IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No. 598 of 2018
and
C.M.P.Nos.5235 and 5236 of 2018

C.Venkatesan ... Appellant

Vs.

1.The Chief Revenue Control Officer/
Inspector General of Registration,
No.100, Santhome High Road,
Santhome, Chennai – 600 028.

2.The Assistant Inspector General of Registration,
Vellore District,
Vellore.

3.The Special Sub-Collector (Stamps),
Vellore District,
Vellore.

4.The District Registrar (Admin),
Arakonam,
Vellore District.

5.The Sub-Registrar,
Arcot, Vellore District. ... Respondents

Civil Miscellaneous Appeal filed under Section 47 A (10) of the Indian Stamp Act, 1899 to set aside the order passed by the 1st respondent in his proceedings in Na.Ka.No.49720/N3/2015 dated 18.04.2017.

For Appellant : Mr.R.Jayaprakash

For Respondents : Mr.P.Harish
Government Advocate (CS)

<u>J U D G M E N T</u>

The Civil Miscellaneous Appeal is filed against the impugned order passed by the first respondent – the Chief Revenue Control Officer/ Inspector General of Registration, Chennai, vide proceedings in Na.Ka.No.49720/N3/2015, dated 18.04.2017.

2. The learned counsel for the appellant submitted that the guideline value in respect of the subject property at the relevant point of time, was Rs.100/- per sq.ft., but the first respondent has fixed the guideline value as Rs.1,000/- per sq.ft. He further submitted that without following

due procedures contemplated under the Indian Stamp Act, 1899 [herein after referred to as 'the Stamp Act' for sake of convenience] and the relevant Rules, especially Form-II notice was not served on the appellant, the first respondent passed the impugned order. Though the first respondent appointed the District Registrar to inspect the subject property and its surroundings and he has also submitted a report, but a copy of the said report was not served on the appellant and no explanation was received from the authority concerned. He further submitted that, without giving any opportunity to defend the case of the appellant, the first respondent passed the impugned order. Further, the impugned order is a non-speaking order.

3. In support of his contentions, the learned counsel for the appellant placed reliance on a judgment of this Court in the case of ***K.Vijayalakshmi vs. The Chief Controlling Revenue Authority of Tamil Nadu cum Inspector General of Registration and others,*** reported in [***2012-3-L.W.27]*** and the relevant portions of the same are extracted hereunder :

" 5. No doubt, form I notice was duly served on the appellant for which the appellant also has given her reply. The second respondent has not accepted the reply of the appellant and passed the final order on 21.05.2002. In the interregnum period, after issuance of form I notice on 24.03.2001, form II notice said to have been issued to the appellant on 02.11.2001. In this connection, a specific stand was taken by the appellant that form II notice was never received by her. In this context, the learned counsel for the appellant also relied on the decision of this Court reported in (Tata Coffee Limited vs. State of Tamil Nadu, rep. By the Secretary to Government, Commercial Taxes & Registration, Government of Tamil Nadu, Fort St. George, Chennai 9 and others) 2008 (3) CTC 614=2008-3-L.W.286 wherein this Court, following the decisions rendered by the Honourable Supreme Court, laid down parameters for service of form II notice. In that judgment, it was held that after first enquiry is conducted and provisional market value is ascertained, a provisional order has to be passed by the District Collector and the same has to be communicated to the applicant, who is liable to pay the stamp duty. In the said form II, which has to be issued as per Rule 6, the District Collector has to direct the applicant, who is liable to pay the stamp duty, to lodge his objection or representation against the provisional order regarding the market value and it is open to the District Collector to give sufficient time, as he desires, if any time limit is prescribed. Therefore, from the decision of this Court

referred to supra, it is clear that before passing the final order, a provisional order has to be passed by the second respondent and it has to be communicated to the appellant enabling her to submit her reply and thereafter only final order has to be passed. In this case, it is the specific stand of the appellant that she has not received the form II notice at all. There is nothing on record to show that the second respondent has passed any provisional order. Rule 15 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 provides the manner of service of notice and orders to the parties. Rule 15 can usefully be extracted hereunde:-

> *"15. Manner of Service of notice and orders to the parties:- Any notice under Rule 4 or order under Rule 4 or 7 shall be served in the following manner, namely-*
>
> *(a) in the case of any company, society or association of individuals, whether incorporated or not, be served-*
>
> *(i) on the secretary or any director or other principal officer of the Company, Society or association of individuals, as the case may be; or*
>
> *(ii) by leaving it or sending it by registered post acknowledgement due addressed to the Company, Society or association of individuals as the case may be at the registered office, or if there is no registered office, then at the place where the company, society or association of individuals as the case may be carries on business.*
>
> *(b) in the case of any firm, be served-*
>
> *(i) upon any one or more of the partners; or*

(ii) at the principal place at which the partnership business is carried on, upon any person having control or management of the partnership business at the time of service.

