

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 02-02-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3013 OF 2012

Venkatesan

...

Appellant

-vs-

1.The Inspector General of Registration,
Chennai - 600 028.

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

3.The Joint-I Sub Registrar,
Virudhachalam.

...

Respondents

Appeal against the order, dated 11.03.2010, passed in Ref.No.60618/N3/2007, on the file of the Inspector General of Registration, Chennai.

For appellant : M/s.Sai Bharath Ilan

For respondents : Mr.M.Venkadesh Kumar,
Govt.Advocate (CS)

JUDGMENT

Aggrieved over the order passed by the first respondent-Inspector General of Registration, dated 11.03.2010, the appellant is before this Court.

2. According to the appellant, he presented the document for registering his agricultural land before the third respondent Sub-Registrar, Virudhachalam, and he referred the same to the second respondent under Section 47-A (1) of the Indian Stamp Act, 1899, for determining the market value of the property; the second respondent issued notice under Form-I on 23.01.2007 and, without issuing Form-II Notice, has directly passed final order on 01.10.2007; against which, he preferred an appeal to the first respondent and the same was disposed of on 11.03.2010; and, further aggrieved over the same, he has preferred this appeal.

3. Learned counsel for the appellant would submit that the order passed by the second respondent is vitiated, as it was not passed within three months, as contemplated under Rule 7 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, in short, "the Rules"; and no opportunity was given to the appellant either by the second respondent or by the first respondent, before taking a decision to fix the value of the property and, therefore, he sought that the impugned order passed by the first respondent be set aside.

4. Conversely, the learned Government Advocate, appearing for the respondents, would submit that the first respondent has passed the order relying on the material and after site inspection; both the authorities have conducted site inspection and, based on the guideline value as well as the information from the public, have redetermined the market value of the property; and, therefore, the orders passed by the authorities need not be interfered with.

5. Heard both sides.

6. Admittedly, the first notice under Form-I as per Rule 4 of the Rules was issued on 23.01.2007 and passed final orders on 01.10.2010. In this regard, it is imperative to refer to Rule 7 (1) of the Rules, which 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 a 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."

As per the above Rule, the second respondent should have passed the order within three months i.e., before 23.04.2007, and, without issuing Form-II notice, the final orders came to be passed on 01.10.2007, after a period of nearly six months. This Court, in a decision in C.M.A.No.2820 of 2012, dated 05.06.2015, has elaborately discussed the issues in this regard. Paragraphs

17,18 and 19 of the said decision read as under :

"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 1st 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 1st 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 2nd respondent and 1st respondent are vitiated."

Therefore, it is mandatory for the authority to pass orders within three months from the date of first notice as per Rule 7 (1) of the Rules, which is, admittedly, not done in this case.

7. A perusal of the impugned order passed by the first respondent also discloses that the first respondent has not conducted site inspection under notice to the parties concerned, as contemplated under Rule 11-A of the Rules. Rule 11-A of the 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 or authority under the Government or the local authority; and

(c) inspect the property after due notice to the parties concerned."

When that be so, the first respondent has delegated his duty to the Deputy Inspector General of Registration, as held by this Court in C.M.A.No.2820 of 2012, referred to above. The first respondent is not empowered to delegate the powers conferred on him to his subordinates. As such, the entire proceedings are vitiated, in view of violation of Rules 6,7 and 11-A of the Rules. Accordingly, the impugned order passed by the first respondent is not sustainable in law and the same is set aside.

8. Civil Miscellaneous Appeal is allowed. No costs. Consequently, the connected M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

dixit

To

The Inspector General of Registration,
Chennai.

+1cc to Mr.SAI BHARATH & ILAN, Advocate, S.R.No. 7917
+1cc to the Government Pleader, S.R.No. 8576

C.M.A.No.3013 OF 2012

NRL(CO)
TR(16/04/2018)