BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.07.2017

DELIVERED ON: 06.02.2018

CORAM

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

C.M.A(MD)No.311 of 2011
and
M.P(MD)No.1 of 2011

Muneeswaran ... Appellant

Vs.

1.The Chief Controlling Revenue Authority,
And Inspector General of Registration,
Chennai - 28.

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

3.The District Registrar,
Dindigul.

4.The Sub-Registrar,
Nilakottai Taluk,
Dindigul District. ... Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 47-A(10) of Indian Stamp Act, 1899, to call for the records of the first respondent dated 13.01.2011 in proceedings Pa.Mu.No.47297/N4/2008 and to quash the same as the same is ultravires and arbitrary.

For Appellant : Mr.R.G.Shankar Ganesh
For R-1 to R-4 : Mr.R.Velmurugan,
Government Advocate

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant challenging the order passed by the first respondent dated 13.01.2011 in proceedings Pa.Mu.No.47297/N4/2008.

2. The brief facts of appellant's case are as follows:

(i)The land comprised in S.No.631/12 admeasuring to an extent of 20 cents situated at Oruthattu Village, Nilakottai Taluk, Nilakottai Sub-District, Dindigul District, originally belonged to one Thangaraj @ Thangasamy. Thereafter, the said Thangaraj @

Thangasamy and his son Seeni, sold the said punja land to the appellant and his brother Arunachalam, by means of a registered sale deed dated 09.07.2004, for a sale consideration of Rs.13,200/-, vide document No.1257/2004 on the file of the third respondent.



(ii) Thereafter, on 20.01.2005, the fourth respondent sent a notice to the appellant under Samadhan Scheme, directing him to pay a sum of Rs.1,75,103/-, as deficit stamp duty and a sum of Rs.21,755/- as deficit registration fees, by assessing the market value of the land as Rs.21,88,720/-.

(iii) Subsequently, since the appellant did not pay the deficit stamp duty, the document was sent to the second respondent and on receipt of the same, according to the appellant, without issuing notice to the appellant, merely recording that 'despite notice, the appellant did not appear', confirmed the order passed by the fourth respondent.

(iv) Aggrieved by the same, the appellant preferred an appeal before the first respondent under Section 47-A(5) of the Indian Stamp Act, 1899 and in the said appeal, the first respondent, without appreciating the true facts, had passed the impugned order fixing the market value of the land, per square feet as Rs.251/-. Hence, the appellant was constrained to approach this Court by filing this Civil Miscellaneous Appeal.

3. In the grounds of appeal, the following substantial questions of law have been raised:

> *"(i) Whether market value in respect of a land be fixed on the basis that adjacent properties have been converted as house site plots though the concerned land stands as punja land?*
>
> *(ii) Whether subsequent developments be taken into consideration after presentation of document for registration?*
>
> *(iii) Whether mere fact of difference in value stated in the sale deed dated 09.07.2004 and the market value per as warrant the respondent to invoke Section 47 A of the Indian Stamp Act?; and*
>
> *(iv) Whether the respondents erred in not taking into consideration that when there is a doubt in respect of the market value mentioned in the sale deed, the guideline value is the prima facie material to ascertain the market value?"*



4. The learned counsel for the appellant contended that the first respondent failed to observe that the notification under Section 47-A of the Indian Stamp Act, is only a guideline for

collection of revenue and the same cannot form basis for determination of the market value. He would further contend that the first respondent grossly erred in relying upon the Field Measurement Book for the purpose of fixation of market value in respect of the land in question.



5. The learned counsel for the appellant further contended that the first respondent erred in taking into consideration the subsequent development of the locality, after the execution of the sale deed dated 09.07.2004. Further, the first respondent erred in observing that as the lands comprised in S.Nos.630, 634, 635 have been permitted to be registered as 'house sites' and therefore, the same principle should be applied for the subject property situated in S.No.631/12, for the reason that the said land still retains only as a punja land, learned counsel contended.

