IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2019
Delivered on : 08.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.371 of 2017
and
CMP.Nos.2593 and 4501 of 2017

M/s.Hindustan Marine Industries,
rep. by its Proprietor M.K.Balraj,
D.No.12-42A, Fishing Industrial Area,
Udayavara - 574 118,
Udipi, Karnataka. ... Appellant

Vs

1.The Chief Controlling Revenue Authority (Stamps),
The Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 028.

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

3.The Sub Registrar,
Radhapuram,
Thirunelveli Registration District,
Thirunelveli. ... Respondents

Civil Miscellaneous Appeal filed under Order 41, Rule 2 CPC read with Section 47-A of the Indian Stamp Act against the order dated 08.12.2016 passed by the first respondent in Na.Ka.No.7909/N4/2016.

For Appellant : Mr.R.C.Paulkanagaraj

For Respondents : Mr.T.M.Pappiah
Spl. G.P. for R1 & R2

R3 - No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the appellant against the order dated 08.12.2016 passed by the first respondent fixing the value at Rs.1,020/- in respect of the building measuring an extent of 666 square metre situated in S.No.252/1 and the remaining lands situated in S.No.249/2A, 2B, 259/3, 252/1 and 252/2 at Rs.10,12,200/- per acre.

2. The case of appellant is as follows:

The appellant is carrying on business in manufacture of fish meal and fish oil in Udupi, Karnataka State and Gujarat respectively. With a view to start factory in Tamil Nadu, the appellant had purchased lands situated in Vijayapathi Village, Radhapuram Taluk, Thirunelveli District in S.Nos.249/2A measuring 0.09 Acre; S.No.249/2B measuring 3.99 Acres; S.No.252/1 measuring 5.80 Acres; S.No.252/2 measuring 0.12 Acre and S.No.259/3 measuring 1.51 Acre in all 11.51 Acres for a total sale consideration of Rs.35,00,000/-. The total extent of land purchased by the appellant is 11.51 Acres, which is a dry manavari punja land, wherein a factory building admeasuring 380 sq. mts. was situate on one side and the remaining extent of land was dry vacant land. The factory building is nearly seven years old and no machinery is available therein and the factory building has become defunct and even the electricity service connection has been served by the TNEB.

3. According to the appellant, the sale deed was registered on the file of the third respondent as Document No.1562 of 2015. The lands were valued at Rs.4,00,000/- per hectare and the building was valued at Rs.16,36,000/- and the appellant had paid stamp duty and stamp charges as per the guideline value. But the third respondent without any reason refused to return the sale deed bearing Document No.1562/2015 and fixed the value at Rs.1,700/- per sq. mt. and sent it to the second respondent under Section 47-A(1) of the Indian Stamp Act.

4. By the order dated 04.02.2016. the second respondent without any valid reasons fixed the value of the property at Rs.5,09,61,617/-. Aggrieved by the said order, the appellant had filed an appeal to the first respondent. By the impugned order dated 08.12.2016, the first respondent fixed the value at Rs.1,020/- in respect of the building measuring an extent of 666 square metre situated in S.No.252/1 and the remaining lands situated in S.No.249/2A, 2B, 259/3, 252/1 and 252/2 at Rs.10,12,200/- per acre. Challenging the same, the appellant has filed the present Civil Miscellaneous Appeal.

5. Resisting the appeal, the second respondent filed counter

stating that since Document No.1562 of 2015 has been executed without following the guideline value and bearing lesser stamp duty, the same was referred to the second respondent to ascertain the value of the property. Accordingly, the second respondent fixed the value of the property at Rs.5,09,61,617/- and the appellant was directed to pay Rs.33,22,319/- towards deficit stamp duty within sixty days. Challenging the same, the appellant had preferred an appeal before the first respondent. The first respondent confirmed the value fixed at Rs.1,020/- per sq. mt. for the part of the land in S.No.252/1 and for the balance extent of the land in S.No.252/1 which has no buildings and the other lands in S.Nos.249/2A, 2B, 259/3, 252/1 and 252/2 at Rs.10,12,200/- per acre and the appellant was directed to pay the deficit stamp duty within two months from the date of the order. It is stated that if the deficit stamp duty, interest and registration fees are not collected, it would open the flood gate to other persons to make such claim and thus prayed for dismissal of the Civil Miscellaneous Appeal.

6. I heard Mr.R.C.Paulkanagaraj, learned counsel for the appellant and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents 1 and 2. No representation on behalf of the 3rd respondent.

