IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CMA. No.1586 of 2019
and
C.M.P.No.4536 of 2019

M/s.Elgi Rubber Company Limited,
Rep by its Chief Finanacial Officer,
2000, Trichy Road,
Coimbatore – 641 005. ... Appellant

Vs.

1.Inspector General of Registration,
Office of Inspector of Registration,
Santhome, Chennai.

2.The District Revenue Officer (Stamps),
Coimbatore.

3.The Sub-Registrar,
Kinathukkadavu,
Coimbatore. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of Indian Stamp Act, 1899, against the order dated 24.12.2018 made in Na.Ka.No.11184/N2/2015 on the file of Inspector General of Registration, Chennai signed on 02.01.2019.

For Appellant : Mr.R.Krishna Prasad
for M/s.Sarvabhauman Associates

For Respondents: Mr.T.M.Pappiah
Special Government Pleader
[for RR1 to 3]

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the order dated 24.12.2018 made in Na.Ka.No.11184/N2/2015 on the file of Inspector General of Registration, Chennai.

2. The appellant presented documents for registration for purchase of land and building in Survey Nos.351/1, 351/2A and

359/2 before the 3rd respondent. The guideline value at the relevant point of time for Survey No.351/2A and 359/2 was Rs.2,15,000/- per acre and for Survey No.351/1 was Rs.90/- per sq.ft. However, appellant valued the same at Rs.4,72,805/- and Rs.4,87,561/- for Survey Nos.351/2A and 359/2 and for Survey No.351/1 at Rs.90/- per square foot as per the guide line register. After registering the document, the 3rd respondent referred the documents for determination of the market value to the 2nd respondent. The 2nd respondent issued Form I notice on 22.06.2009. Pursuant thereto, appellant produced documents to substantiate the value and by his reply dated 30.06.2009 and 13.11.2009 submitted his objection to the 2nd respondent. Thereafter, nothing progressed. On 24.02.2012, the 2nd respondent issued a communication informing that the appellant has not paid the stamp duty and also failed to avail "Samadhan scheme" and directed him to pay the deficit stamp duty and get back the document. The appellant vide letter dated 07.03.2012 informed the 2nd respondent that he had paid the stamp duty in excess of the guideline value, that too, more than double the value mentioned in the Registers of the 3rd respondent.

3. Surprisingly, on 14.11.2012 the 3rd respondent requested the appellant to give a copy of the Form I notice issued by 2nd respondent. The appellant forwarded a copy of Form I notice as well as the estimate issued by the Assistant Engineer, Madurai for consideration on 20.11.2012. Even thereafter, no order was passed. Since the appellant needed the sale deed, he filed a writ petition for return of original sale deed presented to the 3rd respondent. This Court, in WP.No.5672 of 2013 by order dated 07.03.2013 directed the respondents to release the document after making necessary endorsement creating charge against the property. Thereafter, by letter dated 22.07.2013, the 2nd respondent sought for the valuation report from the Assistant Engineer at Office of Deputy Inspector General of Registration, Madurai and after receipt of the same, had issued Form II notice on 26.09.2014, i.e., the 2nd respondent have taken more than five years to issue Form II notice from the date of issuance of Form I notice. He arrived at a provisional assessment of Rs.90/- per sq.ft and called for objection from the appellant, which was submitted on 13.10.2014 and a final order was passed on 27.10.2014 determining the market value at Rs.70/- per.sq.ft in respect of Survey No.351/2A. Aggrieved over the same, the appellant preferred an appeal before the first respondent. The 1st respondent in proceedings in Na.Ka.No.11184/N2/2015 dated 24.12.2018 has enhanced the market value, which is under challenge in this appeal.

4. Heard both sides and perused the materials placed before this Court.

5. From the pleadings, it is seen that the guideline value for Survey Nos.351/2A and 359/2 was Rs.2,15,000/- per acre on the date of registration. Even though the guideline value was only Rs.2,15,000/-, the appellant had valued his property at Rs.4,72,805/- and Rs.4,87,561/- per acre respectively for Survey Nos.351/2A and 359/2. However, the Registering Authority without recording any reasons as required under Section 47 A (1) of Indian Stamp Act, 1899 (herein after called 'Act') referred the documents for determination of market value to the 2nd respondent. The 2nd respondent, in turn, issued Form-I notice to the appellant on 22.6.2009, which was replied by him on 30.06.2009 and 13.11.2009. It is to be noted on 24.2.2012, the 2nd respondent communicated the applicant that the appellant neither paid the deficit stamp duty nor availed Samadhan Scheme and hence, directed him to pay the deficit stamp duty and to take return of documents.

