IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2019

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.1949 of 2018 &
CMP.No.15040 of 2018

R.Bakthavatchalam .. Appellant

-vs-

1. The Tamilnadu Principal Revenue Control Officer, Inspector General of Registration, Chennai 600 028.
2. The District Revenue Officer (Stamps) Chennai 600 001.
3. The Sub-Registrar, Office of the Sub Registrar, Avadi, Chennai. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 47(10) of Stamp Act praying to set aside the order dated 4.01.2018 made in Na.Ka.No.7914/N1/2016 by the Tamilnadu Principal Revenue Control Officer cum Inspector General of Registration, Chennai 600 028, modifying order dated 08.01.2016 made in C.Pa.No.506/12/A4 passed by the District Revenue Officer (Stamps), Chennai-1 and release the appellant sale deed dated 21.6.2012 .

For Petitioner : Mr.T.Murugamanickam
for Mr.R.Sreerangan

For respondents: Mr.T.M. Pappiah
Special Govt. Pleader

JUDGMENT

This Civil Miscellaneous Petition is filed seeking to set aside the order dated 4.01.2018 made in Na.Ka.No.7914/N1/2016 by the Tamilnadu Principal Revenue Control Officer cum Inspector General of Registration, Chennai 600 028, modifying the order dated 08.01.2016 made in C.Pa.No.506/12/A4 passed by the District Revenue Officer (Stamps), Chennai-1 and release the appellant's sale deed dated 21.6.2012.

2. The appellant has purchased agricultural land and presented the document for registration before the third respondent, who, in turn, referred the same for determination of market value to the 2nd respondent. The 2nd respondent determined the market value in his proceedings No. C.Pa.No.506/12/A4, dated 8.1.2016 at Rs.300/- per sq.ft. and directed the appellant to pay the deficit stamp duty of Rs.7,90,100/-.

3. Aggrieved over the same, the appellant preferred the appeal before the 1st respondent under section 47 (A) 5 of the Indian Stamps Act (hereinafter called as Act). The 1st respondent fixed the market value at Rs.250/- per sq.ft., against which, the present appeal has been preferred.

4. Heard Mr.T. Murugamanickam, learned counsel for the appellant appearing for Mr.Sreerangan and Mr.T.M. Pappiah, learned Special Govt. Pleader appearing for the respondent.

5. At the outset, it is seen that the land is an agricultural land as admitted by the respondents during the time of inspection report submitted therein. According to the appellant, the 3rd respondent-Sub Registrar as per Section 47(A)(i) of the Indian Stamp Act should record reasons that he has reasons to believe that the market value of the property has not been truly set forth in the instrument. In so far as the present case is concerned, the third respondent has not recorded any reasons before referring the subject matter of conveyance to the Collector for re-determination of the value. The contention of the learned Senior counsel in this regard is well founded.

6. Secondly, the 2nd respondent failed to issue notice which are mandatory as per Rule 4, 5 and 6 of Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968 and without issuing form I, Form II notice providing opportunity to make representation, file documentary evidence and objection to the provisional conclusion, the 2nd respondent ought not to have passed the final orders directly. If such a course is adopted, it is violative of principles of natural justice and the entire proceedings would stand vitiated for violation of the statutory provisions.

7. The appellant has contended that the subject land purchased by him lies within one kilometer from the catchment area, and several irrigation canals are located within one kilometer. Therefore no lay out permission would be granted and the land would continue only as an agricultural land. The 1st respondent has not considered any of these objections raised by the appellant. On the other hand, even after finding that

the property is an agricultural land, fixed the market value at square foot rate as recommended by the District Registrar of Registration Department. Insofar as the objections raised by the appellants are not answered, the order of the 1st respondent would amount to non speaking order without application of mind.

8. It is seen from the records that the value was arrived on the basis of the document registered in respect of a property conveyed in Survey No.505/1B in the year 2005. But the value of the property was Rs.668/- per cent, whereas, the appellants, even though found as an agricultural land, without assigning any reason on the grounds of future development and future user was fixed at Rs.250/- per sq.ft.

9. It is well settled that the market value of the property shall be determined on the basis of the nature of the property on the date of registration and shall not be on the basis of the future user.

10. A Division Bench of this Court has considered 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], wherein, it is 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."

11. In so far as the 1st respondent herein has arrived at the market value purely on the basis of future development, it is contrary to well settled principles of law and hence the order of the 1st respondent is not sustainable in the eyes of law.

12. The impugned order is not sustainable for another reason that Rule 11 A of Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968 mandates that there shall be a personal inspection by the appellate authority before

fixing the market value. In the instant case, the 1st respondent has not conducted inspection and delegated his power to conduct inspection and it was conducted by somebody else without notice to the appellants herein. It is a clear statutory violation and hence the order stands vitiated on this ground also.

13. Further there is no enabling provision in the Act or rules enabling the 1st respondent to delegate his powers to somebody else to conduct the inspection, but in the instant case the 1st respondent has delegated the power to the District Registrar serving in the Registration Department, hence the delegation itself is ultravires. Even assuming the 1st respondent has powers, it should not have been delegated to a person who is not an authority under the Indian Stamp Act, 1899. The District Registrar is an officer under Registration Act and such delegation by the 1st respondent is absolutely contrary to the statutory provisions and ultravires his powers.

14. This Court in RAJENDRAN VS. THE INSPECTOR GENERAL OF REGISTRATION AND OTHERS [2012 (3) CTC 589] has held as under:

> "36. Enhancement of market value of the property on the appeals preferred by the land owners under Section 47(5) is not contemplated under the scheme of the Act, without recourse to sub section 6 of section 47, wherein the statute has contemplated a procedure of conducting an inquiry and reasonable opportunity. No doubt, the statute empowers the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, to exercise suo-motu powers under Section 47(6) of the Act, within five years, from the date of passing of an order, under Section 47(2) and (3) of the Act, as the case may be, but the Statute mandates, consideration of the records, in terms of the objective, specifically incorporated in the Section and that he should arrive at a subjective satisfaction, as to whether, the order passed under sub-Sections (2) and (3) of Section 47-A of the Act, is prejudicial to the interests of Revenue. He must record reasons for arriving at the satisfaction."

15. 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."

16. As found in the above referred judgments, the delegation of power to subordinate authority and the order passed by the appellate authority based on the report of the District Registrar vitiate the entire proceedings. To sum up, the land in question is an agricultural land. The second respondent has found that agricultural activities are going on in that land. But there is no clear statement as to the classification of the property in the revenue records. The nature and classification of the land on the date of registration shall be considered for determination of the market value. The market value came to be determined on the basis of future development. The future user shall not be the criteria for fixing the market value.

17. Therefore, in view of the above observations, the impugned order passed by the first respondent stands vitiated for violation of statutory provision as well as principles of natural justice.

18. In fine, the Civil Miscellaneous Appeal stands allowed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

To

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

2. The District Revenue Officer (Stamps)
Chennai 600 001.

3. The Sub-Registrar,
Office of the Sub Registrar,
Avadi, Chennai.

+2cc to Mr.R.Sreerangan, Advocate sr.23696
+1cc to Government Pleader sr.24702

C.M.A.No.1949 of 2018 &
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cnr(co)
nr 03/10/2019