(2013) 10 MAD CK 0061

In the Madras High Court

Case No : C.M.A. No. 1443 of 2006 and C.M.P. No. 6470 of 2006

S. Sivasubramaniam APPELLANT

Vs

Chief Controlling Revenue Authority, District Revenue Officer, (Stamps) and Sub-Registrar Mettupalayam RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2013) 6 CTC 295 : (2014) 1 MLJ 500

Hon'ble Judges : S. Vimala, J

Bench : Single Bench

Advocate : S. Muthiah for Mr. N. Damodaran, for the Appellant; M. Jayashree, Spl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Vimala, J.—The appellant has challenged the order passed by the Chief Controlling Revenue Authority (Inspector General of

Registration), dated 13.2.2006. By the order dated 13.2.2005, the appellate authority has fixed the market rate of the property at Rs. 100/- per

square feet. The seven coconut trees have been valued at Rs. 3,500/- and building has been valued at Rs. 7,00,145/-.

2. The appellant has purchased the property by virtue of the sale deed dated 27.1.1994, an extent of 53 cents located at Coimbatore registration

district, Mettupalayam Taluk, Chickathasam palayam village, Mettupalayam Town, in R.S. No. 376. As per the document, the property has been

valued at Rs. 80,000/-. Agricultural land is the classification of the property as per the document. In the document of the vendor also, the property

has been described only as an agricultural land.

2.1. After the registration of the property, the District Revenue Officer has issued

Form I notice, only on 23.1.2003. Pointing out that issuance of

Form I notice, after the period of nearly 5 years, it is contended by the learned counsel for the appellant that the District Revenue Officer has no

power to issue notice after the period of five years and the notice issued is clearly barred by limitation.

3. The learned Special Government Pleader submitted that no specific period has been prescribed under the provisions of the Stamp Act, 1899

and therefore, the reference is not invalid and it is not barred by limitation.

3.1. It is the specific contention of the appellant that reference ought to have been made within a period of three weeks from the date of completion

of registration and therefore, the belated reference and the belated Form I notice (issued only after five years) is barred by limitation.

4. In support of the contention, the decision reported in 2001 (2) CTC 449 (The District Collector, Erode District, Erode and two others Vs. M.

Ponnusamy) is relied upon. In this judgment, it has been held that reference should be made immediately after registration or soon after registration

is completed and at any rate within 3 weeks from the date of completion of registration of documents. The observation made in paragraph 27 is

heavily relied upon wherein it has been held as follows:-

27......... We are unable to countenance such a stand. In the absence of any time limit provided for u/s 47-A(1) and in the light of the analysis of

the process involved in reference to Sub-section (1) of Section 47-A of the Act, there is no scope for holding that reference can be made at any

point of time.

4.1. It was held in the above decision that the reference should be made immediately after registration or soon after registration is completed and at

any rate within three weeks from the date of completion of registered documents. Therefore, the contention of the appellant is correct and it has to

be upheld on the plea of limitation.

5. It is contended by the learned counsel for the appellant when the issue of limitation was raised before the Chief Controlling Revenue Authority,

namely, the Inspector General of registration, he has not chosen to deal with the issue and therefore, the order passed in not a valid order in the

eye of law. In other words, it is contended that the very purpose of hearing the parties would loose its meaning when it is not considered. This contention has to be accepted as it is open to the appellate authority either to accept the contention or to reject the contention, but, it is not proper

not even to consider the objections raised.

5.1. Yet another contention was that the land in dispute is used only as an agricultural land and not as a house site, and therefore, the valuation

made as if it is a house site is not proper.

5.2. In support of the contention, the averment stated in the sale deed are relied upon. Moreover, it is specifically pointed out that as the ground

water was not sufficient to do agriculture, maize was the plaint raised and that will not lead to the conclusion that the lands are not agricultural

lands. The grievance of the appellant is that the certificate issued by the Village Administrative Officer, certifying that it is only an agricultural land,

has not been taken note of by the Inspector General of Registration. Instead of considering the report of the Village Administrative Officer, the

appellate authority has considered the report of the District Registrar.

