BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.77 of 2010

R.Muniyandi .....Appellant/ Petitioner

-vs-

1. The Chief Revenue Controlling Authority,
   Chennai.

2. The Special Deputy Collector (Stamps)
   Thanjavur. .... Respondents /Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 47(10) of Indian Stamp Act, against the order dated 12.05.2009 made in No.17084/N5/06, on the file of the Chief Controlling Revenue Authority, Chennai and praying to set aside the same.

For Appellant : Mr.K.Rajeswaran

For Respondents : Mr.N.G.A Natraj
Government Advocate

JUDGMENT

The present Civil Miscellaneous Appeal has been filed by the purchaser of a property in S.No.51/1 for an extent of 1 Acre 40 cents and registered on 06.07.2005 before the Joint Registrar Office No.1, Pattukottai. After registration the document was referred by the Sub Registrar to the Special Deputy Collector (Stamps) Thanjavur. He had issued a Form-1 Notice and called for explanation from the appellant.

2. After considering the submissions of the appellant the original authority came to a conclusion that though at present the lands are not likely to be converted into housing plots, at the future point of time they are likely to be converted into housing plots. The said finding was arrived at on the ground that a nearby property has been laid out as Lakshmi Nagar. Based upon the said findings, the original authority fixed the guideline value at Rs.105/- per square feet.

3. The appellant herein filed an appeal before the Inspector General of Registration, the first appellate authority after considering the report of the Sub Registrar and the District Registrar though concurred with a finding that the lands are agricultural lands as on date of registration, proceeded to hold that there is a likelihood the lands can be converted into layout in future. He further found that though they are classified as “Punja Lands” as per the revenue records, no agricultural activities are being carried out on the date of registration of the document. Based upon the said findings, the first appellate

authority has confirmed the order of the original authority viz., fixing Rs. 105/- per square feet. Challenging the said order, the purchaser had filed the present appeal.

4. The learned counsel appearing for the appellant had contended that the original authority had recorded finding that in a property adjacent to the property in dispute, a layout has been created in the name of Lakshmi Nagar. However, he has also given a finding that the land is located six feet below the road, the land is kept fallow. He further pointed out that the first appellate authority has called for a report from the Sub Registrar and the District Registrar. Both of them have given a report that the lands are agricultural lands but no agricultural activities are being carried out at the time of the inspection. Without properly appreciating the report of the Sub Registrar and the District Registrar, the first appellate authority has arrived at a finding that the lands are lying fallow. Though the lands are not plots as on today there is a possibility of converting the agricultural lands into plots in future.

5. According to the learned counsel appearing for the appellant the value of the land has to be decided based upon the usage of the said land on the date of registration of the document. The future purpose, for which, it is

likely to be used is only based on presumption. The authorities cannot be permitted to presume and assume something which is likely to increase in future.

6. The learned counsel appearing for the appellant had further contended that as on today the land remains as "Punja land" and it is six feet below the ground level and therefore, it is clear that in the immediate future there is no possibility for converting the lands to layout. The adjacent survey number being converted into layout cannot be cited as a reason for fixing the land value at the square feet rate, considering the fact that the disputed land is six feet below the ground level. Therefore, he prayed for allowing the appeal and for releasing the documents.

7. Per contra, the learned counsel appearing for the appellant had contended that the appellant had purchased 1 acre and 40 cents in S.No.51/1 the adjacent viz., S.No.51/2 which falls within the Anna Nagar area, in which, various layout have been created. The Lakshmi Nagar layout is located just adjacent to the S.No.51/1. He further contended that no agricultural activities are being carried on in the disputed property and the lands have been purchased only for the purpose of creating a layout. Therefore, the said

aspects shall be taken into consideration by the registering authorities while fixing the market value of the property under Section 45-A of the Stamp Act.

8. The learned counsel appearing for the respondents had further contended that the land is being located in prime locality and in future the appellant is likely to convert it into a layout. Therefore, considering the purpose for which the land is being purchased by the appellant, the authorities under the Registration Act can very well fix the market value at square feet rate. He further contended that the another property was purchased by one Sumathi at Rs.102/- per square feet as market value for the said property and she has admitted the same and paid the stamp duty and document have been released. Therefore, according to the learned counsel appearing for the respondents the order passed by the original authority as well as the appellate authority may be sustained.

9. I have carefully considered the submissions made by the learned counsel on either side.

10. The appellant had purchased 1 acre and 40 cents in S.No.51/1 and he has paid a stamp duty at the rate of Rs.76,000/- for the value of the

property viz., for the sale consideration of viz., Rs.9,50,000/-. However, the authorities have not accepted the market value mentioned in the document, and referred the matter before the Special Deputy Collector (Stamps).

11. The Special Deputy Collector has recorded a specific finding that the land in dispute is located six feet below ground level. He would also record a findings that as on today the land remains fallow but the adjacent properties have been converted into a house site. Therefore, he has chosen to fix the market value at Rs.105/- per square feet. The appellate authority has also confirmed the said order.

12. A perusal of the order passed by the original authority as well as the appellate authority will clearly indicate that both the authorities have not considered the market value of the property as on date of registration. They have taken into consideration the potential value of the land that is likely to increase in the near future. According to the authorities, the adjacent property has been converted into house site and therefore, this property is also likely to be converted into house site in future. Therefore, it is clear that the entire order is based upon the presumption and assumption.

13. In the judgment of the Hon'ble Supreme Court reported in ***AIR 2012 SCC 1140 (State of U.P and Ors Vs. Ambrish Tandon and another)*** the Hon'ble Supreme Court has held that merely because the property is being used for commercial purpose at the later point of time it may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Therefore, it is clear that the usage of land in future cannot be a basis for assessing the value of the property on the date of registration.

14. The Hon'ble Division Bench of our High Court in a judgment reported in ***2015 SCC Online Mad 13855 (Special Deputy Collector (Stamps) Vs.Thajunisa and others)*** has categorically held that the determination of the market value of land for the purpose of stamp duty cannot be left to the presumption and assumption of the authorities under the registration Act. The registering authorities are entitled to recover stamp duty based upon the value of the land on the date of registration. They cannot presume and assume that the land is likely to be converted into house site or put to same commercial use in future.

15. In view of the above said deliberations, this Court is of the view that the order of the original authority as well as the appellate authorities based upon the presumption that the land is likely to be converted into house site use for commercial purposes in future is not legally sustainable. The authorities cannot be granted such a kind of discretionary power to presume and assume the value of the property that is likely to increase in future.

16. Therefore, the order passed by the original authority as well as the appellate authority are set aside, this Civil Miscellaneous Appeal stands allowed and the authorities are directed to release the documents within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

26.04.2023

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

To

1. The Chief Revenue Controlling Authority,
   Chennai.

2. The Special Deputy Collector (Stamps)
   Thanjavur.

3. The Chief Controlling Revenue Authority,
   Chennai.

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

R.VIJAYAKUMAR,J.

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