IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	20.09.2019
Pronounced On	04.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.282 of 2012
and
MP.No.1 of 2012

A.Jacob .. Appellant

Vs

1.The Principal Revenue Control Officer,
Cum - Inspector General of Registration,
Chennai 600 028.

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

3.The Sub Registrar (Stamps),
Jolarpet, Vellore District. ..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 47 (A) (10) of Indian Stamp Act, 1899 to set aside the order of the Principal Revenue Control Officer - Cum - Inspector General of Registration, Chennai made in Pa.Mu.No.23788/N3/2008 dated 12.12.2011 and allow the above appeal.

For Appellant : Mr.Vadivel Murugan for Mr.R.G.Narendhiran
For Respondents: Mr.T.M.Pappiah Special Government Pleader

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J U D G M E N T

The appellant is aggrieved by the impugned order dated 12.12.2011 passed by the 1st respondent Principal Revenue Control

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Authority Officer/1st respondent herein made in Pa.Mu.No.23788/N3/2008.

2.By the impugned order, the 1st respondent has rejected the appeal filed by the Appellant through letter dated 12.12.2008 of Inspector General of Registration in proceedings No.23788/N3/08.

3.Impugned order was passed pursuant to a report of the District Registrar who inspected the subject property and gave his report. The operative portion of the impugned order reads as under:-

> As per the District Registrar's report there are some houses in the surrounding lands. One of the documents for the land in S.No.54/3 was registered through Document No.565/2005 at the rate of Rs.25/- per sq.ft.
>
> From the report of the District Registrar, it is clear that the property of the document is an agricultural land but the guideline value was fixed in contrary as sq.ft. The District Registrar's valuation report is not acceptable as the small plot was registered and fixed as Rs.25/- per sq.ft. for the lands in Survey No.54/3.
>
> Further, while fixing the value for the lands having no proper access, street lights, road facility, water facility, sewage facility, fixing value for the lands near houses. Then it has to be fixed by giving 35% concession value to the lands which were already valued. Therefore it is ordered that a sum of Rs.7,00,000/- was fixed as market value per acre as the lands in S.No.54/3, was fixed as Rs.25/- per sq. ft. registered through Doc.No.565/2005, computed with 35% concession, value of the land is fixed as Rs.7,00,000/- per acre and Rs.12,500/- was fixed as value of the trees after taking into account of the inspection report of Special Deputy Collector (Stamps) inspection report of District Registrar location of the land, nature of the land mentioned in the Document and usage.
>
> As per this order, the differential stamp duty along with interest at the rate of 2% per month shall be paid upto the period of 31.08.2010,

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> from 01.09.2010, 1% shall be paid. Two months concession period from the date of the order of Deputy Collector (Stamps) shall be excluded. It is informed that a certificate has to be obtained from the Special Deputy Collector (Stamps) and deficit stamp duty has to be paid to the Sub Registrar to get back the document.

4.The appellant had purchased 1 Acre of land on 10.06.2005 in S.No.58/2 (New No.58/2D) in Sathuvachari Village, Jolarpettai. The appellant had declared a sale consideration of Rs.1,00,000/- and paid proportionate stamp duty and registration charges. The document was also registered and numbered as Document No.955/2005.

5.The 2nd respondent thereafter issued notice dated 01.07.2005 under Section 47 A r/w Rule 3 of the Stamp Rules and demanded a differential stamp duty and registration charges of Rs.1,70,888/- from the appellant.

6.This demand was arrived by proposing a value of the land at Rs.51/- per sq.ft after considering the total value of the land and the trees there as Rs.22,36,100/-.

7.Under these circumstances, the appellant disputed the rejection of the value. According to the appellant, after Form-I notice was issued under Rule 4 Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, there should have been an order determining the provisional market value in terms of Rule 4 (a) of the aforesaid Rules and communicated and along with a notice in Form II and called for objection from the appellant in terms of Rule 6.

8.According to the appellant, without arriving at a provisional market value as contemplated under Rule 4 of the aforesaid rules, the 2nd respondent issued Form -II and therefore determination of the market value by the second respondent by final order dated 05.05.2008 in Form - III under Rule 7 of the aforesaid rule was improper.

9.Therefore, according to the appellant, the procedure undertaken to revise the assessment and adoption of the value was contrary to the Provision of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 was liable to be set aside. Aggrieved by the same, the appellant preferred an appeal before the 1st respondent.

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10.Before the 1st respondent, the appellant filed a written statement and produced documents including Village Administrative Officer's report to confirm that the property in question was an agricultural property and therefore, the valuation cannot be re-determined as proposed by the 2nd respondent .

