IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
25.11.2019	13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3326 of 2005
and C.M.P.No.16959 of 2005

A.S.Sundaresan ... Appellant/Petitioner

vs

1.The Inspector General of Registration,
No.120, Santhome High Road,
Chennai - 4.

2. The District Revenue Officer (Stamps)
Collector's Office,
5^{th} Floor, First Line Beach,
Chennai - 600 001.

3. Sub Registrar,
Mylapore,
Chennai - 600 004. ... Respondents/Respondents

Prayer:The Civil Miscellaneous Appeal filed under Section 47A (10) of the Indian Stamp Act, 1899, to set aside the order dated 31.05.2004 signed on 02.06.2004 in the proceedings No.55550/N4/2005 dated 02.06.2004 of the 1^{st} respondent.

For Appellant : Mr.V.Bhiman for Sampathkumar & Associates

For Respondents : Mr.T.M.Pappiah Special Government Pleader

J U D G M E N T

The appellant is aggrieved by the impugned order dated 31.5.2004 passed by the 1^{st} respondent, Inspector General of Registration under the provisions of the Indian Stamp Act, 1899. By the impugned order, the 1^{st} respondent has partially allowed the appeal filed by the appellant under section 47-A (5) of the aforesaid Act.

2. By the impugned order, the 1st respondent has concluded that the market value of the land was Rs.2,200 per square feet and has fixed the value of the building as Rs.2,79,579 and has called upon the appellant to pay the deficit stamp duty together with interest at 2% per month during the period of default under Section 47(4) of the Act.

3. The petitioner had purchased a property on Luz Corner Road, Mylapore, Chennai and had signed sale deed dated 22.1.1999. In the said sale deed which was presented for registration, the appellant had set forth the value of the property as Rs.9, 00,000/- and paid stamp duty. The 3rd respondent invoked Section 47-A (1) of the Act and referred the sale deed to the 2nd respondent for determination of the correct market value as he suspected that the market value of the property was not truly set forth in the said document.

4. In the proceedings before the 2nd respondent, the appellant stated that the property in question was on the Oliver Road, Luz Church Road, Mylapore, Chennai and therefore the value of properties on Luz Church Road cannot be adopted by the 2nd respondent for determining the market value.

5. In May 1999, the 2nd respondent demanded a differential amount of Rs.1,31,468/- (Rs.2,48,468 - Rs.1,17,000). The 2nd respondent vide another notice dated 31.7.2003 proposed the market value of the land and stamp duty on land at Rs.2,477/-per square feet and accordingly called upon appellant to pay a proposed the demand of Rs.1,10,279/- as the differential stamp duty on land from the appellant.

6. The appellant thereafter participated in the proceeding before the 2nd respondent which culminated in an order dated 15.9.2003 of the 2nd respondent. By the aforesaid order the market value of the land was determined as Rs.2,340/-per square feet. Accordingly, the appellant was called upon to pay differential stamp duty for a sum of Rs.99,723/-.

7. The appellant was given 2 months time to pay the aforesaid and failing which appellant was also informed that the appellant would be liable to pay interest at 2% per month in terms of Section 47-A (4). The aforesaid rate of interest at 2% per month has been subsequently reduced to 1% with effect from 01.09.2010.

8. In the impugned order, the 1st respondent has arrived at the market value of the property at Rs.2,200/- per square feet and the appellant has been called upon the appellant to pay the deficit stamp duty and the interest thereon.

9. In the present appeal, the appellant has challenged the impugned order passed by the 1st respondent. It is submitted that the 1st respondent has erred and misconceived in presuming that the undivided share conveyed is 50% of the land measuring 7,155 sq. ft. of the property in question whereas the actual undivided share in the land conveyed was 1/12th of the land.

10. It is further submitted that the guideline value of the property on Oliver Road was Rs.1361/- per square feet which was adopted for the purpose of payment of stamp duty but value of property on Luz Church Road has been adopted in the impugned order. It is further submitted that the valuation of the property squarely falls under Rule 5 (b) (vii) and Rule 5 (b) (viii) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. It is submitted the property in question falls on the forking side of Oliver Road and Luz Church Road.

11. The learned counsel for the appellant relied upon the Decision of the Honorable Supreme Court in V.N.Devadoss Vs. Chief Revenue Control Officer Cum INS and Others, 2009-3-L.W.236 to state that the basis for exercise of power under Section 47-A of the Act, can be invoked only where there is wilful undervaluation of the subject instrument with an intention to evade payment of proper stamp duty. It is submitted that the power under the aforesaid provision is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bonafide of the parties to the document by attempting fraudulently to undervalue the subject conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue.

12. It is further submitted that the market value is a changing concept. The explanation to Sub-Rule (5) of the Rules makes it clear that the value would be such value which would have fetched if the property is sold in the open market on the date of execution of the instrument of conveyance.

13. The learned counsel also relied on the decision of the Full Bench of this court rendered in M/s.Shakthi And Co-. vs. Shree Desigachary 2006-2-LW.297 and 2 other decisions of this court in the following cases:

> " i. Sundaram Medical Foundation vs. Inspector General of Registration, 2018-3-L.W. 516.
>
> ii. Special Tahsildar (L.A.), vs. Kamal, 2002 (3) CTC 582."

14. Per Contra the learned Government Pleader submits that the impugned order of the 1st respondent affirming the proceedings of the 2nd and 3rd respondents are well reasoned and require no interference in this appeal. He submits that the decision cited by the learned counsel for the appellant are distinguishable on facts and therefore the present Civil Miscellaneous Appeal filed by the appellant are liable to be dismissed.

