IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	01/10/19
Pronounced On	18.10.2019

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.526 of 2008
and
M.P.No.1 of 2008

M/s.Jain Housing,
Represented by its Partner
Mr.Sandeep Mehta,
No.7, Lakshmi Narashiman Street,
T.Nagar, Chennai - 17. ...Appellant

vs

Inspector General of Registration
and Chief Controlling Revenue Authority,
No.120, Santhome High Road,
Chennai - 600 028. ...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamp Act, 1899, to set aside the order dated 16.05.2006 passed by the Inspector General of Registration, Tamil Nadu passed relating to Document Nos.4033/2003, 4034/2003 & 4035/2003, SRO Pallavaram.

For appellant : Mr.Kuberan for
M/s.Rank Associates

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

J U D G M E N T

The appellant is aggrieved by the impugned order dated 16.05.2006 passed by the respondent in respect of Document Nos.4033/2003, 4034/2005 and 4035/2003 under Section 47 A (6) of the Indian Stamp Act, 1899 (Tamil Nadu Stamp Manual) as applicable in the State of Tamil Nadu.

2.By the impugned order the respondent has suo-motu exercised the power to revise the value of the land and has demanded an amount of Rs.95,84,120/- and as deficit Stamp Duty and Rs.11,98,010/- as registration charges with 2% interest p.m. on failure to pay the said duty.

3.The appellant had purchased three parcels of land vide three separate sale deed dated 04.12.2003 measuring total extent of 11.14 acres from the vendor Gordon Woodroffe Ltd., a public limited Company.

4.The land was situated in Agricultural and Industrial Zone. The appellant had declared the value of the property as Rs.45,000/- per cent at the time of presentation of the documents for registration. It was objected by the Sub-Registrar, District Revenue Officer.

5.The value was enhanced for the purpose of payment of stamp duty by another sum of Rs.10,000/- per cent. Apparently, this escalation in the market value included the existing boundary wall and trees that were available on these properties at the time of presentation.

6.Thereafter, the respondent Inspector General of Registration invoked the power vested Section 47 A(6) of the Indian Stamp Act, 1899 (Tamil Nadu Stamp Manual) as applicable to the State of Tamil Nadu.

7.In the show cause notice dated 22.09.2005, it stated that at the time of inspection, there were constructions of multi-storied building on the property and which was abutting several other developments including main roads, and bus routes and Vels School and therefore the value should be increased at least by Rs.200/- per sq.ft.

8.The appellant replied to the above show cause notice vide reply letter dated 18.10.2005 which has culminated in the impugned order of the respondent by re-determining the value at Rs.374/- Per sq.ft.

9.It is the case of the appellant that land in question was situated in the Agricultural and Industrial Zone and therefore the value of the land has to be determined only in cents/acres and not in square feet.

10.Operative portion of the impugned order reads as under:-

> The subject property was inspected and at the time of registration the original market value was to be determined based on the report given by the Joint Registrar of Chennai. Based on the report, you were asked to appear in person and give explanation. It was explained that the Guideline value is not applicable to the subject property.
> Before the property value was determined, you have appeared for five times and have also made your submission with supporting evidence.
> Based on the above the Joint Registrar, Chennai filed a report that the property is situated in Darga Street, having connectivity through P.V.Vaidhyalingam Street, Kambar, Durai Kannu Street. Moreover the property is 1 km. from the GST Road. Therefore, the value is not estimated based on the Survey No.but based on the street wise value.
> Since now a multistoried building is being constructed in the entire property with all facilities, it is ordered that the Guideline value of the subject property is fixed at Rs.374/- per sq.ft.
> The difference of Stamp Duty of Rs.95,84,120/- and the Registration Fee of Rs.11,98,010/- is to be paid to the concerned SRO within 60 days. Failing to do so you will be liable to pay interest @ 2% per month.

11.Assailing the same, the appellant submits that the impugned order passed by the respondent was liable to be set aside on the ground that valuation has to be determined based on the nature of use of property as on date of its purchase and not subsequent to its purchase at the time of its use and certainly not at the time of inspection.

12.In this connection, the learned counsel for the appellant relies on the decision of the Hon'ble Supreme Court and that of this Court in the following cases:-

i. State of Uttar Pradesh and Ors vs Ambrish Tandon and Another, (2012) 5 SCC 566.

ii. The Special Deputy Collector (Stamp), Cuddalore vs Chemicals and Plastics Ltd., 2004 (1) CTC 187.

13.Per contra, the learned counsel for the respondent submits that the order passed by the respondent was well reasoned and requires no interference.

