IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.28 OF 2016
AND CMP NO.144 OF 2016

A.Ambrose ... Appellant

Vs.

1.The Chief Controlling Revenue Authority
cum Inspector General of Registration
Chennai.

2.The Special Deputy Collector (Stamps)
Thanjavur.

3.The Sub-Registrar No.1
Pattukottai,
Thanjavur District. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of the Indian Stamps Act 1899 against the order passed by the first respondent in Pa.Mu.No.56763/N5/2014 dated 04.11.2015.

For Appellant : Mr.K.Surendranath
Senior Counsel
for Ms.P.T.Ramadevi

For Respondents: Mr.T.M.Pappiah
Special Government Pleader (CS)

J U D G M E N T

The purchaser of the land is the appellant before this Court. He purchased an agricultural land to an extent of 2.46 acres in Survey No.151/2A, Pattukottai Village and Taluk. The Sub-Registrar No.1, Pattukottai, the third respondent herein referred the document for determination of market value to the second respondent. The second respondent issued a show cause notice dated 17.03.2014, stating that the market value of the property was Rs.53,72,800/-, whereas the appellant has paid only Rs.42,90,240/- and claimed the remaining amount. Thereafter, the appellant appeared for an enquiry on 29.03.2014 and raised his objection that the land is an agricultural land and and not a house site and no guideline value was fixed for the said land. However, without considering the objections, the second respondent passed an order dated 14.10.2014 fixing the market rate at Rs.2,00,000/- per cent. Against which, the appellant preferred an appeal to the Inspector General of Registration under Section 47-A(5) of the Indian Stamp Act 1899. The appellate authority directed the District Registrar (Administration) Pattukottai, to submit the valuation report. Accordingly, the District Registrar (Administration), Pattukottai, in his proceedings Na.Ka.No.60/A1/2015 dated 16.03.2015 submitted his report. The appellate authority, considering the order passed by the second respondent, the Special Deputy Collector (Stamps), Thanjavur, dated 14.10.2014 and report of the District Registrar (Administration) Pattukottai, dated 16.03.2015 fixed the value at Rs.2,00,000/- per cent. Aggrieved over the same, the appellant is before this Court.

2. Mr.K.Surendranath, learned Senior Counsel appearing for Ms.P.T.Ramadevi, counsel on record for the appellant would raise the following legal submissions:

> (i) The third respondent / Sub Registrar has not set out the reasons before referring the document for determination of market value under Section 47-A of the Indian Stamp Act, 1899.
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> (ii) Delay of the proceedings of the second respondent is in violation of Rule 7 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968.
>
> (iii) The authorities have failed to conduct site inspection and also failed to give notice to the appellant in violation of principles of natural justice.
>
> (iv) The first respondent failed to adhere to the mandatory procedures of Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968.
>
> (v) The first respondent has acted ultra vires his powers and delegated the same to the an incompetent authority.

(vi) The first respondent has determined the market value taken into consideration the future development.

3. The learned Senior Counsel for the appellant would rely on the following judgments in support his contention:-

(a) Judgment of this Court in HINDUSTAN MOTOR FINANCE CORPORATION LIMITED VS. THE DISTRICT REGISTRAR AND OTHERS [W.P.Nos.18768, 19296 and 20788 of 2017 decided on 03.10.2017]

(b) Full Bench judgment of this Court in G.KARMEGAM AND OTHERS VS. THE JOINT SUB-REGISTRAR, IV, MADURAI [2007 (5) CTC 737]

(c) Judgment of this Court in G.MARY CHELLATHAI VS. TAMILNADU INSPECTOR GENERAL OF REGISTRATION & PRINCIPAL REVENUE AUTHORITY [2017 (5) CTC 173]

(d) Judgment of the Hon'ble Supreme Court in STATE OF U.P. AND OTHERS VS. AMBRISH TANDON AND ANOTHER [2012 (1) CTC 556]

(e) Judgment of this Court in M/S.KARPAGAVINAYAGA ASSOCIATES VS. THE INSPECTOR GENERAL OF REGISTRATION OF TAMIL NADU CUM CHIEF CONTROLLING REVENUE AUTHORITY AND OTHERS [2014 (5) LW 280]

(f) Judgment of a Division Bench of this Court in SPECIAL DEPUTY COLLECTOR VS. THAJUNNISSA [2015 (6) MLJ 129]

4. Heard the submissions made on either side and perused the materials available on record.

5. With respect to the contention raised by the learned Senior Counsel for the appellant that the third respondent / Sub Registrar has not set out the reasons before referring the document for determination of market value under Section 47-A of the Indian Stamp Act, 1899, it is useful to refer the relevant para from the judgment of this Court in M/S.HINDUSTAN MOTOR FINANCE CORPORATION LIMITED's case (cited supra) which reads as under:

