



C.M.A(MD)Nos.376, 440, 516 of 2023 and 17 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)Nos.376, 440, 516 of 2023 and 17 of 2024

and

C.M.P.(MD)Nos.4542, 5457, 7335, 7336 of 2023, 276, 277 of 2024

C.M.A(MD)No.376 of 2023:

1.S.Anand
2.A.Jeyarani

... Appellants

Vs.

The Chief Revenue Controlling Authority
and Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Raja Annamalaipuram,
Chennai-600 028.

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 47A(10) of the Indian Stamp Act against the final order, dated 22.07.2022, made in Proc.No. 49948/E1/2014 on the file of the respondent.

For Appellants : Mr.S.Venkadesh
For Respondent : M/s.S.Jeya Priya
Government Advocate



C.M.A(MD)Nos.376, 440, 516 of 2023 and 17 of 2024

C.M.A(MD)No.440 of 2023:

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1.S.Anand

2.A.Jeyarani

... Appellants

Vs.

The Chief Revenue Controlling Authority
and Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Raja Annamalaipuram,
Chennai-600 028.

... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 47A(10) of the Indian Stamp Act against the final order, dated 02.11.2022, made in Proc.No. 49948/E1/2014 on the file of the respondent.

For Appellants : Mr.S.Venkadesh
For Respondent : M/s.S.Jeya Priya
Government Advocate

C.M.A(MD)No.561 of 2023:

Sathish Kumar

... Appellant

Vs.

1.The Chief Controlling Revenue Authority
and Inspector General of Registration,
Santhome, Chennai.

2.The Special Deputy Collector (Stamps),
Stamp and Tax, District Collector Campus,
Kokkirakulam, Tirunelveli.

3.The Sub - Registrar,
Sub – Registrar's Office,
Vasudevanallur,
Sivagiri Taluk, Tenkasi District.

... Respondents



C.M.A(MD)Nos.376, 440, 516 of 2023 and 17 of 2024

PRAYER: Civil Miscellaneous Appeal is filed under Section 47A(10) of the Indian Stamp Act against the order passed by the 1st respondent in Na.Ka.No. 20360/N4/2017, dated 09.05.2023.

For Appellant : Mr.H.Arumugam
For Respondents : M/s.S.Jeya Priya
Government Advocate

C.M.A(MD)No.17 of 2024:

E.Cross Immaculate ... Appellant
Vs.

- 1.The Chief Controlling Revenue Authority
and Inspector General of Registration,
Santhome, Chennai.
- 2.The Special Deputy Collector (Stamps),
Stamp and Tax, District Collector Campus,
Kokkirakulam, Tirunelveli.
- 3.The Sub - Registrar,
Sub – Registrar's Office,
Vickramasingapuram,
Ambasamudram Taluk,
Tirunelveli District.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 47A(10) of the Indian Stamp Act against the order passed by the 1st respondent in Na.Ka.No. 12959/N4/2018, dated 22.05.2023.

For Appellant : Mr.P.P.Alwin Balan
For Respondents : M/s.S.Jeya Priya
Government Advocate



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COMMON JUDGMENT

This batch of Civil Miscellaneous Appeals had raised similar and common issues and hence all the Civil Miscellaneous Appeals are taken up for hearing and a common judgment is passed.

2.(i) The **C.M.A.(MD)No.376 of 2023** is filed against the order passed by the sole respondent. The brief facts of the case are that the appellant had purchased the agricultural property admeasuring 7 Acres in S.No.276 along Well, Electric Motor and building through registered sale deed dated 26.03.2014 valued at Rs.8,62,000/- as per guideline value and paid stamp duty of Rs.60,350/- and registration fees of Rs.8,810/-. The Sub Registrar had referred the document under section 47-A to Collector (Stamps), wherein the land was valued for higher rate and the appellant had accepted the same and had paid additional amount of deficit stamp duty of Rs.38,650/- and registration fees of Rs.5,525/-. Again, the respondent had valued the land at the rate of Rs.645/- per square feet. The contention of the appellant is that when the statutory power was already exercised, then again, the respondent has no power to refix higher value by issuing Form-1. Based on the report of the Deputy Collector (Stamps) the respondent issued a



notice dated 14.11.2014 directing the appellant to submit explanation. The appellant had issued lawyer's notice dated 05.12.2014 with all documentary evidence. After more than three years the respondent had issued notice dated 30.01.2018 and the appellant had replied through lawyer notice dated 19.02.2018. Thereafter the respondent had issued notice dated 12.04.2022 to appear in person for enquiry to be held on 29.04.2022 and the appellant had appeared and based on the enquiry the present impugned order 22.11.2022 is passed. Aggrieved over the same the present appeal is filed.

