BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No. 1023 of 2021
and
C.M.P(MD)Nos. 1025 of 2022 & of 9481 of 2021

M.Sahul Hameed ... Appellant

Vs.

1. The Inspector General of Registration,
   O/o. the IG of Registration,
   100, Santhome High Road,
   Chennai-600 028.

2. The Special Deputy Collector (Stamps),
   Kokkarakulam,
   Tirunelveli-627 009.

3. The Joint I Sub Registrar,
   Nagercoil,
   Kanyakumari District. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to call for the records relating to the proceedings of the 1st respondent made in Na.Ka.No.3877/N4/2021, dated 07.09.2021 confirming the order in Mu.Sa.X.4/1089/2013, dated 30.03.2015 passed by the 2nd respondent and set aside the same and consequently direct the respondents to release the document, dated 10.07.2013 registered as Document No.2149/2013 on the file of the 3rd respondent.

For Appellant : M/s.T.Antony Arul raj

For Respondents : M/s.S.Jeya Priya
Government Advocate

JUDGEMENT

The Civil Miscellaneous Appeal is filed to set aside the proceedings of the 1st respondent made in Na.Ka.No.3877/N4/2021, dated 07.09.2021 confirming the order in Mu.Sa.X.4/1089/2013, dated 30.03.2015 passed by the 2nd respondent and seeking consequential direction to the respondents to release the document, dated 10.07.2013 registered as Document No.2149/2013 on the file of the 3rd respondent.

2. The brief facts of the case are that the property situated in S.No.P2/39 in Nagercoil Village Agastheeswaram Taluk, Kanyakumari District admeasuring five cents originally belong to one Sri Krishna Nadar, son of Vadivel Nadar and had sold the same to Chellammal, wife of Sundaram Nadar on 21.06.1952 and she had executed settlement deed dated 08.11.1985, in favour of Star Ramani Bai. In the settlement deed itself it is mentioned that there is residential house with door number and EB connection. The said Star Ramani Bai had sold the property to the appellant herein for a valuable consideration on 10.07.2013 in Document No.2149 of 2013. At the time of registration, the appellant had paid the requisite stamp duty by valuing the

ground area as ₹10,00,121/- and by valuing the building as ₹1,79,879/- and totally ₹11,80,000/-

3. The third respondent after registering the document, referred the document to the second respondent under section 47A (1) of the Indian Stamp Act, 1899 for determination of value on the ground of deficiency in stamp duty. The second respondent vide order dated 30.03.2015 had determined the total value of the property as ₹34,46,200/-, the ground area value is fixed as ₹32,66,233/- and the building value as ₹1,75,879/- and the appellant was called to pay the deficient stamp duty of ₹1.58,634/-. The second respondent had accepted value of the building as mentioned in the document but refixed the value of the ground, hence aggrieved over the same, had preferred statutory appeal on 06.05.2015, before the first respondent. In the meanwhile, the respondents had introduced Samathan Scheme and the petitioner wanted to settle the issue by utilising the scheme, hence submitted a representation dated 22.02.2018 to refer the matter under the scheme, but there was no response. Thereafter the appellant submitted a reminder letter dated 08.05.2017 to the first respondent to take up the appeal and dispose of the same in accordance to law as early as possible and in response to the same the appellant had received a communication dated 12.07.2018 directing to summit the appeal along with the copy of the order passed by the second respondent after affixing Court Stamp Fee of ₹5/-. But the

appellant had already submitted the original copy and did not retain the copy of the order, had to apply a fresh copy. After obtaining a said copy under RTI on 13.08.2020 the appellant forwarded the same to the first respondent on 26.08.2020. Since there was no response, the appellant had filed W.P.(MD)No. 19600 of 2021 for speedy disposal of appeal and the said writ petition was disposed of vide order dated 04.01.2021 directing the first respondent to dispose of within a period of three months. The appellant received notice indicating the hearing of the appeal is scheduled on 30.04.2021 and the same was adjourned for few occasions due to Covid restrictions that after the petitioner submitted written arguments on 17.08.2021. The first respondent vide order dated 07.09.2021 passed the impugned order dismissing the appeal. In the impugned order, the first respondent confirmed to the order of the second respondent so for value of the ground area is concerned, but unfortunately, the building value was enhanced from ₹1,79,879/- to ₹13,55,594/. The respondent had referred to the report of the third respondent dated 21.04.2021 for enhancing the value of the building, but the copy of said report was not provided to the appellant. In the report, the value that was prevailing in the year 2021 was taken, but the present document was registered on 10.07.2013, which is eight years prior to the said valuation. The building is an old house which is more than 40 years, which would be evident from the settlement deed executed in the year 1985.

