
(2014) 09 MAD CK 0150

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2109 of 2014 and M.P. No. 1 of 2014

Karpagavinayaga Associates

APPELLANT

Vs

The Inspector General

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Stamp Act, 1899 — Section 47

Citation : AIR 2015 Mad 7 : (2014) 5 LW 280

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Judgement

R. Subbiah, J.—The present appeal has been filed challenging the impugned order passed by the first respondent in Letter No. 31206/c1/10 dated 20.5.2014, initiating suo motu proceedings as against the appellant herein under Section 47A of the Indian Stamp Act.

2. The brief facts, which are necessary for the disposal of the present appeal, in nutshell, are as follows:-

(a) The appellant is a partnership firm, having office at No. 792, KNK Road, Erode Town, running in the name and style of M/s. Karpaga Vinayagar Associates. On 29.11.2007, the appellant purchased 3 acres of Manavari / dry Punja land in R.S. No.372/1 in Sundakamuthur Village, Coimbatore Taluk and District for a valuable sale consideration of Rs.27,00,000/- and paid a sum of Rs.1,85,000/- towards stamp duty and registered the same before the S.R.O. Madukarai, Coimbatore. After registration of the document, the Sub Registrar impounded the said document and referred the same under Section 47A of the Indian Stamp Act to the District Revenue Officer, Stamp, Coimbatore, the second respondent herein. On reference, a spot inspection was conducted by the competent authority and a report was also submitted to the effect that the land was Manavari land and crops were raised therein. Thereafter, the second respondent by conducting enquiry, estimated the market value of the land at Rs.55,00,000/- per acre and thus, fixed the total value of the land measuring to

an extent of 3 acres purchased by the appellant at Rs.1,65,00,000/- and directed the appellant to pay the deficit stamp duty of Rs.11,04,000/- apart from registration charges of Rs.1,38,000/-. Pursuant to the same, the appellant has also paid the deficit stamp duty and the documents have been returned to the appellant on 28.3.2008.

(b) While so, to the shock and surprise of the appellant, after 2-1/2 years from the date of the order passed by the District Revenue Officer, Stamp, Coimbatore under Section 47A of the Indian Stamp Act, a notice dated 8.9.2010 under Section 47A(6) of the Indian Stamp Act was issued by the first respondent, directing the appellant to show cause as to why the market value of the said land should not be fixed at Rs.1,00,000/- per cent. The appellant has also submitted their objection for the said show cause notice. The appellate authority has also directed the District Registrar to conduct spot inspection. Based on the spot inspection report, the first respondent passed the impugned order by fixing the market value of the land as Rs.1,00,00,000/- (Rupees one Crore) per acre and directed the appellant to pay the deficit stamp duty of Rs.10,80,000/- for a sum of Rs.1,35,00,000/- being the difference amount between Rs.3,00,00,000/- and Rs.1,65,00,000/- and to pay the deficit registration charges of Rs.1,35,000/-, totalling a sum of Rs.12,15,000/- within a period of 60 days. Aggrieved over the same, the present appeal has been filed.

3. I have heard the submissions made on either side and perused the entire materials available on record.

4. The appellant is a partnership firm. They have purchased Manavari / dry punja land measuring to an extent of 3 acres in R.S. No.372/1 in Sundakamuthur Village, Coimbatore Taluk and District for a valuable sale consideration of Rs.27,00,000/-, i.e., at the rate of Rs.9,00,000/- per acre. They have paid a sum of Rs.1,85,000/- towards stamp duty. After registration, the document was referred to the second respondent herein under Section 47A of the Indian Stamp Act for determination of payment of deficit stamp duty. Pursuant to the said reference, a spot inspection was conducted by the competent authority and a report was submitted to the second respondent to the effect that the land was only an agricultural land and crops were raised therein. Based on the said report, the second respondent passed an order by estimating the market value of the land at Rs.55,00,000/- per acre, i.e., at the rate of Rs.126/- per square feet and fixed the total value of the land at Rs.1,65,00,000/- and directed the appellant to pay the deficit stamp duty of Rs.11,04,000/- apart from deficit registration charges of Rs.1,38,000/-. The appellant has also paid the deficit stamp duty and the deficit registration charges and the documents were returned on 28.3.2008. While so, all of a sudden, after a period of 2-1/2 years from the date of the order passed by the second respondent, the first respondent initiated suo motu proceedings and issued a notice dated 8.9.2010 under Section 47A (6) of the Indian Stamp Act. In the said proceedings, based on the report submitted by the District Registrar dated 25.2.2010, the first respondent fixed the market value of

the land at the rate of 1,00,00,000/- per acre and fixed a sum of Rs.3,00,00,000/- as total value for 3 acres and directed the appellant to pay the deficit stamp duty of Rs.10,80,000/- and the deficit registration charges of Rs.1,35,000/-, totalling a sum of Rs.12,15,000/-.

