(2013) 11 MAD CK 0302

In the Madras High Court

Case No : C.M.A. No. 1748 of 2005 and C.M.P. No''s. 9774 and 9775 of 2005

K.V. Chitra	APPELLANT
Vs	
The Inspector General (Registration), The District Revenue Officer (Stamps) and The District Registrar	RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2013) 11 MAD CK 0302

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : S. Vijayakumar, for the Appellant; S. Pattabiraman, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The appellant has preferred the present appeal against the order of the first respondent dated 13.05.2005, vide proceedings No. 68803/ No. 4/2004. The short facts of the case are as follows:

The appellant had purchased a property comprised in R.S. Nos. 4288/4 and 5 (part) of Block No. 94 of Mylapore, measuring an extent of 1 Ground 1605 sq.ft., from one Mr. K. Subbaiah, for a sum of Rs. 78,43,000/-, under a sale deed dated 19.08.2004, registered as document No. 2355 of 2004, at Sub-Registrar Office Mylapore.

2. The second respondent District Revenue Officer (Stamps) had issued a show cause notice on the appellant, on 07.09.2004, and demanded a sum of Rs. 4,36,616/-as deficit stamp duty for the said property. After the receipt of the said show cause notice, the appellant had sent a reply dated 14.09.2004 stating that she had purchased property from one Mr. K. Subbaiah and that the same is situated in S. Nos. 4288 and 4288/5, which bears Plot No. 53, MRC Nagar, Sathya Dev Avenue, Chennai-28. The said property was originally forming larger extent of land owned and possessed by the Rajah Muthaiah Charitable and

Educational Trust. The said Trust had subsequently prepared a layout and sold the plots to various parties.

3. Further, she had stated that as regards the property purchased by her, the same was originally owned by the Trust and it was subsequently purchased by the said Mr. Subbaiah. In this connection, the said Trust had earlier sold a portion of the vacant land to M/s. Chaitanya Builders for a consideration of Rs. 45 lakhs in the year 2003. Similarly, Madras Stock Exchange had sold a small portion of land to Sun TV for around Rs. 35 lakhs in the year 2002. In the same survey number, just opposite to this plot, Jain Housing Construction, purchased the land for Rs. 45 lakhs per ground. In the same survey number, two plots away from this plot number, one Dr. Ramani purchased the plot for Rs. 50 lakhs per ground. This matter/sale deed was referred to u/s 47A of the Stamp Act and was decided for Rs. 50 lakhs per ground, except the two isolated sales. The appellant had not come across any sale over and above Rs. 50 lakhs per ground. Therefore, by no stretch of imagination, the said property could be assigned at the rate of Rs. 3,321/- per sq.ft.

4. She had stated further that the property had been purchased for the purpose of residential purpose and the value arrived at cannot be compared to the property, which was sold for the purpose of commercial. Moreover, the entire area is around 100 Acres and it would not be possible to fix the same price for each and every plot situated in the same survey number and further it is always better to inspect the locality and also the place of the plot where it is situated. Further, the actual consideration involved in the sale was Rs. 47 lakhs per ground that she had availed a credit facility from a nationalized bank for payment of the entire consideration. The entire payment was made by way of pay order and cheque. Therefore, there was no question of any second transaction involved in the sale. The valuation arrived at Rs. 3,000/- in respect of the property was highly exorbitant and also arbitrary. Therefore, she had requested the second respondent to conduct an enquiry.

5. Accordingly, the second respondent, after conducting an enquiry, verifying the objections raised by the appellant, inspecting the purchased property and on observing the surrounding areas adjacent to the said property, fixed the rate per sq.ft., at Rs. 2,991/- and demanded a sum of Rs. 3,01,720/- as deficit stamp duty, by an Order vide Na.Ka.Ci.Pa. No. 184/2004/A1, dated 30.11.2004 and directed the appellant to pay the said amount, within a period of two months, from the date of it''s order. Failing which, the appellant was directed to pay 2% interest on the said amount for the entire period.

6. Against the said order dated 30.11.2004, the appellant had preferred an appeal before the first respondent and the first respondent, after verifying the impugned order of the second respondent herein, had dismissed the appeal order dated 13.05.2005, vide proceedings No. 68803/ No. 4/2004.

7. Aggrieved by the order of dismissal of the first respondent, the appellant has

preferred the present civil miscellaneous appeal.