Hence relying on such report is not sustainable in law. Moreover, the appellant was not given proper notice before passing the order. For all these reasons the present Civil Miscellaneous Appeal is filed.

4. At the time of admission this Court had granted interim stay dated 18.11.2021 for a period until 09.12.2021, hence the respondents had filed counter along with the vacate stay petition.

5. In the counter it is submitted that the appellant has purchased the property admeasuring 202–249 square meter of land along with house in Document No.2149/2013 dated 10.07.2013. As per the guideline value, the land is valued at ₹16,150/- per square metre and the market value for the land is ₹ 32,66,321/- building was valued as ₹1,79,879/- and the total market value of fixed as ₹34,46,200/-, for the said value the appellant ought to pay stamp duty of ₹2,41,234/-, but the petitioner had paid the stamp duty of ₹82,600 only, hence there is deficit stamp duty of ₹1,58,634. Hence the document was referred for determination of market value under Section 47A of Indian Stamp Act 1899. After providing adequate opportunity to the appellant the market value was determined at ₹16,150/- per square metre vide proceeding dated 30.03.2015. Aggrieved over the same, the appellant had preferred an appeal

before the first respondent and subsequently filed writ petition wherein the Hon'ble Court had directed to consider and pass orders within a period of three months. As per the direction of the Hon'ble Court, notice of enquiry was issued and the appellant had appeared through Advocate and submitted necessary documents. In order to value the building on 17.08.2021 the third respondent was directed to inspect the building and fix the value as per the norms of Public Works Department. Accordingly, the third respondent had inspected the said building and submitted a detailed valuation report. As per the valuation report, the market value of the land was arrived at ₹16,150/- per square metre or ₹1,500/- per square feet and the market value the building was fixed at ₹13,55,594/-. The detailed field inspection report and the valuation report was found to be just and reasonable and hence accepting the same the first respondent has passed the impugned order.

6. As far as the grounds of appeal the same false and vexatious. The contention of the appellant that the appellate authority has enhanced the value of the building after eight years from the date of purchase is false misleading. As per Section 47-A(6) of the Stamp Act the first respondent being the Chief Controlling Revenue Authority is empowered to call for and examine an order passed under Section 47-A(2) and Section 47-A(3) and if such order is

prejudicial to the revenue, he may initiate proceedings to modify or set aside such order and may pass such orders as he thinks fit. The impugned order was passed based on the field inspection report and based on the value of the building which was arrived at based on the rates fixed by the Public Works Department.

7. Further in the valuation of the buildings the necessary depression of the building value and also other entitled allowances were taken into account. Hence the value of the building determined is within the ambit of law and there is no violation of principle of natural justice as alleged. As far as the other grounds, the same is raised with the intention to avoid the payment of legitimate deficit stamp duty payable to the government. Even at the time of registration the petitioner is well aware on the guideline value of the land as ₹1,500 square feet, but the petitioner has not remitted the value noted in the guideline value and hence the document was referred under section 47-A and the value of the land and building was arrived by the second respondent. In the appeal also the market value of the land was fixed as ₹16,150/- since the property is located in prime location of Nagercoil Corporation limits, which is a posh residential area surrounded by houses and lying opposite of the Government Guest. Hence the market value fixed for land and building is not

exorbitant and the same is fixed as per guidelines and the value of Public Works Department. Hence the CMA is devoid of merits and the respondents prayed to dismiss the appeal.

8. Heard M/s.T.Antony Arulraj, the Learned Counsel appearing for the appellant and M/s.S.Jeya Priya, the Learned Government Advocate appearing for the respondents and perused the records.

