BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A(MD)No.850 of 2013
and
M.P(MD)Nos.1 of 2012 & 1 of 2013

T.R.Gopalakrishnan ... Appellant/Appellant/Petitioner

Vs.

1.Inspector General of Registration
cum Principal Revenue Control Officer,
Chennai-600 028.

2.Special Deputy Collector (Stamps),
Trichy.

3.Joint Sub Registrar-I,
Karur. ... Respondents/Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 47 (A) (10) of the Indian Stamp Act, 1899, to set aside the order, dated 28.02.2006 in Pa.Mu.No.11112/No.4/05 passed by first respondent confirming the order, dated 26.10.2004 passed by the second respondent in S.R.No.1222/1997.

For Appellant : Mr.Anand Chandrasekar

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed by the first respondent in Pa.Mu.No.11112/No.4/05, dated 28.02.2006, wherein the appellant herein has filed an appeal, as against the order passed by the second respondent in S.R.No.1222/1997. According to the appellant, he purchased the property in Karur Town, Ward No.2, Pasupathipaalayam, North Street Block No.34, T.S.Nos.2087 & 2088, an extent of 0.77 cents on 30.09.1997, through document No.982/1997. In the document, the petitioner valued the property as Rs.2,00,000/-. But the respondents fixed the guideline value of sum of Rs.63,22,000/-. Thereafter, the third respondent has sent the document under Section 47 (1) A to the second respondent Special Deputy Collector (Stamps) for fixing value and the second respondent fixed the value at sum of Rs.27,90,000/-. As against the said order, the appellant has preferred the first appeal before the first respondent under Section 47 (A) (5) of the Indian Stamp Act. The first respondent also passed the impugned order by confirming the order of the second respondent. As against the said order passed by the first respondent, the present Civil Miscellaneous Appeal has been preferred by the appellant.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Tribunal.

3. The learned Counsel appearing for the appellant / appellant / petitioner would contend that the property is an agricultural land and the second respondent also admitted that the property, on the date of registration was agricultural land. But only on the assumption that it will be converted into plots and fixed the value of property by referring the document No.1125 of 1991. The first respondent also in the appeal without verifying the records passed the impugned order. The second respondent himself in the order admitted that there is no records to fix the above said amount and the property was mentioned as agricultural land. The above said aspect has not been considered by the respondents and the first respondent has passed order without providing opportunity to the appellant when he disputed the value of the property. The first respondent having found that there was no material on the file of the second respondent with respect to fixation of market value, ought to have remitted the matter back to the second respondent for proper enquiry. But they failed to do so. The Special Deputy Collector in his inspection report stated that the property is classified as 'Agricultural land'. But only on the basis of presumption that there is a possibility of the said land being converted into house site and fixed the market value and the same is erroneous. Therefore, the order passed by the second respondent is liable to be set aside.

4. The learned Special Government Pleader appearing for the respondents would contend that the value was fixed by the respondents by following the rules of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 and the value of the adjacent land was considered by the respondents and then only they passed the order based on the document No.1125 of 1991 and the present document was, dated 30.09.1997. Though the property was agricultural land, the adjacent lands were converted into plots and thereby, as per Rule 5 Sub Clause (vi) and (ix) of the Tamil Nadu Stamp (Prevention of Undervaluation of

Instruments) Rules, 1968 by following the procedures they have fixed the value.

5. To support the contention of the learned Special Government Pleader, he relied upon the following judgments:

i) R.Rajalakshmi and Others Vs. The Revenue Divisional Officer and Another reported in AIR 1989 Madras 96,

ii) S.Mani (Died) and Others Vs. The Chief Controlling Revenue Officer cum Inspector General of Registration, Chennai and Another reported in CDJ 2023 MHC 4975 and

iii) The Inspector General of Registration, Tamil Nadu and Others Vs. K.Baskaran reported in CDJ 2020 SC 576.

6. Heard both sides and perused the records. According to the petitioner, he purchased the property of agricultural land and the same also admitted by the respondents. However, the respondents fixed the value on the basis that in future, the property could be converted into plots, because the adjacent lands were converted into plots. The respondents have justified their Act that they followed the Rule 5 (vi) and (ix) and fixed the value based on the adjacent land value. As per Rule vi and ix of Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules the Collector Stamps shall as far as possible take into consideration, the value of adjacent lands or lands in the vicinity and the use of land, domestic, commercial, industrial or agricultural purposes and also the appreciation in value when an agricultural land is being converted into a residential, commercial or an industrial land. But in the case on hand, the land is agricultural land and the same also admitted by the respondents. But the order was passed based on the adjacent land values.