8. The highly competent counsel appearing for the appellant has submitted that the appellant had purchased the property bearing Plot No. 53, MRC Nagar, Sathya Dev Avenue, Chennai-28, comprised in R.S. Nos. 4288/4 and 5 (part) of Block No. 94 of Mylapore, measuring an extent of 4005 sq.ft., from one Mr. K. Subbaiah, under a sale deed dated 19.08.2004, registered as document No. 2355 of 2004, at Sub-Registrar Office Mylapore. The total sale consideration for the said property is Rs. 78,43,000/-, which works out to Rs. 1,958.35 per sq.ft. The appellant presented the document for registration on 19.08.2004 before the District Registrar, Mylapore. The District Registrar, Mylapore, had examined the sale deed and ultimately insisted upon the appellant to pay the stamp duty at the rate of Rs. 3,321/- per sq.ft., citing the guideline value mentioned in the register. Aggrieved by the said demand, the appellant sent a representation to the second respondent on 31.08.2004, who served a show cause notice on 07.09.2004 and conducted an enquiry, as contemplated under the Indian Stamp Act. Subsequently, the said authority passed an order fixing the valuation at Rs. 2,900/- per sq.ft. Against the said order, passed by the above second respondent, the above appeal has been preferred.

9. The very competent counsel for the appellant has submitted further that the land valuation maintained in the register is not a conclusive proof for deciding the value of the sale deed in question. The first respondent had not followed the procedure to determine the market value as well as the stamp duty payable on the sale deed. The first respondent has not assigned valid reasons for dismissing the appeal, which had been filed by the appellant herein. Further, the first respondent failed to note that the appellant had placed certain cited cases, wherein vacant land was sold to one M/s. Chaitanya Builders for a consideration of Rs. 45,00,000/- in the year 2003, in the same survey number. Another sale transaction, in the same survey number, had taken place, wherein the Madras Stock Exchange had sold a small portion to Sun TV for Rs. 35,00,000/- in the year 2002. These two transactions are relevant records for deciding the appellant''s case. The second respondent had fixed the rate at Rs. 2,900/- per sq.ft., after inspecting the property. This was totally ignored by the first respondent. The first respondent had no locus standi to enhance the value of the property on his own accord, without substantial document proof and as such the first respondent''s order is an arbitrary one. Hence, the highly competent counsel prays the Court to set aside the order of the first respondent.

10. The highly competent counsel appearing for the State has vehemently argued that the property is situated in the prime location of the metro city. The appellant had cited two documents, which had been registered in the year 2003 and 2002 for a sum of Rs. 45,00,000/- and Rs. 35,00,000/- per Ground respectively. But, in the instant case, the appellant had purchased the property in the year 2004. The deficit of stamp duty had been demanded by the District Registrar, Mylapore, on the basis of guideline value maintained by him, which is

an authenticated document. As such, the demand has been made. The first respondent, who is the highest authority in the Registration Department is the appropriate person to decide the issue on the basis of relevant records and on the basis of orders passed by his subordinates. As such, the first respondent had fixed the rate per sq.ft., of the said property at Rs. 3,000/-, which is a well considered order. Hence, the highly competent counsel requests the Court to dismiss the above appeal.

11. Per contra, the learned counsel appearing for the appellant has submitted that the appellant had availed loan from Syndicate Bank, Kodambakkam Branch, who assessed the market value at Rs. 45,00,000/- per ground. The Bank authorities are also competent persons to determine the market value. Therefore, the first respondent'' order is not sustainable considering the factual position of the case.

12. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order of the first respondent, this Court is of the view that the second respondent had fixed the market value at Rs. 2,400/- per sq.ft., after inspecting the property and on considering the connected records including Bank Certificate. Therefore, this Court sets aside the first respondent''s Order and confirms the second respondent''s order and directs the appellant herein to comply with the order of the second respondent and to remit the deficit of stamp duty on the said instrument and get the sale deed after remitting the deficit of stamp duty as demanded by the second respondent and no interest would be charged on such payment of deficit duty. In the result, this civil miscellaneous appeal is allowed and the order dated 13.05.2005, vide proceedings No. 68803/ No. 4/2004, passed by the first respondent is set aside. Consequently, connected miscellaneous petitions are closed. No costs.