6. Lastly, the learned counsel for the appellant contended that the first respondent erred in observing that the appellant had not raised any objection for fixation of the market value at Rs.251/-, for the reason that the appellant had attended the hearing on 30.09.2010 and submitted his explanations and objections clearly setting out that the market value as fixed by the respondents 2 and 4, is not correct and prays for setting aside the order of the first respondent and in support of his submission, the learned counsel relied on the judgment of this Court dated 28.11.2014 made in C.M.A (MD)No.1019 of 2009 *(M.Chinnasamy vs. The Chief Revenue Control Officer-cum-Inspector General of Registration and two others)* .

7. The fourth respondent filed a counter affidavit stating that the locational importance of the property is a major factor, which influence the valuation of the property in question. The subject land is situated adjacent to the business area of 'Kodai road' and very nearer to Dindigul Madurai Highway and hence, the instant property comprised in S.No.631/12, cannot be valued as agricultural dry land and the guideline value available for agricultural dry lands is not applicable to the property in question, which is situated in an advantageous area nearer to the commercial area of Kodai Road and prays for dismissal of this Writ Petition.

8. The second respondent filed a counter affidavit stating that it is the duty of the appellant to lay proof before the Authorities to prove that the land is used only as an agricultural land and not as a house-site. But, the appellant did not avail the opportunity of submitting his reply to the notice under Form-I and that, though he appeared in person before the 1st respondent, he has not chosen to raise this issue and bereft of any proof forthcoming from the appellant herein, the market value was fixed on the basis of the sale that has taken place on the basis of sq. ft. as applicable to that of house-site and prays for dismissal of this Civil Miscellaneous Appeal

9. This Court heard the rival submissions and also perused the materials available on record.

10. The grievance expressed by the appellant is that at the time of registration of the document bearing No.1257/2004, the appellant had quoted the market value of the property at Rs.13,200/-, which was the correct value. Contrary to that, the fourth respondent had assessed the market value of the subject land as Rs.21,88,720/- without any basis and the same was confirmed by the respondents 1 and 2 also.

11. In similar circumstances, this Court considered the issue in C.M.A(MD)Nos.1019 and 1020 of 2009, vide order dated 28.11.2014. It is relevant to extract Paragraph Nos.6 to 35 as follows:

> *"6. Before considering the matter on merits, it is necessary to look into the provision of Section 47-A of the Indian Stamp Act, 1899.*
>
> *6.1. If the Registering Officer appointed under the Indian Registration Act, 1908, while registering any instrument of conveyance, has reason to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set forth in the instrument, he may refer the same to the Collector for determination of the market value of such property.*
>
> *7. On receipt of such reference, the Collector is expected to give opportunity of hearing to the parties concerned and after holding an enquiry in such a manner, as prescribed by rules under the Act, must determine the market value of the property, which is the subject matter of conveyance.*
>
> *8. Invoking aid of this provision, it is pointed out by the learned counsel for the appellant that the Registering Authority has not mentioned any reason to come to a conclusion that the market value of the property has not been truly set forth in the sale deed, which is the subject matter of conveyance.*
> *9. Firmly contending that various functionaries under the Act did not discharge their function in accordance with law, the following omission/irregularities are highlighted:*
> *(i) In Form No.I, which is issued in accordance with Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, in column No.7, the guideline value of the Registering Authority is kept blank. In the column relating to the*

*recommendation of the Registering Authority, the value is stated to be Rs.15/- per square feet (column No.11).*

*(ii) By the letters dated 07.02.2005 and 16.03.2005, the appellant has requested the authorities to return the document without any further delay.*



*(iii) Even though the appellant has been advised to prefer appeal under Section 47-A(5) of the Indian Stamp Act, 1899, intimating him that final order has been passed by the Special Deputy Collector (Stamps), the proceedings did not mention anything about the date of the final order or the result of final order. The so-called final order was not communicated to him at all.*

*10. Rule 4 provides for the procedure to be followed while fixing the market value and also the principles to be followed while determining the market value. Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 reads thus:*

*"4. Procedure on receipt of reference under section 47-A.- (1) On receipt of a reference under sub-section (1) of section 47-A, from a registering officer, the Collector shall issue a notice in Form I,*