7. At this juncture, the learned Special Government Pleader relied the judgment in ***R.Rajalakshmi and Others Vs. The Revenue Divisional Officer and Another reported in AIR 1989 Madras 96***, wherein this Court held in paragraph No.5 as follows:

> *"5. Unfortunately, the attention of the learned Subordinate Judge was not drawn to the relevant rules. The learned Subordinate Judge has proceeded on the footing that there are number of sale deed of nearby lands and on the basis thereof, the value of the land in question has been fixed by the Revenue Divisional Officer at Rs.1,21,500/-. It is to be seen that*

the sale deeds relied on by the Revenue Divisional Officer relate to small extents of 5 cents, 3 cents and even lesser extents. Much reliance could not be placed on those sale deeds as it is not known whether these sale deeds relate to agricultural lands or house sites. It is clear from R.5 that with reference to agricultural lands, the matters to be taken into account include the average yield from the land, nearness to road, and market, distance from village site, level of land, transport facilities, facilities available for irrigation and the nature of crops raised on the land in addition to the valuation of the adjacent lands. If there is no sale deed available to show the value of the adjacent lands in the vicinity that cannot prevent the Court from fixing the value on the basis of the other matters referred to in the rule. It is open to the petitioners to let in evidence with regard to the other matters mentioned in R.5(a).

8. Further the learned Special Government Pleader also relied the judgment in ***S.Mani (Died) & Others Vs. The Chief Controlling Revenue Officer cum Inspector General of Registration, Chennai and Another reported in CDJ 2023 MHC 4975***.

9. On a careful perusal of the said judgment, it is clear that while fixing the land value, Rule 5 and 6 of the rules to be followed.

10. Further, the learned Special Government Pleader also relied the judgment in ***The Inspector General of Registration, Tamil Nadu and Others Vs. K.Baskaran reported in CDJ 2020 SC 576,*** in paragraph No. 35 has held as follows:

> *"35. For exercising revisional power "suo motu" or "on its motion", the concerned authority must be satisfied that an order has been passed by the authority or officer subordinate to it which may be prejudicial to the interest of the revenue. As indicated in some of the hypothetical instances noted in the decisions quoted hereinabove, the error may have crept in unknowingly, or there may be a genuine mistake, or in some cases there could be a deliberate attempt to prejudice the interest of revenue. If an infirmity or illegality is brought to the notice or knowledge of the revisional authority, through normal and regular process of reporting by the subordinate officer or authority, the power of revision can certainly be exercised. The requisite knowledge enabling the revisional authority to exercise the power*

vested in it, can also be gathered from the appeal preferred by the registrant himself. That may only be an occasion or a source which enables the authority to gather information about the possible infirmity or illegality in the process. Upon being so aware, the revisional authority would thereafter be exercising power vested in it. Qualitatively, it makes no difference as to what was the source of the information or knowledge, so long as the power is exercised within the confines of the limitations or restrictions imposed by the statute, and is in accordance with law. Apart from the restrictions imposed by the statute, none can be read into the exercise of power on the ground as to the nature or source of information.

While entertaining an appeal, if an obvious illegality is noticed by the revisional authority, it can certainly exercise suo motu power to undo the mistake, or rectify an error committed by the subordinate officer or authority, subject to such restrictions as are imposed on the exercise of the power by the statute."

11. On careful perusal of the above said judgments relied on by the learned Special Government Pleader, it is clear that while determining the market value of the land, Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules to be followed and the nature prevailing at the time of sale alone has to be taken into account and not how the land is going to be utilized in future used to taken into consideration and the appellate authority while deciding the appeal, if any obvious illegality is noticed, certainly exercise *suo motu* power to undo the mistakes or rectify an error committed by the subordinate officer or authority, subject to such restrictions as are imposed on the exercise of the power by the statute.

