BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)Nos.1143 and 1144 of 2022
and
C.M.P.(MD)Nos.11734 and 101737 of 2022

Jeyanthi John ...Appellant in C.M.A.(MD)no.1143 of 2022

D.John Alfred ...Appellant in C.M.A.(MD)no.1144 of 2022

Vs.

1.Inspector General of Registration,
Santhome High Road,
Santhome,
Chennai-600 028.

2.The Special Deputy Collector,
Stamps, Tirunelveli.

3.The Deputy Registrar No.1,
Nagercoil,
Kanyakumari District. ...Respondents in both appeals

COMMON PRAYER: These Civil Miscellaneous Appeals are filed under Section 47 A [10] of the Indian Stamp Act, 1899 r/w Rule 9 [3] [5] [a] of the Tamil Nadu Stamp [Prevention of Undervaluation of Instruments] Rules, 1968 to set aside the orders dated 31.10.2022 in Na.Ka.Nos.24572/N4/2022 and 24573/N4/2022 of the first respondent herein.

In both appeals:

For Appellants : Mr.VR.Shanmuganathan
For R1 to R3 : Mr.D.Sasikumar
Additional Government Pleader

COMMON JUDGMENT

These Civil Miscellaneous Appeals are filed challenging the final order passed by the Inspector General of Registration in an appeal filed against the order passed under Section 47-A of the Indian Stamp Act.

2.The brief facts, leading to the filing of the Civil Miscellaneous Appeals, are as follows:-

(i)The appellants purchased the properties at Nagercoil Vadakku Village, Agatheeswaran Taluk vide sale deeds dated 24.05.2016 and presented the same for registration after having paid the stamp duty as per the guideline value. However, a query had been raised as to the deficit stamp duty. Hence, a sum of Rs.2,11,717/- and Rs.1,59,939/-, respectively, was collected as deficit fee on 30.05.2016 from the appellants and endorsements were also made in this regard on the respective documents presented by the appellants for registration.

(ii)Thereafter, it appears that proceedings under Section 47-A of the Indian Stamp Act (hereinafter referred to as 'the Act' for the sake of brevity) had been initiated by the Sub Registrar and the documents were referred to the Stamp Collector. The Stamp Collector had passed an order on 05.07.2017 fixing the difference value stating that the market value of the subject properties is more than the value set out in the documents. The copy of the said orders were served on the appellants only in the year 2020. After receiving the said final orders, appeals had been filed before the Inspector General of Registration by the appellants and the said appeals were dismissed. Challenging the same, the present appeals came to be filed.

3.The learned counsel for the appellants contented that no notice whatsoever had been served on the appellants before passing the final order under Section 47-A of the Act. Further, after having collected the differential stamp duty and having made an endorsement to that effect on the documents on 30.05.2016 itself, the question of referring the documents to the Stamp Collector did not arise at all. It is contended by the appellants that after releasing the documents, the Sub Registrar under the pretext of some audit objections, called for the documents from the appellants and thereafter, initiated the proceedings. However, no notice whatsoever had been issued to the appellants. Further, the final orders have been passed in violation of fundamental rules and without following the prescribed procedures under law. The value adopted by the Stamp Collector is not on the basis of any materials and these facts had not been taken note of by the Inspector General of Registration in deciding the appeals. Hence, the present appeals had been filed.

4.The learned counsel for the respondents would submit that the matter had been referred to the Stamp Collector on 05.08.2016. Thereafter, a formal notice was issued on 27.09.2016 and final order had been passed on 05.07.2017. Therefore, it is the contention that the value adopted by the Stamp Collector is in accordance with law and the same does not warrant any interference.

5.In the light of the above submission, now the point arise for consideration in this appeal is:

Whether the stamp duty had been fixed following the procedure as contemplated under the Act?

6.It is relevant to note that the documents had been presented for registration by the appellants on 24.05.2016. The endorsement made in that documents clearly shows that the differential amount had been collected on

30.05.2016. Thereafter, the proceedings under Section 47-A of the Act had been initiated. It is relevant to note that to initiate the proceedings under Section 47-A of the Act, the Registration Authority has reasons to believe that the true market value of the property has not been set out in the document. Then he can refer the document to the Stamp Collector for determining the market value. This Court is unable to understand as to how suddenly the documents were referred to the Stamp Collector on 05.08.2016, particularly when the differential amount had already been collected by the same Sub Registrar on 30.05.2016.

7.Be that as it may, even assuming that the documents had been referred properly, it has to be seen that whether procedure contemplated under the Act had been properly followed?. Once the document had been referred under Section 47-A(1) of the Act, after reception of such document on reference, the Stamp Collector or the person authorised on his behalf shall provide proper opportunity to the parties. After holding an enquiry in such a manner prescribed in the Act, the Stamp Collector shall determine the market value as per sub Section 47-A(2).

8.Section 47-A(2) makes it very clear that before passing an order, a reasonable opportunity of personal personal hearing must be given to the parties.

On perusal of the entire records produced by the respondents, though it indicates that notice had been issued to the appellants before passing the final order, no acknowledgment whatsoever is available on record to substantiate the same. The notice is said to have been issued on 27.09.2016. Perusal of the same clearly indicates that the said notice is said to have been despatched only on 27.09.2016 for the hearing fixed on 30.09.2016. It is relevant to note that after arriving at provisional market value as per the provisions contemplated under the Prevention of Undervaluation of the Instrument Rules, the Collector shall communicate the copy of the provisional order determining the market value of the properties and the duty payable along with the notice in Form II and call upon the parties to lodge their objections, if any, to the said determination of the market value within the time specified in the notice.

9. The market value has to be determined by the Collector after taking into consideration all the various factors set out in Rule 5 of the Prevention of Undervaluation of the Instrument Rules. Further, Rule 7 of the Prevention of Undervaluation of the Instrument Rules deals with the passing of the final order after such service of notice, any objection is received, then the Collector shall pass an order after giving an opportunity to the parties within a period of three

months from the date of the first notice determining the market value of the property and the

10.On perusal of the entire order as well as the document produced before this Court, I am of the considered view that the notice was not sent to the parties before passing either the provisional order or the final order as required under Rules 6 and 7 of the Prevention of Undervaluation of the Instrument Rules. These aspects have not been gone into by the appellate authority in deciding the appeal. The appellate Authority simply relied upon the reference order and some communications said to have been sent to the parties without even being verifying whether the notice had been originally served to the parties.

11.In such view of the matter, the orders passed by the original authority and confirmed by the appellate Authority are liable to be interfered with and accordingly, the same are set aside and the proceedings are remanded back to the authorities to follow the Rules and determine the value of the properties afresh after giving an opportunity of hearing to the appellants. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

12.In the result, these Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

19.04.2023

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

1.Inspector General of Registration,
Santhome High Road,
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Chennai-600 028.

2.The Special Deputy Collector,
Stamps, Tirunelveli.

3.The Deputy Registrar No.1,
Nagercoil,
Kanyakumari District.

4.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.

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