(1998) 08 MAD CK 0013

In the Madras High Court

R. Nagarajan APPELLANT

Vs

The Revenue Divisional Officer RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

Citation : (1999) 1 LW 609 : (1999) 1 MLJ 286

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Judgement

P.D. Dinakaran, J.—The above revision is directed against the order dated 27.10.1993 in C.M.A. No. 22 of 1988 on the file of the learned

Appellate Authority (Sub Court), Srivilliputhur, confirming the order dated 31.3.1988 made in S.R. No. 208 of 1987, on the file of the learned

Revenue Divisional Officer, Sivakasi, wherein, the respondent herein by exercising his powers u/s 47-A of the Indian Stamp Act, held that the

revision petitioner herein had undervalued the property purchased by him and rejected the representation of the petitioner to accept the value

mentioned in their sale deed.

2. One of the grounds taken by the revision petitioner is that the Revenue Divisional Officer, while inspecting the property, has not given due notice

to the parties concerned as contemplated under Rule 4 (3) (c) of the Tamil Nadu (Prevention of Under Valuation) Rules (hereinafter referred to as

Rules); in the absence of any notice, the inspection made by the Revenue Divisional Officer is not binding on the revision petitioner and in any

event, when the Revenue Divisional Officer has admittedly failed to follow the procedure contemplated under the Rule 4 (3) (c), as he had

inspected the property without due notice before such inspection, valuation fixed in pursuance of such inspection, as Confirmed by the learned

Subordinate Judge, are liable to be set aside.

3. Per contra the learned Government Advocate, contends that as per Rule 4 (3) (c), the Collector may for the purpose of enquiry, inspect the

property after due notice to the parties concerned, and therefore, an option is given to the Collector to give notice before such inspection, but there

is no mandatory obligation to give notice before the inspection.

4. I have given careful consideration to the submissions of both sides.

5. In this connection, I am obliged to refer Section 47-A of the Indian Stamp Act, which reads as follows:

Instruments of conveyance etc., under valued how to be dealt with- (1) If the Registering Officer appointed under the Indian Registration Act,

1908 (Central Act XVI of 1908) while registering any instrument of conveyance, exchange, gift, release of benami right or settlement, has reason

to believe that the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement has

not been truly set forth in the instrument he may, after registering such instrument, refer the same to the Collector for determination of the market

value of such property and the proper duty-payable thereon.

(2) On receipt of a reference under Sub-section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after

holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the

subject matter of conveyance, exchange, gift, release of benami right or settlement and as aforesaid. The difference if any, in the amount of duty,

the duty shall be payable by the person liable to pay the duty.

(3) The Collector may suo moto, within two years from the date of registration of any instrument of conveyance, exchange, gift, release of benami

right or settlement not already referred to him under Sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to

the correctness of the market value of the property which is the subject matter of conveyance, exchange, gift release of benami right or settlement

and the duty payable there and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in

sub Section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty;

Provided that nothing in this Sub-section shall apply to any instrument registered before the date of the commencement of the Indian Stamp

(Madras Amendment) Act, 1967.

(4) Any person aggrieved by an order of the Collector under Sub-section (2) or Sub-section (3) may appeal to the appellate authority specified in

Sub-section (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner, as may be prescribed by

rules made under this Act.

6. Rule 4 of the Tamil Nadu (Prevention of Undervaluation) Rules, reads the follows:

Procedure on receipt of reference u/s 47-A (1) -

(1) On receipt of a reference under Sub-section (2) of Section 47-A from a Registering Officer, the Collector shall issue a notice in Form I,

(a) the 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, in 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 representations 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 under Sub-rule (1) has been issued.

(3) The Collector may, for the purposes of his enquiry.

(a) Call for any information or record from any public office, officer or authority under the Government of 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 properly 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, are 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. A harmonious construction of the above section and Rule makes it clear that in view of the word ''may'' used in Rule 4(3) (c), no doubt, the

Collector is given an option to inspect the property, but once the Collector decides to inspect the property to hold an enquiry on the representation

of the petitioner, it is mandatory for the Collector to give due notice to the petitioner before inspecting the property. Otherwise, the very enquiry

contemplated u/s 47-A, of the Act read with Rule 4 (3) (c) would become an empty formality. When the rule provides a particular procedure to

be followed while inspecting the property for the purpose of conducting such enquiry provided u/s 47-A of the Act read with Rule 4 (3) (c), such

procedure has to be strictly adhered by the authorities concerned, or otherwise, it would render the entire enquiry as illegal. In the instant case,

admittedly, no due notice had been given to the revision petitioner by the Revenue Divisional Officer at the time of inspecting the property, and

consequently, the proceedings of the respondent dated 31.3.1988 made in S.R. No. 208 of 1987 as confirmed by the learned Subordinate Judge,

Srivilliputhur, are erroneous and illegal and therefore, the same are set aside. Hence, the matter is remitted back to the learned Revenue Divisional

Officer to exercise his power u/s 47-A of the Act and hold an enquiry following the procedure laid down under Rule 4 of the Rules and the

guidelines prescribed under Rule 5 of the Rules and pass appropriate orders within three months from the date of receipt of a copy of this order.

In the result, revision is ordered accordingly. No costs.