2.(ii) The **C.M.A.(MD)No.440 of 2023** is filed against the order passed by the sole respondent. The brief facts of the case are that the appellant had purchased the agricultural property admeasuring 4 Acres 31 cents in S.No.276 along with easement rights and electricity connection through registered sale deed dated 04.04.2014 valued at Rs.8,62,000/- as per guideline value and paid stamp duty of Rs.60,350/- and registration fees of Rs.8,810/-. The Sub Registrar had referred the document under section 47-A to Collector (Stamps), wherein the land was valued for higher rate and the appellant had accepted the same and had paid additional amount of deficit stamp duty of Rs.38,650/- and registration fees of Rs. 5,525/-. Again, the respondent had valued the land at the rate of Rs.645/- per



square feet. The contention of the appellant is that when the statutory power was already exercised, then again, the respondent has no power to refix for higher value by issuing Form-1. Based on the report of the Deputy Collector (Stamps) the respondent issued a notice dated 14.11.2014 directing the appellant to submit explanation. The appellant had issued lawyer's notice dated 05.12.2014 with all documentary evidence. After more than three years the respondent had issued notice dated 30.01.2018 and the appellant had replied through lawyer notice dated 19.02.2018. Thereafter the respondent had issued notice dated 12.04.2022 to appear in person for enquiry to be held on 29.04.2022 and the appellant had appeared and based on the enquiry the present impugned order dated 02.11.2022 is passed. Aggrieved over the same the present appeal is filed.

2.(iii) The **C.M.A.(MD)No.561 of 2023** is filed against the order passed by the 1st respondent. The brief facts of the case are that the appellant had purchased the agricultural property admeasuring 2 Acres 21 Cents in S.No.155/6A, 155/6B2, 155/4C and 155/5C along with ½ right over the Well and Electric Motor registered on 15.03.2016 valued at Rs.2,18,418/-. The Sub Registrar had referred the document under section 47-A to Collector (Stamps) without notice and the reference note was not served to the appellant. The 2nd respondent had



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straight away issued Form-2 notice fixing the value as Rs.500/- per square meter based on the adjacent survey number and directed to submit objection on 31.12.2016 and the same notice was received by the appellant on 31.12.2016 only. The appellant had submitted the objection on 02.01.2017. The 2nd respondent without passing any order, had relied on order dated 19.12.2016 had demanded additional stamp duty. Hence the appellant had filed an appeal on 03.05.2017 to the 1st respondent. The 1st respondent without issuing any notice and without opportunity to the appellant had passed the impugned order by obtaining report from the department. Infact the report clearly states that the land is still maintained as agricultural land. But the 1st respondent had held the land would be developed in future as housing sites and had confirmed the order of the 2nd respondent and further increased from Rs.500/- to Rs.670/- square meter. Aggrieved over the same the present appeal is filed.

2.(iv) The **C.M.A.(MD)No.17 of 2024** is filed against the order dated 22.05.2003 passed by the first respondent. The brief facts of the case are that the appellant had purchased the property in S.No.535/1A2A to an extent of 0.27.50 Ares and S.No.535/1A2F to an extent of 0.30.20 Ares, totally, 0.58 Ares (1.43 acres) for total sale consideration of Rs.2,00,000/- along with well and electric



motor. But as per the insistence of the 3rd respondent / Sub Registrar the appellant had paid Rs.2,14,020/-. Thereafter the 3rd respondent had referred the document under section 47-A, without following the procedure contemplated under Rule3(3)(4) of the Tamil Nadu Stamp (Prevention & Under Valuation of the Instruments) Rules 1968 (hereafter referred to as Under Valuation Rules, 1968) stating that the adjacent lands are sold as house sites and its value is higher, even though the land under document is only an agriculture land and still the appellant is doing agriculture. The 2nd respondent / Collector (Stamps) had issued notice under Form-I and the appellant had submitted reply on 24.10.2017, but the 2nd unilaterally determined the market value without any basis and passed an order dated 19.01.2018 at the rate of Rs.680/- per square meter and demanded to pay the additional stamp duty and registration fee at the rate of Rs.2,66,449/-. Aggrieved over the same, the appellant preferred an appeal before the appellate authority / 1st respondent. However, rejecting the contention of the appellant, the appellate authority has confirmed the fixation at Rs.680/- per square meter. Aggrieved over the same, the present Civil Miscellaneous Appeal in C.M.A.(MD)No.17 of 2024 is filed.