11.The first respondent has passed the impugned order after calling for a report in terms of Rule 11 A(C). It is stated that the report of the Deputy Registrar dated 25.03.2009 was without notice to appellant.

12.Aggrieved by the same, the appellant has preferred the present appeal before this Court under Section 47(A)(10) of Indian Stamp Act, 1899, assailing the order passed by the respondents.

13.The learned counsel for the appellant relied on the judgment of this Court in K.Vijayalakshmi Vs The Chief Controlling Revenue Authority of Tamil Nadu Cum Inspector General of Registration and others, 2012 (1) MWN (Civil) 126 to state that failure to furnish Form – II would be fatal to the proceedings. In the above case, the Court referred to Rule 15 of the aforesaid rule and observed as under:

> “ 6. Rule 15 clearly prescribes the manner or mode of service of the notice to the parties. In this case, the original files were directed to be produced before this Court and it was also produced by the learned Additional Government Pleader for the Respondents. The copies of the Form II Notice was available in the original file, but it there is nothing to show that it was served on the Appellant either by registered post acknowledgement due or it was acknowledged by the Appellant. There is no endorsement to show that it was served on the Appellant or any other family member of the Appellant or it was served by affixutre. It was simply stated that the Form II Notice was ordinarily posted to the address of the Appellant. There was only an endorsement showing “சார்வு செய்யப்பட்டது”. This is not the mode of service contemplated under Rule 15. Therefore, it can safely be construed that Form II Notice was not served on the Appellant and the contentions urged by the counsel for the Appellant in this regard is well founded.”

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14.The learned counsel referred to the decision reported in Karpagavinayaga Associates, rep. by its Partners. N.Shanmugam, C.Muthusamy, C.Perumal Vs The Inspector General of Registration of Tamil Nadu cum Chief Controlling Revenue Authority, Chennai and others, 2014 (3) MWN (Civil) 508 to buttress the point that the future use of property is not a relevant fact or to revive the valuation at the time of presentation of the document for registration. The Court has held as follows:-

> "After a lapse of 2 years, another Notice under Section 47-A(6) was issued to show cause why further Stamp duty should not be collected - Held, Stamp duty to be determined based on nature of usage of property on date of purchase - Usage for commercial purpose at later date not relevant - Suo motu proceedings can be initiated only after arriving at subjective satisfaction that Order passed under sub-section (2) of Section 47 is prejudicial to interest of revenue - No such material placed on record."

15.The learned counsel relied on the decision of this Court in S.Sivasubramaniam Vs Chief Controlling Revenue Authority - Cum - Inspector General of Registration and others, 2013 (6) CTC 295 to state that the evidence produced in the form of report of the Village Administrative Officer to state that the property is an agricultural property cannot be brushed aside. In the above case, the Court held as under:-

> "Report of District Registrar and not considering Report of VAO with regard to classification of lands is arbitrary and unreasonable."

16.Finally, the learned counsel for the appellant stated that the order under Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of instruments) Rules, 1968 has to be passed within three months from the date of application, whereas in this case, order was passed nearly after three years.

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17.The learned counsel for the appellant further submitted that there is a gross violation of Rule 11 (A) in as much as the first respondent ought to have given due notice to the appellant before exercising the power when the inspection is called for.

18.Mr.T.Pappiah, the learned Government Pleader submits that the impugned order passed by the authorities is well reasoned and requires no interference.

19.The learned Government Pleader further submits that the property in question is not an agricultural property and there is no water source near the land.

20.There is proof that property in the neighbouring area has been converted as housing plots and it is based on the guideline value for those housing plots, Rs.51/- per sq.ft. was fixed under Section 47 A r/w Rule 3 of the Stamp Rules, pursuant to which Form I was issued by the 3rd respondent. It is further submitted that at the stage of appeal, a report was also called for from the Deputy Registrar and by a report dated 25.03.2009 bearing Na.Ka.No.9259/B1/08 it has been confirmed that in respect of the property in question, the value can be determined at Rs.25/- per sq.ft, since there are no civil amenities. Thus, abatement to the value has been allowed by 30%. He submits that the stamp duty has to be paid on the revised value at Rs.16/- per sq.ft. which is just valuation of the property.

21.I have considered the arguments of the learned counsel for the appellant and the respondents and perused the documents and evidences.

22.Section 3 of the Indian Stamp Act, 1899 is the charging section under which stamp duty is payable on a instrument. Stamp duty is payable on the amount indicated in the schedule. Article 23 to the schedule to the Indian Stamp Act, 1899 stipulates stamp duty payable on the market value of the property which is the subject matter of the conveyance.

