IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.1127 & 1128 of 2011
and
M.P.Nos.1,1 & 2 of 2011

1. M.Kalanthar Naina Mohammed
2. M.Mohammed Jafarullah

...Appellants in both the Appeals/Petitioners

Vs.

1. The Chief Controlling Revenue Authority & Inspector General of Registration, No.100, Santhome High Road, Chennai - 600 028.

2. The District Revenue Officer (Stamps) Office of the District Collectorate 5th Floor, No.32, Rajaji Salai, Chennai - 600 001.

3. The Sub Registrar of Assurances, Theagaraya Nagar, @ 9, Jeenis Road, Saidapet, Chennai - 600 017

...Respondents in both the Appeals/Respondent

Civil Miscellaneous Appeals are filed under Section 47A(10) of the Stamp Act, to call for the records in No.30262/E1/06, dated 11.01.2011 of the first respondent and set aside the same and to direct the first respondent to accept the market value determined by the second respondent in his order dated 22.02.2005 made in C.No.Spl.R.No.10/05/A1 in respect of Doc.Nos.137 and 138 of 2005 of Book 1 on the file of the third respondent as true, proper and correct value.

For Appellants in both appeals : Mr.B.R.Sundar

For Respondent in both appeals : Mr.T.M.Pappiah

Judgment

These Civil Miscellaneous Appeals have been filed to call for the records of the first respondent in No.30262/E1/06 dated 11.01.2011 and set aside the same and to direct the first respondent to accept the market value determined by the second respondent in his order dated 22.02.2005 made in C.No.Spl.R.No.10/05/A1 in respect of Doc.Nos.137 and 138 of 2005 of Book 1 on the file of the third respondent as true, proper and correct value.

2. The case of the appellants is that on 26.01.2005, two sale deeds were executed jointly in favour of the appellants and their wives, selling a land and building situated at Door No.109, Usman Road, T.Nagar, registered as Document Nos.137 & 138 of 2005 at Sub Registrar Office, T.Nagar. The value adopted by the appellants was Rs.9,000/- per sq. ft. and the Sub Registrar, T.Nagar referred the said documents under Section 47-A(1) of the Indian Stamp Act, 1899.

3. The second respondent had fixed the value at Rs.10,155/- per sq. ft. vide his Proceedings in C.Pa.No.10/05/A1 dated 22.02.2005, directing the appellants to pay the deficit Stamp Duty. On 29.11.2008, a notice dated 29.11.2008 was received by the appellants from the first respondent to show cause as to why the land value should not be fixed at Rs.10,780/- per sq. ft. The appellants have replied to the said notice on 26.04.2010 seeking the documents relied on by the first respondent for arriving at the value of Rs.10,780/-. Thereafter, as per the direction issued by the first respondent vide his letter dated 31.07.2008, the District Registrar, South Chennai, Chennai - 15, sent a reply by his Letter No.11225/E1/2008-4 dated .01.2009 stating that the value determined by the second respondent reflects the market value.

4. On 17.09.2010, a notice was issued by the first respondent, directing the appellants to appear for enquiry, and the learned counsel for the appellants had given their written submission on 05.10.2010. Again, the first respondent had issued another Show Cause Notice on 23.11.2010 contrary to the earlier letter dated 29.11.2008 seeking for explanation from the appellants as to why the value of Rs.11,282/- per sq. ft. as found in the guidelines register should not be fixed. The appellants have sent a reply to the first respondent on 01.12.2010. But, the first respondent has passed an order dated 11.01.2011 in No.30262/E1/2006 fixing the value at Rs.11,282/- per sq. ft. and notice has also been issued to the appellants demanding to pay the deficit stamp duty and deficit registration fee within a period of two months from the date of the order, failing which, interest at the rate of 1% per month shall be

paid by the appellants.

5. The substantial questions of law involved in this issue is as follows:

> "a. Whether the first respondent has the authority to decide the value under the Suo Motu action following his/her own procedures in the absence of any provision either in the Indian Stamp Act or in Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968?
>
> b. Whether the first respondent has the authority to issue a notice to the appellants to show cause why the proposed value of Rs.10,282/- per sq. ft. should not be fixed and after enquiry whether she can refer and rely on the guidelines value of Rs.11,282/- per sq. ft. which amounts to acting beyond the show cause notice?
>
> c. Whether the first respondent has the authority to levy interest under Section 47-A(6) of the Indian Stamp Act, 1899 in the absence any provision there under?
>
> d. Whether the first respondent has the authority to levy interest on the registration fee for the differential value arrived at by the first respondent in the absence of any provision in the Registration Act, 1908?."

