
(2010) 08 MAD CK 0506
In the Madras High Court
Case No : C.M.A. No. 3814 of 2005

Asmatullah Khan

APPELLANT

Vs

Chief Controlling Revenue Authority-cum-Inspector General
of Registration

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Registration Act, 1908 — Section 27, 34

Stamp Act, 1899 — Section 47A, 47A(1), 47A(10)

Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 — Rule 3, 3(3)

Citation : (2011) 1 RCR(Civil) 624 : (2011) 1 RCR(Civil) 624

Hon'ble Judges : P.P.S. Janarthana Raja, J

Bench : Single Bench

Advocate : P. Valliappan, for G.R.M. Palaniappan, for the Appellant; R. Muthian, Government Advocate, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—The Appeal is preferred by the Appellant u/s 47-A(10) of the Indian Stamp Act, 1899, against the order of the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Santhome, Chennai-600 004, the First Respondent herein, dated 14.9.2005 in proceeding No. 65639/N2/2004 modifying the order passed by the Special Deputy Collector (Stamps), Salem, Namakkal & Dharmapuri Districts, Salem, the Second Respondent herein, in S.R. No. 146/02/KG-I, dated 30.4.2003.

2. The Appellant purchased the property measuring a total extent of 3060 sq. ft., with building thereon bearing Door No. 92F, R.S. No. 698 of Poganapalli Village, Krishnagiri panchayat, for sale consideration of 24,20,000/- from one K.C. Krishnan and others under a Sale Deed dated 10.6.2002 and the same was presented for registration before the Joint Sub-Registrar-III, Krishnagiri, the Third Respondent herein and the said Sale Deed was registered as Document No. 856 of 2002. The Appellant paid the stamp duty of Rs. 50,400/- The Third Respondent was of the view that the market value in the document is not true.

Therefore, the he determined the market value at Rs. 22,33,694/- and referred the document to the Special Deputy Collector (Stamps), Salem, the Second Respondent herein for the purpose of determining the market value. The Second Respondent after careful consideration of the market value determined by the Third Respondent herein and the original document of the subject land, fixed the market value at Rs. 2525/- per sq. ft., and directed the Appellant to pay a sum of Rs. 22,13,024/- Aggrieved by that order, the Appellant preferred an Appeal to the Chief Controlling Revenue Authority-cum-Inspector General of Registration, the First Respondent herein. The said First Respondent fixed the value at Rs. 2582/- per sq. ft. Aggrieved by the that order, the Appellant filed the present Appeal.

3. The learned Counsel appearing for the Appellant vehemently contended that the order passed by the First Respondent, enhancing the market value fixed by the Second Respondent from Rs. 2525 to 2582/-per sq. ft., is illegal without any basis and justification as there is no power under the Act to enhance the market value. He further contended that the First Respondent ought not to have relied on the guideline value for the purpose of fixing the market value at Rs. 2582/- the guideline value is not the market value and in support of his contention he has also relied on the judgment of the Supreme Court in the case of R. Sai Bharathi Vs. J. Jayalalitha and Others, and V.N. Devadoss v. The Chief Revenue Control Officer- cum-Ins. and Ors. 2009(3) RCR(Civil) 496: 2009(4) R.A.J. 274; 2009 (3) L W 236. In view of the above, the order passed by the First Respondent is not in accordance with law and the same has to be set aside.

4. The learned Government Advocate appearing for the Respondent submitted that the First Respondent has considered all the facts and circumstances of the case and correctly fixed the market value at Rs. 582/- Therefore, the order passed by the First Respondent is in accordance with law It is a question of fact. Hence, the same has to be confirmed.

5. Heard the learned Counsel on either side and perused the materials available on record.

6. In the present case, the Second Respondent has fixed the market value at Rs. 2525/- per sq. ft. There is no detail as to how the amount was arrived at. But to the great surprise, the First Respondent increased the market value from Rs. 525/- to 2582/- per sq. ft by taking into consideration the guideline value prevailing on the date of the registration. The said value fixed by the First Respondent is only on the basis of the guideline value that too without giving any oppotortunity to the Appellant before fixing the enhanced value at Rs. 2582/-. The Apex Court in the cases of R. Sai Bharathi Vs. J. Jayalalitha and Others, , has considered the scope of guideline value in paragraphs 22 and 24, which reads as follows:

22. The guideline value has relevance only in the context of Section 47-A of the Indian Stamp Act (as amended by T.N. Act 24 of 1967) which provides for

dealing with instruments of conveyance which are undervalued. The guideline value is a rate fixed by authorities under the Stamp Act for purposes of determining the true market value of the property disclosed in an instrument requiring payment of stamp duty. Thus the guideline value fixed is not final but only a prima facie rate prevailing in an area. It is open to the Registering Authority as well as the person seeking registration to prove the actual market value of property. The authorities cannot regard the guideline valuation as the last word on the subject of market value. This position is made clear in the explanation to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. The said Explanation reads as follows:

Explanation.- The "guidelines register" supplied to the officers is intended merely to assist them to ascertain prima facie whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price. Such entries will not foreclose the enquiry of the Collector u/s 47-A of the Act or fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the documents.

