IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.20766 of 2024 and
W.M.P. No.22715 of 2024

M/s.OMR Outdoor Media Reach LLP
Represented by its Designate Partner
Mr.Pallavarajha M
No.5A, Senthil Andavar Street
Dhanalakshmi Colony
Vadapalani, Chennai - 600 026 ... Petitioner

Vs

1.The Inspector General of Registration
O/o.The Inspector General of Registration
Santhome High Road, Chennai - 600004

2.The District Registrar
Integrated Building for Offices of the
Commercial Taxes and Registration Department
Fanepet, Nandanam, Chennai - 600 035

3.The Sub Registrar
Chennai South Joint-II
Integrated Building for Offices of the
Commercial Taxes and Registration Department
Fanepet, Nandanam, Chennai 600 035 ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to set aside the impugned order dated 05.07.2024 and consequently to deliver the petitioner's sale deed dated 05.07.2024.

For Petitioner : Mr.Srinath Sridevan, Senior Counsel
for Ms.Amrutha Srinivasan

For Respondent : Mr.Stalin Abhimanyu
Addl. Govt. Pleader for R1 to R3

ORDER

This writ petition has been filed challenging the proceedings initiated under Section 47-A of the Indian Stamp Act.

2. It is the case of the writ petitioner that the petitioner originally presented a sale deed for registration on 05.07.2024 in the light of the order passed in W.P. No.17305/2024. After registration, now the document has been referred to the District Collector for determination of market value on 09.07.2024.

3. It is the contention of the writ petitioner that the document was originally presented on the basis of 2017 Guideline Value. However, the registering authority did not accept the document for registration on the ground that the guideline value should be on the basis of the revised guideline value. Therefore, a writ petition was filed before this court in W.P. No.17305 of 2024 for a direction to the Sub Registrar to register the document. This court, by order dated 28.06.2024, directed the Sub Registrar to register the document and also held that while registering the document, if the Sub Registrar has reason to believe that the document has been undervalued, it is the duty of the Sub Registrar to first register the document and then refer the document to the District Collector for determination of the market value. In view of the above legal position, this court directed the Sub Registrar to register the document and take a decision as per law. Now it appears that the document has been registered as Document No.1598/2024. On 09.07.2024, the document has been referred to the District Collector under Section 47-A of the Indian Stamp Act, 1899 for determination of the market value.

4. Mr.Srinath Sridevan, learned senior counsel appearing for the petitioner would submit that stamps have been purchased and paid on

24.06.2024 as per the existing guideline value. However, the document has not been registered merely on the ground that the same has not been paid as per the revised guideline value. It is also stated by the learned senior counsel that the sale deed has been executed pursuant to the orders obtained in O.P. No.763 of 2022 dated 20.03.2023. The impugned order has been passed only in terms of the direction of this court and there was no reason to believe that the document has been undervalued, particularly when the document was presented on 10.06.2024. Hence, according to the learned senior counsel, the reasons now assigned referring the matter under Section 47-A of the Indian Stamp Act suffers from mala fide and the reason now stated not emanated at the time of presenting the document.

5. Heard both sides and perused the entire materials available on record.

6. Though the materials indicate that the document was originally uploaded on 10.06.2024, but it was not registered immediately and hence the writ petitioner has come before this court for a direction. In W.P. No.17305 of 2024, this court has passed the following order:

> *"6. When the document is presented for registration, it is for the registering authority to register the document. While*

registering the document, if the Sub Registrar has reason to believe that the document has been undervalued, it is the duty of the Sub Registrar first register the document and then refer the document to the Collector for determination of the market value. Such being the legal position, the Sub Registrar himself cannot keep the document pending without registering the document.

7. In such view of the matter, there shall be a direction to the third respondent/Sub Registrar to register the document and take action as per law, whenever it is presented by the petitioner, within a period of one week from the date of receipt of a copy of this order."

7. Thereafter, the document was presented on 05.07.2024 and after registration, the same was referred to the District Registrar for determination of market value. It is the contention of the learned senior counsel that the reference is bad, since the reason to believe was not existed when the document was presented originally. It is relevant to note that when the Sub Registrar entertains doubt earlier that the market value has not been truly set out in the instrument, he has refused to register the document. The Sub Registrar's doubt, is fortified by the reason that when the document was presented as early as on 24.06.2024, he did not register the document, that resulted in filing a writ petition before this court in W.P. No.17305 of 2024. Therefore, this court is of the view that merely because subsequent to the orders of this court, reference is made, it cannot be inferred that the order lacks *bona fide* and has been made only for the purpose

of collecting excess stamp duty. It is the contention that the sale deed is in pursuance of the order of this court in O.P. No.763 of 2022, on perusal of a copy of the same, the same does not refer the orders of this court, but it proceeds as if it is a voluntary sale made by the parties. In such view of the matter, admittedly when the proceedings have been initiated under Section 47-A of the Act, the Collector shall determine the value strictly in accordance with law, after giving proper opportunity to the parties and such proceedings shall be completed within a period of three weeks from the date of receipt of a copy of this order.