9. The appellant has purchased the property vide registered document, dated 10.07.2013, but the document was referred under Section 47-A of the Indian Stamp Act. The second respondent has passed an order under Section 47-A (1) of the Stamp Act, including the area of the land where the building was also put up for value of ₹32,66,321/-. The second respondent has calculated a sum of ₹1,79,879/- for the building separately. Aggrieved over the same, the appellant has preferred an appeal before the first respondent. The first respondent after perusing the records confirmed the value of the land as ₹ 32,66,321/-. However, did not accept the building value which was fixed as ₹ 1,79,879/-, but, fixed the value as ₹13,55,594/- which is used as residential house.

10. The contention of the appellant is that the said order was passed without issuing notice and no personal hearing was afforded. It is seen that the appellant has preferred the statutory appeal against the order of the second respondent before the first respondent challenging the land value which was increased from ₹10,00,121/- to ₹32,66,321/-. And the first respondent had confirmed the said increased amount. As far as the building value the appellant had not preferred any appeal, but the first respondent invoking the power under Section 47-A had intended to call for field valuation and inspection report and thereafter based on the such field valuation and inspection report had increased the building valuation from ₹1,79,879/- to ₹13,55,594/- and had passed the impugned order. But before passing such order the first respondent had neither issued notice nor called for objections. Further the copy of the field valuation and inspection report was not served on the appellant. When there is no increase by the second respondent in the building value and when the first respondent is intended to increase the building value, then the first respondent is bound to issue notice to the appellant. Therefore, this Court is of the considered opinion that the impugned order is passed violating the principles of natural justice.

11. The next contention of the appellant is that the appellant has purchased the property on 10.07.2013. The parent document is a registered settlement deed 08.11.1985, wherein the document had mentioned about existence of building. In such circumstances, the building ought to be considered as old building in existence from 1985 onwards. Still the same building is in existence and it is used as residential house. Therefore, proper depreciation value ought to be taken by the respondents.

12. The further contention of the appellant is that the respondents have relied on the report which was assessed in the year 2020-2021 and the rate fixed is applicable to the year 2020-2021. Without giving proper depreciation value from 1995 onwards, the respondents have fixed the value.

13. But the respondents have stated in the counter that on inspection by the 3rd respondent, it was found out that the value of the building was not properly calculated and the building value as mentioned by the purchaser was accepted. Hence as per the orders of the first respondent field inspection was carried out and market value was worked out as per Public Works Department rate. Moreover, year wise depreciation value to the building was granted. Even though the inspection was made in the year 2021, when

appropriate depreciation value has been allowed by the authorities as per the rules in force, then the plea of eight years has not validity. As such there is no excess or erroneous fixation of market value as stated by the petitioner.

14. From the counter it is evident that the respondents have taken value as existed in the year 2020-2021. But the respondents ought to have taken the value as it was prevailed in the year 2013 and applied depreciation. Moreover, the respondents had not served the copy of the field inspection report and valuation report to the appellant. Further the respondents have not produced the same before this Court and failed to provide any details. Since, there is violation of principles of natural justice and due to bereft of details, this Court is inclined to interfere with the order passed by the respondents. This Court is of the considered opinion that the fixation of ₹13,55,594/- to building is on higher side and at the same breath fixation of ₹1,79,879/- is lower side. Therefore, in order to meet the ends of justice, this Court is fixing the value of the building as Rs.3,50,000/-. Therefore, the value of the land is fixed as ₹32,66,321/- and the value of the building is fixed as ₹3,50,000/-. The appellant shall pay the appropriate stamp duty both the land and building. On such payment, the respondents are directed to release the deeds.

15. Accordingly, this Civil Miscellaneous Appeal is allowed on above terms. No Costs. Consequently, connected miscellaneous petition is closed.

02.02.2024

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

To

1. The Inspector General of Registration,
   O/o. the IG of Registration,
   100, Santhome High Road,
   Chennai-600 028.

2. The Special Deputy Collector (Stamps),
   Kokkarakulam,
   Tirunelveli-627 009.

3. The Joint I Sub Registrar,
   Nagercoil,
   Kanyakumari District.

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

S.SRIMATHY, J.

KSA

Order made in
C.M.A(MD)No.1023 of 2021

02.02.2024