BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.07.2024

DELIVERED ON : 29.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGOVAN

C.M.A.(MD).No.713 of 2022

R.Jospher Jain ... Appellant

Vs.

1.The Chief Controlling Revenue Authority cum
The Inspector General of Registration,
Chennai – 28.

2.The Special Deputy Collector (Stamps),
Tirunelveli,
Tirunelveli District.

3.The District Registrar (Administration),
Kanniyakumari District.

4.The Sub Registrar,
Boothapandi,
Kanniyakumari District. ... Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 47(A) 20 of the Indian Stamp Act, 1899, to set aside the impugned order passed by the respondent/the Chief Controlling Revenue Authority cum the Inspector General of Registration, Chennai, dated 28.01.2022 in

Na.Ka.No.5637/N4/2018, confirming the order passed by the 2nd respondent dated 28.09.2017, in Na.Ka./Ex.4/80/2017, as against the appellant.

For Appellant : Mr.N.Dilipkumar

For Respondents : Mr.Veerakathiravan,
Assistant Advocate General,
for Mr.D.S.Nedunchezian
(Government Advocate)

JUDGMENT

This civil miscellaneous appeal is preferred against the order passed by the first respondent namely the Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai, dated 28.01.2022, confirming the order passed by the second respondent namely the Special Deputy Collector, (Stamps), Tirunelveli, dated 28.09.2017.

2.The facts in brief:

The issue arises in this way.

The appellant herein presented the sale deed in No.106/2017 before the Sub Registrar, Boothapandi, for Registration. During the course of the proceedings, it was found that there is a deficiency of

Rs.11,89,859/- in stamp duty. So notice was issued to the appellant herein seeking objections. He filed the objections. Even though he appeared before the Enquiry Officer, no documents were produced to show the market value. So the Sub Registrar filed a Report showing the market value as mentioned in the guideline value. The Officer visited the place and made enquiry. On that basis, he assessed the market value as Rs.6,600/- per cent. He reassessed the stamp duty and directed the appellant herein to pay the deficit stamp duty of Rs.5,59,384/-. The total market value of the property was assessed at Rs.1,39,46,200/-. The order was passed as noted above on 28.09.2017. Against which, this appellant filed appeal before the first respondent. The first respondent by the order, dated 28.01.2022, differed from the report submitted by the District Registrar and assessed the market value as Rs.6,60,000/- per acre and confirmed the order passed by the Special District Collector (Stamps), Tirunelveli, dated 28.09.2017.

3.The learned counsel for the petitioner would submit that the order passed by the Special District Collector (Stamps), dated 28.09.2017, is not valid under law. He would submit that proper procedure was not followed by the Special District Collector (Stamps). Form Nos.1 and 2 were issued on the very same date namely 28.09.2017, which is against the specific provisions. On that ground the order passed by the Special District Collector (Stamps), is not legal. The illegality continued by the appellate authority also.

4.Per contra, the respondent would submit that the assessment was made by the Special District Collector (Stamps) and the Commissioner of Revenue based upon the lie of the property, the amenities available, the surrounding properties and sale deeds. So according to him, no interference is called for.

5.As mentioned above, we will go to the first aspect of the preliminary ground. The grievance of the appellant is that even the appellate authority has not considered the above said illegality committed by the Special District Collector (Stamps).

6.To answer that issue now we will straight away go to the Tamilnadu Stamp (Prevention of Undervaluation of Instruments) Rules,

1968. Rule 4 reads that

> ***"4.Procedure On Receipt Of Reference Under Section 47-A :-*** *(1) On receipt of a reference under subsection (1) of section 47-A, from a registering officer, the Collector shall issue a notice in Form I,*
>
> *(a) to every person by whom, and*
>
> *(b) to every person in whose favour the instrument has been executed,*
>
> *informing him of the receipt of the reference and asking him to submit to him his representations, if any, in writing to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21 days from the date of service of the notice.*
>
> *(2) The Collector may, if he thinks fit, record a statement from any person to whom a notice under sub - rule (1) has been issued.*
>
> *(3) The Collector may for the purpose of his enquiry-*
>
> *(a) call for any information or record from any public office, officer or authority under the Government or any local authority;*
>
> *(b) examine and record statements from any member of the public, officer or authority under the*

Government or the local authority; and
(c) inspect the property after due notice to the parties concerned.
(4) After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order."

