IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2023

PRONOUNCED ON : 28.04.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.Nos.145 and 146 of 2012
and
M.P.Nos.1 and 1 of 2012

1. S.Mani (Died)
2.Sowndaram
3.Dinesh Kumar
4.Venkateswaran
5.Meenathal ... Appellants in both appeals

[Appellants 2 to 5 brought on record as LRs of the deceased Sole Petitioner S.Mani vide Court Order dated 24.03.2022 made in M.P.Nos.15548, 15550and 15551 of 2021 in C.M.A.No.145 of 2012 and M.P.Nos.15798, 15797 and 15802 of 2021 in C.M.A.No.146 of 2012]

vs.

1.The Chief Controlling Revenue Officer
-Cum-Inspector General of Registration,
100, Santhome High Road,
Pattinapakam,
Chennai-600 028.

2.The District Revenue Officer (Stamps),
DRO Office,
Coimbatore. ... Respondents in both appeals

PRAYER: Civil Miscellaneous Appeal is filed under Section 47(A)(10) of the Stamp Act, against the Order passed by the first respondent dated 09.11.2011 made in Pa.Mu.Nos.62449/N2/2008 and 48478/N2/2008.

For Appellants : Mr.K.S.Karthik Raja

For Respondents : Mr.C.Jayaprakash
Govt.Advocate (C.S.)

JUDGMENT

An order passed by the Inspector General of Registration on 09.11.2011 in Pa.Mu.Nos.62449/N2/2008 and 48478/N2/2008 respectively have been challenged by the appellants herein by way of filing these appeals.

The facts of the case in brief are as follows:

2. The appellant herein has purchased an extent of one acre of land comprised in S.Nos.234/5 and 234/6 in T.S.No.249 situate at PKR Colony. The said property was purchased by the appellant herein through sale deed Doc.No.3086/2002. Appellant contends that the said property is an agricultural land.

3. The learned counsel for the appellants would argue that the valuation report was made behind his back. No notice was sent to the appellant about inspection. Inspection Report is a mere eye-wash, created even without visiting the land. The Inspector General of Registration has

failed to see that the land is an agricultural land, water get stored all over the land, rain as it is situated in a low level and the people in the adjacent area using the lands for excretion. The land is situated to the north of odai and has no direct access. The findings of the 1st respondent that the land is situated near the road to Tharapuram and the residential areas surrounding the land are completely baseless. As per revenue Records, the land is an agricultural land.

4. The learned counsel would further contend that the guidelines as per Rules 4 and 5 of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules are to be followed. He would further contend that the direction to pay interest at 2% p.m., is unjustified.

5. The learned counsel for the appellants to buttress the above said arguments, he referred to the following decisions:

(I) Hindustan Motor Finance Corporation Limited, Adigathur Kadambathur P.O., represented by its General Manager N.Kannabiran v. The District Registrar, Kancheepuram District & Others reported in 2018 (1) Mad LJ 84.

(ii) M.Chinnasamy v. The Revenue Control Officer-cum-Inspector General of Registration & Others reported in 2015 (2) MWN Civil 200.

6. Whereas the learned Government Advocate (C.S.) would vehemently put-forth that the 1st respondent caused the property to be investigated by the District Registrar, Tirupattur and in turn the District Registrar after following due procedure sent a Report of the facts and circumstances effecting the market value of the property which is not a violation of any law. He would further contend that the properties are not agricultural lands but the disadvantages of the property is that it is situate in low lying area and a small channel is running in one side of the property. He would further contend that the Tiruppur to Tharapuram main road lies 100 ft away on the west side of the property and there is access to the main road from PKR colony road which is abutting the property. He would also further state that no document was filed to show that the property is an agricultural land.

7. In order to strengthen the above said arguments, the learned Government Advocate drew the attention of this Court to the below said judgments:

(I) Inspector General of Registration, Tamil Nadu and Others reported in (2020) 14 SCC 345.

(ii) Ravi @ KN.Annamalai v. The Chief Controlling Revenue Authority-cum-The Inspector General of Registration, Chennai & Others in

C.M.A.No.1897 of 2016 dated 16.03.2021.

8. Heard the learned counsel for the appellants and the learned Government Advocate (C.S.) and perused the materials available on record.

9. The order was passed under Section 47(A)(6) of Indian Stamp Act, through a proceedings dated 09.11.2011. New provision under Section 47(A) was inserted in order to empower the revenue Authority while determining the market value of the property. If the parties clandestinely undervalued the property in order to deprive the Government from getting revenue by way of stamp duty. To attract Section 47(A), it has to be shown that consideration stated in the document is less than the prevailing market value. To put it in other way in the case of undervaluation, Section 47(A) comes into play. The Authority is expected to follow the aforesaid provision while determining the market value. Therefore, whether the Authority has to determine the market value of the property in line with Section 47(A) and also Rules 5 and 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules. For proper appreciation, the said Rules are extracted hereunder:

"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,-*

(a) In the case of lands-

(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.

(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;

(iv) amenities available in the place like public offices, 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.

