IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3954 of 2008
and M.P.No.1 of 2008

K.Selvi ... Appellant

Vs.

1.The Inspector General of Registration cum
the Chief Controlling Revenue Authority,
State of Tamil Nadu,
Chennai 600 028.

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

3.The Joint-II, Sub-Registrar,
Villupuram. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under sub-Section (10) of Section 47-A of the Indian Stamp Act, 1899 to set aside the order dated 16.10.2008 in proceedings No.13256/N3/2006 as corrected by order dated 06.11.2008 on the file of the Inspector General of Registration cum the Chief Controlling Revenue Authority, Chennai 600 028 in modifying the order dated 28.01.2006 in proceedings No.Na.Ka.Mu.Pa.No.787/05-06(VPM) on the file of the Special Deputy Collector (Stamps), Cuddalore and allow the appeal.

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

J U D G M E N T

Aggrieved by the proceedings No.13256/N3/2006, dated 16.10.2008 passed by the 1st respondent/ Inspector General of Registration cum Chief Controlling Revenue Authority, Chennai, the present Civil Miscellaneous Appeal has been filed by the appellant.

2. The brief facts of the case are as follows:

(i)The appellant is a purchaser of the land in question and got it registered as document No.3729/2005 on 15.11.2005. The Sub Registrar, the third respondent referred the documents for determination of market value under Section 47-A(1) of the Indian Stamp Act, 1899 to the second respondent. The second respondent issued Form No.I notice on 12.12.2005 under Rule 4 of the Tamil Nadu Stamp (Prevention of Under valuation of Instruments) Rules 1968, (hereinafter referred to as "the Rules"). Thereafter, he conducted spot inspection on 13.01.2006 and passed final orders on 28.01.2006. The appellant raised objections for non adherence to the mandatory provisions of Rules 4, 5 and 6 of the Rules, before the first respondent. The first respondent while considering the appeal has called for the report of the Deputy Inspector General of Police and confirmed the order passed by the second respondent by rejecting the appeal. Aggrieved by the order passed by the first respondent, the present civil miscellaneous appeal has been filed.

3.The learned counsel for the appellant submitted that the second respondent issued Form No.I notice on 12.12.2005 and without issuing Form No.II notice, conducted spot inspection and directly, passed final order on 28.01.2006. The learned counsel further submitted that there is no enabling provision under the rules for the first respondent to delegate his power to somebody else, but, he delegated his power to his subordinate and passed the order without affording opportunity to the appellant in violation of the Rule 11-A of Tamil Nadu Stamps (Prevention of undervaluation of instruments) Rule 1968 and principles of natural justice.

4.Per contra, the learned Government Advocate (Civil side) submitted that the value of the land was determined by the second respondent after conducting spot inspection and after conducting enquiry on the date of registration, the guideline value of the land was Rs.1,350/-. Therefore, the value fixed by the authority is not perverse and the consequential order passed by the first respondent is valid and legal.

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

6.On a perusal of the materials available on records it is seen that Form No.I notice was issued on 12.12.2005. Thereafter, the second respondent conducted spot inspection on 13.01.2006 and passed the final order on 28.01.2006.

7.Rule 6 ofthe Tamil Nadu Stamp (Prevention of Undervaluation of Instruments), Rules, 1968 is as follows:

> ''6.Procedure after arriving at provisional market value.- The Collector shall communicate a copy of his order provisionally determining the market value of the properties and the duty payable, to all the persons who are liable to pay the duty along with the notice in Form II and call upon the parties to lodge their objections, if any, to such determination of the market value within the time specified in the notice. The Collector shall also hear the parties on the date specified in the notice or on such other day as may be fixed by him.''

8.A reading of the above provision would show that it is mandatory on the part of the District Collector to communicate the provisional determination of the market value of the properties in Form II to all the parties concerned to call for objections.

9.In the instant case, the mandatory requirement was not complied with. Within a short span of one month, the second respondent has completed the procedure of issuing notice in Form No.I, conducting spot inspection and passing final orders. The mandatory requirement of issuing Form No.II notice as specified in Rule 6 of Rules was not followed. As contended by the appellant, it is a material violation of rules.

10.Secondly, the first respondent has decided the appeal without conducting the spot inspection as required under Rule 11 (A) of the Rules after giving notice to the parties concerned.

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."

11.As per the above rule, it is mandatory to issue notice to the parties concerned before conducting inspection. But, from the records, it could be seen that the first respondent has not issued any notice. The site inspection was delegated to his subordinate.

12.In so far as the power of the appellate authority under Section 47(A)(5) of the Act is concerned, there is no enabling provision to sub-delegate his powers. In similar circumstances, this Court in S.Shanthi vs. The Chief Revenue Controlling Authority in C.M.A.No.2820 of 2012 dated 05.06.2015, has held that the authority cannot delegate the powers. Paragraph No.17 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."

13.As per the above judgment, the first respondent cannot delegate his power to his subordinates. Since there is no power conferred on him to sub delegate, the decision taken on the basis of the report submitted by the Deputy Inspector General of Registration is without jurisdiction, the entire proceedings shall stand vitiated. The Deputy Inspector General of Registration also has not issued any notice to the appellant before conducting the inspection.

14.Hence, the entire proceedings is contrary to the mandatory requirements of Rule 6 and 11 A of the Rules and thereby in violation of principles of natural justice. In such circumstances, the impugned order passed by the first respondent is not sustainable as it is not in consonance of the

Act and Rules.

In the result, the civil miscellaneous appeal is allowed and the impugned order dated 16.10.2008 in proceedings No.13256/N3/2006 is set aside. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To
1.The Inspector General of Registration,
Chief Controlling Revenue Authority,
State of Tamil Nadu,
Chennai.

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

3.The Joint-II,
Sub-Registrar,
Villupuram.

+1 CC to Mr.S. Vadivel Murugan, advocate sr 7732.

C.M.A.No.3954 of 2008
and M.P.No.1 of 2008

SAI(CO)
SP(05/04/2018)