7. The learned counsel for the appellant submitted that the appellant had paid stamps and duty as per the guideline value for the survey numbers and the first respondent failed to note that there was no necessity for the third respondent to refer the matter to the second respondent under Section 47-A(5) of the Indian Stamp Act. He would submit that the first respondent failed to note that only when the document holds less stamps than the guideline value available with the third respondent, the document has to be referred under Section 47-A(5) of the Indian Stamp Act and in the present case, the document held stamps in consonance with the guideline value and therefore, the document was wrongly sent to the second respondent.

8. The learned counsel further submitted that the first respondent failed to note that even in Document No.5869 of 2011 referred by the respondents claiming to be the document on the basis on which the value of the property has been fixed by the second respondent, the value has been fixed at Rs.13/- per sq. mt. only. But the first respondent failed to consider the same.

9. The learned counsel next submitted that the first respondent passed the order without giving copies of the alleged enquiry report, inspection report and site inspection report to the appellant which is in violation of principles of natural justice and thus, prayed for setting aside the order of the

first respondent.

10. Per contra, the learned Special Government Pleader for the respondents 1 and 2 submitted that considering the objections filed by the appellant, the report of the second respondent and other connected records, the first respondent has passed the impugned order valuing the lands in Survey Nos.249/2A, 2B, 259/3, 252/1 and 252/2 as Rs.10,12,200/- per acre and part of the land in Survey No.252/1 as Rs.1,020/-. Since the value fixed by the second respondent which was confirmed by the first respondent is based on documentary evidence, there is no necessity to interfere with the same.

11. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

12. The appellant herein purchased a property situated in Vijayapathi Village, Radhapuram Taluk, Thirunelveli District comprised in S.No.249/2A measuring an extent of 0.09 acre; S.No.249/2B measuring an extent of 3.99 acres; S.No.252/1 measuring an extent of 5.80 acres; S.No.252/2 measuring an extent of 0.12 acres and S.No.259/3 measuring an extent of 1.51 acres, in all 11.51 acres on 22.5.2015 for a total sale consideration of Rs.35,00,000/- wherein M/s.N.P.M. Fish Meal and Oil was running a factory. According to the appellant, the lands purchased by the appellant is a dry manavari punja and a factory building admeasuring 380 sq. mts. was situate on one side and the remaining extent of land was dry vacant land. The factory has become defunct and is not functioning over the last 5-6 years.

13. In respect of the aforesaid lands, the sale deed was registered on the file of the third respondent as Document No.1562 of 2015 and stamp duty was paid by the appellant as per the guideline value of the said properties. According to the appellant, the lands were valued at Rs.4.00 lakhs per hectare and the building was valued at Rs.16,36,000/-. According to the appellant, the third respondent referred Document No.1562 of 2015 to the second respondent and the second respondent, in turn, vide order dated 04.2.2016, fixed the value of the property at Rs.5,09,61,617/- without any basis. Aggrieved by the order of the second respondent, the appellant preferred an appeal to the first respondent and the first respondent, by the impugned order dated 08.12.2016, fixed the value at Rs.1,020/- for S.No.252/1 and the remaining extent fixed the value at Rs.10,12,200/- per acre again without any basis.

14. On a perusal of the order of the second respondent dated

04.02.2016, it is seen that the second respondent fixed the value of the property at Rs.5,09,61,617/- and called for objection from the appellant by fixing the enquiry date on 18.01.2016. Pursuant to the notice, the appellant had submitted objection and thereafter, the second respondent fixed the value of the property at Rs.5,09,61,617/-. While so fixing the value, the second respondent directed the appellant to pay the deficit stamp duty within a period of sixty days, failing which the appellant has to pay 1% interest. The appellant was also given liberty to file an appeal against the order of the second respondent within a period of sixty days before the first respondent. The appellant exercised the appeal remedy before the first respondent and by the impugned order, the first respondent fixed the value at Rs.1,020/- in respect of the building measuring an extent of 666 square metre situated in S.No.252/1 and the remaining lands situated in S.No.249/2A, 2B, 259/3, 252/1 and 252/2 at Rs.10,12,200/- per acre.

