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**(2011) 11 MAD CK 0061**

**Madras High Court**

**Case No:** C.M.A. No. 3429 of 2006

| | |
|---|---|
| K. Vijayalakshmi | APPELLANT |
| Vs | |
| The Chief Controlling Revenue Authority of Tamil Nadu cum Inspector General of Registration No. 120, Santhome High Road Chennai - 600028, The District Revenue Officer (Stamps) Office of the District Collector Coimbatore - 641018 and The Sub-Registrar Udumalpet | RESPONDENT |

**Date of Decision:** Nov. 29, 2011

**Acts Referred:**

- Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 - Rule 15, 4, 5, 6, 7

**Citation:** (2012) 3 LW 27 : (2012) 3 MLJ 41

**Hon'ble Judges:** B. Rajendran, J

**Bench:** Single Bench

**Advocate:** Gowri, for the Appellant; Raja, Government Advocate (CS), for the Respondent

**Final Decision:** Allowed

**Judgement**

Honourable Mr. Justice B. Rajendran

1. The appellant has come forward with this appeal aggrieved by the order dated 9.09.2004 passed by the first respondent, confirming the order dated 21.05.2002 of the second respondent, by which the appellant was directed to pay the stamp duty, as determined by the second respondent while rejecting her statutory appeal.

2. The learned counsel for the appellant would contend that the appellant presented a document for registration before the third respondent on 07.02.2001 and the

same was registered vide document No. 396 of 2001. Thereafter, the third respondent, alleging undervaluation of stamp duty, has referred the document to the second respondent for determination of the correct stamp duty payable on the instrument. On such reference, the second respondent issued notice in Form I on 24.03.2011, for which the appellant has submitted her reply, but without considering the reply, the second respondent stated to have issued form II notice on 02.11.2011, which was not received by the appellant at any point of time. Subsequently, on 21.05.2002, the second respondent passed the final order determining the stamp duty payable by the appellant at Rs. 31,500/-. Aggrieved by the same, the appellant preferred an appeal before the first respondent on 28.06.2002. According to the counsel for the appellant, though the first respondent afforded a personal hearing to the appellant pursuance to her appeal dated 28.06.2002, the first respondent belatedly passed the final order on 29.09.2004 rejecting her appeal. According to the counsel for the appellant, the appellate authority/first respondent did not take into consideration that form II notice was not received by the appellant, besides that the second respondent has passed the final order belatedly beyond the stipulated period of three months. According to the counsel for the appellant, the second respondent passed the final order after one year and 2 months after issuing the form I notice and more than 7 months after the date of issuing the alleged form II notice, which was not received by her, and therefore, the final order passed by the second respondent is vitiated, but it was not properly considered by the first respondent. The learned counsel for the appellant would further contend that the registering authority/third respondent did not even give any reason for referring the document to the second respondent and also failed to consider that the guideline value cannot be the mandate for fixing the value on the instrument, but it is one of the factors to be considered for determining the stamp duty payable on the instrument. Further, the appellate authority relied on a report from the Deputy Inspector General of Registration, but the same was never served on the appellant. Therefore, the order passed by the respondents are non-est in the eye of law inasmuch as the respondents have not given any reason for fixing the stamp duty payable by the appellant or how such amount was arrived at and she prayed for setting aside the orders passed by the respondents by allowing this appeal.

3. The learned Government Advocate (Civil Suits) would contend that form I notice was duly served on the appellant on 24.03.2001 and she had also given her reply for the same. Subsequently, on 19.07.2001, a spot inspection of the property was conducted by the officials and at that time, the value of the property was fixed at Rs. 90/-per cent, whereas, the guideline value was Rs. 135.30. Therefore, on 02.11.2011, form II notice was issued to the appellant along with the proposed order passed by the second respondent. On appeal, the appellate authority also called upon a report from the Deputy Inspector General of Registration. In fact, in the report of the Deputy Inspector General of Registration, it is stated that the value should be fixed

based on the guideline value and based on such report, the appellate authority has rightly rejected the appeal filed by the appellant. The appellate authority has also given an opportunity to the appellant to putforth her case on 02.08.2004 and only thereafter, passed the order dated 29.09.2004 and therefore he prayed for dismissal of this appeal.

4. I heard the counsel for both sides. The first contention urged by the counsel for the appellant is the third respondent, without assigning any reason, has referred the instrument for determination of the correct valuation and alleged undervaluation. In the form I notice issued to the appellant, it was only stated that the third respondent referred the matter for adjudication to the second respondent as there is a difference between the guideline value and the value shown in the instrument. There is no reason mentioned in the order of reference passed by the third respondent and therefore, the entire proceedings are vitiated.