12. The learned Counsel appearing for the appellant has relied upon the following judgments:

i) R.Rajalakshmi and Others Vs. The Revenue Divisional Officer and Another reported in AIR 1989 Madras 96. The same judgment also relied on by the respondent.

ii) Pushpa Sareen Vs. State of U.P. reported in 2015 (3) CTC 241, wherein, the Hon'ble Full Bench of Allahabad High Court in paragraph No.27 held as follows:

> *"27. The fact that the land was put to a particular use, say for instance a commercial purpose*

at a later point in time, may not be a relevant criterion for deciding the value for the purpose of stamp duty, as held by the Supreme Court in ***State of U.P and Others Vs. Ambush Tandon and Another, 2012 (5) SCC 566****. This is because the nature of the user is relatable to the date of purchase which is relevant for the purpose of computing the stamp duty. Where, however, the potential of the land can be assessed on the date of the execution of the instrument itself, that is clearly a circumstance which is relevant and germane to the determination of the true market value. At the same time, the exercise before the Collector has to be based on adequate material and cannot be a matter of hypothesis or surmise. The Collector must have material on the record to the effect that there has been a change of use or other contemporaneous sale deeds in respect of the adjacent areas that would have a bearing on the market value of the property which is under consideration. The Collector, therefore, would be within jurisdiction in referring to exemplars or comparable sale instances which have a bearing on the true market value of the property which is required to be assessed. If the sale instances are comparable, they would also reflect the potentiality of the land which would be taken into consideration in a price agreed upon between a vendor and a purchaser."*

13. On careful perusal of the above judgments, it is clear that the use of the land on the date of execution in a period proximate thereto would be relevant for determination by Collector. Use of other lands in area would also be material for determining market value of land by Collector. Sale instances in immediate vicinity of subject land would have a relevant bearing on decision of Collector. However, use of land for a commercial use at later point of time would not be a relevant criterion for deciding value of land for purpose of Stamp Duty. Further, at the time of exercise before the Collector has to be based on adequate material and cannot be a matter of hypothesis or surmises and the Collector must have material on record to the effect that there has been a change of use or other contemporaneous sale deeds in respect of the adjacent areas that would have a bearing on the market value of the property, which is under consideration.

14. In the case on hand also, the second respondent passed order by holding that the property is agricultural land and in future it would be converted into plots. Further, according to the appellant, no opportunity was given to them and no records to show that the appellant was heard before passing the impugned order. Now the learned Special Government Pleader also produced the encumbrance certificate.

15. On careful perusal of the encumbrance certificate shows that some of the documents were registered during the relevant point of time. But the second respondent in the order observed that no records to fix the value of the property. As far as the judgments relied on by the respondents are concerned, while determining the value of the property, the authorities have to follow Rule 5, but in the order itself, the first respondent stated in paragraph that he perused the file of second respondent and heard both sides and the second respondent in the file stated that, there is no documents to determine the value of the property and as per the report of enquiry of Assistant Inspector General, the nature of property mentioned as agricultural property. Therefore, from the said observation made by the first respondent in the impugned order, it is clear that Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules has not been followed. Therefore, these case laws are no-way helpful to decide the case in favour of respondent. Per contra, the judgments relied on by the appellant clearly shows that the Collector while determining the rate of the property, the nature of property and use of land has to be taken into account and the order to be based on the materials and cannot be a matter of surmises and hypothesis. The order of first respondent itself shows that no materials available to fix the value of the property. Therefore, the judgments relied on by the appellant are squarely applicable to the present facts of the case. Therefore, it is appropriate to remand back the matter to the second respondent to fix the value of the property based on the documents registered on the relevant point of time by giving opportunity to the appellant. In view of the above said discussion, the order passed by the respondents are liable to be set aside and accordingly, the order passed by the first respondent in Pa.Mu.No.11112/No.4/2005 by confirming the order of the second respondent in S.R.No.1222/1997 are set aside.

16. In the result, this Civil Miscellaneous Appeal stands allowed and the order passed by the respondents are set aside and the matter is remanded back to the second respondent for fresh consideration by giving opportunity to the appellant. The second respondent is directed to dispose the matter within a period of three months from the date of this judgment.

There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

11.03.2024

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

To

1.The Inspector General of Registration
cum Principal Revenue Control Officer,
Chennai-600 028.

2.The Special Deputy Collector (Stamps),
Trichy.

3.The Joint Sub Registrar-I,
Karur.

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

P. DHANABAL, J.

BTR

C.M.A(MD)No.850 of 2013

11.03.2024