23.As per section 47A(1) of the said Act, the Registering Authority may refer an instrument to the Collector after registering the instrument for determination of proper market

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value of such property and duty payable thereon if he has reasons to believe that the market value of the property has not been truly set forth in the instrument.

24.The Collector may after giving reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by the rules made in that behalf, determine the market value of the property which is the subject matter of conveyance and the duty payable thereon. The difference if any in the amount of duty payable shall be paid by the person.

25.Under section 47A(3) of the Act, the Collector may within 5 years of the registration of instrument suo motu or otherwise examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which was the subject matter of the conveyance etc. and the duty payable thereon and if after examination has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of the property and the duty payable as in accordance with the procedure provided for in sub-section.

26.Thus, the Registering Authority can register an instrument and refer the instrument to the Collector for determination of the correct market value under section 47A(1) of the Act or the Collector may suo motu may determine the correct market value within 5 years and demand differential stamp duty payable on the instrument under Section 47A(3) of the Stamp Act, 1899.

27.The Government of Tamil Nadu also framed the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 under Section 47-A r/w Section 75 of the Indian Stamp Act, 1899. Rule 4 prescribes the procedure on receipt of reference under Section 47-A from a Registering Officer.

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28.Rule 4(4) of the above Rules makes its clear that there shall be first a provisional determination of Market value of the property. The Collector is expected to communicate copy of his order determining the provisional market value of the property and the duty payable and along with the notice in Form II and call upon the party to lodge their objections, if any, to such provisional determination of the market value within the

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time specified in the notice. Procedure to be followed which under such 47A(1) r/w (2) and (3) are the same.

29.In A.R.Narayanan vs Special Deputy Collector (Stamps), AIR 2003 Mad 266 and in M.Chinnasamy vs The Chief Revenue Control Officer-cum-Inspector General of Registration, 2015 (2) MWN (Civil) 200, it was held that if the final market value is determined without giving such post-decisional hearing, then, such order would be illegal and the same is liable to be set aside.

30.Rule 5 deals with principles for determination of market value by the collector. The Collector shall after considering the representation received in writing may pass appropriate order. Under Section 47AA of the Act, the State Government is also empowered to constitute a Valuation Committee under the chairmanship of Inspector General of Registration for estimation, publication and revision of market value guidelines of properties in any area in the state that such interval and in such manner as may be prescribed for the purpose of section 47 A.

31.The provisional determination of the market value was made as early as 01.07.2005 by the 2nd respondent vide Na.Ka.Si.Pa.No.1068/2005/JPT. Whether the determination by the 2nd respondent in the first instance was proper or not is no longer relevant.

32.It is not clear from the records whether the procedure contemplated under Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 was followed by furnishing a copy of the provisional determination of market value along with Form-II or whether final determination made under Rule 7 was made by the 2nd respondent vide order dated 05.05.2008 was after complying with the prescribed procedure.

33.The facts of the case is that the appellant had preferred an appeal with the 1st respondent on 15.05.2008 which was admitted on 12.12.2008 by the 1st respondent viz Inspector of General of Registration in proceedings No.23788/N3/08.

34.In the appeal also there is a provision for inspection of the property by calling for a report from any local authority or public officer authority under the Government.

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35.According to the appellant though the report has been obtained from the District Registrar, neither notice was given to the appellant before inspection of the property nor a copy of the report of the collector dated 25.03.2009 was furnished to the appellant.

36.Therefore, without giving any finding on the merits of the contention of the appellant, the case is remitted back to the 1st respondent to allow the appellant to make appropriate submission as to why the value determined based on the enquiry report dated 25.03.2009 should be followed. A copy of the enquiry report dated 25.03.2009 of the District Registrar may be furnished to the Appellant to make appropriate submissions.

37.If necessary, fresh report may be called for after complying with the requirement of Rule 11 A of the Rule and thereafter the market value can be determined. Therefore, the impugned order is set aside.

38.Accordingly, the present Civil Miscellaneous Appeal stands disposed. Since the instrument is of the year 2005, it is expected that the 1st respondent shall pass appropriate order after hearing the appellant within a period of three months from the date of receipt of a copy of this order. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bri/jen

To

1.The Principal Revenue Control Officer,
Cum - Inspector General of Registration,
Chennai 600 028.

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

3.The Sub Registrar (Stamps),
Jolarpet, Vellore District.

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Copy to:

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

+1cc to Mr.R.G.Narendhiran, Advocate sr.84867

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and
MP.No.1 of 2012

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