8. In ***P.Kamalakannan vs. The Chief Controlling Revenue Authority & Inspector General of Registration and others in W.P. Nos.28854, 28856 & 28857 of 2022 dated 20.06.2024***, this court in paragraphs 30 to 32 held as follows:

> *"30.*
> *...*
> *It is relevant to note here that while determining the market value the collector is required to provisionally determine the market value by taking into consideration various factors mentioned in the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 and not merely the guideline value.*
> *31. Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 provides for*

guidelines for determination of market value which reads as under:-

?5. Principles For Determination Of Market Value:- The Collector shall, as far as possible, have also regard to the following points in arriving, at the provisional market value,-

(a) In the case of lands-

(i) classification of the land as dry, manavari, wet and the like;

(ii) classification under various tarams in the settlement register and accounts;

(iii) the rate of revenue assessment for each classification;

(iv) other factors which influence the valuation of the land in question;

(v) points, if any, mentioned by the parties to the instrument or any other person which requires special consideration;

(vi) value of adjacent lands or lands in the vicinity;

(vii) average yield from the land, nearness to road and market, distance from village site, level of land, transport facilities, facilities available for irrigation such as tank, wells and pumpsets;

(viii) the nature of crops raised on the land; and

(ix) the use of land, domestic, commercial, industrial or agricultural purposes and also the appreciation in value when an agricultural land is being converted to a residential, commercial or an industrial land.

(b) In the case of house sites-

(i) the general value of house sites in the locality;

(ii) nearness to roads, railway station, bus route;

(iii) nearness to market, shops and the like;

(iv) amenities available in the place like public offices, hospitals and educational institutions;

(v) development activities, industrial improvements in the vicinity;

(vi) land tax valuation of sites with reference to taxation records of the local authorities concerned;

(vii) any other features having a special bearing on the valuation of the site; and

(viii) any special feature of the case represented by the parties.

(c) In the case of buildings-

(i) type and structure;

(ii) locality in which constructed;

(iii) plinth area;

(iv) year of construction;

(v) kind of materials used;

(vi) rate of depreciation;

(vii) fluctuation in rates;

(viii) any other features that have bearing on the value;

(ix) property tax with reference to taxation records of local authority concerned;

(x) the purpose for which the building is being used and the income if any, by way of rent per annum secured on the building; and

(xi) any special feature of the case represented by the parties.

(d) Properties other than lands, house sites and buildings-

(i) the nature and condition of the property;

(ii) purpose for which the property is being put to use; and

(iii) any other special features having a bearing on the valuation of the property.?

32. On a careful perusal of the principles set out in the said rule, what is sine qua non is - grant of opportunity of being heard after taking into account various factors and also recording evidence, value has to be fixed, but that has not been done in the instant cases. Before arriving at final value, the collector has to pass an order provisionally determining the market value of the property and the duty payable as per Rule 6 *of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. After hearing the objections, he shall pass final order as per Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. Therefore, the authorities without following such mandatory procedures cannot simply take into account the guideline value as market value and demand deficit stamp duty and penalty. Though, as already held herein above, the authorities were right in holding that the provision under Article 55-D(i) of the Indian Stamp Act would only attract for stamp duty and charges payable on the release deeds in question, the market value was not determined by the Collector as required under the Act. Such view of the matter, this court is of the view that the orders impugned in the writ petitions demanding stamp duty and penalty on the basis of the guideline value without determining the market value of the properties cannot be sustained in the eye of law. The orders impugned in the writ petitions are liable to be set aside. The writ petitions succeed accordingly."*

The above procedure strictly to be followed while determining the market value.

9. With the above observation and direction, the writ petition is disposed of. However, there is no order as to costs. Consequently, the connected writ miscellaneous petition is closed.

24.07.2024

Index : Yes / No
Neutral Citation : Yes / No
Asr

Note: Issue Order Copy on 26.07.2024

To

1.The Inspector General of Registration
O/o.The Inspector General of Registration
Santhome High Road, Chennai - 600004

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Integrated Building for Offices of the

Commercial Taxes and Registration Department
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3.The Sub Registrar
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Commercial Taxes and Registration Department
Fanepet, Nandanam, Chennai 600 035

4.The Government Pleader
High Court, Madras

N.SATHISH KUMAR, J.

Asr

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