(2011) 06 MAD CK 0269

In the Madras High Court

Case No : CMA. No''s. 796 and 797 of 2006

Thyrocare Technologies Limited by Director A. Sundararaju	APPELLANT
Vs	
The Sub Registrar, The District Revenue Officer (Stamps) and The Chief Controlling Revenue Authority and Inspector General of Registration	RESPONDENT

Date of Decision : 27-06-2011

Acts Referred:
Stamp Act, 1899 — Section 47A

Citation : (2011) 06 MAD CK 0269

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : Sundar Narayan, for R. Sunil Kumar, for the Appellant; R. Muthaiyan, SGP, for the Respondent

Final Decision : Allowed

Judgement

Aruna Jagadeesan, J.—These Civil Miscellaneous Appeals are filed against the order dated 15.12.2004 in Appeal Nos. 19188/2/2004 and 19186/2/2004 on the file of the Chief Controlling Revenue Authority and Inspector General of Registration, Chennai.

2. M/s. Thyrocare Technologies Limited, the Appellant in both the appeals, by means of a registered sale deed dated 24.9.2003 (Doc. No. 1712/2003) purchased 11.94 acres of dry land in SF. No. 138/1B, 139/2A, in Pichathur Village, Coimbatore Taluk for an amount of Rs. 10,00,000/-and land and building comprised in SF. No. 138/2A by means of a registered sale deed dated 24.9.2003 (Doc. No. 1713/2003) for an amount of Rs. 43,00,000/-and paid the stamp duty as applicable to agricultural land. The Registering Authority, on requisition, issued notices dated 7.11.2003 in Form-I in terms of Section 47A of the Indian Stamp Act, determining the stamp duty payable thereon on the basis of assessing the property as house sites. The Registering Authority demanded the deficit stamp duty on the enhanced market value in respect of the said two registered sale

deeds. The Appellant sent their objections in response to the Form-I notice stating that the lands comprised in the sale deeds are agricultural lands and the same has been assessed by the Registering Authority as house sites. The Appellant further stated that the documents have been properly valued and appropriate stamp duty has been paid and requested the authority to refer the matter to the District Revenue Officer (Stamps).

3. On a reference being made by the Registering Authority, the District Revenue Officer (Stamps), the 2nd Respondent herein passed an order finding to the effect that the lands comprised in the survey numbers are only agricultural lands, however, held that there is a building in survey number comprised in Document No. 1712/2003 and fixed the market value as Rs. 42,98,400/-in regard to the Document No. 1712/2003 comprising lands in SF. No. 138/1B and 138/2A. As regards the Document No. 1713/2003, the market value was fixed as Rs. 87,38,590/-inclusive of building thereon.

4. On receipt of the final order passed by the District Revenue Officer (Stamps), the Appellant had preferred appeals to the Chief Controlling Authority and Inspector General of Registration, Chennai, the 3rd Respondent herein. By the common order dated 15.12.2004, the 3rd Respondent herein confirmed the market value as determined by the Deputy Inspector General of Registration at Rs. 2,50,000/-per acre and as regards the vale of the building, accepted the value determined by the District Revenue Officer (Stamps) and demanded the differential stamp duty. Aggrieved against the said order, these appeals have been filed.

5. Indisputably, agricultural lands were purchased by the Appellant under two sale deeds and stamp duty has been paid as agricultural lands as per the market value as declared by the executant. The Registering Authority made a reference on the basis that the lands have to be valued as house sites. However, the Respondents 2 and 3 have held that the lands in question are agricultural lands. The 3rd Respondent herein, while holding that the lands are agricultural lands, has not given any reason whatsoever for determining the market value at the rate suggested by him in his order dated 15.12.2004. It is seen that the 3rd Respondent had been influenced by the opinion of the Deputy Inspector General of Registration in determining the market value. With regard to the building in survey number 138/2A, the 3rd Respondent has placed reliance on the opinion of his subordinate viz. the Deputy Inspector General of Registration, who had in turn recommended to accept the value fixed by the District Revenue Officer (Stamps). The opinion of a subordinate authority cannot be the basis for the adjudicating Authority to decide the appeal. The learned Counsel for the Appellant pointed out that such opinion of the subordinate authority is not based on correct assessment, as the order passed by the District Revenue Officer (Stamps) indicated that the building was found in S. No. 138/1B, whereas the building is situated in SF. No. 138/2A.