(c) in the case of a family, be served upon the person in management of such family or of the property of such family, in the manner specified in clause (d)

(d) in the case of an individual person, be served.---

(i) by delivering or tendering the notice or order to some adult member of the family; or

(ii) by delivering or tendering the notice or order to some adult member of the family; or

(iii) by sending the notice or order to the person concerned by registered post acknowledgement due; or

(iv) if none of the aforesaid modes of service is practicable, by affixing the notice or order in some conspicuous part of the last known place of residence or business of the person concerned."

6. Rule 15 clearly prescribes the manner or mode of service of the notice to the parties. In this case, the original files were directed to be produced before this Court and it was also produced by the learned Additional Government Pleader for the respondents. The copies of the Form II notice was available in the original file, but it there is nothing to show that it was served on the appellant either by registered post acknowledgment due or it was acknowledged by the appellant. There is no endorsement to show that it was served on the appellant or any other family member of the appellant or it was served by affixutre. It was simply stated that the form II notice *was ordinarily posted to the address of the appellant. There was only an endorsement showing "சார்வு செய்யப்பட்டது." This is not the mode of service contemplated under Rule 15. Therefore, it can safely be construed that form II notice was not served on the appellant and the contentions urged by the counsel for the appellant in this regard is well founded.*

7. The next important factor for consideration in this case is even assuming without admitting that form II notice was sent on 02.11.2001 and received by the appellant, as per Rule 7, final order has to be passed by the second respondent within 3 months from the date of first notice determining the market value of the property. Rule 7 reads as follows:-

> *7. Final order determining the market value.- (1) The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case after a careful consideration of all the relevant factors and evidence available with him, pass an order within three months from the date of first notice determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty, if any."*

4. The learned Government Advocate appearing for the respondents submitted that the guideline value is not the sole criteria for registering a document, and it is only Section 47(A) of the Stamp Act, which

plays role in the registration. The Registering Authority can fix the value of the property, after inspecting the surroundings and the infrastructure of the buildings available therein. At the relevant point of time, the registration value fixed for the adjacent lands is Rs.1,000/-, and only based on that document, the Registrar of Stamps fixed the value and directed the appellant to pay the registration fees in respect of the subject property. There is no merit in the appeal and the same is liable to be dismissed.

5. Heard the learned counsel for the appellant and the learned Government Advocate appearing for the respondents and perused the materials available on record.

6. Admittedly, the appellant has purchased the property in S.No.398/3D in Vallalar Nagar and subsequently, it was named as K.K.Nagar. The said property in S.No.398/3D, Plot No.47 in K.K.Nagar was registered for a sum of Rs.1,98,800/-. As per the guideline value, Rs.1,980/- was fixed per sq.ft. The contention of the learned counsel for the appellant is that Form-II notice was not served on the appellant and at the

relevant point of time, the guideline value of the said property is Rs.100/-. In this case, there are no materials to substantiate that Form-II notice was sent to the appellant. The Appellate Authority appointed the District Registrar for inspection of the subject property and he has also submitted a report, but a copy of the report was not served on the appellant. The first respondent has not assigned acceptable reasons for reference of the matter for adjudication.

7. The fact remains that the Stamp Act does not say that the stamp duty is applicable only for the guideline value alone. No doubt, it depends upon the potentiality or the value of the infrastructure available in the place. If the concerned authority finds that the property is under-valued, they can always call for an explanation from the persons who have under-valued the property. Only after giving an opportunity to the parties, they can pass order. Whereas, in this case the first respondent has not followed the procedures contemplated under the Stamp Act and passed the impugned order, which is liable to be set aside. Accordingly, it is set aside and the matter is remitted back to the first respondent-Chief Revenue Control

Officer/Inspector General of Registration, Chennai. The first respondent, after affording an opportunity to the appellant, shall pass appropriate orders afresh on merits and in accordance with law and also in accordance with the ratio laid down in the said decision reported in ***2012-3-L.W.27.***

8. With the above direction, this Civil Miscellaneous Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1.The Chief Revenue Control Officer/
Inspector General of Registration,
No.100, Santhome High Road,
Santhome, Chennai – 600 028.

2.The Assistant Inspector General of Registration,
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Arakonam,
Vellore District.

5.The Sub-Registrar,
Arcot,
Vellore District.

6.The Section Officer,
V.R.Section,
High Court, Madras.

P.VELMURUGAN, J.

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C.M.A.No.598 of 2018

14.09.2023