IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NOS.4783, 4784 OF 2012
AND
M.P.NO.1 & 2 OF 2012

Anil Ponmany ... Petitioner in W.P.No.4783 of 2012

Ajay Ponmany ... Petitioner in W.P.No.4784 of 2012

-vs-

1. The District Revenue Officer, (Stamps)
   Office of The Collectorate,
   5th Floor, Singaravelar Maaligai,
   32, Rajaji Salai,
   Chennai - 600 001.

2. The Sub Registrar,
   Avadi.

... Respondents in both Writ Petitions

Prayer in W.P.No.4783 of 2012:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records pertaining to the 1st respondent's provisional order in NaKa.Cee.Pa.239/08/A4 dated 18.08.2009 together with the Final Order in Na.Ka.Cee.Pa.239/08/A4/2010 dated 12.10.2009 and to quash the same with a direction to the 1st respondent to expunge the endorsements made on the original registered document pertaining to the subject matter of the petitioner's land, by affording an opportunity as per the rules.

Prayer in W.P.No.4784 of 2012:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records pertaining to the 1st respondent's provisional order in NaKa.Cee.Pa.240/08/A4 dated 18.08.2009 together with the Final Order in Na.Ka.Cee.Pa.240/08/A4/2010 dated 12.10.2009 and to quash the same with a direction to the 1st respondent to expunge the endorsements made on the original registered document pertaining to the subject matter of the petitioner's land, by affording an opportunity as per the rules.

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| For Petitioners in both WP's | : | Mr.P.Arivudai Nambi |
| For Respondents in both WP's | : | Mr.Richardson Wilson, Government Advocate |

## C O M M O N O R D E R

These writ petitions are filed for the issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the 1st respondent's provisional order in Na.Ka.Cee.Pa.239/08/A4 and NaKa.Cee.Pa.240/08/A4 dated 18.08.2009 together with the Final Order in Na.Ka.Cee.Pa.239/08/A4/2010 and Na.Ka.Cee.Pa.240/08/A4/2010 dated 12.10.2009 (respectively) and to quash the same with a direction to the 1st respondent to expunge the endorsements made on the original registered document pertaining to the subject matter of the petitioner's land, by affording an opportunity as per the rules.

2. The case of the petitioner is that the petitioner purchased an agricultural nanja land comprised in Survey No.140/4 by way of two registered sale deeds dated 20.10.2008 and presented them for registration before the second respondent. On receipt of the same, the second respondent registered the sale deeds vide Document Nos.10877, 10878 of 2008. As per the guideline value, the petitioner valued the property at the rate of Rs.5000/- per cent and accordingly, he has paid Rs.5,10,000/- and Rs.3,65,000/- as sale consideration

and paid the stamp duty at 8% namely Rs.40,800/- and Rs.29,200/- respectively for the sale deeds, with required registration fees and other charges. When the petitioner went to the second respondent for collection of documents, he was directed to pay the deficit stamp duty, applying the guideline value applicable for approved housing sites at Rs.91,482/- per cent. However, the second respondent has not furnished any written communication with valid documentary evidence for the said claim.

3. The learned counsel for the petitioner would submit that when once the second respondent has completed the registration, it is not open to him to refer the matter for adjudication without any material to the effect that the subject matter of the document which had been registered before him was grossly undervalued with an intention to evade stamp duty. The procedure contemplated under 4 and 6 of the Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules, 1968, was violated by the first respondent, and arbitrarily and mechanically, the provisional order was passed determining the market value of the subject property.

4. The first respondent did not even send a notice to the petitioner inviting objection on the date of hearing and the date of spot inspection. Had the first respondent conducted spot enquiry, the petitioner would have physically demonstrated the fact that the subject matter is only an agricultural land. Therefore, the first respondent failed to conduct any enquiry as prescribed under the rules. The first respondent also failed to communicate the provisional order dated 18.08.2009 with notice in Form-II thereby calling upon the petitioner to submit his objections for such provisional determination of the market value within time. Therefore, the petitioner was not given any opportunity to put forth his objections. Therefore, the impugned order passed by the first respondent cannot be sustained as against the petitioner and prayed for set aside the impugned orders.

5. Per contra, the respondents filed counter and submitted that after inspection of the documents, the first respondent determined the guideline value and as such, the second respondent referred both the documents vide Document Nos.10877, 10878 of 2008, under Section 47-A(1) of the Indian

Stamp Act, 1899, to the first respondent for determination of market value of the property. The first respondent determined the market value at Rs.210/- per sq.ft. and passed final order on 12.10.2009. The Form-I notice as required under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, was duly despatched the petitioner.

6. Even then the petitioner failed to raise any objections. Thereafter, the first respondent inspected the field in the presence of Special Tahsildar No.4 and recorded in his field inspection report that the field in question was situated 2.5 kms off Thiruvallur - Avadi Road and in a distance of 500 mts in front of the field. There are some house and the field is having paddy crops and in support of the same, the purchaser has also produced photo and extract of revenue records. Therefore, the first respondent passed the impugned order in violation of the recommend arrears of the Special Tahsildar. He further submitted that as against the said impugned order, there is a provision for statutory appeal under Section 47-A(5) of the Indian Stamp Act, 1899. Therefore, it is not maintainable and prayed for dismissal of these writ petitions.