6. The appellant, by his letter dated 07.03.2012 replied the 2nd respondent that he had already paid stamp duty in excess of the guideline value and therefore, he is not liable to pay any amount.

7. After receipt of the reply, the 3rd respondent requested the appellant to provide a copy of the Form-I notice issued by the 2nd respondent. The appellant had complied with the request and forwarded a copy of Form I notice as well as the estimate issued by the Assistant Engineer, Madurai on 20.11.2012. Even after that, the 2nd respondent has not processed the matter and released the document. Hence, the appellant filed a Writ Petition in W.P.No.5672 of 2013 and got his document released through an order of this Court dated 07.03.2013. Only thereafter, the 2nd respondent issued a Form II notice on 26.09.2014, i.e., after a period of five years from the date of issuance of the Form - I notice. The appellant filed his objections on 13.10.2014 and final orders were passed on 27.10.2014 determining the market value of Rs.70/- per square foot. Aggrieved over the same, the appellant preferred an appeal before the 1st respondent, who, by way of the impugned order dated 24.12.2018, has enhanced the market value as Rs.90/- per sq.ft in respect of S.No.351/1 and in respect of S.Nos.351/1A and 359/2 it confirmed the market value as Rs.70/- per sq.ft.

8. It has to be seen whether the impugned order is valid or not?

9. Insofar as the delay is concerned, the learned Special Government Pleader would vehemently contend that sub clause 1 of Rule 7 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 is only directory and not mandatory. Insofar as the time limit prescribed therein, he would rely on the judgment of the Division Bench of this court reported in

2017 SCC ONLINE MAD 30725 (The Special Deputy Collector Vs. M.Alfred), wherein, it is held as under;

> "We have already discussed that the time limit mentioned in Rule 7 Sub-Clause (1) is not mandatory being procedural. Hence, the same cannot give any right to claim a document nor to contend that the proceedings would lapse. However, the Collector cannot take his own sweet time."

10. A perusal of the above judgment would clearly go to show that Rule 7 (1) is not mandatory being procedural, but it also observes that the Collector, at the same time cannot take his own sweet time in disposing of the matter. Of course, the amendment incorporating three months period came to be made with an intention to plug the revenue leakage to the exchequer. But the sequence of events in the present case would show that the Form -I notice was issued as early as on 22.6.2009 and after that, no action was taken by the 2nd respondent for a long time. After three years, the second respondent has sent a communication dated 24.2.2012 calling upon the appellant to pay the deficit stamp duty and get back the documents. Despite receiving reply of the appellant to the above said communication, the 2nd respondent failed to take any further action. It is the third respondent who requested the appellant to provide a copy of Form-I notice issued by the 2nd respondent, which shows that the 2nd respondent's office must have lost track of the proceedings and not concerned with the prejudice caused to the exchequer.

11. At the instance of the 3rd respondent Sub Registrar, the appellant furnished a copy of the Form I notice on 20.11.2012, thereafter the appellant got his document released pursuant to an order passed by this Court on 07.03.2013 in WP.No.5672 of 2013. Even during the pendency or after the order passed by the High Court, the 2nd respondent had not taken any action and proceeded further within a reasonable time. He issued Form-II notice only on 26.09.2014 after a period of 1 ½ years of the order in W.P.No.5672 of 2013 and passed final orders on 27.10.2014. Thus from 22.06.2009, i.e., the date of issuance of Form–I notice and 27.10.2014 being the date of passing final order, there is no justifying reasons for occurrence of delay.

12. The delay of five years and four months in passing final orders cannot be considered as reasonable. The Honourable Division Bench has categorically observed that even though the three months time specified in Sub Clause 1 of 7 of the above said Rules is not mandatory, it also observes that the Collector cannot take his own sweet time.

13. In that view of the matter, this Court is of the considered view that the delay in passing orders by the 2nd

respondent is not within reasonable limits and vitiates the entire proceedings.

14. In the judgment made by the Division Bench of this Court in W.A.No.640 of 2017, dated 24.11.2017, it was observed as follows;

> " 16. In the present case, no document was referred to by the second respondent to the fist respondent, as per Section 47(A)(1) of the Indian Stamp Act and no personal enquiry was conducted by affording reasonable opportunity to the appellant as per Section 47(A)(2) of the Act. A perusal of Section 47(A)(3) of the Act, it is clear that the first respondent ought to have called for and examined within five years from the date of conveyance of the instrument. In the present case on hand, the first respondent issued final notice only on 09.02.2012, after lapse of five years from the date of issuance of Form-I Notice dated 30.06.2006 and lapse of morethan seven years from the date of registering the sale deed by the appellant. Further, what is important to see here is that the second respondent had passed the impugned order without any jurisdiction."

