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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2864 OF 2018

K.S.Shanmugam ...Appellant

Vs.

1.The Inspector General of Registration/
Tamil Nadu Principal Revenue Control Officer,
Santhome, Chennai-28.

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

3. The District Registrar (Administration)
Collectorate, Erode.

4. The Sub Registrar,
Avalpoondurai Sub Registrar Office,
Avalpoondurai, Erode District. ... Respondent

PRAYER: Civil Miscellaneous Appeal under Section 47 (A)(5) of Indian Stamps Act, 1899, praying to set aside the order dated 04.10.2017 passed by the first respondent in Na.Ka.No.162/N2/2016.

For appellant : Mr.C.Prakasam

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

J U D G M E N T

This appeal is filed by the appellant seeking to set aside the order dated 04.10.2017 passed by the first respondent in Na.Ka.No.162/N2/2016.

2. The appellant herein has purchased 0.53 ½ acres of land in 46 Pudur Village of Erode Taluk and District and presented the same for registration on 09.10.2013. The fourth respondent registered the same as document No.5542 of 2013 and referred it to the second respondent for determination of market value. The second respondent determined the market value by proceedings through Mu.Pa.No.1461 of 2013 dated 17.12.2015, against which

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the appellant preferred an appeal to the first respondent and the same was rejected in Na.Ka.No.162/N2/2016 dated 04.10.2017. Aggrieved over the same, he has preferred the above appeal.

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3. The appellant would contend that the respondents have not considered the nature of the property which is an agricultural land and fixed the marked value calculated at Sq.foot considering it as a housing plot. Accordingly, the barren land is lying without cultivation for want of water supply in LBP canal, which is the main source. Further, the first respondent has determined the market value without conducting any personal inspection, based on the reports sent by some other officer. He has also, in the appeal filed by the appellant, enhanced the market value determined by the second respondent at Rs.250/- to Rs.350/- per Sq.Ft. The Enhancement of the market value is without jurisdiction. On the above grounds, the appellant seeks to set aside the impugned order of the first respondent.

4. Per contra, the learned Special Government Pleader would produce guideline value as per revenue classification and submitted that the land was classified as residential house sites and guide line value was fixed at Rs.250/-. He would further contend that the value was fixed after conducting the inspection and in accordace with law. Therefore, the order does not require any interference.

5. Heard both sides.

6. On a perusal of the materials and on the basis of the records, it is seen that the second respondent has conducted inspection of the property and found that the property in dispute is lying as barren land without any cultivation and that there are layouts adjacent to the property and the registration was also made at Square foot rate. Since there are prospects of converting the above property into house sites, he determined the value at Rs.250/- per sq.ft. From this, it is clear that the second respondent has determined the value on the basis of future user, considering that the agricultural land would get converted into housing sites. Such determination of market value on the basis of future user is considered to be illegal.

7. 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:-

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" 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."

8. Be that as it may, the first respondent on appeal, has caused inspection to be conducted by the District Registrar (Administration) Erode. The District Registrar, in his proceedings Na.Ka.1316/E/2016 dated 31.05.2016, submitted the report that the property is covered by dry lands on three sides and by house sites on one side. Therefore, he would recommend the market value at Rs.350/- per sq.ft. The first respondent has passed an order on the basis of the report submitted by the District Registrar.

9. This Court, in very many cases, has held that the District Registrar is an officer under Registration Act and not an officer under The Indian Stamp Act, 1899. Therefore, any inspection conducted by the District Registrar is without jurisdiction. It is also to be noted that under the Indian Stamp Act, the first respondent is mandated to conduct personal inspection and he has no power to Sub-delegate the same to his subordinates. Therefore, the inspection done by the District Registrar is illegal and therefore, dertermination of the market value stands vitiated for lack of jurisdiction and violation of principles of natural justice as far as the concerned party / appellant was not put on notice.

10. When an appeal was filed under Section 45 A(5) of the Act, against the order of the second respondent by the presentant of the document, enhancing the market value from Rs.250/- to Rs.350/- is illegal as held by various judgments by this Court. When a particular order is under challenge, the appellate authority is entitled to test the orders on merits as to its legality and correctness and should give a finding as to whether the order is correct and legal. But the authority has no power to go beyond the scope of the appeal and enhance the market value as if it was preferred by the department, as done in the instant case.

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11. 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."

Therefore, the enhancement of the market value in the appeal filed by the land owner against the order of the District Revenue Officer is also without jurisdiction, arbitrary and illegal.

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12. Considering the above aspects, dertermination of market value on the basis of future user, delegation of power are held ultra vires and contratry to the Act. In the result, the impugned order is set aside and appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1.The Inspector General of Registration/
Tamil Nadu Principal Revenue Control Officer,
Santhome, Chennai-28.

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

3. The District Registrar (Administration)
Collectorate, Erode.

4. The Sub Registrar,
Avalpoondurai Sub Registrar Office,
Avalpoondurai, Erode District.

+1cc to Mr.C.Prakasam, Advocate Sr.30632
+1cc to the Government Pleader Sr.31017

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