"15.In the case on hand, it is brought to the notice of this court that the 2nd respondent has not registered the document yet. However, he has referred the matter to the 1st respondent, the District Registrar for fixing the market value. That apart, when the provisions of Section 47-A says that unless the 2nd respondent has has reason to believe that there is an attempt to deliberately under value the subject of transfer to effect the payment of proper stamp duty, he cannot refer the matter to the Collector for fixing the market value. The 2nd respondent cannot refer the matter mechanically without following the provisions of Section 47-A. The 2nd respondent has not given any reasons for referring the matter to the 1st respondent. Even in the counter, the respondents have not stated the reason for referring the matter to the 1st respondent for fixing the market value as contemplated under Section 47-A. The 2nd respondent should have registered the document and thereafter should have referred the matter to the Collector following the provisions of section 47-A of the Act. "

6. Further, even though there are specific grounds raised against the order of the second respondent, the first respondent has not applied his mind to those aspects. In this regard, para 7 of the Full Bench judgment of this Court in G.KARMEGAM's case (cited supra) is extracted hereunder:

"7.Registration of document is a sine qua non for referring the matter of the Collector, if the Registering Officer believes that the property is undervalued. No jurisdiction has been conferred on the Registering Officer to refuse registration, even if the document is undervalued. Besides, there is no authority for him to call upon the person concerned to pay additional stamp duty. Collector is the prescribed authority to determine the market value, after affording a reasonable opportunity of hearing the parties. The Registering Officer cannot make a roving enquiry to ascertain the correct market value of the property by examining the parties. However, it is expected that he has to give reasons for his conclusion for undervaluation, however short they may be. He can neither delay nor refuse registration of the instrument, merely because the document does not reflect the real market value of the property. In order to reach a conclusion, there is no bar for the Registering Officer to gather information from other sources, including official or public record. Valuation guidelines, prepared by teh revenue officials periodically, are intended with an avowed object of assisting the Registering Officer to find our prima facie, whether the market value set out in the instrument has been set forth correctly. "

7. In a judgment of this Court in G.MARY CHELLATHAI's case (cited supra) it is observed as under:

> "13.The impact of the decision of the Hon'ble Supreme Court in V.N.Devadoss v. Chief Revenue Control Officer - cum - Ins. and Ors., cited supra, rendered by a Three - Judge Bench would be, unless it is shown that the Registering Officer has reason to believe that there was a wilful undervaluation, there is no scope for further proceedings. The said reason to believe should be expressed in the Order of Reference. Unless these essential conditions are satisfied, I do not think that a Reference under Section 47-A would be available to the Revenue as a matter of course. Therefore, unless it is shown that the Referring Officer had expressed that there was a wilful undervaluation with a fraudulent intention to evade payment proper Stamp Duty, there is no question of exercise of power under Section 47-A of the said Act. "

8. From the above judgments, it is crystal clear that the Registration Officer, unless he has reason to believe that there was a willful undervaluation, cannot refer the document for valuation. The respondents have not shown the reasons recorded by the third respondent for referring the document to the second respondent under Section 47(A)(1) of the Indian Stamp Act, 1899. In such an event, the proceeding by itself is illegal.

9. On a perusal of the impugned order, it is seen that the appellate authority, while deciding the appeal, has not conducted site inspection as contemplated under Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968, (shortly "the Rules"). Secondly, he has deputed the District Registrar (Administration), Pattukottai, for inspection and on the basis of the report submitted by him, had taken the decision. Thirdly, the District Registrar (Administration), Pattukottai, assessed the market value of the property on the basis of future development.

10. Rule 11-A of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, reads as under:-

> "11-A. Decision of the appellate authority. - The appellate authority may, for the purpose of deciding an appeal,-
>
> (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 of authority under the Government or the local authority; and
>
> (c) inspect the property after due notice to the parties concerned."

11. As per Rule 11-A of the Rules, it is mandatory on the part of the appellate authority to conduct site inspection after due notice to the parties concerned. On the basis of his inspection, he shall redetermine the market value and arrive at a decision as to whether the order passed by the District Registrar is correct or not. But in so far as he failed to conduct inspection, the impugned order stands vitiated for violation of mandatory compliance of principles of natural justice and statutory provisions.

12. In the instant case, the authority has not conducted site inspection, but relied on the report of the District Registrar (Administration) Pattukottai. Under Section 47-A(5) of the Act, there is no enabling provision to delegate the powers conferred on the appellate authority to any of his subordinates. Such sub-delegation is without jurisdiction. Further, even assuming that he has power to delegate the same to his subordinates, it shall be conferred on a competent authority. In so far as the District Registrar is concerned, this Court in its various judgments has held that he is an Officer under Registration Act and not at all an Officer under the Indian Stamps Act. In such view of the matter, the District Registrar is an incompetent authority.