6. The learned counsel for the appellants would submit that in the absence any provision made either under Section 47-A(6) of the Indian Stamp Act, 1899 or Rules made thereunder, the first respondent ought to have inspected the property in-person and to enquire the public and adjoining properties as to the market value of the property on the date of execution of the sale deed in question. When the first respondent has not inspected the property, a notice was issued to the appellants by the first respondent, acted contrary to the law and the principles of natural justice. Once the show cause notice fixed the value of Rs.10,780/- per sq. ft. and later, called the appellants for an enquiry, who had also given written submission and that the value of Rs.10,155/- per sq. ft., the first respondent was suddenly jumped to the guidelines value of Rs.11,282/- per sq. ft. and demanding the appellants to pay the same which shows that they have not exercised their statutory power adopting principles of natural justice.

7. The learned counsel for the appellants would submit that

in the said impugned order in 30262/E1/06, dated 11.01.2011, the first respondent had fixed the value of Rs.11,282/- per sq. ft. and that the property is situated very nearer to the Sub Registrar's Office, T.Nagar. The said office is located at No.9, Jeenis Road, Saidapet, prior to 2002 onwards, not in T.Nagar, which would show that the first respondent without visiting the place fixed the value at Rs.11,282/- based on the guidelines. The learned counsel would further submit that the revised guidelines value was given effect from 01.04.2003 and after that no revision was made. After 1.04.2003, the market value raised to the tune of 90% which is a fact and the public have been accepting the said increased value. It is also submitted that if the reason adduced by the first respondent is correct, they ought to have taken up all the documents registered from the year 01.04.2003 for Suo Moto revision but not done so. It shows that the first respondent had taken up the sale deed alone because an objection raised by the Accountant General audit party on presumption and it shows the mala fide intention of the first respondent.

8. The learned counsel for the appellants would further submit that in the impugned order itself, it is seen that the authority cannot fix the value lesser than the one found in the guidelines register and the first respondent failed to furnish the details of documents relied on by them either for fixation of the value at Rs.10,780/- per sq. ft or at Rs.11,282/- per sq. ft. as found in the impugned order, which is violation of law.

9. In support of their contention, the learned counsel relied on the judgments reported in

(i) 2009 (3) MLJ 672, in the name of R.V.Refractories Vs.District Revenue Officer (Stamps):

> ''When the registration department is of the view that true marker value has not been set forth, then they have to establish that the value as shown in the document is not the market value and for that there should be sufficient and acceptable reason;
>
> ii. The opinion of a subordinate authority cannot be the basis for the adjudicating authority to decide the appeal. It will amount to surrendering his power as judicial or quasi judicial to a subordinate authority.

(ii) State of Rajasthan Vs. Khandaka Jain Jewellers (2008) 1 MLJ 1139 : 2008(1) CTC 60, the Hon'ble Apex Court held that

> ''the stamp duty in respect of the instrument of sale will have to be determined on the basis of market value of the property at the time when the document is tendered for registration.''

10. The learned counsel would further submit that the first respondent, without providing any material and without inspecting the property, fixed the market value based on the guidelines register, which shows that the first respondent has totally neglected the process of law and there is no provision in the Stamp Act, 1899 to levy interest on unpaid deficit Stamp duty after the grace period of two months from the date of order.

Section 47-A of the Stamp Act, 1899 is as follows:

> '' (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 reasonto 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.
>
> (2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as maybe prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.
>
> (3) The Collector may, suo moto, or on the receipt of a reference from the Inspector General of Registration or Registrar of a District appointed under the Registration Act, 1908 (Central Act No. 16 of 1908), in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situated or on the receipt of a report of audit by the Comptroller and Auditor General of India or by any other authority authorized by the State Government in this behalf or otherwise, within a period of three years from the date of the registration of an instrument, call for and examine

any instrument for the purposes of satisfying himself as to the correctness of the value of the property or of the consideration disclosed and of all other facts and circumstances affecting the changeability of the instrument or as to the true character and description thereof and the amount of the duty with which it was chargeable and if after such examination, he has reason to believe that proper duty has not been paid, he may, after giving the person concerned reasonable opportunity of being heard and after holding an enquiry in the manner provided under sub-section (2), determine the value of the property or the consideration or the character or description of instrument and the duty with which it was chargeable and the deficient amount of duty, if any, would be payable by the person liable to pay duty; and

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of that order, prefer an appeal before the District Judge and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act.''