7.Reading of the above said Rule makes the position clear that on receipt of reference (1) of Section 47 (A), the Special District Collector (Stamp) within 15 days from the date of receipt of reference must issue notice in Form No.1, intimating the parties to submit their representation. So this indicates that notice is mandatory upon the person against whom the reference was made and he must be given opportunity to produce evidence in support of his representation.

8.Power has been conferred upon the Special District Collector

(Stamps) as per Sub Sections 2, 3 and 4 deals about the order to be passed. Wherein, it is made clear that an order in writing must be passed determining the market value and the duty payable and this must be a provisional determination. He must also indicate the reasons namely the basis on which the provisional market value is determined.

9.A detailed guideline is mentioned in Rule 5 to arrive at the market value, which may not be relevant for out discussion. Now even though it is contended by the appellant on those guidelines was not taken into account either by the original authority or by the appellate authority. We will concentrate only on the violation of the Rules.

10.Rule 6 reads about the further steps to be taken by the Special District Collector (Stamps).

> ***"6.Procedure After Arriving At Provisional Market Value :-***
> *The Collector shall communicate a copy of his order provisionally determining the market value of the properties and the duty payable, to all the persons who are liable to pay the duty along with the notice in Form II and call upon the parties to*

lodge their objections, if any, to such determination of the market value within the time specified in the notice. The Collector shall also hear the parties on the date specified in the notice or on such other day as may be fixed by him."

11.The provisional market value must be intimated to the party concerned in Form No.2. Again opportunity must be given to that person. All must be heard. Thereafter, only the final order should be passed as indicated in Rule 7, which reads under.

"7. Final Order Determining The Market Value :-

(1) The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case after careful consideration of all the relevant factors and evidence available with him [1][pass an order within three months from the date of first notice] determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty, if any.

(2) A copy of the order shall be communicated to the registering officer concerned for his record. 2 [(3) The difference in the amount of duty determined by the Collector shall be paid within two months from the date of final order passed under sub-section (2) or sub-section (3) of section 47-A.

(4) The Collector shall, after collecting the difference in amount of stamp duty and interest, if any, under section 47-A, give a certificate in Form III by endorsement on the instrument.]

Footnote: 1. The above expression was substituted by G.O. Ms. No. 69, CT&RE, dated 26.2.1997. 2. Sub-rules (3) & (4) of Rule 7 were substituted by G.O. Ms. No. 35, CT, dated 9.3.2001."

12.Now, reading of the order of the original authority shows that both Form Nos.1 and 2 were passed on the very same day namely 28.09.2017, which, is clearly in violation of the statutory provisions. How this important aspect was not noticed by the original authority as well as the appellate authority is not known. The appellate authority mainly concentrate upon the assessment of market value on the basis of the original order and the report submitted by the Special District

Collector. Even though it is submitted by the respondent herein that the appellant cannot go back to the original order and challenge it, but, however, I am of the considered view that when statutory violation is noticed, this plea must be entertained by this Court even though that was not raised before the appellate authority.

13.On the sole ground, I am of the considered view that the matter must be remitted back to the original authority namely Special District Collector (Stamps) for fresh consideration by following the statutory provisions properly. For that purpose, the order passed by the original authority as well as the appellate authority stand set aside. The original authority may decide the same as indicated in the Rules adhering to that time period mentioned. Accordingly, this civil miscellaneous appeal is allowed. No costs.

29.10.2024

Index : Yes / No
Internet : Yes / No
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To

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4.The Sub Registrar,
Boothapandi,
Kanniyakumari District.

5.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

G.ILANGOVAN,J.

TM

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