13. Further, it is well settled in various judgments of this Court that inspection of the property by the appellate authority is a mandatory requirement and failure to do so, will vitiate the entire proceedings. In similar circumstances, this Court in S.SANTHI VS. THE CHIEF REVENUE CONTROLLING AUTHORITY & INSPECTOR GENERAL OF REGISTRATION, CHENNAI AND TWO OTHERS [C.M.A.NO.2820 OF 2012 DATED 05.06.2015] 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.

18. The failure on the part of the 2nd respondent to pass a final order within 3 months from the date of Form-I notice as mandated under rule 7 of the rules vitiates the entire proceedings. Form - I notice was issued on 17.05.2005 and the final order was passed on 05.12.2006, after 1 1/2 years, i.e., after 3 months and hence the entire proceedings are vitiated.

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."

As found in the above referred judgment, the delegation of power to subordinate authority and the order passed by the appellate authority based on the report of the District Registrar vitiates the entire proceedings.

14. The Hon'ble Supreme Court in STATE OF U.P's case (cited supra) has observed as under:

"8) We have already held that it is the grievance of the respondents that the orders were passed by the Additional Collector on a public holiday. Regarding the merits though the Collector, Lucknow made a surprise site inspection, there is no record to show that all the details such as measurement, extent, boundaries were noted in the presence of the respondents who purchased the property. It is also explained that the plot in question is not a corner plot as stated in the impugned order as boundaries of the plot mentioned in the freehold deed executed by Nazool Officer and in the sale deed dated 16.04.2003 only on one side there is a road. It is also demonstrated that at the time of execution of the sale deed, the house in question was used for residential purpose and it is asserted that the stamp duty was paid based on the position and user of the building on the date of the purchase. The impugned order of the High Court shows that it was not seriously disputed about the nature and user of the building, namely, residential purpose on the date of the purchase. Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Though the matter could have been considered by the Appellate Authority in view of our reasoning that there was no serious objection and in fact the said alternative remedy was not agitated seriously and in view of the factual details based on which the High Court has quashed the order dated 27.09.2004 passed by the Additional District Collector, we are not inclined to interfere at this juncture."

15. This Court in M/S.KARPAGAVINAYAGA ASSOCIATES's case (cited supra) has held as under:

"The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Therefore, it is clear that the usage of the land in future cannot be a basis for assessing the value. In the present case, as per the report of the second respondent, on the date of purchase i.e., on 29.11.2007, the land was only an agricultural land. Even in the year 2010, as per the report of the District Registrar dated 25.2.2010, the land was only being developed to make a lay out of housing plots. Even on the date of inspection by the District Registrar, the lands were not plotted out as house sites. Therefore, in my considered opinion, the intention of usage of land in future cannot be a basis for estimating the value of the property for the purpose of calculation of stamp duty. Hence, the impugned order passed by the first respondent based on the report of the District Registrar in the year 2010 in respect of the land purchased by the appellant in the year 2007, is not legally sustainable and as such, the same is liable to be dismissed. "

16. Further, while deciding the market value, the authority should take the nature and classification of the land as on the date of registration, but it cannot be on the basis of future development. The future user shall not be the criteria for fixing the market value. A Division Bench of this Court also had an occasion to consider the determination of market value of the property on the basis of future development, in the case of SPECIAL DEPUTY COLLECTOR (STAMPS), CHENNAI COLLECTORATE, SINGARAVELAR MALIGAI, CHENNAI, VS. THAJUNNISA AND OTHERS [2015 (6) MLJ 129] and held as under:-

" 10. It is to be borne in mind that the Deputy Inspector General of Registration's Report dated 22.03.2002 does not indicate any conclusion which was arrived at to the effect that the Respondents / Petitioners lands in question were not agricultural lands. Just because the lands in question are having the potential of being converted as house sites in future, the authorities in this regard cannot allow their imagination to run riot or to indulge in assumptions, presumptions, surmises and conjectures etc., in the considered opinion of this Court."

17. Foregoing decisions clearly declare that determination of market value on the basis of future development or future user is not sustainable. When the nature of property is agricultural land, it should have been valued as to its nature on the date of registration. Therefore, for the various irregularities recorded above, the impugned order is held bad.

18. Considering the facts and circumstances of the case, this Court is of the view that the order passed by the first respondent is not sustainable. Accordingly, the order dated 04.11.2015 passed by the first respondent / Chief Controlling

Revenue Authority cum Inspector General of Registration, Chennai, in his proceedings in Pa.Mu.No.56763/N5/2014 is set aside and the matter is remitted back to the first respondent for fresh consideration. This exercise shall be completed by the first respondent, within a period of two months from the date of receipt of a copy of this order.

19. In fine, the Civil Miscellaneous Appeal is allowed with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.
Tk

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Controlling Revenue Authority
cum Inspector General of Registration
Chennai.

2. The Special Deputy Collector (Stamps)
Thanjavur.

3. The Sub-Registrar No.1
Pattukottai,
Thanjavur District.

+1cc to Government Pleader, SR.No.22092

C.M.A.NO.28 OF 2016

Kak(20/06/2019)