IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.NO.1897 OF 2016
AND
C.M.P.NO.13916 OF 2016

Ravi @ KN.Annamalai .. Appellant

Vs.

1. The Chief Controlling Revenue Authority,
   Cum The Inspector General of Registration,
   Santhome High Road,
   Chennai.

2. The Special Deputy Collector (Stamps)
   Cuddalore.

3. The Joint Sub Registrar No.II,
   Villupuram. .. Respondents

Prayer :

Civil Miscellaneous Appeal filed under Section 47A-10 of the Indian Stamp Act read with Rule 9(5)(a) Tamilnadu Stamp (Prevention of Undervaluation of Instruments Rules 1968), against the order of the 1st respondent in Ka.No.32558/U1/14 dated 12.8.2016 and served on the appellant on 23.8.2016.

For Appellant : Mr.N.Suresh

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

J U D G M E N T

The order passed under Section 47-A(6) of Indian Stamp Act in proceedings dated 12.08.2016 is under challenge in the present Civil Miscellaneous Appeal.

2. Admittedly, the appellant registered a sale deed on 15.05.2013. Before registering the sale deed, an agreement for sale was also registered by the appellant. The competent

authority found that the document was undervalued and assessed the Market value as per the guidelines. The order impugned reveals that the Special Deputy Collector, (Stamps), Cuddalore, determined the market value of the subject property as Rs.12,00,000/- per acre and the learned counsel for the appellant states that the said amount had already been paid and necessary endorsement was made in sale deed itself. Under those circumstances, it is contended by the appellant that the first respondent initiated suo motu revision under Section 47-A(6) of the Indian Stamp Act, the said initiation itself is untenable on the ground that the Special Deputy Collector (Stamps), considered all the documents as well as the prevailing circumstances in that locality and accordingly, fixed the market value of the property.

3. The learned counsel for the appellant reiterated that no materials available on record to arrive a conclusion regarding the market value fixed by the first respondent in the present case. An exorbitant value is fixed without following the guidelines. No materials are produced nor any such copies are communicated to the appellant, enabling the appellant to defend his case. Thus, the entire process undertook by the first respondent for revision of market value is perverse and not in accordance with the procedures as contemplated under the Statute and Rules.

4. The learned counsel for the appellant mainly contended that the reports were not communicated nor any documents were sent to the appellant for the purpose of submission of his defense. Thus, the order is in violation of the Principles of Natural Justice. The learned counsel for the appellant states that the property is an agricultural land and also surrounded by the agricultural lands. Therefore, the value fixed by the first respondent is excessive and not in consonance with the prevailing situation as well as the actual market value of that locality.

5. The learned Special Government Pleader disputed the said contentions by stating that it is incorrect to state that the subject property is an agricultural land. There is no cultivation activities going on and the said property has already been divided as housing plots by forming a layout. The subject property is surrounded by some residential building and situate 5 Kms from the Villupuram Bus stand and more specifically in Villupuram-Chennai Highways. It is further contended by the learned Special Government Pleader that at present, the subject property has been converted as housing

plots and by forming a layout and the name of the layout is Sri Lakshmi Guberan Nagar and considering the situation, the authorities competent made further enquiry and ascertained that even agricultural lands in the nearby area, which sold for Rs.25 lakhs per acre to Rs.30 lakhs per acre. However, the subject property situate nearby the residential area and it was purchased for the purpose of forming housing layout. The said factors were not considered by the Special Deputy Collector (Stamps). Thus, the first respondent/Inspector General of Registration initiated suo motu revision under Section 47-A(6) and undertook the process of ascertaining the correct facts, so as to determine the market value of the subject property. In view of the fact that the Special Deputy Collector (Stamps) committed a patent error in fixing the market value. The first respondent initiated suo motu proceedings and therefore, there is no irregularity in respect of such initiation and also fixation of market value. Thus, the appeal is to be dismissed.

6. Considering the arguments, this Court is of the opinion that the powers of the High Court to interfere with the determination of market value is undoubtedly limited. Court is not an expert body, so as to determine the market value. However, the High Court is empowered to ascertain, whether the process adopted for determining such a market value is in accordance with the Statute and in Rules or not. The Original authority determined the market value, which was questioned by the Appellate Authority / Inspector General of Registration. The said order is under challenge before the High Court. Thus, the High Court is expected to confine with reference to the methodologies and the process adopted by the authorities for the purpose of arriving the market value and certainly not the market value determined by the authority. In other words, the High Court is bound to ascertain the guidelines as well as the principles followed and the fairness adopted. If those criteria's are fulfilled, then there is no reason whatsoever to interfere with the determination of market value by the High Court.

