IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.NO.2917 OF 2018
and
C.M.P.NO.22093 OF 2018

N.Premavathy ...Appellant

Vs.

1. The Chief Controlling Revenue Authority and Inspector General of Registration, Santhome, Chennai - 600028.

2. The Special Deputy Collector (Stamps), Salem-Namakkal-Dharmapuri and Krishnagiri Districts, Salem.

3. The Sub Registrar, Sankagiri, Salem. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A (10) of Indian Stamp Act, 1899, praying to set aside the order passed by the first respondent made in 37708/U1/2012 dated 09.10.2018 which was received by the appellant on 20.10.2018, suo moto proceeding by modifying the order of the Learned Special Deputy Collector (Stamps), Salem dated 05.10.2007 passed in SR No.3247/2007/SKR SDC

For appellant : Mr.S.Senthil

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

J U D G M E N T

This Civil Miscellaneous Petition is filed by the appellant seeking to set aside the order passed by the first respondent made in 37708/U1/2012 dated 09.10.2018 which was received by the appellant on 20.10.2018.

2. The appellant is the presentant of the document. He purchased a piece of agricultural land and presented the document for registration before the third respondent. The value of the property was Rs.7,77,750/- per acre. The third respondent referred the document for redetermination of market value under Section 47 A of the Indian Stamp Act, to the second respondent. The second respondent, under Section 47 A (2) of the Act, has determined the market value at Rs.9,92,300/- and demanded the deficit stamp duty at Rs.17,480/-, which was paid by the appellant on 09.10.2007. The respondents have entered receipt of money and made an endorsement is Form 3 and released the documents. Thereafter, pursuant to the audit conducted by the Accountant General in their report dated 24.07.2008, the first respondent initiated suo moto proceedings under Section 47 (A) (6) of the Act on 21.11.2012.

3. The appellant submitted his written statement on 28.03.2018 and without considering the same, the first respondent rejected the petitions of the appellants and passed the impugned common order on 09.10.2018. Aggrieved over the same, the appellants are before this Court.

4. The primary contention of the appellant is that under Section 47 (A) (7) of the Act, the first respondent has power to initiate preceedings within five years from the date of the order passed under Section 47 (A)(2) of the Act or 47 (A)(3). But the proceedings were initiated after a period of five years and therefore, the impugned order passed by the first respondent is without jurisdiction and therefore seeks to set aside the impugned order.

5. Mr.T.M.Pappiah, learned Special Government Pleader, appearing on behalf of the respondents would defend the action of the first respondent on the ground that the Accountant General in the report No. AG (C&RA)/ISRIV/Regn III/20-123/08-09/399 dated 24.07.2008 raised objection with respect to four sale deeds involved in the borrowing. The objections are as follows:

(i) That the property conveyed through the above four documents is part and parcel of a larger property in the same survey numbers which was already converted into house sites in the year 2004 and accordingly cent rate of Rs.37,060/- was adopted by the registering authority, which was based on the value fixed in the year 2004 for the present four documents.

(ii) Further, as per document No.994/2004 land measuring 14,000 Sq.ft. (32.11 cents) was conveyed as plots for the value of Rs.8,42,500/- i.e. @ Rs.60/- per sq.ft.

(iii) Further, as per the revised guideline value applicatin from 01.08.2007, the entire lands situated in S.No.277/2A, 2B, 2C and 277/3A & 3B was stated to be classifed in Ward 8, S.K.Nagar for which the guideline value is Rs.188/- Sq.ft, i.e., Rs.81,968/- per cent, which justifies the market value of Rs.37,060/- per cent in the area, hence fixing Rs.5,250/- per cent (Rs.5,25,000/- per acre) which is very much lower has resulted in loss of stamp duty and registration fee to an extent of Rs.52,83,488/-. In view of the fact that the value fixed by the SDC(S) is as low as 14.17%, it is considered that the above cases are worth to be reviewed u/s.47A(6)"

6. Therefore, the first respondent has to review the market value of the property under Section 47 (A) (6) of the Act by exercising power to initiate suo moto proceedings. The first respondent has empowered under Section 47 (A) (6) of the Act. The order passed by the second respondent, under Section 47 (A) (2) was on 05.10.2007 and audit objection was made on 24.07.2008. On receipt of audit objection, the first respondent constituted a Joint Committee and Joint Committee conducted field inspection on 16.12.2008 and thereafter show cause notice was issued on 20.07.2012, which resulted in the passing of the impugned order dated 09.10.2018. The time consumed for the process is properly explained and the period mentioned under Section 47 (A) (7) could not be contradicted. Therefore, the order passed by the first respondent is submitted to be valid and legal and shall not be set aside.