As per the above judgment, the order passed by the 2nd respondent beyond a period of five years from the date of issuance of the first notice is without jurisdiction. In the case on hand also, the order of the 2nd respondent is beyond a period of five years and four months from the date of issuance of the Form-I notice shall be construed as one without jurisdiction vitiating the impugned proceedings.

15. A perusal of the impugned order shows that the 1st respondent relied on the inspection report submitted by the District Registrar of the Registration Department.

16. Rule 11(A) of the Tamil Nadu Stamp (Prevention of Undervaluation 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 on record form 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."

17. As per the above Rule, the Appellate Authority has to call for informations from Public Office or Officer of the Government or local body to examine and record statements from such public officers or authorities from the Government or local bodies and to inspect the property after due notice to the parties concerned. Insofar as issuance of notice to the parties before inspection is concerned, it is a mandatory requirement. But in the instant case, the Appellate Authority had failed to conduct site inspection and also failed to issue notice to the aggrieved parties. The impugned order came to be passed in violation of principles of natural justice as mandated under Rule 11(A) of the above Rules and hence not sustainable in law.

18. Secondly, the appellate authority has delegated his powers to the District Registrar of the Registration Department. The Indian Stamp Act, 1889 does not confer any power on the Appellate Authority to delegate his powers.

19. 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."

20. However, in the present case, as discussed above, the Appellate Authority not only delegated his power without jurisdiction, but also delegated the same to an officer outside the purview of the Act. The District Registrar is an Officer under Registration Act and he has no power to perform functions under the Indian Stamp Act. On this Ground also, the order passed by the Appellate Authority is ultra-vires and thereby not sustainable in the eyes of law.

21. Thirdly, on an appeal filed by the presentant of the document, the appellate Authority has power to scrutinise the validity, legality and correctness of the order. He can either allow the appeal or reject the same. Under 47 A(5) of the Indian Stamp Act, he is empowered to hear and dispose of the matters as prescribed by the Rules made under the Act. The Appellate Authority is not entitled to enhance the value as if he is exercising his power under Section 47 A (6) of the Act. In the instant case, the rate fixed by the 2nd respondent at Rs.70/- per sq.ft has been enhanced to Rs.90/- by the first respondent without there being any appeal by the department.

22. As per Rule 12 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the Appellate Authority shall decide whether or not the market value of the properties as determined in the order of the Collector under Sub Section 2 or Sub Section 3 of Section 47-A of the Act is correct. In case, the Appellate Authority does not accept the valuation of the properties made by the Collector, it shall determine the correct value of the properties and the duty payable on the instrument by recording reasons. It does not mean that the Appellate Authority is entitled to enhance the market value in the appeal presented by the presentant of the document.

23. In the judgment of this court reported in 2012 (3) CTC 589 (Rajendran vs. The Inspector general of Registration, Chennai-28), it is held as follows;

> '47. In the light of the above discussion and following the decision in Asmathullah Khan V. the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai and two others, 2010 (6) CTC 567, the Civil Miscellaneous Appeals are allowed only to the limited extent of holding that the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, has no power to enhance the market value of the property, while considering the Appeals preferred by the vendors, without recourse to Section 47-A(6) of the Act, within the time provided in the Act. The Appellate Authority is directed to deal

with the appeal in each case, on merits, after following the procedure, contemplated under the Act and the Rules. No costs.'

The 2[nd] respondent has determined the value as Rs.70/- per square foot enhancing the same from Rs.70/- to Rs.90/- without any enabling provision in the statute is ultravires and illegal.

24. Thus, the delay of five years and four months caused in issuing final orders by the second respondent; failure to adhere to Rule 11 A of the Rules; conferring the power of inspection to a non officer and enhancing the market value on an appeal by presentant of the document without any enabling provision under the Act to do so are ultra-vires and illegal.

25. In fine, the impugned order is not sustainable in the eyes of law and accordingly the same is set aside.

26. The Civil Miscellaneous Appeal stands allowed and the excess stamp duty paid by the appellant shall be refunded to him without prejudice to his rights within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

bri/msr

To

1.The Inspector General of Registration,
Office of Inspector of Registration,
Santhome, Chennai.

2.The District Revenue Officer (Stamps),
Coimbatore.

3.The Sub-Registrar,
Kinathukkadavu, Coimbatore.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No. 27814
+1cc to the Government Pleader, S.R.No. 28611

CMA. No.1586 of 2019
and
C.M.P.No.4536 of 2019

NRJK(CO)
GN(05/08/2019)