6. According to the Appellant, the lands were cultivated with cholam, green

grams and black grams and the same was evidenced from the adangal extract issued by the competent local authority. The learned Counsel for the Appellant would submit that this fact was not considered by the 2nd Respondent. It is his contention that the property was purchased by the Appellant as agricultural lands only and was also being utilised for the purpose of Medical Research Institute to impart medical laboratory technical education to rural public. He also pointed out that the lands covered under the sale deeds is nearly 1.5 km far away from Coimbatore-Palghat National Highway and situated in agricultural area which is found in and around the radius of 10 kms. There is no commercial or industrial units in and around the property in question. The learned Counsel for the Appellant would submit that there was no basis or material placed on record by the Respondents to justify the value fixed by the 3rd Respondent and the demand made thereon in respect of the property.

7. It is admitted that on the date when the lands were purchased they were agricultural lands. They were assessed to kist. The proposed use, namely, using the building for the purpose of running Medical Research Institute to impart education to the rural public is also not seriously disputed.

8. What is the market value of the land is what a willing buyer is ready to pay to a willing vendor at the price agreed to. It may be that a part of the lands may be used for the purpose of running an educational institution, viz. Medical Research Institute. But, that cannot be the determinatric factor for determination of the market value of the land.

9. In P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, , the Honourable Supreme Court held that the question of future potential of the land in question cannot be the determinatric factor for determination of the market value for the purpose of stamp duty payable under the Stamp Act.

10. The Honourable Supreme Court held that whether in future the purchaser would use the land for other purpose or change the character of the land was immaterial for the payment of stamp duty on the date when the land was purchased. The stamp duty can only be determined on the basis of the land use recorded by the State in the revenue records and the mere fact that the land is in close proximity to a residential land will not make an agricultural land into a residential land nor can the Authority determine the stamp duty of an agricultural land treating the said land as a house site.

11. It has to be pointed out here that the report of the subordinate authority to the 3rd Respondent herein may be a relevant factor for initiation of the proceedings u/s 47A of the Act, but, it cannot be relied upon to pass an order under the aforesaid Section. In other words, the said report cannot form itself basis of the order passed u/s 47A of the Act. There is no material in possession of the Respondents to substantiate the adoption of value at Rs. 2,50,000/-per acre on the date of the execution of the sale deed.

12. It is also relevant to point that the Registering Officer must act judicially and there must be some record or basis to show that he has to believe that documents in question have been under valued.

13. In the case of S.P. Padmavathy v. State of Tamil Nadu (AIR 1997 Mad 296), the Division Bench of this Court has held that power u/s 47A of the Act can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance, has not been truly set forth with a view to fraudulently evade payment of proper stamp duty. In that case, the Division Bench found that the Department did not raise a plea that there was an attempt to evade stamp duty and that there was no whisper about the lack of bona fides on the part of the parties. The Division Bench further held, "There is no finding recorded that there was lack of bona fides or any reason to belief that there was under-valuation.

14. It is seen, in this case, that there is no decision on the part of the Registering Authority that he had reason to believe that there was an attempt on the part of the parties to under value the subject matter of the transfer with a view to evade payment of proper stamp duty. No such plea had been raised by the Respondents. In this case, except the alleged inspection made by the authority, there is no other material to support the case of under valuation or that the market value of the property has not been truly set forth by the Appellant. The order passed by the 3rd Respondent only indicated that he has abdicated his function and proceeded to confirm the appeal on the basis of the opinion of the Deputy Inspector General of Registration and the proceedings passed by the District Revenue Officer (Stamps) which is made on improper assessment of value.

15. In view of the reasons stated above, I am unable to find any good reason to justify the demand for excess stamp duty in respect of the property in question. Hence, I am of the considered view that the Respondents have not made out the case as against the Appellant that the market value of the property in the documents in question have not been truly set forth and in such view of the matter, the demand made by the Respondents for higher stamp duty cannot be sustained.

16. In the result, this Civil Miscellaneous Appeal is allowed and the impugned order passed by the 3rd Respondent is set aside. However, there will be no order as to costs.