7. The facts and circumstances narrated by the parties, if reveals that there is every reason to arrive such a conclusion by the competent authority, then the scope of interference is undoubtedly in narrow compass and Courts would not enter into the venture of determining the market value, which is the job of the Expert body.[Committee constituted under the Act]

8. Stamp duty is the State Revenue. Revenue to the State is to be protected. Certain discrepancies in facts and

circumstances may cause certain inconvenience to the parties concerned. However, the larger interest of the public and the manner, in which, the determination of market value is made are the guiding factors for the purpose of deciding the issues and therefore, the Courts are expected to be slow in determining the market value but to ensure that process, through which, such determination is done, is in accordance with the guiding principles as well as the provisions of the Statute and Rules.

9. With these principles, let us now test the manner, in which, the market value is determined in the present case. It is an admitted fact that the sale deed was executed on 15.05.2013. Further, it is admitted that a sale agreement was registered. However, while submitting objections, the appellants have disputed the sale agreement and stated that it was registered by mistake. It is further stated by the appellant that they have changed the agreement in their computer. They have gone to the extent of stating that sale agreement was erroneously prepared and a separate agreement was entered into between the parties. However, these grounds were taken before the First respondent in the appeal under Section 47-A(6) of the Act.

10. However, the fact remains that the sale agreement was registered before the Same Sub Registrar, before whom, the sale deed was executed. As per the said sale agreement, the parties had agreed to sell the property for a sum of Rs.76,50,000/-. That exactly is the reason why the Inspector General of Registration initiated suo motu revision proceedings under Section 47-A(6). When the sale agreement between the parties reflects that the value of the subject property is Rs.76,50,000/-, the Special Deputy Collector (Stamps), determined the market value as Rs.12,00,000/-, which is not comparable. This created a doubt in the mind of the first respondent and prompted for initiation of suo motu revision. On initiation of suo motu proceedings, notice was issued to the appellant and the appellant also submitted objections by appearing in person before the First respondent, they have raised their objections orally as well as in writing. Thus, opportunity was provided to the appellants to defend their case. Before the 1st respondent, they have stated that the sale agreement was registered by mistake and they have subsequently changed the sale agreement. However, the 1st respondent found that such a contention/defense is unacceptable and cannot be trusted upon, in view of the fact that the said sale agreement was consciously registered before the Sub Registrar, before whom, the sale deed was executed. The first respondent further considered the fact that the Special Deputy Collector (Stamps), has committed a basic error in not considering the Sale

agreement as well as the prevailing market value in that locality.

11. Taking note of all these factors, the first respondent revised the Stamp duty. However, he has not fixed the market value as per the sale agreement i.e., Rs.76,50,000/-. The Inspector General of Registration fixed the market value as Rs.51 lakhs per acre. Therefore, a concession has been already given to the appellants. He has not fixed the market value as per the sale agreement entered into between the parties, which is registered and reduced the market value from Rs.76,50,000/- to Rs.51,00,000/- lakhs, considering the fact that the subject property was converted as housing plots and a layout was formed in the name of Sri Lakshmi Guberan Nagar. Further, the property is surrounded by residential buildings and situate 5 Kms from the Villupuram Bus stand.

12. The next question to be considered is that Rule 5 of the Tamilnadu Stamp (Prevention of Undervaluation of Instruments Rules) 1968, is followed or not.

13. Rule 5 enumerates that Principles for determination of market value and Sub Clause (a) denotes in the case of lands and the same reads as under:

> (i) classification of the land as dry, manavari, wet and the like;
>
> (ii) classification under various tarams in the settlement register and accounts;
>
> (iii) the rate of revenue assessment for each classification;
>
> (iv) other factors which influence the valuation of the land in question;
>
> (v) points, if any, mentioned by the parties to the instrument or any other person which requires special consideration;
>
> (vi) value of adjacent lands or lands in the vicinity;
>
> (vii) average yield from the land, nearness to road and market, distance from village site, level of land, transport facilities, facilities available for irrigation such as tank, wells and pumpsets;
>
> (viii) the nature of crops raised on the land; and

> [(ix) the use of land, domestic, commercial, industrial or agricultural purposes and also the appreciation in value when an agricultural land is being converted to a residential, commercial or an industrial land.]"

14. As per the above Rules, the authority competent is bound to consider the classification of the land, other factors, which influence the value of the land in question and value of adjacent lands in the Vicinity.

15. The learned counsel for the appellant in this regard made a submission that there is no materials available on record, regarding the consideration of the adjacent lands or the other factors. It is contended that in the absence of any such materials on record and no such materials are communicated to the appellant, the first respondent has committed an error in arriving a conclusion regarding the determination of market value.

