respondent. The Sub Registrar had referred the documents to the 3rd respondent, the District Revenue Officer (Stamps), Singaravelan Building, Chennai, for determination of valuation under Section 47-A(1) of the Indian Stamp Act, 1899. Thereafter, the second respondent issued notice in Form No.I on 11.10.2002, followed by Form No.II notice on 11.06.2004, and passed the final order on 28.06.2004. Against which, the appellant preferred an appeal before the first respondent, which came to be decided on 28.06.2007.

3.The learned counsel for the appellant submitted that the order passed by the second respondent is vitiated on account of violation of Rule 7 of Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules,1968 and the order passed by the first respondent is also vitiated by not following the principles of natural justice and the procedure laid down under Rule 11-A of the Rules.

4.The learned Government Advocate (Civil Side) submitted that the order passed by the first respondent is valid and sustainable in law as the personal hearing was afforded to the appellant and he has also appeared through an advocate to contest the matter and based on the relevant materials, the impugned order came to be passed by the first respondent and therefore, the order shall not be interfered with.

5.Heard the learned counsel for the appellant and the learned Government Advocate (Civil Side) for the respondents.

6.On a perusal of the material available on records, it is seen that Form No.I notice was issued on 11.10.2002 following the same, Form No.II notice was issued on 11.06.2004 and the final order was passed on 28.06.2004 by the second respondent, the District Revenue Officers (Stamps) under violation of Rule 7 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 and the same 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.As per Rule 7, the authority shall pass an order within a period of three months from the date of first notice, whereas, the orders came to be passed after 1½ years. It is further seen that when the appeal is preferred before the first respondent, the first respondent passed the order based on the report obtained from the Deputy Inspector General of Registration. Rule 11-A of the above 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."

8.As per Rule 11-A, the authority shall conduct inspection after due notice to the parties concerned. But, in the instant case, it is seen that the power has been delegated to the Deputy Inspector General of Registration, who in turn, had inspected the spot and no material has been shown that notice was given to parties to conduct inspection. Even though it is contended by the learned Government Advocate (Civil Side) that opportunity was given to the appellant for personal hearing, it is different from providing the materials, based on which, the decision was taken and adhering to the principles of natural justice, is an essential element to be taken into account while deciding the appeal.

9.In the instant case, the impugned order does not reflect that the authorities relied on facts. In similar circumstances, the judgment of this Court in C.M.A.No.2820 of 2012 dated 05.06.2015, (S.Shanthi vs. The Chief Revenue Controlling Authority and others) wherein it is held that the authority cannot delegate the powers. Paragraph Nos.17, 18 and 19 of the said judgment reads as follows:

> "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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> The failure on the part of the second respondent to pass a final order within three 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 1½ years, i.e. after three months and hence, the entire proceedings are vitiated.
>
> 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."

10.Further, it is observed in paragraph 18 that it is mandate under Rule 7 that an order shall be passed within three months from the date of first notice otherwise, entire proceedings shall stand vitiated. In the instant case, it is seen that the final order has been passed after 1½ years from the date of first notice. From the above, it is clear that the authorities vitiated the entire proceedings and violated the statutory provisions as mentioned above. Hence, this Court is inclined to set aside the impugned order passed by the first respondent.

Accordingly, the Civil Miscellaneous Appeal is allowed. The impugned proceedings No.43585/N5/2004, dated 28.06.2007 passed by the first respondent is set aside. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

CLA

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Chief Controlling Revenue Authority/
Inspector General of Registration,
Mylapore,
Chennai - 600 028.

2.The District Revenue Officer (Stamps),
Singaravelan Building,
Chennai 600 001.

3.The Sub-Registrar,
Kodambakkam,
Chennai.

+1CC to Spl Govt Pleader (CS) SR.NO.8526

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and M.P.No.1 of 2008

VGI[CO]
MK:28/03/2018