7. Hears Mr.P.Arivudai Nambi, the learned counsel for the petitioner and Mr.Richardson Wilson, Government Advocate, for the respondents.

8. The petitioner presented the two sale deeds for registration and the same were registered as Document Nos.10877, 10878 of 2008 for the property comprised in Survey No.140/4, ad measuring 73 cents each. The petitioner has valued the property at Rs.5000/- per cent in the total sale consideration of Rs.5,10,000/- and Rs.3,65,000/- in both the sale deeds respectively. Accordingly, he calculated the stamp duty at 8%, at Rs.40,800/- and Rs.29,200/- to be paid as stamp duty for both the sale deeds along with the registration fees. Thereafter, the second respondent referred the matter under Section 47-A of the Indian Stamp Act to determine the value of the property as per the guideline value.

9. In this regard, it is relevant to extract the provisional order under 47-A(2) of the Indian Stamp Act:

> "47-A(2). On receipt of reference under Sub Section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner, as may be prescribed by rules, made under 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."

10. Accordingly, when the instrument of conveyance was not properly valued, the registering authority can refer the same to be computed for determination of market value. On receipt of such reference, the collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry, determine the value of the market value. The procedure on receipt of reference under Section 47-A contemplated in Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules, 1968, Rule 4 reads as follows:

> "4. Procedure on receipt of reference under Section 47-A---
>
> (1) On receipt of a reference under sub-Section (1) of Section 47-A from a registering officer, the Collector shall issue a notice in Form I.
>
> (a) to every person by whom, and
>
> (b) to every person in whose favour the instrument has been executed.
>
> Informing him of the receipt of the reference and asking him to submit to him his representations, if any, in writing to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21 days from the date of service of the notice.
>
> (2) The Collector may, if he thinks fit, record a statement from any person to whom a notice under sub-rule (1) has been issued.
>
> (3) The Collector may, for the purpose

of his enquiry,---

(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 or authority under the Government or the local authority; and

(c) inspect the property after due notice to the parties concerned.

(4) After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order."

11. Accordingly, the Collector on receipt of reference made under Section 47-A of the Indian Stamp Act shall issue notice in Form-I thereby informing him to submit his representation if any and to produce all evidences in support of his representation within a period of 21 days from the date of receipt of notice under Form-I. On receipt of such representation, the Collector shall conduct enquiry, after examining the records and evidences before him and shall pass an order provisionally, determining the market value of the property. Thereafter, as contemplated under Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules, 1968, the Collector shall consider the same by way of Form-II and thereafter call upon the parties for hearing on the date of enquiry. Thereafter, as contemplated under Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules, 1968, the Collector, after considering the representations and after enquiry, shall pass final order determining the market value of the subject property.

12. In the case on the hand, the first respondent failed to follow the procedure laid down under Rule 4 to 7 of the Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules,

1968, and passed the impugned order. It is also evident from Form-I issued by the first respondent dated 18.08.2009 and also the provisional order passed under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules, 1968, on the very same day i.e., 18.08.2009. It shows that the first respondent did not give any opportunity for the petitioner to send his representation at the time of determining the value of the subject property.

13. After passing the provisional order dated 18.08.2009, the first respondent again failed to serve any notice on the petitioner for determining the market value of the subject property to pass final order. Without conducting any enquiry, straight away passed the final order under Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules, 1968. Therefore, after issuance of Form-I and receipt of objections under Rule 6 from the petitioner, the first respondent did not conduct any enquiry for passing provisional order as contemplated under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules, 1968. Even before passing final order as contemplated under Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules, 1968, the petitioner was not given opportunity of hearing and it clearly violates the principles of natural justice.

14. The learned counsel for the petitioner also relied upon the judgment reported in 2002(3) CTC 544 B.Rajappa and another -vs- The Special Deputy Collector (Stamps). The above case is squarely applicable to the case on hand. The impugned order has been passed without giving opportunity to the petitioner and also without conducting any enquiry. Therefore, it is clear violation of the principles of natural justice and as such, the impugned orders in these writ petitions cannot sustained and liable to be set aside.

15. Accordingly, both the impugned orders are set aside. The first respondent is directed to expunge the endorsements made on the documents which were registered as Document Nos.10877, 10878 of 2008 and release the same. However, the first respondent is at liberty to issue fresh notice as contemplated under Rules 4 to 6 of the Tamil Nadu Stamp (Prevention of Undervaluation Instruments) Rules, 1968 and pass order on merits in accordance with law.

16. With the above directions, these writ petitions are allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1. The District Revenue Officer, (Stamps)
   Office of The Collectorate,
   5th Floor, Singaravelar Maaligai,
   32, Rajaji Salai,
   Chennai - 600 001.

2. The Sub Registrar,
   Avadi.

+2ccs to Mr.P.Arivudai Nambi, Advocate, S.R.No.41297

+1cc to the Government Pleader, S.R.No.41057

W.P.Nos.4783, 4784 of 2012
and M.P.No.1 & 2 of 2012

NK(CO)
RLP(14/09/2021)