7. I have considered the rival submissions.

8. It is relevant to extract Section 47 (A) (6) and (A) (7) of the Act to consider the case in hand.

Section 47 (A) (6) :

"The Chief Controlling Revenue Authority may, suo motu, call for and examine an order passed under sub-section (2) or sub-section (3) and if such order is prejudicial to the interest of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit."

Section 47 (A) (7) :

"The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3) if,

a) the time for appeal against that order has not expired; or

b) more than five years have expired after the passing of such order."

9. It is no doubt that the first respondent has every power to conduct the suo motu revise the order. In the instant case, admittedly the document was presented on 30.04.2007 and the second respondent determined the market value and passed the order on 05.10.2007. As per Section 47 (A)(6) of the Act, sumoto revision shall be initiated by the first respondent, when he comes to the conclusion that the order passed by the Authority is prejudicial to the interest of revenue and there is loss of revenue. So, to exercise the power under Section 47 (A)(6), it requires application of mind and it shall not be exercised at the instance of somebody else or on the advice of the audit authorities.

10. The first respondent has admittedly initiated action only on the basis of Audit Objection. In other words, he was totally unaware of the market value of the properties, till the audit report was given. Secondly, as per Section 47 (A) (7) of the Act, it is mandated that first respondent shall not initiate any proceedings against any order passed under Sub-Section 2 or 3 of Section 47 (A) (7) of the Act after more than five years have expired after the passing of such order.

11. As seen above, the order under Section 47 (A) (2) & (A)(3) was passed on 05.10.2007. In that event, the suo moto revision should have been initiated on order before 04.10.2012. In the instant case, it was initiated beyond a period of five years i.e. 21.12.2018. In any case, a Joint Committee was constituted for field inspection and the Joint Committee conducted field inspection on 16.12.2008. The said committee has submitted its report on 30.01.2009. Therefore, when he had knowledge about the market value of the property as on 30.01.2009, he should have initiated the proceedings under Section 47 (A) (6) of order before 04.10.2012. But, the first respondent has directed the subordinates to initiate necessary action only on 20.07.2012. But in fact, the actual initiation of proceedings under Section 47 (A) (6) of the Act had commenced only on 21.11.2012, for the reason best known to the first respondent. Admittedly, commencing of proceedings after a period of five years was in violation of the mandatory provisions. Even assuming the explanation given by the first respondent is acceptable, he has not explained the delay between 30.01.2009 the date of submission of inspection report and 04.10.2012 the date of show cause notice in compliance with Section 47 (A)(8) of the Act.

12. Even though it is stated that the first respondent has formed Joint committee for field inspection, as mandated, he has not put the appellants on notice before conducting inspection. No reasonable opportunity was given to them. Hence it is a clear case of violation of principles of natural justice.

13. Therefore, this Court is of the considered opinion that the action taken by the first respondent in issuing show cause notice on 21.11.2012 is beyond the mandatory period of five years is without jurisdiction and the order passed on the basis of inspection conducted behind the appellants is violative of principle of natural justice. Hence the impugned order is vitiated for violation of principles of natural justice and the mandatory provision and accordingly set aside. The Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To
1. The Chief Controlling Revenue Authority and
   Inspector General of Registration,
   Santhome, Chennai - 600028.

2. The Special Deputy Collector (Stamps),
   Salem-Namakkal-Dharmapuri and
   Krishnagiri Districts,
   Salem.

3. The Sub Registrar,
   Sankagiri,
   Salem.

+1cc to Mr.S.Senthil, Advocate SR.No.30263

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and
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SPD(CO)
GMY(05/09/2019)