BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A(MD)No.1142 of 2022
and
C.M.P(MD)No.11693 of 2022

M.Kabeer Mohammed :Appellant/Second respondent

.vs.

1.The Chief Controlling Revenue Authority and
The Inspector General of Registration,
Chennai.

2.The Special Duty Collector(Stamps),
Tirunelveli.

3.The Inspector General of Registration,
Chennai-600028.

4.The District Registrar,
Kanyakumari District.

5.The Sub-Registrar-I,
Nagercoil,
Kanyakumari District. :Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47-A(10) of the Indian Stamps Act against the order passed by the first respondent in No.33158/E1/2014, dated 27.08.2022.

For Appellant :M/s.J.Anandhavalli

For Respondents :Mr.D.Sasikumar,
Addl.Govt.Pleader

JUDGMENT
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This Civil Miscellaneous Appeal has been filed challenging the order passed by the Chief Controlling Revenue Authority and the Inspector General of Registration, Chennai-28/the first respondent herein, in a suo-motu proceedings enhancing the stamp duty of the guideline value.

2.The brief facts leading to the filing of the Civil Miscellaneous appeal is as follows:

The appellant has purchased the property in R.S.No.P5/54-1, Old S.No.2478, measuring an extent of 31 ½ cents(1275.12 sq.mtr), out of a total extent of 1 acre and 62 cents for a total sale consideration of Rs.15,75,000/-. When the document was presented for registration, the Sub-Registrar has referred the matter to the second respondent under Section 47-A of the Indian Stamp Act. Pursuant to the proceedings under Section 47-A of the Indian Stamp Act, the second respondent by order, dated 13.6.2012, fixed the market value of the property at Rs.8,075/- per sq.mtr. Pursuant to the said order, the appellant had paid the differential stamp duty and the document has been handed over to the appellant. In the meanwhile, the first respondent issued a notice in the month of March 2022, calling upon the appellant to appear before him. The appellant has also sent a reply, dated 7.4.2022. Thereafter, by order, dated 19.7.2022, the first respondent has fixed the value of the land at Rs.10,765/- per sq.mtr. Challenging the same, the present Civil Miscellaneous Appeal is filed on the ground that the suo-motu enquiry has been initiated only in the year 2019, after a period of six years, after the passing of the order by the Original Authority(Stamp Collector) and further, no notice whatsoever was issued by the first respondent in the suo-motu proceedings, except one notice, dated 30.3.2022. Therefore her contention is that the order passed by the authority is not valid in the eye of law, enhancing the stamp duty. The learned counsel for the appellant would submit that no notice whatsoever was issued in the suo-motu proceedings. Further the Original Authority after making proper inspection, assessed the value of the property and fixed the stamp duty. Now the order indicates that as if the Inspection was conducted by the District Registrar at a later point of time. The first respondent, without following any procedure, has simply adopted the guideline value. Further, no opportunity whatsoever was given in the suo-motu proceedings and there is no proof to show that notice has been served on the appellant. Hence the entire order is liable to be set aside.

3.On the contrary, the learned Additional Government Pleader appearing for the respondents would submit that the appellant appeared before the first respondent which makes it clear that notice has been issued in the suo-motu proceedings instituted in the year 2015 itself. Therefore, he would submit that the order passed by the first respondent does not require any interference by this Court.

4.In the light of the above submissions, now the point that arose for consideration in this Civil Miscellaneous Appeal is as follows:

1.Whether the suo-motu enquiry has been initiated beyond the period of six years?

2.If so, whether proper opportunity has been given to the appellant?

3.Whether the procedure adopted by the first respondent in fixing the value of the property in question, is correct?

5.As far as the first aspect is concerned, the contention raised is that a suo-motu enquiry has been initiated beyond the period of six years, which is barred by limitation. It is relevant to note that this Court had summoned the entire records from the respondents and on a perusal of the records, which is intra-departmental in nature, makes it clear that the suo-motu enquiry has been initiated in the year 2015 itself. Based on that suo-motu enquiry, spot inspection has been conducted by the District Registrar. These facts clearly show that suo-motu enquiry has been initiated within the time. Though there is no document to show that the value was fixed, after the appellant has been served with notice and ordered an opportunity to appear before the first respondent to submit his objections. The fact remains that on one occasion, the appellant has also appeared before the first respondent and file his objections. Therefore the contention that no opportunity was given in the suo-motu enquiry, cannot be countenanced.