*(a) to every person by whom, and*

*(b) to every person in whose favour the instrument has been executed,*

*informing him of the receipt of the reference and asking him to submit to him his representations, if any, in writing <u>to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21</u> days from the date of service of the notice.*

*(2) The Collector may, if he thinks fit, <u>record a statement from any</u> person to whom a notice under sub-rule (1) has been issued.*

*(3) The Collector may for the purpose of his enquiry-*

*(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.*

*(4) After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing <u>provisionally determining the market value of the properties</u> and the duty payable. The <u>basis</u> on which*

*the provisional market value was arrived at shall be clearly indicated in the order."*

*11. In order to appreciate the challenge made with regard to the order of the first respondent, in the grounds of appeal, it would be necessary to look into the details of the final order passed by the first respondent.*
*(a) There is a specific finding that the order passed by the second respondent fixing the value at Rs.15/- per square feet on the ground that the property covered under the conveyance had attained the status of the house site is not acceptable.*
*(b) The second finding is that as the property could not be sold out as house sites and it has been again converted as an agricultural land and the agricultural activities are being carried out in the property, fixing of the value at Rs.15/- per square feet is unsustainable.*

*12. In the light of the said findings, it is not known, how the value of property can be fixed at Rs.5,00,000/- per acre.*

*12.1. The only reason assigned for fixing the value at Rs.5,00,000/- per acre is that there had been house sites and hospital near the property, apart from the road facility.*

*13. Whether reasons alleged are fair/in accordance with law for fixing the value at Rs.5,00,000/- per acre is the issue to be considered.*

*14. Inasmuch as the finding is that the properties under dispute are being used as agricultural lands, in what way, the existence of the hospital and the house sites, which are nearby to the agricultural lands, would make the agricultural land more fertile/valuable, is the critical issue to be considered. The existence of house sites nearby agricultural land will never facilitate the agricultural operations, so to say, the existence of the hospital. May be the road facility may facilitate the agricultural operations, for bringing agricultural implements and for other commercial purposes.*

*15. The question is without even considering the guideline value, which is the value that is utilised by the Registering Authority, to determine the value of stamps to be purchased, how the first respondent fixed the value at Rs.5,00,000/- per acre is the question to* be answered by other side. No data sale deed has been relied upon. No other document has been referred to for the purpose of fixing the value at Rs.5,00,000/- per acre.

16. What is meant by market value, what is the market value for the purpose of 'Stamp Act' and how to determine the market value of the property are the relevant questions that arise for consideration.

17. The first and foremost question is what is the relevant date for fixing the market value of the property. The learned counsel for the appellant relied upon the decisions reported in 2009(5) MLJ 1501 (Ezhilarasi v. I.G. of Registration), wherein it has been held that the market value of property has to be determined, based on date when documents were tendered for registration. This decision is not in accordance with the provision of Section 47-A of the Indian Stamp Act, 1899. Under the explanation to Section 47-A, for the purpose of this Stamp Act, market value of any property shall be estimated to be the price which, in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance. Therefore, the Registering Authority or the appellate authority is expected to consider the market value of property as on the date of the execution of the instrument of conveyance and not even the date on which the document is tendered for registration.

18. Contending that the onus with regard to establishment of market value of the property is only on the department, the decision reported in 2011(1) MLJ 1240 [KK Flats (P) Ltd. v. Inspector General of Registration], is relied upon. In the said decision, the following dictum have been laid down:

(i) The intended use of the land in future cannot be the basis for adopting the value of the land.

(ii) The onus of proving the allegation that the value of the land has not been truly set forth in the instrument or not truly disclosed in the instrument is upon the authorities claiming so.