15. I have considered the arguments of the learned counsel for the appellant and the respondent and the impugned orders and the case laws cited by the learned counsel for the appellant. The decision of this court in The Special Tashsildar (L.A), Vs. Kamala, 2002 (3) CTC 582 is not relevant as it was rendered in the context of Land Acquisition Act, 1894.

16. There it was observed that what is fair and reasonable and adequate market value is always a question of fact depending on the evidence produced, circumstantial evidence and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market condition prevailing in the open market in the locality in which they acquired lands are situated as on the date of the notification under Section 4 (1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, nor façade of sale or fictitious sale brought about in quick succession or otherwise to inflate the market value. The judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances, as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions.

17. The decision of this court rendered in Sundaram Medical Foundation vs. Inspector General of Registration, 2018-3L.W.5160 was rendered in the context of Section 47-A (6). There, the Honourable Division Bench of this court held that the said section empowers the Inspector General of registration to cause suo motu enquiry if he was of the opinion, after arriving at subjective satisfaction, that interest of revenue is prejudiced by reason of any order passed by his subordinates in the exercise of power conferred on them under section 47-A (2) and (3) of the Act.

18. The court held that for invoking the Jurisdiction under Section 47-A (6), the Chief Controlling Authority/Inspector General of Registration has to record his subjective satisfaction that by reason of an order passed by his subordinates, interest of revenue is prejudice or affected. Therefore, the said decisions is also not apt for resolving the issue falling under Section 47-A (1) and (2) of the Act.

19. On the other hand, the decision of the court in M/s. Shakthid And Co. vs. Shree Desigachary, 2006-2-LW.297 appears to be relevant though it was intended to answer the law relating to fixation of fair rent for the purpose of Tamil Nadu Buildings (Lease and Rent Control), Act 1960. The Court answered as follows:-

> “The guideline value, contained in the Basic Valuation Register, maintained by The Revenue Department or the Municipality for the purpose of collecting stamp duty, has no statutory base or force. It cannot form foundation to determine the market value mentioned there under in instrument brought for registration.”

20. The above view of the Full Bench of this court may require re-consideration as and when another opportune occasion arises as the issue in the above case was fixation of fair rent under Section 9 of the Tamil Nadu Buildings (Lease and Rent Control), Act, 1960 and the said case was specifically not concerned with the fixation of market value for the purpose of payment of stamp duty under the provisions of the Indian Stamp Act, 1899. Be that as it may, the said decision has a binding precedential value.

21. For the purpose of finding out whether the market value has been correctly furnished in the instrument, the registering authority may make such enquiry as he may deem fit as per the provisions of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules 1968. He can also elicit from the parties concerned any information bearing on the subject and call for and examine any records kept with any public officer authority.

22. The registering authority is also expected to look into the Guideline Registers containing the value of property supplied to them for the purpose of verifying the market value. Thus, the 3rd respondent had validly exercised the power vested under Section 47A of the Act. The 2nd respondent acting under sub-clause (2) of Section 47-A was however required to determine the market value after holding an enquiry in such manner as has been prescribed under the above rules made under the Act.

23. Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules 1968 deals with 4 categories of properties namely:-

a) in the case of lands;

b) in the case of house sites;

c) in the case of buildings; and

d) in the case of properties other than lands, house sites and buildings.

24. The assessment and the demand for differential stamp duty has been truncated in the present case into value of the land and value of the building by the 1st and 2nd Respondent when indeed rule does not contemplate such bifurcations under Rule 5 (c). Therefore, while invocation of provisions of Section 47-A by the 3rd Respondent was correct, the determination of the market value by the 2nd respondent and subsequent enhancement by the 1st respondent to separately include the value of the building appears to be not in tune with the provisions of the aforesaid Rules.

25. In my view, the 2nd respondent has not followed the procedure prescribed under Rule 4 and 5(b) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules 1968. In appeal, the 1st respondent has reduced the market value of the land to Rs.2,200/- but at the same time added the value of the

building separately and has asked the appellant to pay the differential stamp duty together with interest thereon.

26. In my view, only for invocation of section 47-A the guideline value of properties maintained by the authorities are relevant. However, for determination of the market value by the 2nd respondent, it is not the guideline value which is relevant but actual determination of the market value in terms of the above rules.

27. Therefore, I'm of the view that the order was passed by the 2nd and the 3rd respondents have to be set aside and remanded back for a re-determination of the correct market value of the property by the 2nd respondent with reference to the value at the time execution of the sale deed in terms of the clause (c) of Rule 5 of theTamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules 1968.

28. Since the case pertains to the year 1991, the 2nd respondent is requested to pass a speaking order within a period of 3 months from date of receipt of this order keeping the above observation and the decision of the Full Bench of this Court in M/s.Shakthi And Co. vs Shree Desigachary 2006-2-LW.297 and that of the Honourable in V.N.Devadoss vs. Chief Revenue Control Officer Cum INS and Others2009-3-L.W.236 before passing a fresh order in the de novo proceedings.

29. In fine, the impugned orders are set aside and the above appeal stands allowed by way of remand to the 2nd respondent to pass a speaking order within a period of 3 months from date of receipt of copy of this order. Needless to state, the appellant shall be heard by the 2nd respondent. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

kkd

To

1.The Inspector General of Registration,
No.120, Santhome High Road,
Chennai - 4.

2. The District Revenue Officer (Stamps)
Collector's Office,
5th Floor, First Line Beach,
Chennai - 600 001.

3. Sub Registrar, Mylapore,
Chennai - 600 004.

+2cc to M/s.Sampathkumar & Associates, Advocate, SR.No.103922.

C.M.A.No.3326 of 2005
and
C.M.P.No.16959 of 2005

NR(CO)
CSR: 10.03.2020