IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A. No.2659 of 2023 and
C.M.P. Nos.24659 and 24660 of 2023

K.Natarajan ... Appellant

Vs.

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

2.The District Revenue Officer (Stamp)
Collector Office Campus
Coimbatore District, Coimbatore

3.The Special Tahsildar (Stamp)
Tahsildar Office, Dharapuram
Tiruppur District

4.The Sub Registrar
Vellakovil Sub Registrar Office
Vellakovil
Tiruppur District ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 47A(10) of the Indian Stamp Act, 1899, to set aside the order passed by the 1st respondent in his proceedings in Na. Ka. No.40556/N2/2022 dated 08.09.2023.

For Appellant : Mr.R.Jayaprakash

For Respondents : Mr.R.Gokul Krishnan,
Special Govt. Pleader for R1 to R4

JUDGMENT

This appeal is preferred challenging the order of the Inspector General of Registration dated 08.09.2023 wherein he had confirmed the proceedings of the Special Tahsildar (Stamps) dated 25.08.2022 by which the second mentioned authority had made a demand for Rs.23,31,015/-, which comprised the deficit stamp duty of Rs.23,07,176/- and the interest thereon. The brief facts are as below:

- On 19.09.2020, the appellant herein had purchased a block of land measuring about 3.66 acres in S. No.251/4 of Velampalayam village, Kangayam Taluk, Tirupur District along with a building, which is valued at Rs.98,50,000/-. The document was registered as

Document No.4667/2020 on the file of the Sub Registrar, Vellakoil Sub Registrar Office. For the purpose of stamp duty, the appellant valued the land at Rs.54,11,115/- and the building at Rs.44,38,885/-.

- This document was taken up for scrutiny under Section 47A of the Stamp Act. On 13.08.2021, the appellant was served with 'Form 1' notice informing him that there is a deficit stamp duty of Rs.23,07,176/-. The appellant had sent his reply dated 16.09.2021 indicating therein that he is willing to produce such material as may be necessary to defend his valuation. This has to be now followed by a notice under Form 2, but in the instant case, the appellant had only received the final order of the Special Tahsildar (Stamps) dated 25.08.2022. According to the appellant, 'Form 2' notice was enclosed only with this final proceedings.
- The appellant had submitted his detailed response to the same, but it has zero value, since this reply ought to have been given for 'Form 2' notice and not for the final decision of the Special Tahsildar (Stamps). Neither 'Form 2' notice which is enclosed to the final proceedings dated 25.08.2022 nor the said proceedings

itself does not make any statement justifying the levy of Rs.23,07,176/- as defaulted sum of stamp duty.

- Aggrieved by the same, the appellant herein had preferred an appeal before the first respondent, namely the Chief Revenue Control Officer/Inspector General of Registration. The appeal was disposed of by the first respondent vide his proceedings dated 08.09.2023. It is in this proceedings, the appellant was informed that the authorities had no issues with the valuation of the land, but only with regard to the valuation of the building they had issues. According to them, the Assistant Executive Engineer, PWD, Madurai had inspected the building and had valued the building at Rs.3,74,05,662/-. This proceedings is now under challenge.

2. The learned counsel for the appellant made the following submissions:

(a) There is breach of procedure at the first instance by the Special Tahsildar (Stamps) where he did not follow his Form 1 notice dated 13.08.2021 with Form 2 notice and that the same is enclosed in the impugned proceedings of the first respondent, which ought to have been disclosed in Form 2 notice. If only it was served duly with all material particulars, then the appellant would have had an opportunity of defending the same. This was defeated by (i) non service of Form 2 notice and (ii) even what was served subsequently did not disclose the material particulars necessary for defending the claim.

(b) the final order of the Special Tahsildar (Stamps) is devoid of any disclosure of any facts justifying the demand for the alleged deficit stamp duty of Rs.23,07,176/-;

(c) The impugned proceedings discloses certain report of the Assistant Executive Engineer regarding the valuation of the property. But neither his visit was notified to the appellant nor a copy of his report was ever served on him. There is total breach of doctrine of *audi alteram partem.*

(d) Today, the appellant has demolished the entire building, as it was too old and too dangerous for human inhabitation. If only the appellant were duly informed about an intended enquiry by proper service of Form 2 notice accompanied by the engineer's report, the appellant would have at least preserved the building but with a determined silence, the Special Tahsildar (Stamps) has given an impression to the appellant that the entire episode demanding deficit stamp duty is closed.

3. The learned Additional Government Pleader, produced the entire file for the perusal of this court.

4. This court finds that the official file does not contain either Form 1 or Form 2 notice much less the date on which Form 2 notice was served on the appellant. With no material in the official file to indicate that Form 2 notice was served not simultaneously with the final order but well before the passing of the final order by the Special Tahsildar (Stamps), it has to be held that the appellant was not duly served with Form 2 Notice. This is the first leg of breach of principles of natural justice, which the statute is anxious to extend to the one who is facing liability under an Act.

5. The second point in favour of the appellant is about the alleged inspection report of the Assistant Executive Engineer valuing the property. Admittedly, it is the building and no authority is entitled to barge into any property without a notice to its owner, unless there is an

apprehension or suspicion about the commission of a cognizable offence. The official records does not disclose that the engineer had ever issued any notice of his visit to the appellant before he inspected the building in question.

6. The next point in favour of the appellant is that, even this report of the Assistant Executive Engineer dated 19.04.2021 addressed to the Sub Registrar, Vellakoil, was not served on the appellant.

7. With breach of statutory provision at every level with gross violation of the principles of natural justice, which is demonstrably evident, this court has no little hesitation, but to set aside the impugned order of the first respondent dated 08.09.2023. In normal circumstances, this court would have remanded the matter back to the Special Tahsildar (Stamps) for a *de novo* enquiry, but even this option is not available with the court, since the building has already been demolished. If the statement of the engineer is true and justifiable, then it is the laxity of the authorities, they had denied the State of its just revenue. The appellant can never be blamed and the fault is entirely on the authorities not communicating to the

appellant the materials it intended to use against him.

8. In conclusion, the civil miscellaneous appeal is allowed. The impugned proceedings of the 1st respondent in Na. Ka. No.40556/N2/2022 dated 08.09.2023, is set aside. The fourth respondent, namely the Sub Registrar, Vellakovil Sub Registrar Office, is required to release the document registered as Document No.4667 of 2020 dated 19.09.2020 forthwith to the appellant. No costs. Consequently, the connected civil miscellaneous petitions are closed.

28.11.2023

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

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5.The Government Pleader
High Court, Madras

N.SESHASAYEE, J.

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