14.It is submitted that the guideline value of the property in the said location is Rs.374/- per sq.ft at the time of presentation of the documents and merely because the land in question fell within Agricultural and Industrial Zone by itself will not mean the value has to be adopted on the cents/acres basis.

15.It was submitted that the property in question is situated on Darga Road and was abutting to Vaidyalingam Road, Kambar street, Duraikannu Road and Renuga Housing Properties. The property in question is situated one Kilo Metre away from G.S.T.Road and on the zamin Pallavaram (subject property) and its survey Number is situated within the jurisdiction of the Pallavaram Muncipal.

16.The property is situated in a busy location where the Renuga Housing sites, already exists. It is connected with vaidyalingam Road, Kambar Street and Duraikannu Road and is just one kilometre away from G.S.T Road.

17.Apart from the fact that the subject property is situated on zamin Pallavaram within the jurisdiction of the Pallavaram Municipal. The property land in question was not agricultural property. There are no documents to substantiate any agricultural activity were carried out or there is payment agricultural tax such as kist etc, were paid.

18.It was therefore submitted that the value has been correctly enhanced as Rs.374/- per sq.ft accordingly. The respondent has demanded deficit Stamp fee Rs.94,84,120/- apart from Rs.11,98,010/- towards registration charges.

19.I have considered the arguments advanced by the learned counsels for the appellant and respondent.

20.Section 3 of the Indian Stamp Act is the charging Section under which stamp duty is payable on any instrument. Stamp duty is payable on the market value of the conveyance instrument as per Article 23 of Schedule I of the Indian Stamp Act, 1889. Section 47 AA of the Act also contemplates constitution of a Valuation Committee under the Chairmanship of the Inspector-General of Registration and such other member for estimation, publication and revision of market value guidelines of properties in any area in the State at such intervals and in such manner as may be prescribed for the purpose of Section 47A.

21.Section 47 A of the Indian Stamp Act, 1889 allows revision of stamp duty. The Chief Controlling Revenue authority can suo motu call for and examine an order passed under subsection (2) or under subsection (3) of the Section 47 A of the aforesaid Act and if such an officer comes to conclusion that the order passed is prejudicial to the interests of the revenue, he may make an enquiry or cause such enquiry to be made and subject to the provisions of the said Act, may initiate appropriate proceedings to revise, modify or set aside order and may pass such order thereon as he thinks fit.

22.To prevent the undervaluation of instruments, the Government has also framed the Tamil Nadu Stamp’s (Prevention of Undervaluation of Instruments) Rules, 1968. Rule 5 of the aforesaid rule provides a guideline for determining provisional market value if Rule 4 of the aforesaid Rules are invoked for the purpose of Section 47 A (1).

23.It is well settled law that stamp duty is payable on the market value on the date of the registration of instrument and guideline value is not binding on the authorities. However, they serve as a useful guide for the purpose of Collection and levy of stamp duty.

24.On the date of execution of instrument, the value was increased to Rs.55,000/- per cent. It is the contention of the appellant that the land in question was situated in an Agricultural and Industrial zone and therefore the value was to be determined in cent/acre basis and not on square feet basis based on the value of the land in the neighbouring land in the area.

25.Though rendered in the context of Section 37 (i) of the Securitization And Recovery of Financial Act, 2002, it may be useful to refer to a recent decision of the Hon'ble Supreme Court Indian Bank vs K. Pappireddiyar, (2018) 18 SCC 252. The Court reiterated its earlier view rendered in ITC Ltd. vs Blue Coast Hotels Ltd., (2018) 15 SCC 9 and observed as under:-

> 9.The classification of land in the revenue records as agricultural is not dispositive or conclusive of the question whether the SARFAESI Act does or does not apply. Whether a parcel of land is agricultural must be deduced as a matter of fact from the nature of the land, the use to which it was being put on the date of the creation of the security interest and the purpose for which it was set apart.

26.In ITC Ltd. vs Blue Coast Hotels Ltd., (2018) 15 SCC 99 referred to earlier decisions rendered in CWT vs Officer-in-Charge (Court of Wards), (1976) 3 SCC 864, which interpreted the definition of the term "agricultural land" with respect to Section 2(e) of the Wealth Tax Act, 1957. This Court observed: (SCC pp. 872-73, para 24)

> "24. …We agree that the determination of the character of land, according to the purpose for which it is meant or set apart and can be used, is a matter which ought to be determined on the facts of each particular case.What is really required to be shown is the connection with an agricultural purpose and user and not the mere possibility of user of land, by some possible future owner or possessor, for an agricultural purpose. It is not the mere potentiality, which will only affect its valuation as part of