(iii) The Registering Authority is required to possess prima facie materials to form an opinion as to the market value not being truly set forth in the instrument for invocation of proceedings under Section 47-A of the

*Indian Stamp Act, 1899.*

*19. Relying upon this decision, it is contended that the fixation of value as fixed by the first respondent has been made without any prima facie materials at the hands of either the Registering Authority or the appellate authority and, therefore, the orders passed are without jurisdiction and, therefore, it should be set aside. 20. The learned Additional Government Pleader for the respondents submitted that the non-mentioning of the guideline value itself is not fatal and on that basis, the order cannot be set aside. When the learned Additional Government Pleader for the respondents was asked to state what are the materials based on which the market value would be fixed, the learned Additional Government Pleader was not in a position to give any concrete answer, as the orders passed by the respondents did not rely upon any basic or prima facie materials. Therefore, this Court has no other option except to set aside the order passed by the first respondent.*

*21. Then the next question is how to fix the market value of the property for the purpose of payment of stamp duty. The learned counsel for the appellant has placed a data sale deed (by way of additional typed-set), whereunder the value of the properties in Survey Nos.1342/1A, 1342/1B, 1342/2 have been indicated. Whether to place reliance upon this document or not would depend upon the availability of jurisdiction to the referring authority.*

*22. Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, provides for elaborate procedure for determining provisional market value of the property.*
*23. Rule 5 prescribes various principles for determination of market value.*

*24. Rule 6 speaks about procedure to be adopted after arriving at provisional market value of the property and enables the Collector to communicate the order provisionally determining the market value of the property and the duty payable to the person concerned in Form No.II and call upon him to lodge his objections within the time specified in the notice. It has been held in the case of A.R.Narayanan v. Special Deputy Collector (Stamps) [AIR 2003 Madras 266] that the order determining final market value without following mandatory provision of affording post-decisional hearing being illegal is set aside.*

*25. It is useful to refer to Rule 5, under which, the principles for determining the market value have been elaborated, which reads thus:*

"

*5. Principles for determination of market value.- The Collector shall, as far as possible, have also regard to the following points in arriving at the provisional market value:*

*(a) In the case of lands-*

*(i) classification of the land as dry, manavari, wet and the like;*

*(ii) classification under various tarams in the settlement register and accounts;*

*(iii) the rate of revenue assessment for each classification;*

*(iv) other factors which influence the valuation of the land in question;*

*(v) points, if any, mentioned by the parties to the instrument or any other person which requires special consideration;*

*(vi) value of adjacent lands or lands in the vicinity;*

*(vii) average yield from the land, nearness to road and market, distance from village site, level of land, transport facilities, facilities available for irrigation such as tank, wells and pumpsets;*

*(viii) the nature of crops raised on the land;*

*(ix) the use of land, domestic, commercial, industrial or agricultural purposes and also the appreciation in value when an agricultural land is being converted to a residential, commercial or an industrial land.*

*(b)............................*
*(c) ..............................*

*(d)..............................."*

*26. In the case of Rajalakshmi v. R.D.O., [AIR 1989 Madras 96], it has been held that the value should be determined considering the average yield from the land, nearness to the road market, distance from village site,* *level of land, transport facilities, facilities available for irrigation and the nature of crop raised on the land. In case there is no relevant sale deed available for adopting the value on the basis of value of adjacent lands under sub-clause (vi) should be fixed on the basis of other matters referred to in clause (a) of the Rule.*

*27. The Deputy Collector (Stamps) and the appellate authority are given ample powers under the Act for arriving at the provisional market value and the final market value also.*

*28. The powers of the Collector have been prescribed under Section 47-A(3).*

*29. Rule 14 provides for the powers of the appellate authority. The appellate authority has been empowered under Rule 14(2) to call for any information, record or other evidence from the appellant or the Collector. The appellate authority may use the provisions of the Code of Civil Procedure relating to the procedure to be followed by the appellate authority in appeals against the orders of the Civil Court.*

*30. Under Section 47-A(1) and under Section 47-A(3), if the Registering Authority has reason to believe that the instrument of conveyance did not reflect the correct market value of the property, then the Registering Authority has the power to refer the same to the Collector for determination of market value of the property and the Collector, on reference, under Section 47-A(1), may determine the market value of such property in accordance with the procedure prescribed. Enquiry by the Registering Authority is a pre-condition for making reference to the Collector for determination of market value of the property. The determination of market value without notice of hearing to parties is liable to be set aside. When the Registering Authority finds that the value set forth in an instrument was less than the minimum value determined in accordance with the rules, in that event, the Registering Authority is empowered to refer the instrument to the Collector for determination of market value of such property and the stamp duty payable thereon.*