3. The respondents submitted that the land ought to be valued as per



the Rule 5 of Under Valuation Rules, 1968, wherein the said rules have given certain guidelines to fix the market value and the same is extracted 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 and 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;*



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- (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*



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

4. After hearing the rival submissions, this Court had given its anxious consideration. Under Rule 5 the lands are divided into four categories. Sub-clause 5(a) deal with lands, sub-clause 5(b) deals with the house sites, sub-clause 5(c) deals with land along with buildings and sub-clause 5(d) deals with properties other than lands, house sites and buildings. Under sub-clause 5(a) for determining the value of land, the respondents ought to take the classification and the usage of the land. Specifically, under sub-clause 5(a)(ix), it has been stated only when the agricultural land is being converted into residential, commercial and industrial land, the respondents are empowered to fix the land as house site.

5. Further, it is seen that to convert the land from agricultural to non-agriculture purpose, then orders ought to have been passed under the “Tamil Nadu Change of Land Use (From Agriculture to Non-agriculture Purposes in Non-Planning Areas) Rules, 2017 (hereinafter referred to as “Change of Land Use Rules”). Admittedly, the present lands in all the Civil Miscellaneous Appeals are not subjected to conversion under the said Rules, 2017. In such circumstances,



the land ought to be considered as agriculture lands and not as house cites. In the present cases the respondents had not considered the issue under the said Rules, 2017. Hence the impugned orders ought to be interfered with.

6. Further, the respondents cannot take into account the “future usage” of the lands while fixing the stamp duty and for the same the Learned Counsel appearing for the appellant had relied on the judgment rendered in the case of ***Pushpa Sareen Vs State of Uttar Pradesh*** reported in ***2015 (2) MWN (Civil) 129*** wherein the question that was considered by the Hon'ble Full Bench of High Court of Allahabad is that

“1.....

((2) Whether the Collector Stamps has power to fix the valuation of a plot on the assumption that the same is likely to be used for commercial purposes, and whether the presumed future prospective use of the land can be a criterion for valuation by the Collector;”

The Hon'ble Full Bench of High Court of Allahabad had considered the issued and has held as under:

“....

25. The true test for determination by the Collector is the market value of the property on the date of the instrument because, under the provisions of the Act, every instrument is required to be stamped before or at the time of



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execution. In making that determination, the Collector has to be mindful of the fact that the market value of the property may vary from location to location and is dependent upon a large number of circumstances having a bearing on the comparative advantages or disadvantages of the land as well as the use to which the land can be put on the date of the execution of the instrument.

26. Undoubtedly, the Collector is not permitted to launch upon a **speculative inquiry about the prospective use to which a land may be put to use at an uncertain future date**. The market value of the property has to be determined with reference to the use to which the land is capable reasonably of being put to immediately or in the proximate future. The possibility of the land becoming available in the immediate or near future for better use and enjoyment reflects upon the potentiality of the land. This potential has to be assessed with reference to the date of the execution of the instrument. **In other words, the power of the Collector cannot be unduly circumscribed by ruling out the potential to which the land can be advantageously deployed at the time of the execution of the instrument or a period reasonably proximate thereto.** Again the use to which land in the area had been put is a material consideration. If the land surrounding the property in question has been put to commercial use, it would be improper to hold that this is a circumstance which should not weigh with the Collector as a factor, which influences the market value of the land

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**



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*the Supreme Court in State of U.P. and others v. 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.*

28. In the circumstances, we answer the second question as referred in the aforesaid terms”

7. The same issue was considered by the Hon'ble Division Bench of this Court in the case of **Deputy Collector (Stamps) Vs. Thajunnisa and others** reported **(2015) 6 MLJ 129** and the relevant portion of the judgment is extracted



hereunder:

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“10. It is to be borne in mind that the Deputy Inspector General of Registration's Report dated 22.03.2002 does not indicate any conclusion which was arrived at to the effect that the Respondents/Petitioners lands in question were not agricultural lands. **Just because the lands in question are having the potential of being converted as house sites in future, the authorities in this regard cannot allow their imagination to run riot or to indulge in assumptions, presumptions, surmises and conjectures etc., in the considered opinion of this Court.** Even the Suo Moto power as envisaged under Sub Section (3) of the Section 47(A) of the Indian Stamp Act ought to have been exercised within two years from the date of Registration of the documents. As a matter of fact, the Suo Moto power of revision should have been exercised well before 11.04.1999 not at a later point of time. As such, it is candidly clear that the impugned order dated 08.04.2002 is without jurisdiction whatsoever and resultantly, Form II notices issued were invalid and illegal in the eye of law.

11. At this juncture, at the risk of repetition, this Court pertinently points out that in the instant case on the date of registration, viz., on 11.04.1997, admittedly the lands in question are agricultural lands and only after 5 ½ years later, after the registration of the documents, the Deputy Inspector General of Registration was of the opinion that the lands were capable of being converted into house sites and made a representation for the revision of land value. Suffice it for this Court to pinpoint that in this case, no tangible materials were available before the authorities at least to come to a tentative conclusion that the value of the property described in the sale deeds were not properly described. Apart from that, even the Suo Moto



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power as contemplated under Sub-Section 3 of 47 A of the Indian Stamp Act, 1899 was clearly out of bounds of the limitation period specified there under. Viewed in that perspective, the order of the Second Appellant dated 08.04.2002 and the subsequent confirmation order of the First Appellant/First Respondent dated 09.01.2003 are invalid and illegal by this Court. In this regard, this Court is in complete agreement with the view taken by the Learned Single Judge in quashing the aforesaid two orders and allowing the Writ Petition. Consequently, the Writ Appeal fails.”

