IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA No.6 of 2024
and
C.M.P.No.65 of 2024

J.Sekar ... Appellant

Vs.

1.The Tamil Nadu Principal
Revenue Control Officer Authority and
Inspector General of Registration,
No.100, Santhome High Road,
Santhome, Chennai - 600 028.

2.The Special Deputy Collector, (Stamps),
Sathuvachari, Vellore District,
Vellore - 632 009.

3.The Sub Registrar,
No.46, Vellore Road, Tharapadavedu Village,
Katpadi - 632 007. ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 47(A)(10) of Indian Stamps Act, 1899, to set aside the impugned order passed by the first respondent in Proceedings No.34893/E1/2021 dated 17.11.2023.

For Appellant : Mr.Nithyaesh Natraj
for Mr.Anirudh A.Sriram

For Respondents : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.R.Siddharth
Government Advocate

JUDGMENT

This Civil Miscellaneous Appeal is filed to set aside the proceedings dated 17.11.2023 in 34893/E1/2021 on the file of the first respondent.

2. The brief case of the appellant is that the appellant purchased the property in Survey Numbers 474 and 550 (part) of Katpadi Village through seven sale deeds dated 01.12.2016. When he presented the sale deeds for registration, the Sub Registrar initiated proceedings in terms of Section 47-A of the Indian Stamp Act (hereinafter referred as the 'Act') and referred the matter to the Special Deputy Collector, (Stamps), the second respondent herein. The Special Deputy Collector conducted an enquiry and determined the market value of the property as

Rs.2,46,98,250/- vide his orders dated 23.01.2017. Accordingly, the appellant paid the stamp duty and other registration charges and the documents were registered and handed over to the appellant. Later after five years, the first respondent in his *suo moto* proceedings issued a notice dated 07.03.2022 and directed the appellant to appear before him on 25.03.2022 for an enquiry. Accordingly, the appellant participated in the enquiry proceedings and filed his objections. Thereafter, the first respondent determined the market value as Rs.600/- per square feet and directed the petitioner to pay the deficit stamp duty and registration charges vide his impugned proceedings No.34893/E1/2021 dated 17.11.2023 as against which, the present appeal is filed.

3. Heard Mr.Nithyaesh Nataraj, learned counsel appearing for the appellant and Mr.J.Ravindran, learned Additional Advocate General assisted by Mr.R.Siddharth, learned Government Advocate for the respondents.

4. Mr.Nithyaesh Nataraj, learned counsel appearing for the appellant contended that the property purchased by the appellant is an agricultural land and the second respondent, Special Deputy Collector, (Stamps) in his proceedings under Section 47-A of the Indian Stamp Act had already determined the value of the land way back in the year 2017. In the circumstances, the first respondent cannot initiate proceedings after a lapse of five years under Section 47-A(6). He also relied on the decisions of this Court in ***Thiru.Vasu vs The Tamil Nadu Principal Revenue Control Officer Authority & Inspector General of Registration and two others*** in ***C.M.A.No.1423 of 2023*** dated 15.09.2023 and ***R.Mathiazhagan and five others vs The Inspector General of Registration and four others*** in ***C.M.A.Nos.2319 to 2322 of 2016*** dated 17.02.2020 and contended that this Court had consistently held that the action taken by the concerned authority beyond the period of five years as mandated under Section 47-A(7) of the Act, cannot be sustained. He therefore, prayed for setting aside the order of the first respondent's proceedings in 34893/E1/2021 dated 17.11.2023.

5. Per contra Mr.J.Ravindran, learned Additional Advocate General

assisted by Mr.R.Siddharth, learned Government Advocate appearing for the respondents contended that the appellant had submitted a representation dated 16.09.2021 to the Special Deputy Collector, (Stamps) to determine the market value of the property and therefore, it cannot be stated that the proceedings of the first respondent is beyond the period of limitation as mandated under Section 47-A(7) of the Act. He also relied on the following decisions :

i. ***C.Bright vs District Collector and Others*** reported in ***(2021) 2 SCC 392***

ii. ***P.T.Rajan vs T.P.M.Sahir and Others*** reported in ***(2003) 8 SCC 498***

and contended that it is a well settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. He therefore prayed for dismissal of the present appeal.

6. It is appropriate to extract Section 47-A(6) and 47-A(7) of the Act :

*"**Section 47-A(6):** The Chief Controlling Revenue Authority may, suo motu, call for and examine an order passed under sub-section (2) or sub-section (3) and if such order is prejudicial to the interests of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit.*

__Section 47-A(7):__ The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3) if, -

(a) the time for appeal against that order has not expired; or

(b) more than five years have expired after the passing of such order."

Therefore, it is clear from the reading of the above provisions that before exercising the *suo motu* power the first respondent should

i. call for and examine the order passed under sub-section (2) and (3);
ii. form a subjective satisfaction, after examination of the order passed under sub-section (2) and (3) along with the orders as to whether it is prejudicial to the interests of the revenue ; and
iii. thereafter, he may make such inquiry or cause such inquiry to be

made and, subject to the provisions of this Act may initiate proceedings to revise, modify or set aside such order and may pass such order, thereon as he thinks fit.