> "assets", but its actual condition and intended user which has to be seen for purposes of exemption from wealth tax. One of the objects of the exemption seemed to be to encourage cultivation or actual utilisation of land for agricultural purposes. If there is neither anything in its condition, nor anything in evidence to indicate the intention of its owners or possessors, so as to connect it with an agricultural purpose, the land could not be "agricultural land" for the purposes of earning an exemption under the Act. Entries in revenue records are, however, good prima facie evidence."
>
> (emphasis supplied)

27.Similarly, in Kunjukutty Sahib vs State of Kerala, (1972) 2 SCC 364, it was held as follows:

> "25. … "We suppose that something or other can be, and often is, grown on any vacant land, but that would not necessarily make it agricultural land for our purposes. To give an example the possibility of cultivating, or even the actual cultivation of, what is essentially a building site in the heart of a town would not make it agricultural land. It is the purpose for which it is held that determines its character and the existence of a few coconut trees or a vegetable patch on the land cannot alter the fact that it is held for purposes of building and not for purposes of agriculture.'"

28.Measurement of the land whether in acres, cents or in square meter is not a relevant factor for determining and countermanding the value declared in the instruments. Location of the land in the Industrial zone or the Residential zone or Agricultural zone also may not be relevant. What is relevant is the "market value" of the property which is the subject matter of impugned registration.

29.Unfortunately, the expression "Market value" has not been defined in the Indian Stamp Act. Explanation to Section 47-A of the said Act however prescribes the method for its estimation. It reads as follows:-

> "For the purpose of this Act, market value of any property shall be estimated to be the price which, in the opinion of the Collector or the Chief Controlling Revenue Authority of the High Court 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, exchange, gift, release of benami right or settlement."

30.The market value of the land is thus the amount that the land if sold in the open market by a willing seller might be expected to realise from a willing purchaser. A willing seller is a person who is a free agent to offer his land for sale with all its existing advantages and potentialities as on the date of the sale and willing purchaser taking all factors into consideration would offer to purchase the land as on the date of the sale. Future suitability or adaptability of the land for any purpose shall not be taken into account.

31.In R. Sai Bharathi vs J. Jayalalitha, (2004) 2 SCC 9, the Hon'ble Supreme Court held as under:-

> 22.The guideline value has relevance only in the context of Section 47-A of the Indian Stamp Act (as amended by T.N. Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie,rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the

actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value. This position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. The said Explanation reads as follows:

"Explanation.— The 'guidelines register' supplied to the officers is intended merely to assist them to ascertain prima facie, whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price. Such entries will not foreclose the enquiry of the Collector under Section 47-A of the Act or fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the documents."

32.Thus, to countermand the value declared by the appellant, the authorities concerned have to prove that the value declared in the instrument has been suppressed and that there was under valuation.

33.In absence of any evidence to show that the appellant has undervalued, the guideline value cannot be imposed.

34.The use of the land at the time inspection is also not a relevant factor for countermanding the "market value" declared in the instrument.

35.The argument that the land in question falls in an Agricultural and Industrial zone and therefore the market value of the property is to be determined in cents/acres and not in square feet basis is irrelevant as they are merely units of measurement of land.

36.For convenience large track of land purchased are shown in Acres/Cents are declared in Acres/Hectors/Cents and where ever the purchase of lands are in smaller it is either declared in square feet and cents. Practice also variety. For instances, in the City of Chennai the extent of housing plots are sold in Sq Ft. while in many local area it is declared in Cents.

37.The respondent has invoked the power under Section 47 A (6) of the Act. However, there are no cogent reasons forthcoming in the impugned order to sustain the demand. As per the explanation, the market value of any property shall be estimated to be the price which, in the opinion of the Collector or the Chief Controlling Revenue Authority of the High Court 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. This exercise has not been done in the impugned order.

38.Therefore, to meet the ends of justice, the case is remitted back to the respondent to pass a speaking order keeping in mind the explanation to Section 47 A. Such order shall be passed within a period of three months from the date of receipt of a copy of this order.

39.The present Civil Miscellaneous Appeal is disposed by way of remand. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.Inspector General of Registration
and Chief Controlling Revenue Authority,
No.120, Santhome High Road,
Chennai - 600 028.

2.The Section Officer,
V.R.Section. High Court,Madras.

+1cc to M/s.Rank Associates, Advocate SR.No. 87197
+1 cc to Government Pleader Sr.No. 88222

C.M.A.No.526 of 2008
and
M.P.No.1 of 2008

A.SK(21/11/2019)