11. The learned counsel would further relied on the judgment of the Hon'ble Supreme Court reported in (2004) 2 SCC, in the case of R.Sai Bharathi Vs. J.Jayalalitha :

''22. The guideline value has relevance only in the context of Section 47-A of the Indian Stamp Act (as amended by TN Act 24 of 1967) which provides for dealing with instruments of conveyance which are undervalued. The guidelines value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area. It is open to the registering authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value. The position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

23..................

24. This scheme of the enactment and the Rules contemplate that guideline value will only afford a prima facie basis to ascertain the true or correct market value, undue emphasis on the guideline value without reference to the setting in which it is to be viewed will obscure the issue for consideration. It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies. In any event, therefore, if for the purpose of the Stamp Act guideline value alone is not a factor to determine the value of property, its worth will not be any higher in the context of assessing the true market value of properties in question to ascertain whether the transaction has resulted in any offence so as to give a pecuniary advantage to one party or the other.''

12. The learned counsel for the appellants prayed that the first respondent failed to inspect the property in the presence of the appellants and fixed the market price on his own. The impugned order passed by the first respondent on presumption and assumption and non application of mind. Hence, the learned counsel prays to dismiss these appeals.

13. The learned Special Government Pleader appearing for the respondents would argue that the sale deed dated 26.01.2005 executed by one Venkatesan in favour of the appellants for consideration of Rs.1,25,00,000/- conveying a land and building situated at Door No.109, Usman Road, T.Nagar, was registered as Document Nos.137 and 138 of 2005, and as per the market value, the said value declared as undervalued. Hence, the document was referred under Section 47-A(1) of the Indian Stamp Act 1899, for determining the market value for the said property and for collecting the difference in Stamp duty based on such determination. The second respondent has determined the value as 10,155 per square feet against the value fixed by the appellants at Rs.9,000/-. The second respondent's order was considered as prejudicial to the interest of revenue, and the same was modified by Suo moto action of the first respondent under Section 47-A(6) of the Act and valued the land as 11,282 per square feet under proceedings dated 11.01.2011 in 30262/E1/06. Against the said order passed by the first respondent, the appellants have filed the Civil Miscellaneous Appeal under Section 47-A(10) of the Indian Stamp Act 1899. Further, the learned Special Government Pleader would submit that as per the first respondent's order is as per law and based on evidence and only when the second respondent has ignored to consider in correct perspective as the

Rule 5 of Tamilnadu Stamps Prevention of Undervaluation of Instruments Rules 1968 which is as follows :

> 5) Principles for determination of market value :- The Collector shall, as far as possible, have also regard to the following points in arriving at the provisional market value :-
>
> b) In the case of house sites :-
> i. the general value of house sites in the locality;
> ii. nearness to roads, railway station, bus route;
> iii. nearness to market, shops and the like;
> vi. amenities available in the place like public officers, hospitals and educational institutions;
> v. development activities industrial improvements in the vicinity.
> vi. land tax valuation of sites with reference to taxation records of the local authorities concerned.
> vii. any other features having a special bearing on the valuation of the site; and
> viii. any special feature of the case represented by the parties.

14. The learned Special Government Pleader would also submit that the order was based on the previous transaction, in which, 11,282 has been accepted, and only based on the commercial value of the property and various transactions held in that area, the said value has been fixed. The first respondent has scrutinized the order passed by the second respondent by Suo Moto action based on the observation made by the Accountant General and it is not based on presumption alone. By letter No.30262/E1/06 dated 11.05.2010, all the relevant papers were sent to the appellants by registered post with acknowledgment due. The notice dated 29.11.2008 was sent to show cause why the market value of the property 10,780 per square feet should not be determined for the subject property against the value of 10,155 fixed by the second respondent. There need not be any reason for taking Suo Moto action for modifying the order of the Original Authority. The appellants have presented written submissions on 05.10.2010, and based on the records available, it was considered to modify the show cause notice dated 29.11.2008 and a revised notice dated 23.11.2010 was issued to the appellants to show cause why the value of Rs.11,282/- shall not be determined for the subject property. The first respondent is not bound to accept any report of the Subordinate Officer when there is a reason to deviate from the recommendations of the Subordinate Officer, and as per the legislators, it is not necessary to make any rule in respect of Section 47-A(6) of the Act and the first respondent has been conferred with powers to make enquiry subject to the provisions of the Act. When no rule