6.Now it has to be seen whether the first respondent followed the proper procedure in fixing the value of the property.

7.It is seen from the records that the Original Authority fixed the value of the land in question at Rs.8,025/- per sq mtr. As the property was purchased and value below the guideline value, the matter has been referred to the Stamp Collector under Section 47-A of the Indian Stamp Act. The Stamp Collector, on perusal of the document and by making proper inspection in the year 2012, found that though the land purchased situate in the town, the land is not developed at the relevant point of time and the said land is surrounded by Drainage,Sewage water, besides a public toilet is very much situate near to the land in question. Taking overall consideration of the ground reality, the Stamp Collector has come to the conclusion that though the guideline value was fixed at Rs. 10,765/- per sq mtr, fixed the value of the property at Rs.8,075/- per sq.mtr which has been sought to be reviewed in the suo-motu enquiry. In the suo-motu enquiry, a report said to have been sought from the District Registrar. The District Registrar has given his report as if the surrounding area in the locality developed and some commercial establishments have come up in the year 2015. Based on his report, the first respondent has passed the order. It is relevant to note that the guideline value is normally fixed for the purpose of collecting the revenue and whether such guideline value fixed on proper assessment taking note of the value of the property and nearby place value, there is no evidence whatsoever available. The guideline value is fixed only for collecting the revenue and it will not reflect the correct value of the property. The market value depend upon the nature of the area and where the property situates, whether it is surrounded by other buildings, whether there was any proper development etc. Therefore, merely on the basis of the guideline value of the property, we cannot come to the conclusion that it is the definite market value of the property. Market value has to be assessed taking note of various factors on ground reality. In some of the area, the guideline value may be more than the market value. Even the market value is less than the guideline value. So the market value has to be determined considering the transaction took place in the nearby lands or nature of development took place in that locality. Admittedly, the Original Authority passed an order after making spot inspection and found that though the said land was in the centre of the town, there was no development and surrounded by drainage, sewage and that apart, there was no commercial buildings at the relevant point of time ie., in the year 2012. Therefore, it is relevant to note that the market value has to be assessed as on the date of presentation of the document for registration. Merely on the basis of some reports, which was after three years, the market value cannot be assessed. In the meanwhile, some building come up and that cannot be the criteria to determine the market value of the property. It is relevant to note that while fixing the market value of the property, particularly, in respect of vacant sites, Prevention of Undervaluation of Instruments Rules contemplates some methodology in determining the market value , the other factors which influence the valuation of the land in question has to be taken into consideration. As far as the house sites are concerned, the general value of the house sites in the locality, nearness to roads, railway station, bus route; nearness to market shops and the like; amenities available in the place like public Offices, hospitals and educational institutions has to be taken into consideration while fixing the value. Further the nature and location of the property to be taken note of and any other special feature having a bearing on the valuation of the property has to be taken note of. Therefore, the Original Authority, during his inspection found that the land was undeveloped one and the locality was undeveloped one at the relevant point of time. Further the land in question was surrounded by drainage, sewage and also there is a public toilet available nearby the land. Taking note of all the above points on reality, the market value has been assessed and the Stamp Collector had fixed the value of the land at Rs.8,075/- per sq.mtr.

8.Such being the position, the market value of the land in question cannot be assessed only based on the report of the District Registrar, who is none other than the sub-ordinate officer of the respondents. The value of the land in question cannot be enhanced automatically without conducting any inspection and considering the modalities as required under Rule 5 of the Prevention of Undervaluation of Instrument Rules. Therefore the report of the District Registrar of the year 2015 has been given much importance by the first respondent and it is only made for the purpose of collecting the revenue. No such enquiry was conducted as contemplated under Rule 5 of the Prevention of Undervaluation of Instrument Rules. In such view of the matter, the order of the revisional authority cannot be sustained and the same has necessarily to be set aside and accordingly, the same is set aside and the order of the Original Authority is confirmed.

9.Accordingly, the Civil Miscellaneous Appeal is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.06.2023

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

vsn

To

1.The Chief Controlling Revenue Authority and
The Inspector General of Registration,
Chennai.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR.,J.

vsn

JUDGMENT MADE IN

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