7. This Court in the decision in ***R.Mathiazhagan and five others vs The Inspector General of Registration and four others*** in ***C.M.A.Nos.2319 to 2322 of 2016*** has held thus :

> "..................
> *Once a statute prescribes a period limitation for initiation of action, the same should be initiated within the prescribed mandatory period, unless the Act itself provides for condonation of such limitation within which the authorities or the courts can exercise the powers to condone such delay. As such, it is clear from its statute that the five years period prescribed for initiation of suo motu revision by the 1st respondent as against the decision taken by the 3rd respondent herein, who initially passed orders under Section 47 (A) as early as on 13.07.2007, was complied by the appellants on 17.07.2007 itself. The act has provided a wider limitation of five years for initiating suo motu revision and the reason for such wider period is that the Government should not lose the revenue. The authorities cannot sleep over the matter and take a decision and they ought to have*

taken steps before expiry period of limitation provided under the Act.

24. Admittedly, the commencing of the proceedings after a period of five years is in violation of mandatory provisions. Therefore, this Court is of the considered view that the action taken by the 1st respondent in issuing a show cause notice dated 20.07.2012 in C.M.A.No.2319 of 2016 and 21.09.2012 with regard to C.M.A.Nos.2320, 2321 and 2322 of 2016 is beyond the mandatory period of five years and is without jurisdiction and the orders passed on the basis of such show cause notice and subsequent enquiry conducted also cannot stand scrutiny in the present appeals.

25. That apart, the orders passed on the basis of the inspection conducted based on the show cause notice, which was issued beyond the mandatory period cannot also be held in consonance with the act, hence the impugned order passed by the 1st respondent is vitiated for the violation of mandatory provisions prescribed under the Act and accordingly, the same is set aside. Since the impugned order is set aside on the ground of jurisdictional error, this Court is not inclined to the deal with the merits of the decision rendered by the 1st respondent with regard to the revisional value fixed based on the report submitted by the 2nd *respondent."*

8. Similarly, another single judge of this Court in the decision in ***Thiru.Vasu vs The Tamil Nadu Principal Revenue Control Officer Authority & Inspector General of Registration and two others*** in ***C.M.A.No.1423 of 2023*** observed thus :

> *"7. As stated earlier by the impugned order in C.M.A.No.1423 of 2023, the first respondent by the order dated 16.08.2022 seeks to modify the order of the Collector which was passed on 15.04.2015. Likewise, for the sale deed executed on 09.09.2015, the first respondent passed the impugned order in C.M.A.No.1424 of 2023. The actions have been taken beyond the period of five years and hence, the same is unsustainable in view of the clear mandate of the statute. This position has been reiterated in several decisions of this Court. Therefore, merely because the respondents had been contemplating action internally, the limitation provided under the Statute cannot be ignored. Therefore, this Court is of the view that the impugned orders, pursuant to an action taken beyond the period of five years from the order of Collector and from the date of sale deed cannot be sustained."*

9. The decision in ***P.T.Rajan vs T.P.M.Sahir and Others*** (cited

supra) relied upon by the learned Additional Advocate General is with regard to Representation of the People Act, 1951. In that case, the 1960 Rules did not fix any time limit for publication of the electoral rolls and on the other hand Section 23(3) of the 1950 Act had categorically mandated that direction can be issued for revision in the electoral rolls by way of amendment for inclusion and deletion from the electoral rolls till the date specified for filing nomination. Since no prejudice was caused to the appellant therein, it was held that even if the statute specifies a time limit for publication of the electoral rolls, the same by itself could not have been held to be mandatory.

10. The decision in ***C.Bright vs District Collector and Others*** (cited supra) deals with SARFAESI Act. Considering the question as to whether, a time limit fixed for a public officer to perform a public duty is directory or mandatory, it has been held thus :

"................

Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time limit *is to instill a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to. Thus, the basic object and purpose was to fix a time limit for the concerned Magistrate to pass an order and not to give a clean chit to an unscrupulous borrower/guarantor, who had not repaid the debts."*

11. The object of Indian Stamp Act has to be analysed subjectively. Under the Indian Stamp Act, five years time limit is given for taking any *suo moto* revision under Section 47-A(7). The significance of the time limit is that if any apparent deviation or deficiency is found out the same can be rectified. However, no Statutory Authority can be vested with unfettered power to revaluate and take *suo moto* revision of stamp duty even after the time limit of five years. If the Statutory Authority is given such powers to take *suo moto* revision beyond the time limit it would lead to arbitrariness and bias and the result would be utter chaos. In the circumstances, the decisions relied upon by the learned Additional Advocate General may not be useful to the facts of the present case as those cases stand on a different footing. Again, it is a question of the object of the legislation.

12. The representation of the appellant dated 16.09.2021 could not save the period of limitation. Moreover, this Court had also consistently held that the first respondent cannot take action beyond the period of five years. In the circumstances, the impugned order of the first respondent in Proceedings No.34893/E1/2021 dated 17.11.2023, is set aside.

13. In the result,

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

ii. the impugned order dated 17.11.2023 in Proceeding No.34893/E1/2021 on the file of the first respondent, is hereby set aside.

23.09.2024

Index : Yes/No
Speaking / Non-speaking order

mtl

To

1.The Tamil Nadu Principal
Revenue Control Officer Authority and
Inspector General of Registration,
No.100, Santhome High Road,
Santhome, Chennai - 600 028.

2.The Special Deputy Collector, (Stamps),
Sathuvachari, Vellore District,
Vellore - 632 009.

3.The Sub Registrar,
No.46, Vellore Road, Tharapadavedu Village,
Katpadi - 632 007.

4. The Section Officer, VR Section, Madras High Court, Chennai.

R. HEMALATHA, J.

mtl

<u>CMA No.6 of 2024</u>
<u>and C.M.P.No.65 of 2024</u>

23.09.2024