5. On a perusal of the records, I find that on 29.11.2007, the property in question was purchased by the appellant. When the document was referred to the second respondent under Section 47A of the Indian Stamp Act, a spot inspection was conducted by the competent authority and it was found that the said land was an agricultural land. Based on the said report, the market value of the land was fixed at Rs.55,00,000/- per acre. Thereafter, based on the inspection report by the District Registrar, suo motu proceeding was initiated by the first respondent. But, before making the spot inspection, no notice was issued to the appellant. The District Registrar, in his report dated 25.2.2010, had stated that the subject land was being developed to make a lay out of housing plots and there is also a likelihood of getting water connection for the said land. Further, in north and south side of the subject land, there are residential colonies and there is no indication as to whether the said land was used for agricultural purpose. Hence, based on the said report, the first respondent fixed the market value of the land at the rate of Rs.1,00,00,000/- per acre. But, I find that during 47A proceedings, when the competent authority inspected the land in the year 2007, he had found that agricultural operations were being carried out in the said land and crops were raised and there were agricultural lands in the southern and western portion of the subject land. Based on the said report, in the year 2007, the original authority viz., the second respondent herein fixed the market value of the land at the rate of Rs.55,00,000/- per acre. Thereafter, after 2-1/2 years, i.e., in the year 2010, in the report of the District Registrar dated 25.2.2010, it has been stated that the land was being developed to make a lay out of housing plots and there is likelihood of getting water connection. Therefore, it is clear that even on the said date viz., on 25.2.2010, the subject land was not completely plotted out as house sites. I am of the opinion, while fixing the market value of a land, the nature of the land as on the date of purchase alone should be taken into consideration. But, in the instant case, as per the report submitted by the second respondent herein in the year 2007, at the time of purchase, the subject land was only an agricultural land. Even in the year 2010, according to the report of the District Registrar dated 25.2.2010, the said land was only being developed to make a lay out of housing plots. It is well settled legal position, merely because a property is being used for commercial purpose at a later point of time, it may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of usage of the land on the date of purchase alone has to be taken into consideration for assessing the value for the purpose of stamp duty. In this regard, a reference could be placed in the judgment of the Hon''ble Apex Court reported in State of U.P. and Others Vs. Ambrish Tandon and Another, , wherein, in para 8, it has been held as follows:-

"8. We have already held that it is the grievance of the respondents that the

orders were passed by the Additional Collector on a public holiday. Regarding the merits though the Collector, Lucknow made a surprise site inspection, there is no record to show that all the details such as measurement, extent, boundaries were noted in the presence of the respondents who purchased the property. It is also explained that the plot in question is not a corner plot as stated in the impugned order as boundaries of the plot mentioned in the freehold deed executed by Nazool Officer and in the sale deed dated 16.4.2003 only on one side there is a road. It is also demonstrated that at the time of execution of the sale deed, the house in question was used for residential purpose and it is asserted that the stamp duty was paid based on the position and user of the building on the date of the purchase. The impugned order of the High Court shows that it was not seriously disputed about the nature and user of the building, namely, residential purpose on the date of the purchase. Merely because the property is being used for commercial purpose at the later point of time may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Though the matter could have been considered by the Appellate Authority in view of our reasoning that there was no serious objection and in fact the said alternative remedy was not agitated seriously and in view of the factual details based on which the High Court has quashed the order dated 27.9.2004 passed by the Additional District Collector, we are not inclined to interfere at this juncture."

A reading of the above judgment would go to show that merely because the property is being used for commercial purpose at a later point of time, it may not be a relevant criterion for assessing the value for the purpose of stamp duty. The nature of user is relatable to the date of purchase and it is relevant for the purpose of calculation of stamp duty. Therefore, it is clear that the usage of the land in future cannot be a basis for assessing the value. In the present case, as per the report of the second respondent, on the date of purchase i.e., on 29.11.2007, the land was only an agricultural land. Even in the year 2010, as per the report of the District Registrar dated 25.2.2010, the land was only being developed to make a lay out of housing plots. Even on the date of inspection by the District Registrar, the lands were not plotted out as house sites. Therefore, in my considered opinion, the intention of usage of land in future cannot be a basis for estimating the value of the property for the purpose of calculation of stamp duty. Hence, the impugned order passed by the first respondent based on the report of the District Registrar in the year 2010 in respect of the land purchased by the appellant in the year 2007, is not legally sustainable and as such, the same is liable to be dismissed.

6. Apart from the above, I find that the Chief Controlling Authority has invoked suo motu proceedings only based on the audit objection. The Chief Controlling Authority can initiate suo motu proceedings by examining the order passed by the original authority under sub-Sections (2) and (3) of Section 47 of the Indian Stamp Act on arriving at a subjective satisfaction. In this regard, a reference

could be placed in the judgment of this Court reported in (2012) 4 M.L.J. 704 - Rajendran v. Inspector General of Registration, Chennai 600 028 and others. A perusal of the said judgment would show that the Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai can arrive at a subjective satisfaction that the order passed under sub-section (2) of Section 47 by the original authority is prejudicial to the interest of the revenue. But, in the instant case, as observed earlier, suo motu proceedings have been initiated only based on the audit objection. Absolutely, no material is available that the suo motu proceedings have been initiated by the first respondent after arriving at subjective satisfaction that the order passed under sub-section (2) of Section 47 is prejudicial to the interest of the revenue. Since no such subjective satisfaction has been arrived at by the first respondent before initiating suo motu proceedings, on this ground also, the order of the first respondent is liable to be set aside.

7. In the result, the order of the first respondent in Letter No. 31206/c1/10 dated 20.5.2014 is set aside and the civil miscellaneous appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.