16. With reference to the said submission, this Court is of an opinion that Rule contemplates manner in which an assessment is to be made. That does not mean that each and every material available is to be communicated to the person, who registered a sale deed. The onus lies on the person, who registered a document to establish that the market value prevailing in that area. However, the authorities are empowered to dispute the same based on certain other factors, which is to be assessed by following the procedures laid down in the rules. Accordingly, the classification of the land is considered in this case. The subject property is not a cultivating land. It is converted as housing plots by forming a layout. Further, the other factors, which valuation of the land in question was also considered by the Inspector General of Registration. In the present case, the subject property situates 5 Kms from Villupuram Bus stand and the property is surrounded by the residential building, there is a beneficial development in the surrounding locality and the layout is named as Sri Lakshmi Guberan Nagar. The actual market value even for the agricultural lands in that particular locality was Rs.25 lakhs to Rs.30 lakhs. When these factors were ascertained, the first respondent necessarily considered the sale agreement entered into between the parties, which was registered before the same Sub Registrar before whom the sale deed was executed. Thus, it is not exactly the value of the adjacent lands alone. The lands in the Vicinity are also taken into consideration for assessing the market value of the property. Perusal of the findings in the impugned order, the

same reveals that the first respondent has taken all these factors into consideration and further granted concession to the appellant by reducing the market value from Rs.76,50,000/- to Rs.51,00,000/- as the subject property was also converted as housing plots.

17. This Court, with displeasure, record that the first respondent has not initiated any action against the officials concerned with reference to the patent illegalities committed, while determining the market value in the present case. When the actual market value of the agricultural land in the surrounding locality remained as Rs.25 lakhs to Rs.30 lakhs per acre and the agreement for a sale between the parties in the present case was Rs.76,50,000/- per acre, it is not known, on what basis the Special Deputy Collector (Stamps), determined the market value as Rs.12,00,000/-. The fairness adopted is explicitly missing in the present case. Thus, while adjudicating the appeal, 1st respondent ought to have gone into these aspects in order to initiate appropriate disciplinary proceedings against the officials, who committed such irregularities and illegalities.

18. The discretionary powers are to be exercised by the authorities judiciously. The discretionary powers exercised on good faith alone is protected under law. The element of good faith if missing, then such conducts are actionable. An abuse or misuse of discretionary power if identified from the manner, in which, decisions are taken, then stringent actions are warranted against all such authorities, who are responsible and accountable. The patent illegality in the case on hand undoubtedly caused Revenue loss to the State Exchequer. Thus, the 1st respondent, being the Head of the Department, is expected to view such issues seriously for initiating further actions.

19. Undoubtedly, the Government of the day is formulating welfare policies. The policies are implemented for the development of our Nation for the benefit of the citizen. The policy makers/legislatures are implementing the policies in good faith and with the good intention for the welfare and development of our great Nation. However, the serious question arises, whether such policies are implemented in entirety, so as to reach the common man in its real spirit. Court cannot close its eyes regarding the prevailing situations in the society. The realities are to be reflected in the judgments to create awareness, atmosphere and for initiation of corrective measures. Constitutional duty of the Courts are to ensure adjudication of issues and in the present case, the relevancy is to consider the

magnitude of the corrupt activities in the Government Departments. The implementing authorities of the policies of the Government, if indulging in corrupt practices, undoubtedly, the benefits will not reach the common man. In such an event, the purpose and object of such welfare policies implemented by the legislatures are not only defeated, but the executives are failing in their duties to comply with the constitutional mandates of equality in economic status amongst the citizen of our great Nation. Policies of the Government are expected to reach all beneficiaries in a corrupt free manner and without any interruption by middle men or brokers. Unfortunately, many welfare policies are meddled with many middle men, more specifically, with the connivance or assistance of the executives. People are lamenting that their rightful claims are not done without illegal gratifications.

20. It is not sufficient to verify the credentials of the executives. It is insufficient to verify the assets, details of the Government employees and their spouses. Clever and intelligent way of benami transactions by the executives are to be identified by the Government through intelligence. Scientific way of concealing the ill-gotten money are being developed in our great Nation. Thus, straight jacket formula by Vigilance and Anti-Corruption and other Government Departments are insufficient to tackle high magnitude of corrupt practices. Thus, mere verification of assets declared by the Government employees are insufficient and every Department must have "Anti-Corruption Special Cells" for assessing official's activities, movements and efficiency level and periodical inputs must be given to the Head of the Department and Government, so as to make consistent assessments of the Executives for the purpose of improving the efficiency level in the public administration, which is mandatory under the Constitution of India.