*31. When both the parties viz., the Registering Authority and the Collector are given the discretion to decide regarding the market value of the property, by* *the expression 'reason to believe', whether it reflects the subjective satisfaction of the authorities concerned or it reflects the objective determination of the market value of the property. Then what is meant by 'reason to believe' is the issue to be considered.*

*32. In the Latin Maxims, ratio est legis anima means "*

*reason is soul of law.*
*Ratio - onis (f) -reason,*

*Legis anima/anima legis - soul of law.*

*Anima - ae (f):-*

*(1) air, wind, breath of life;*

*(2) soul, life, spirit, ghost;*

*(3) the principle of life, as opposed to "animus" which is regarded as the principle of thoughts and feelings."*

*32.1. There is a related maxim, which means the reason is the soul of law; the reason of the law being changed, the law is also changed.*

*33. Availability of material is the foundation or the basis, for any authority to arrive at any decision whatsoever. The basis of a thing is that on which it stands, and on the failure of which it falls and when a document consisting partly of statements of fact and partly of undertakings for the future is made the basis of a contract of insurance, this must mean that the document is to be the very foundation of the contract, so that if the statements of fact are untrue, or the promissory statements are not carried out, the risk does not attach. This has been interpreted in the case of Dawsons Ltd. v. Bonnin, [1922(2) AC 413].*

*34. It has been held in the case of Mohali Club, Mohali v. State of Punjab, [AIR 2011 P&H 23] that the Registering Officer, after registration of the document, can refer the same for adjudication before the Collector, if he <u>has reason to believe</u> that there was deliberate undervaluation of the property. Such a reference is not a mechanical act, but the Registering Officer should have a <u>basis</u> for coming to prima facie* *finding of undervaluation of the property. Duty is enjoined upon the Registering Officer to ensure that Section 47-A(1) does not work as an engine of oppression nor as a matter of routine, mechanically, without application of mind as to the existence of any material or reason to believe the fraudulent intention to evade payment of proper stamp duty. The expression 'reason to believe' is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith, it cannot be merely a pretence. It is open to the Court to examine the question whether the reasons for the belief must have a rational connection or a relevant bearing to the formation of the belief and are not irrelevant or extraneous to the purpose of the section. The word 'reason to believe' means some material on the basis of which the department can re-open the proceedings. However, satisfaction is necessary in terms of material available on record, which should be based on objective satisfaction arrived at reasonably.*

*34.1. In other words, there must be cogent reasons or convincing reasons or a fair reason for believing that the value mentioned in the document is not truly set forth. If not, the reference under Section 47-A is without jurisdiction. The authorities have not discharged their function in accordance with the procedure prescribed. As contended by the learned counsel for the appellant, there had been procedural violations in arriving at the conclusion and, therefore, the reference under Section 47-A itself is without jurisdiction and it is liable to be interfered with."*

12. The above said judgment is squarely applicable to the facts and circumstances of the present case. In view of the same, the substantial questions of law are answered in favour of the appellant.

13. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order of the first respondent dated 13.01.2011 in proceedings Pa.Mu.No.47297/N4/2008, is set aside. The matter is remitted back to the first respondent and on receipt of the same, the first respondent shall follow the procedure contemplated under law and pass appropriate orders, after giving opportunity of hearing to the appellant. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this judgement. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(C.O)

/True Copy/



Sub-Assistant Registrar

To,

1.The Chief Controlling Revenue Authority,
And Inspector General of Registration,
Chennai - 28.

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

3.The District Registrar,
Dindigul.

4.The Sub-Registrar,
Nilakottai Taluk,
Dindigul District.

5.The Record Keeper, ( 2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.R.G.Shankar Ganesh, Advocate, SR.No.46408

pm
RL/7C/13P/SV/MMS/SAR2/22/2/2018

C.M.A(MD)No.311 of 2011

06.02.2018