5.3. In the order passed by the Deputy Inspector General of Registration, he has referred to the report of the District Registrar, Coimbatore. In the

report, it has been stated that the property is in the prime location with all basic facilities and with a big layout. Therefore, the market value can be

fixed at Rs. 100/- per square feet. Whether that report has been prepared based upon collection of essential details and therefore, it could be

accepted, is the issue to be decided.

5.4. The factors to be taken into consideration and the principle involving in the determination of market value has been furnished under Rules 5

and 6 of the Tamilnadu Stamp (Prevention of Under-valuation of Instrument) Rules, which read thus:-

5. Principles for determination of market value:

The Collector shall, as far as possible, have also regard to the following points in arriving, at the provisional market value,

(a) In the case of lands

(i) classification of the land as dry, manavari, wet and the like;

(ii) classification under various tarams in the settlement register and accounts;

(iii) the rate of revenue assessment for each classification;

(iv) other factors which influence the valuation of the land in question;

(v) points, if any, mentioned by the parties to the instrument or any other person which requires special consideration;

(vi) value of adjacent lands or lands in the vicinity;

(vii) average yield from the land, nearness to road and market, distance from village site, level of land, transport facilities, facilities available for

irrigation such as tank, wells and pumpsets;

(viii) the nature of crops raised on the land; and

(ix) the use of land, domestic, commercial, industrial or agricultural purposes and also the appreciation in value when an agricultural land is being

converted to a residential, commercial or an industrial land.

(b) In the case of house sites

(i) the general value of house sites in the locality;

(ii) nearness to roads, railway station, bus route;

(iii) nearness to market, shops and the like;

(iv) amenities available in the place like public offices, hospitals and educational institutions;

(v) development activities, industrial improvements in the vicinity;

(vi) land tax valuation of sites with reference to taxation records of the local authorities concerned;

(vii) any other features having a special bearing on the valuation of the site; and

(viii) any special feature of the case represented by the parties.

(c) In the case of buildings

(i) type and structure;

(ii) locality in which constructed;

(iii) plinth area;

(iv) year of construction;

(v) kind of materials used;

(vi) rate of depreciation;

(vii) fluctuation in rates;

(viii) any other features that have bearing on the value;

(ix) property tax with reference to taxation records of local authority concerned;

(x) the purpose for which the building is being used and the income if any, by way of rent per annum secured on the building; and

(xi) any special feature of the case represented by the parties.

(d) Properties other than lands, house sites and buildings

(i) the nature and condition of the property;

(ii) purpose for which the property is being put to use; and

(iii) any other special features having a bearing on the valuation of the property.

5. Procedure after arriving at provisional market value:

The Collector shall communicate a copy of his order provisionally determining the market value of the properties and the duty payable, to all the

persons who are liable to pay the duty along with the notice in Form II and call upon the parties to lodge their objections, if any, to such

determination of the market value within the time specified in the notice. The Collector shall also hear the parties on the date specified in the notice

or on such other day as may be fixed by him.

5.5. It would be relevant to quote Rule 11-A of the Rules, where-under before inspecting the property, the Appellate Authority is expected to give

notice.

11-A. Decision of the appellate authority:

The appellate authority may, for the purpose of deciding an appeal,

(a) call for any, information or record from any public office, officer or authority under the Government or any local authority;

(b) examine and record statements from any member of the public officer of authority under the Government or the local authority; and

(c) inspect the property after due notice to the parties concerned.

5.6. Rule 11-A(c) of the Rules, contemplates notice which is mandatory having regard to the purpose of notice. Had there been notice, it would

enable the purchaser to show materials/physical features which would be helpful for the appellate authority to find out whether the property in

question is an agricultural land or house site. Notice has not been issued to parties. Under such circumstances, on merits also, the order passed by

the Inspector General of Registration cannot be sustained.

In the result, the appeal is allowed and the order passed by the Chief Controlling

Revenue Authority, dated 13.02.2006, and the reference made is

quashed. The Registering Authority is directed to return the original document to the appellant, within a period of two weeks from the date of

receipt of the copy of this order. No costs. Consequently connected C.M.P. is closed.