is prescribed, if the first respondent is satisfied with the records available and the inspection of the property in-person is not warranted. The exact situation of the property has been clearly mentioned in the Inspection Report of the Subordinate Officers. When the guideline value is fixed and has been accepted 90% of the transaction in the very adjacent areas, the value was 11,282 has already been adopted by the parties in most of the sale deeds. Hence, guideline value is clearly reflecting a market value prevailing for Usman road. When there is sufficient and compelling reason to issue a revised show cause notice, there is nothing illegal in it and the law does not prohibit for issue of revised show cause notice. Only after duly considering the submissions made by the appellants both in written as well as oral, the first respondent has passed an order and the guideline value was fixed as 11,282 with effect from 01.04.2003 has not been revised till 2004 and 2005. During the said period, the market value has been increased. However, the first respondent has fixed the value of 11,282 which was prevailing two years prior to the date of execution of sale deed. Sufficient opportunity has been given to the appellants in-person who had submitted a written submission that the principles of Audi Altrem Partem has been violated is not correct and the same has to be rejected. Even though the guideline value is only a guiding factor, the value of the immovable property will decrease only in extraordinary circumstances like act of god and the market value will always be only increasing every year and that cannot be any decrease. Mere non marking of the copy of the order to the two of the petitioners' name in the order of the first respondent will not vitiate the said order. He would further submit that the mentioning of deficit registration fee is only for the convenience of the appellants and if the registration fee to be paid by the petitioner is not mentioned, the appellants have to approach the Sub Registrar for actual registration fee to be paid which is certainly cause a delay. Hence, the order cannot be treated as invalid. The order passed under Sub Section 2 of Section 47-A is only modified under Sub Section 6 of Section 47-A and the interest prescribed under Section 47-A(4) shall be paid and he further prayed that the same has to be dismissed.

15. The learned counsel for the appellants have filed an additional submissions, wherein, he submitted that Suo Moto action was initiated pursuant to audit objections, but no papers have been sent by the respondent that has been sent on 11.05.2010 as stated in the counter. He would further submit that show cause notice was modified without any basis. The first respondent is not bound to accept report of the subordinate who has acted in accordance with the Act and Rules demonstrate is a presumptive action on the part of the first respondent. Further, he would submit that the guideline value is only a guiding

factor has been admitted by the first respondent which stabilizes the case of the first respondent to arrive at the value of 11,282 solely based on the guideline value. As the first respondent has admitted the copy of the order is not provided to two of the appellants. Moreover, he would submit that under Rule 3(4) of the Tamilnadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, the guideline value is not a substitute for the market price, the authorities including the Collector while invoking Section 47-A of the Indian Stamp Act has to satisfies themselves on the reasonableness or otherwise the value expressed in the documents. He also relied on the Judgment reported in 1995 (II) CTC 492 in the case of G.Loganathan Vs. S.Chenniya Chettiar, stating that the guideline value is not a market value.

16. The learned counsel for the appellants further submitted that the value of the property vary from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be predetermined and the prevailing prices in the locality, in which, the land covered by the instrumental situated. It is only based on subjective satisfaction of the authorities has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth on value or consideration mentioned when it is presented for registration. He also relied on the Judgment reported in (1996) 1 SCC 609 in the case of State of Punjab and Others Vs. Mohabir Singh, in Paragraphs 5 and 6. He further submitted that violation of principles of natural justice, the Courts have constantly held that the act of issuing a show cause notice should not be an empty formality and must disclose the material relied on so as to afford the notice on an opportunity to effectively defend his case. He also submitted that subjective satisfaction is mandatory to invoke 47-A(6) with enquiry and follow rules. The reason to belief has to be strictly follow.

17. Heard the learned counsel for the appellants and the learned counsel for the respondents, and perused the materials available on record.

18. On perusing the impugned order passed by the first respondent, which is passed under Section 47-A(6) of the Indian Stamp Act, 1899, wherein which, the first respondent has exercised its Suo Moto review power contemplated under the Act to re-fix the guideline value as per the report submitted by the second respondent herein.