21. Promotions to the higher posts are also one of the check point for the Executives. Promotions cannot be granted without proper assessment of credentials, performance, integrity and efficiency of the public servants. Departmental Promotion Committees are to be constituted for the regular assessment of performance, integrity and efficiency of the officials for the purpose of improving the public administration as mandated under the Constitution.

22. The Government of the day is 'by the people' and 'for the people'. Therefore, every aspect must be looked into for the purpose of improving the efficiency level, so as to achieve the Constitutional goal through its Philosophies and Ethos.

23. Thus, implementation of policies by the welfare State alone is insufficient. However, the implementation must reach all the beneficiaries free from corrupt practices in order to constitute a successful Government.

24. Particularly in Registration Department, day-in and day-out, allegations of corrupt practices are being experienced by the public at large. Such illegal and corrupt practices if not minimized considerably, then an inference to be drawn that the executives responsible and accountable do not have any vision or conviction to control such illegalities.

25. Rights and duties are interrelated and corresponding. Performance of duties confers right. Both are inseparable. However, every right is qualified and restricted with reference to the rights of the fellow citizen. The executives, not performing the duties to the satisfaction of the public at large, cannot have moral courage to claim their rights. The Government Employees Service Associations Recognized are playing a pivotal role. These Associations are expected to be the voices for the voiceless citizen, who all are aggrieved due to the large corrupt practices by the members of such Employees Association. They are expected to act for the welfare of the society at large by initiating action against those members, who all are indulging in corrupt practices. It is needless to state that these Service Associations are very well aware of their members and their official activities.

26. Article 51-A of the Constitution of India enumerates the fundamental duties of the citizen. Sub Clause (i) states that "to safeguard public property and to abjure violence". Sub Clause (j) denotes "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement". Every Government employee is obligated to borne in mind the fundamental duties enumerated under the Constitution of India and they are expected to be loyal to the citizen of this great Nation as they are receiving their salary from and out of the taxpayers money.

27. The competent authorities of the Registration Department are exercising their powers under the provisions of the Act, Rules and Government orders. They are empowered with discretionary powers under the Act and Rules. Thus, exercise of such discretionary powers are expected to be checked periodically, so as to ensure and curtail the illegal, irregular and corrupt activities. Periodical assessment of performance of the executives by the Head of the Department is certainly imminent. Promotions are to be granted only based on the seniority and merits. Assessment of merit must be thoroughly

done for the purpose of grant of promotions, then alone, there will be some hope for minimizing the illegal and corrupt practices in the Department. In view of the facts and circumstances, this Court is inclined to pass the following orders:

(1) The Inspector General of Registration / Head of the Department is directed to constitute a Separate "Anti-Corruption Special Cell", consists of officials with integrity for initiating actions against illegalities, irregularities and corrupt practices in co-ordination with the Department of Vigilance and Anti-Corruption. The "Anti-Corruption Special Cell" constituted shall collect informations and materials regarding illegal and corrupt activities in the Department across the State of Tamil Nadu and provide active inputs to the Vigilance and Anti-Corruption Department for the purpose of initiation of actions under Law.

(2) The Inspector General of Registration is directed to provide a separate Telephone / Mobile number to the "Anti-Corruption Special Cell" and the Address and the Telephone Numbers are to be displayed visibly in all the Registration Department offices across the State of Tamil Nadu, enabling the public to provide informations or complaints regarding any illegalities or corrupt practices.

(3) The First respondent / Inspector General of Registration is directed to consider and recommend to the Government for Constitution of Departmental Promotion Committee for the purpose of merit assessment of the officials for grant of promotions to the higher posts.

(4) The First respondent / Inspector General of Registration is directed to verify the details of the assets of the officials working in the Registration Department with the assistance of the Department of Vigilance and Anti-Corruption or with the assistance of any other connected wing of the Department and initiate all appropriate actions, if there is any violation regarding the declaration or disproportionality of the wealth including the benami transactions, if any subject to enquiry.

28. In view of the fact that the appellant could not able to establish any discrepancy or illegality in the matter of initiation of suo motu proceedings initiated under Section 47-A

(6) of the Indian Stamps Act and further, the determination of market value was done by following the procedures as contemplated under the Valuation Rules, this Court do not find any infirmity or perversity and accordingly, the order passed under Section 47-A(6) of Indian Stamp Act in proceedings dated 12.08.2016 stands confirmed and the Civil Miscellaneous Appeal in C.M.A.No.1897 of 2016 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Controlling Revenue Authority,
   Cum The Inspector General of Registration,
   Santhome High Road, Chennai.

2. The Special Deputy Collector (Stamps)
   Cuddalore.

3. The Joint Sub Registrar No.II,
   Villupuram.

+1cc to the Government Pleader, S.R.No.17580

C.M.A.No.1897 of 2016

SS(CO)
CS/21/04/2021