24. This scheme of the enactment and the Rules contemplate that guideline value will only afford a prima facie basis to ascertain the true or correct market value, undue emphasis on the guideline value without reference to the setting in which it is to be viewed will obscure the issue for consideration. It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the Appellants, but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies. In any event, therefore, if for the purpose of the Stamp Act guideline value alone is not a factor to determine the value of property, its worth will not be any higher in the context of assessing the true market value of properties in question to ascertain whether the transaction has resulted in any offence so as to give a pecuniary advantage to one party or the other.

and in the case of V.N. Devadoss v. The Chief Revenue Control Officer-cunt- Ins. and Ors. 2009 (3) LW 236 the Apex Court has considered the scope of Section 47-A of the Indian Stamp Act, 1899 and this Court, in the case of The District Collector, Erode District, Erode and Ors. v. M. Ponnusamy 2002(2) RCR(Civil) 262: 2001 (2) CTC 449 (DB): 2001 (2) MLJ 458, has considered the scope of Section 47-A of the Act and in paragraphs 15 and 16 it has been held as follows:

15. On this subject, the Supreme Court in categorical terms, in State of Punjab and Others Vs. Mohabir Singh etc. etc., , has held that the function of the Registering Authority is quasi-judicial and he must make up his mind whether true price is reflected and that registration and reference follows. Considering the scope of the Section similarly worded namely Section 47-A, as amended by the Punjab Stamp Act, 1962, their Lordships observed as follows:

4. Sub-section (1) of Section 47-A empowers the Registering Officer, while

registering any instrument relating to the transfer of any property, if he has reasons to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, after registering such instrument, to refer the same to the Collector for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon. It would, therefore, be clear that the Registering Authority has to satisfy himself that value of the property or the consideration for it has not been truly set forth in the instrument. He may make a reference to the Collector in accordance with the provisions of Sub-section (2) of Section 47-A. Before making reference, he is required to register the document and he is not empowered to withhold the registration. Such a registration, of course, will be subject to the determination of the true market value prevailing in the locality though the value mentioned in the instrument for such registration under Sub-section (1) of Section 47-A was not conclusive.

6. It would thus be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself, before registering the document, whether the true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under Sub-section (1) of Section 47-A, he registers the document. Thereafter, he should make a reference to the Collector for action under Sub-sections (2) and (3) of Section 47-A. Accordingly, we hold that the offending instructions are not consistent with Sub-section (1) of Section 47-A. It would, therefore, be open to the State Government to revise its guidelines and issue proper directions consistent with the law. 16. In *Park View Enterprises Vs. State Government of Tamil Nadu*, , a Division Bench of this Court, while considering the scope of Section 47-A of the Act as well as Sections 27, and 34 of the Registration Act held that the Registering Officer has no jurisdiction or authority to hold enquiry and decide as to what is the stamp duty that is payable. Rule 3(3), only enables him to arrive at the prima facie assessment whether the market value furnished in the sale deed could be relied upon to proceed with the registration. If he opines that the market, value is not correct the statutory duty cast upon him is to register it and send it to the Collector by overlooking the procedure u/s 47-A. Except the Collector, no authority could fix the market value and decide upon the proper stamp duty payable in respect of any instrument covered u/s 47-A. The Division Bench further held that the Registering Officer cannot delay the registration of the instrument of the kinds covered by Section 47-A. He has no right to go behind the terms of the document and any other agreement or any other transaction. The role of the Collector is to find out the market value relating to the charge ability of the instrument and he has to go by

the terms of the document regarding the nature or the transaction.

The principles enunciated in the above judgments were not taken into consideration by the First Respondent before passing the impugned order.

7. Taking into consideration the facts and circumstances of the case, in the interest of justice, the order of the First Respondent is set aside with a direction to the First Respondent to consider the matter afresh and pass appropriate orders after giving opportunity to the Appellant, to produce material evidence to support his case keeping in view the principles enunciated in the Apex Court judgment cited supra and in accordance with law as expeditiously as possible. The Appellant is also directed to cooperate with the First Respondent, to dispose of the matter without taking unnecessary adjournments.

8. With the above directions, this Civil Miscellaneous Appeal is disposed of. No costs.