IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 08-02-2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.446 OF 2013

Mr.J.Heeralal ..Appellant

-vs-

1.The Inspector General of Registration,
42, Santhom High Road,
R.A.Puram,
Chennai - 600 028.

2.The Deputy Inspector General of Registration,
42, Santhom High Road,
R.A.Puram,
Chennai - 600 028.

3.The District Registrar (Administration),
Central Chennai,
42, Santhom High Road,
R.A.Puram,
Chennai - 600 028.

4.The Joint Sub Registrar No.2,
Central Chennai,
No.182, Bharati Salai (Pycrafts Road),
Royapettah,
Chennai-600 014.

5.The District Revenue Officer (Stamps),
1st Line Beach,
Chennai - 600 001. ..Respondents

Appeal against the order, dated 21.12.2012, passed in proceedings Pa.Mu.No.42213/N5/2010, on the file of Inspector General of Registration, Chennai.

For appellant : Mr.J.Naresh Kumar
For respondents 1to4 : Mr.M.Venkadhesh Kumar, Govt.Advocate (CS)

JUDGMENT

Aggrieved over the order passed by the Inspector General of Registration, Chennai, dated 21.12.2012, the appellant is before this Court.

2. According to the appellant, he purchased a flat with an undivided share of land in an apartment complex, which is situated 200 mts. away from Nungambakkam High Road and within Dr.Thirumurthy Nagar; the guideline value of the property as per the entries made in the Sub-Registrar's Office, is Rs.3500/- per sq.ft., but, on reference by the Sub-Registrar, the fifth respondent has fixed the value at Rs.15,000/- per sq.ft., considering the value prevailing on Nungambakkam High Road; an appeal made against the order passed by the fifth respondent was decided by the first respondent without considering the material issues and on assumptions, and, therefore, the order of the first respondent is liable to be set aside.

3. Per contra, the learned Government Advocate, appearing for the respondents, would submit that the first respondent, considering the location and the commercial importance of the area, has fixed the market value of the property very reasonably and, therefore, the impugned order does not require any interference by this Court.

4. Heard the rival submissions.

5. On the face of it, the order of the first respondent would reveal that it is based on the recommendations made by the District Registrar, Administration, Central Madras, dated 02.02.2011, and the report of the Deputy Inspector General of Registration, dated 28.05.2012. As per Rule 11-A of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules,1968, it is mandatory that the appellate authority, while deciding the appeal, shall conduct site inspection under notice to the parties concerned. He cannot delegate the powers to his subordinates or any other officials. 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.

xxxx

19. 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."

6. In so far as delegation of power is concerned, it is contrary to Rule 11-A of the Rules and the judgment of this Court referred to supra. Secondly, even assuming that the authority has caused the inspection conducted, it should have been under notice to the parties. The impugned order does not reveal that proper notice was given by the Deputy Inspector General of Registration before making inspection and, therefore, the order is violative of principles of natural justice, more so, when no such report was furnished to the appellant for defending his case effectively. Further, the order of the first respondent relied upon the reports submitted by Sub-Registrars and District Registrar of Registration Department.

7. It is well settled that Sub-Registrar and District Registrar are officers under the Registration Act, but not under the Indian Stamp Act. Therefore, reliance on the reports of the incompetent authorities, while passing orders under Section 47-A (5) of the Indian Stamp Act, is not sustainable in the eye of law.

8. Learned counsel for the appellant would also contend that for an identical property, which was registred by another flat owner, the market value was assessed as per the guideline value and, only in this case, it was assessed at Rs.15,000/- per sq.ft., which is far higher than the guideline rate. According to him, the guideline value is indicative of the market value, though with marginal difference, but, it cannot be exorbitant; and, for this reason also, the order passed by the first respondent is without application of mind.

9. I see substance in the said argument of the learned counsel. Therefore, I consider that the order passed by the first respondent is smacked with mala fides and not sustainable, for violation of the mandatory requirement laid down under Section 47-A (5) of the Act and Rule 11-A of the Rules. In such circumstances, I am inclined to set aside the order passed by the first respondent and remit the matter back for fresh consideration.

10. 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, this appeal can also be referred for the said scheme.

11. However, I make it clear that it is open to the appellant to avail the benefits of the Samadhan Scheme, referred to above, if he so chooses, or else, the matter can be agitated on merits before the first respondent. In any event, the entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order, after adhering to the mandatory requirements of the statutory provisions under the Indian Stamp Act and the Rules. The submission of the learned counsel for the appellant that the appellant has purchased a residential flat in the building, which comprises both residential and commercial flats, and the authorities, while considering the residential flat, shall not apply the rate of the commecial flat, shall also be taken into consideration by the first respondent, at the time of deciding the matter.

12. Civil Miscellaneous Appeal is allowed in the above terms. No costs. Consequently, the connected M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

dixit

To

1. The Inspector General of Registration,
Chennai.

2.The Deputy Inspector General of Registration,
42, Santhom High Road,
R.A.Puram,
Chennai - 600 028.

3.The District Registrar (Administration),
Central Chennai,
42, Santhom High Road,
R.A.Puram,
Chennai - 600 028.

4.The Joint Sub Registrar No.2,
Central Chennai,
No.182, Bharati Salai (Pycrafts Road),
Royapettah,
Chennai-600 014.

5.The District Revenue Officer (Stamps),
1st Line Beach,
Chennai - 600 001.

+ 1 cc to Mr. J. Naresh Kumar, Advocate SR.9844
+ 1 cc to Government Pleader Sr.9917

C.M.A.No.446 OF 2013

NRL(CO)
EU(17/04/2018)