IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2404 OF 2018
AND CMP NO.18300 OF 2018

T.Muthurajalingam ... Appellant

Vs.

1.Chief Controlling Revenue Authority
cum Inspector General of Registration
Chennai - 600 028.

2.The Special Deputy Collector (Stamps)
Tiruchirappalli - 620 001.

3.The Sub Registrar
The Sub Registrar Office
Tiruchirappalli - 620 001.
... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47A(10) of the Indian Stamp Act, 1899, against the order passed in Na.Ka.No.57398/N3/2016 on the file of the Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai, dated 23.08.2018, modifying the order passed in Tha.Pa.No: 32/2016 on the file of the Special Deputy Collector (Stamps) Tiruchirappalli, dated 19.11.2016.

For Appellant : Mr.K.Doraisami
Senior Advocate
for M/s.Muthumani Doraisami

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



J U D G M E N T

This Civil Miscellaneous Appeal is filed by the appellant against the order dated 23.08.2018 passed in Na.Ka.No.57398/N3/2016 by the Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai, modifying the order dated 19.11.2016 passed in Tha.Pa.No: 32/2016 by the Special Deputy Collector (Stamps) Tiruchirappalli,.

2. The appellant is the land owner and he presented the document for registration. The entire extent of land is 4 acres 55 cents, which is classified as Punjai land in S.F.No.192/2B and T.S.No.76/2 Part, in Kottapattu Village, K.Sathanur, Trichy. According to the appellant, the value of the property is Rs.1.50 Crores per acre. But the third respondent, after registering the document, referred the same to the second respondent for determination of market value. The second respondent, vide proceedings dated 19.11.2016 fixed the value at Rs.688/- per sq.ft considering the surrounding lands and the developments made thereunder. Aggrieved over the same, the appellant preferred an appeal to the first respondent. The first respondent, by his order dated 23.08.2018, fixed the value at Rs.1,96,02,000/- per acre.

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

4. From a perusal of the impugned order, it is clear that the order was passed based on the inspection reports submitted by the Special Deputy Collector (Stamps) and the District Registrar (Administration) dated 19.11.2016 and 17.04.2017 respectively. From the reports, it is seen that at the time of site inspection, Corn was cultivated in the said land. The Special Deputy Collector (Stamps) had opined that in order to evade stamp duty, the presentant of the document, namely the appellant had cultivated the land to make it appear as an agricultural land. However, the Appellate Authority, as required under Rule 11-A of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules 1968, has not conducted any inspection but relied on the inspection report of the District Registrar, who is not a competent authority under the Indian Stamp Act and passed the order. In the order, it is also observed that considering the future development, the Authority fixed the value at Rs.520/- per sq.ft.

5. 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."

6. As per Rule 11-A of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, 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.

7. In the instant case, the authority has not conducted site inspection, but relied on the report of the District Registrar (Administration) Trichy. The authority, 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.

8. 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.

9. 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."

10. 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 23.08.2018 passed by the first respondent / Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai, in his proceedings in Na.Ka.No.57398/N3/2016 is set aside and the matter is remitted back to the first respondent for fresh consideration. The first respondent shall conform to the mandatory requirement under Rule 11-A of the Tamil Nadu (Prevention of Under Valuation of Instruments) Rules, 1968, and conduct inspection after giving notice to the appellant / land owner and after affording an opportunity for personal hearing, for passing final orders. This exercise shall be completed by the first respondent, within a period of three months from the date of receipt of a copy of this order.

11. This Civil Miscellaneous Appeal is disposed of with the above observation and direction. No costs. Consequently, connected civil miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

TK
To
1.Chief Controlling Revenue Authority
cum Inspector General of Registration
Chennai - 600 028.

2.The Special Deputy Collector (Stamps)
Tiruchirappalli - 620 001.

3.The Sub Registrar
The Sub Registrar Office
Tiruchirappalli - 620 001.

+1 CC to Mr.Muthumani Doraisami, Advocate sr 27023.
+1 CC to Govt. Pleader sr 28050.

C.M.A.NO.2404 OF 2018

RR(CO)
SP(10/07/2019)