BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2023

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THE HONOURABLE **MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.11143 of 2019
and
W.M.P(MD)Nos.8506, 8507 & 11080 of 2019

M.P.Senthil ... Petitioner

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.

2.The Special Deputy Collector (Stamps),
Tirunelveli,
Tirunelveli District.

3.The Special Deputy Collector (Stamps),
Nagercoil,
Kanyakumari District.

4.The Sub Registrar,
Rajakkamangalam,
Agasteewaram Taluk,
Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned preliminary order passed by the second respondent in Na.Ka.X4/1727/13, dated 20.01.2014 and the impugned final order passed by the second respondent in Na.Ka.X4/1727/13, dated 10.02.2014 and quash the same.

For Petitioner	:	Mr.M.Saravanan for Mr.R.Subramanian
For Respondents	:	Mr.S.Shanmugavel Additional Government Pleader

ORDER

Heard the learned Counsel on either side.

2. The writ petitioner purchased the petition mentioned property vide sale deed dated 06.05.2013. The fourth respondent retained the sale deed as a pending document and made reference under Section 47-A of the Indian Stamp Act. The second respondent had passed order dated 20.01.2014 fixing the deficit stamp duty payable by the petitioner at Rs.97,536/-. According to the petitioner, the impugned order came to be served on the petitioner only on 03.09.2018. Challenging the same, the present writ petition came to be filed.

3. The learned Counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this petition. An additional typed set of papers has also been filed. The learned Counsel took me through the materials enclosed therein and contended that the impugned order deserves to be set aside

and the writ petition may be allowed.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through his contents. The learned Additional Government Pleader submitted that the allegation of the petitioner that the impugned order was passed without conducting field inspection is not correct. He would also argue that all the procedural requirements set out in the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rule, 1968 were scrupulously followed. He would add that the impugned order is appealable before the IG of Registration and that this writ petition has been straight away filed without exhausting the alternative remedy. According to him, no sufficient cause has been made out for dispensing with or by-passing the statutory remedy. He pressed for dismissal of the writ petition.

5. I have carefully considered the rival contentions and went through the materials available on record.

6. Section 47-A of the Indian Stamp Act empowers the Registering Authority to refer a document under the said provision if he is of the opinion that the market value of the property which is subject matter of the conveyance has not been truly setforth in the instrument. However, the Special Deputy Collector (Stamps) will have to follow the procedure set out in the Tamil Nadu

Stamp (Prevention of Undervaluation of Instruments) Rule, 1968. Rule 5 sets out the principles for determination of market value. The market value of the land in question will depend on the classification of the land. If it is a housing plot, then the value will be different. If the land is agricultural, then of course it will not fetch the same level of value. The land in question is agricultural in character. It is basically a coconut grove. It is also enjoying free agricultural electricity service connection. In paragraph No.2 of the affidavit, the petitioner had categorically averred that his vendor purchased the property in question as agricultural land and that he is also enjoying the property only as an agricultural land and that he is plucking coconuts and cultivating inter crops for his personal use. Photographs have also been enclosed in the typed set of papers and it is seen therefrom that the land is only a coconut grove. This assertion made in the affidavit has not been directly rebutted by the respondents in their counter affidavit. I therefore, apply the rule of non-traverse and hold that the petitioner's assertion regarding the character of the land is agricultural has been established. The reference under Section 47-A has been made primarily on the footing that the adjacent lands have been converted as housing plots. That is why the market value has been assessed on square foot basis. An agricultural land obviously cannot be assessed likewise. Thus the basic premise on which the reference was made and the order under Section 47-A of the Indian Stamp

Act came to be issued is faulty. I therefore hold that the petitioner was justified in bypassing the statutory remedy of appeal set out in the Indian Stamp Act. In this view of the matter, the order impugned in the writ petition is set aside and the writ petition stands allowed. The respondents are directed to return the document forthwith without any delay subject to fulfillment of other usual formalities. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

02.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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3.The Special Deputy Collector (Stamps),
Nagercoil,
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G.R.SWAMINATHAN, J.

Btr

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