(c) In the case of buildings-

(i) type and structure;

(ii) locality in which constructed;

(iii) plinth area;

(iv) year of construction;

(v) kind of materials used;

(vi) rate of depreciation;

(vii) fluctuation in rates;

(viii) any other features that have bearing on the value;

(ix) property tax with reference to taxation records of local authority concerned;

(x) the purpose for which the building is being used and the income

if any, by way of rent per annum secured on the building; and

(xi) any special feature of the case represented by the parties.

(d) Properties other than lands, house sites and buildings-

(i) the nature and condition of the property;

(ii) purpose for which the property is being put to use; and

(iii) any other special features having a bearing on the valuation of the property.

6. Procedure After Arriving At Provisional Market Value :- The Collector shall communicate a copy of his order provisionally determining the market value of the properties and the duty payable, to all the persons, who are liable to pay the duty along with the notice in Form-II and call upon the parties to lodge their objections, if any, to such determination of the market value within the time specified in the Notice. The Collector shall also hear the parties on the date specified in the Notice or on such other day as may be fixed by him."

10. Apart from the above said Rules, as per Rule-11A of the Rules, where under the Appellate Authority is supposed to issue notice before inspection of the property. As per Rule 11-A, the Appellate Authority should have issued notice to the purchaser which would enable him to substantiate his case.

11. A careful perusal of the order would indicate the fact that the purchaser was issued notice and on receipt of the notice, the purchaser had appeared in person and explained about the sale, as to the nature of land. He has stated that it is an agricultural land. Therefore, it is made clear that Rules – 11 A was duly complied with by the Authorities before passing the impugned order. The next question is whether the Authority has followed the principles laid down in Rules 5 and 6 before determining the market value.

12. Further, it could be seen from the impugned order that the purchaser had purchased the property for an amount of Rs.5,00,000/- per acre, but in the guideline Register, during inspection of the said property, the value is found at Rs.332/- per sq.ft. Based on the same, as the document value was found to be less than the guideline value, the Sub-Registrar has taken action under Section 47(A)(1) of the Stamps Act and sent the same to the District Revenue Officer(Stamps), Coimbatore. The said Officer, in turn after hearing the purchaser and after conducting inspection of the land, fixed the value of a land at Rs.78,00,000/-. Thereafter, the appeals were rejected as barred by limitation. Thereafter, as per the order of this Court, the above said petitions were taken up for enquiry.

13. The crucial point is that as mentioned supra, whether the Authority has followed the principles laid down in Rules 5 and 6 in letter and spirit or not ?

14. In this regard, a holistic reading of the order in page No.3, it reveals the fact that the property was inspected by the District Registrar of Tiruppur and to that effect, the observations are made in paragraph No.7 in his order. The next para describes about the nature of the property and what is the extent of property. In four paras, the said details have been explained in detail. Though it was stated as an agricultural land by the purchaser, no revenue document was filed before the Authority in order to prove his contention. It is also pertinent to note that for the same survey number, the details of sale deed was also taken into consideration namely Doc.No.2976/2002, wherein, the value was fixed at Rs.266/- per sq.ft on 21.07.2003. In addition to the said sale deed yet another date a sale deed details were taken into consideration by the Authority while determining the market value. Based on the market value, nature of land, place where the property situate and the facilities available in the property and taking into advantages and disadvantages, the Authority has fixed the value of the property at Rs.200/- per sq.ft.

15. The impugned order relates to S.Nos.234/5 and 234/6 and in the second data sale deed, the next survey number namely S.No.235 is dealt with. As per Doc.No.1489/2001, in the year 2001, value was determined at Rs.240 per sq.ft., by the District Revenue Officer(Stamps) on 23.08.2002.

16. The learned counsel for the appellants heavily stressed upon the point that the nature of land is an agricultural land. On the other hand, it transpires from the impugned order that the purchaser when he was called upon for enquiry, he did not produce the Revenue Records to show that the land is an agricultural land. Therefore, it should not lie in the mouth of the appellants that the land is an agricultural land.

17. However, while determining the market value, it should not be last sight of to properly appreciate the disadvantages in the land also. The learned counsel for the appellant repeatedly put-forth that though the land is situate near Tharapuram road, it is a low-lying area and Odai is crossing in the said land. It is also settled decision while determining the market value of the land, the nature prevailing at the time of sale alone has been taken into consideration and not how the land is going to be utilised in future is to be taken into consideration. Therefore, considering the submissions of the learned counsel for the appellants, coupled with the

orders of the Authorities as mentioned supra and keeping in mind the principles enunciated in Rules 5 and 6 of the said Act, this Court is of the considered opinion that it is reasonable to fix the value of the land at Rs.175/- per sq.ft.

18. In the result, both the Civil Miscellaneous Appeals are allowed and the Order passed by the first respondent dated 09.11.2011 made in Pa.Mu.Nos.62449/N2/2008 and 48478/N2/2008 are set aside. The appellants are directed to pay the Stamp Duty within a period of three months from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petitions are closed.

28.04.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1.The Chief Controlling Revenue Officer
-Cum-Inspector General of Registration,
100, Santhome High Road,
Pattinapakam,
Chennai-600 028.

2.The District Revenue Officer (Stamps),
DRO Office,
Coimbatore.

R.KALAIMATHI, J.,

ssn

Pre-delivery Judgment in

C.M.A.Nos.145 and 146 of 2012
and
M.P.Nos.1 and 1 of 2012

28.04.2023