15. On a perusal of the orders of the first respondent as well as the second respondent, it is seen that both the authorities have mechanically enhanced the market value of the property without any reasons. In fact, the second respondent has failed to state how he is fixing the value of the property. However, on a perusal of the order of the first respondent, it has been stated that since in the earlier Document bearing No.5869 of 2011, the value of the property has been fixed by the second respondent at Rs.13/- per sq. mt. and also finding the features of the properties in question, the second respondent fixed the value of the building and the land situated in 252/2 at Rs.1,020/- and the remaining lands at Rs.10,11,736/-, the first respondent affirming the value of the building and land fixed by the second respondent and fixed the value of other properties at Rs.10,12,200/- per acre.

16. It is apposite to mention that both the authorities have not assigned any reason as to what prompted them to enhance the market value of the lands in question. Absolutely, there is no material to show that the value fixed by them is based on documentary evidence. In fact, both the authorities had discussed about the opportunity given to the appellant and the objection received by them as against the proposal to enhance the market value. However, no where, the second respondent has discussed about the comparison of the document in fixing the value of the property in question. The first respondent also did not refer about any other instrument presented for registration in respect of the same locality during the relevant time. The instrument which was referred to in the order of the first respondent is of the year 2011 and nothing has been produced to show that the property mentioned in the instrument viz., Document No.5869 of 2011 is situated in the proximity of

the lands in question.

17. In V.N.Devadoss v. Chief Revenue Control Officer-cum-Inspector and others, reported in (2009) 7 SCC 438, the Hon'ble Supreme Court held:

> "13. Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property, which is the subject matter of the conveyance, has not been truly set out in the document. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty."

18. Section 47-A(1) of the Indian Stamp Act reads thus:

> "47-A. (1) If the Registering Officer appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), while registering any instrument relating to the transfer of any property, has reason to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector, for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon."

19. Market value is a changing concept. The position is clear that value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale by the vendor for a consideration of Rs.33.00 lakhs. That being so, there is no question of any intention to defraud the revenue or non-disclosure of the correct price.

20. On the facts of the case, it cannot be said that Section 47-A of the Indian Stamp Act has any application in the present case because there is no scope for entertaining a doubt that there was any under valuation. The value one fixed by the

second respondent as well as the first respondent is imaginary and no basis.

21. In V.R.Venkataraman v. Chief Controlling Revenue Authority/The Inspector General of Registration, Chennai and 4 others, reported in 2005 (2) CTC 465, wherein, it has been held that the Chief Controlling Revenue Authority dealing with valuation under Stamp Act, exercises quasi judicial power and has to give reasons while disposing appeal.

22. In the present case, simply by taking into account the spot inspection report and other materials, the second respondent has passed the order which does not reflect application of mind in fixing the value of the property in question and the appellate authority, the first respondent herein also did not apply its mind while fixing the value of the property. In fact, the order passed by the second respondent is a blanket order and devoid of merits on the following reasons:

(i) While determining the market value, the classification of the land viz., dry manavari punja land was not duly considered.
(ii) The building is 15 years old and there is no machinery in it and also the factory is inoperative for several years.
(iii) It is admitted by the second respondent that the property in question situated at about half kilometer away from the main road.
(iv) The second respondent decided the entire land as site and determined the market value at Rs.5,09,61,617/-, which is incorrect.

23. In the instant case, no reason was assigned by respondent Nos.1 and 2 to conclude that the market value of the property has to be fixed at Rs.1,020/- in respect of the building measuring an extent of 666 square metre situated in S.No.252/1 and the remaining lands situated in S.No.249/2A, 2B, 259/3, 252/1 and 252/2 at Rs.10,12,200/- per acre. Moreover, no supporting sale deed for fixing the above said value was produced by respondent Nos.1 and 2. Therefore, this Court is of the view that the order of the second respondent which was affirmed by the first respondent is per se bereft of any material particulars and both respondent Nos.1 and 2 have passed the order mechanically without any application of mind and the same are liable to be set aside.

24. In the result, the Civil Miscellaneous Appeal is allowed thereby the order of the first respondent dated 08.12.2016 in Na.Ka.No.7909/N4/2016, confirming the order of the second respondent dated 04.02.2016 in Mu.X.1/1976/2015 is set aside.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Chief Controlling Revenue Authority (Stamps),
The Inspector General of Registration,
100, Santhome High Road,
Chennai - 600 028.

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

3.The Sub Registrar,
Radhapuram,
Thirunelveli Registration District,
Thirunelveli.

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

+1 cc to The Government Pleader, Sr.No.11892

Judgment made in
Civil Miscellaneous Appeal No.371 of 2017 and
CMP.Nos.2593 and 4501 of 2017

AD(CO)
CSL/21.02.2019