8. In the aforesaid judgments, it has been categorically held that 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. The lands are having the potential to convert as house sites in future cannot be the reason to fix higher value and the authorities cannot be allowed to imagine and to indulge in assumptions, presumptions, surmises and conjectures. The test would be the land is having potential to form housing plots at the time of execution of the document or reasonably proximate time. In the present cases it has to be seen whether such test was considered by the respondents.

9. In C.M.A(MD)No.376 of 2023, it is seen that the spot enquiry



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report states the land is in village, 15 kilometers away from the Municipal limits, on northern side the land is developed as housing plots but on the other three sides the lands are still used as agricultural lands. In the present land, there are 134 mango trees, 144 amla trees, 50 lemon trees, 35 Guava trees, drip irrigation is carried on and all are yielding. When the report specifically states that the land is continuing as agriculture land with yield and further, when the land was not converted under “Change of Land Use Rules”, it has to be concluded that the land is agricultural land only.

10. In C.M.A(MD)No.440 of 2023, it is seen that the spot enquiry report states the land is in village, 15 kilometers away from the Municipal limits, on northern side the land is developed as housing plots but on the other three sides the lands are still used as agricultural lands. In the present land, there are 67 coconut trees, 66 mango trees, 71 amla trees, 25 lemon trees, 15 Guava trees, drip irrigation is carried on and all are yielding. When the report specifically states the land is continuing as agriculture land with yield and further, when the land was not converted under “Change of Land Use Rules”, it has to be concluded that the land is agricultural land only.



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11. In C.M.A(MD)No.516 of 2023, it is seen that the spot enquiry report states the land is in village, 3 kilometers away from Vasudevanullar Sub Registrar Office, near the land Thar Road is available connecting Vasudevanullar – Sankarankovil, the land is used for agricultural activities where Corn is planted in 1/4th of the land and the remaining is ready for cultivation, nearby Sanganaperi Village houses are available. When the report specifically states the land is continuing as agriculture land with yield and further, when the land was not converted under “Change of Land Use Rules”, it has to be concluded that the land is agricultural land only.

12. In C.M.A(MD)No.17 of 2024, it is seen that the spot enquiry report states the land is in village, behind the Government Private Aided School and Government Primary Health Centre. In the present land there are 72 coconut trees, 17 other variety coconut trees and maintained as coconut grove and all are yielding. There are village houses and some lands are registered as house plots, but the present land is agricultural land with coconut grove. When the report specifically states the land is continuing as agriculture land more specifically as coconut grove with yield and further, when the land was not converted under “Change of Land Use Rules”, it has to be concluded that the land is agricultural



13. Therefore, this Court is of the considered opinion when the present lands are used as agricultural lands and there is no potential conversion of land in near proximity then the same ought to be considered as agricultural land. Further, future conversion of land as house sites would be assumptions, presumptions, surmises and conjectures etc., Hence by following the above said judgments, this Court is inclined to quash the impugned orders and accordingly, the impugned orders in the all the Civil Miscellaneous Appeals are quashed.

14. It is submitted that based on the impugned orders, the respondents have classified the land as residential plots in their records. Since the respondents are not the appropriate authority to classify the lands, the respondents are directed to reclassify the lands as agricultural lands and also carry out necessary changes in the computer data. It is submitted that in some cases, the respondents have retained the document, hence, where ever the respondents have retained the documents, the same shall be returned to the appellants. The above directions shall be completed within a period of four weeks from the date of receipt of a copy of this judgment.



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15. With the above said directions, the Civil Miscellaneous Appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

15.02.2024

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

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To

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- 1.The Chief Revenue Controlling Authority
and Inspector General of Registration,
No.100, Santhome High Road,
Mullima Nagar, Mandavelipakkam,
Raja Annamalaipuram,
Chennai-600 028.
- 2.The Special Deputy Collector (Stamps),
Stamp and Tax, District Collector Campus,
Kokkirakulam, Tirunelveli.
- 3.The Sub - Registrar,
Sub – Registrar's Office,
Vasudevanallur,
Sivagiri Taluk, Tenkasi District.
- 4.The Sub - Registrar,
Sub – Registrar's Office,
Vickramasingapuram,
Ambasamudram Taluk,
Tirunelveli District.
- 5.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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