19. It is not in dispute that the documents registered as early as 26.01.2005 in sale deed Nos.137 and 138 of 2005 situated in the prime locality at Thyagaraya Nagar, Usman Road, Chennai. On perusal of the impugned order, it is also clear that

the basis for invoking Section 47-A(6) by the first respondent is based on the report submitted by the second respondent, wherein which, the second respondent has placed reliance on the locality of the property that is conveyed in the sale deed Nos.137 and 138 of 2005. Merely because the property situate in a prime locality, does not empower the first respondent to invoke its jurisdiction under Section 47-A(6) to re-fix and review the stamp duty payable by the purchaser Suo Moto. On perusing the impugned order, the first respondent has not applied its mind while passing the said order.

20. It is also clear from the impugned order that the first respondent has come to a conclusion to re-fix the stamp duty payable which was under scrutiny under Section 47-A that the third respondent herein has scrutinized and differential stamp duty was also paid by the appellants herein. However, there is no bar for the first respondent to invoke the powers under Section 47-A(6) provided the same is done within the limitation period of 5 years as provided under the statute. As such the present impugned order is well within the limitation as the first respondent has invoked such powers as early as 29.11.2008. However, it is seen that after issuing show cause notice dated 29.11.2008 to invoke the Suo Moto revision power under Section 47-A(6), the second respondent who seems to have conducted an enquiry and submitted a report to the first respondent by relying certain documents for the second respondent to come to a conclusion, the appellant has paid less stamp duty than that of the existing value.

21. The argument of the learned counsel appearing for the appellants has to be taken into account as there is no piece of evidence in the proceedings initiated by the second respondent which formed the basis for the first respondent to pass the present impugned order. As to whether the appellants were given opportunity before or during inspection conducted by the second respondent merely because the audit conducted by the accountant general reflected loss of revenue based on differential stamp duty paid by the appellant for the document executed as early as 2005 cannot be the only reason for the first respondent to invoke power under Section 47-A(6). In fact, under Section 47-A (6), if the first respondent is to invoke the Suo Moto revision power to re-fix the stamp duty payable by the appellant, the first respondent who had relied on the report submitted by the second respondent and the second respondent who had conducted the field inspection and relied upon certain documents who arrived at the stamp duty payable by the appellant ought to have given a reasonable opportunity to the appellants. The documents relied on for arriving at the differential stamp duty to be payable in comparison with the documents executed by the appellants ought to have been furnished to the appellants and

when a spot enquiry was conducted should also be conducted on a prior notice to the appellants. Only after following these procedures, the second respondent can arrive at the value after hearing the appellants on a prior notice to them can file a report to the first respondent for fixing the stamp duty. As such the second respondent who has submitted the report to the first respondent has not offered any opportunity and not conducted a spot enquiry by sending notice and the appellants were not given any opportunity. The alleged inspection itself is a false one according to the appellants. The records also clearly shows that the basic principles of natural justice by the second appellant was not followed for arriving at a differential stamp duty payable by the appellants.

22. Under these circumstances, this Court is of the view that the impugned order has to be set aside and the matter has to be remanded back to the first respondent to pass fresh orders based upon the report submitted by the second respondent by affording an opportunity to the appellants during the inspection to be conducted a fresh and by furnishing copies of the necessary documents which is going to be relied upon by the second respondent.

23. With the above observations, the present Civil Miscellaneous Appeals are allowed and the impugned order is set aside and the matter is remanded back to the first respondent for conducting fresh enquiry as directed above within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

raja

To

1. The Chief Controlling Revenue Authority &
   Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai - 600 028.

2. The District Revenue Officer (Stamps)
   Office of the District Collectorate, 5th Floor,
   No.32, Rajaji Salai,
   Chennai - 600 001.

3. The Sub Registrar of Assurances,
   Theagaraya Nagar,
   No.9, Jeenis Road, Saidapet,
   Chennai - 600 017.

4. The Section Officer,
   VR Section,
   High Court,
   Madras.

+1cc to Mr.K.Moorthy, Advocate, SR No.16312

+1cc to The Government Pleader, SR No.17196

C.M.A.Nos.1127 & 1128 of 2011
and
M.P.Nos.1,1 & 2 of 2011

PVS(CO)
RN(28/07/2020)