5. No doubt, form I notice was duly served on the appellant for which the appellant also has given her reply. The second respondent has not accepted the reply of the appellant and passed the final order on 21.05.2002. In the interregnum period, after issuance of form I notice on 24.03.2001, form II notice said to have been issued to the appellant on 02.11.2001. In this connection, a specific stand was taken by the appellant that form II notice was never received by her. In this context, the learned counsel for the appellant also relied on the decision of this Court reported in (Tata Coffee Limited vs. State of Tamil Nadu, rep. By the Secretary to Government, Commercial Taxes & Registration, Government of Tamil Nadu, Fort St. George, Chennai - 9 and others) 2008 (3) CTC 614 wherein this Court, following the decisions rendered by the Honourable Supreme Court, laid down parameters for service of form II notice. In that judgment, it was held that after first enquiry is conducted and provisional market value is ascertained, a provisional order has to be passed by the District Collector and the same has to be communicated to the applicant, who is liable to pay the stamp duty. In the said form II, which has to be issued as per Rule 6, the District Collector has to direct the applicant, who is liable to pay the stamp duty, to lodge his objection or representation against the provisional order regarding the market value and it is open to the District Collector to give sufficient time, as he desires, if any time limit is prescribed. Therefore, from the decision of this Court referred to supra, it is clear that before passing the final order, a provisional order has to be passed by the second respondent and it has to be communicated to the appellant enabling her to submit her reply and thereafter only final order has to be passed. In this case, it is the specific stand of the appellant that she has not received the form II notice at all. There is nothing on record to show that the second respondent has passed any provisional order. Rule 15 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 provides the manner of service of notice and orders to the parties. Rule 15 can usefully be extracted hereunde:

15. Manner of Service of notice and orders to the parties:-Any notice under Rule 4 or order under Rule 4 or 7 shall be served in the following manner, namely

(a) in the case of any company, society or association of individuals, whether incorporated or not, be served

(i) on the secretary or any director or other principal officer of the Company, Society or association of individuals, as the case may be; or

(ii) by leaving it or sending it by registered post acknowledgment due addressed to the Company, Society or association of individuals as the case may be at the registered office, or if there is no registered office, then at the place where the company, society or association of individuals as the case may be carries on business.

(b) in the case of any firm, be served

(i) upon any one or more of the partners; or

(ii) at the principal place at which the partnership business is carried on, upon any person having control or management of the partnership business at the time of service.

(c) in the case of a family, be served upon the person in management of such family or of the property of such family, in the manner specified in clause (d)

(d) in the case of an individual person, be served.--

(i) by delivering or tendering the notice or order to some adult member of the family; or

(ii) by delivering or tendering the notice or order to some adult member of the family; or

(iii) by sending the notice or order to theperson concerned by registered post acknowledgment due; or

(iv) if none of the aforesaid modes of service is practicable, by affixing the notice or order in some conspicuous part of the last known place of residence or business of the person concerned."

6. Rule 15 clearly prescribes the manner or mode of service of the notice to the parties. In this case, the original files were directed to be produced before this Court and it was also produced by the learned Additional Government Pleader for the respondents. The copies of the Form II notice was available in the original file, but it there is nothing to show that it was served on the appellant either by registered post acknowledgment due or it was acknowledged by the appellant. There is no endorsement to show that it was served on the appellant or any other family member of the appellant or it was served by affixutre. It was simply stated that the

form II notice was ordinarily posted to the address of the appellant. There was only an endorsement showing "rhh;t[ bra;ag;gl;lJ/" This is not the mode of service contemplated under Rule 15. Therefore, it can safely be construed that form II notice was not served on the appellant and the contentions urged by the counsel for the appellant in this regard is well founded.

7. The next important factor for consideration in this case is even assuming without admitting that form II notice was sent on 02.11.2001 and received by the appellant, as per Rule 7, final order has to be passed by the second respondent within 3 months from the date of first notice determining the market value of the property. Rule 7 reads as follows:

7. Final order determining the market value.-(1) The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case after a careful consideration of all the relevant factors and evidence available with him, pass an order within three months from the date of first notice determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty, if any.

8. In this case, the second respondent passed the final order on 21.05.2002 i.e., after 7 months from the date of issuance of form II namely 02.11.2001, though not served on the appellant and one year and 2 months from the date of issuing form I notice. Therefore, there is an inordinate delay in passing the final order by the second respondent.

9. In the above decision reported in (Tata Coffee Limited vs. Stateof Tamil Nadu, rep. By the Secretary to Government, Commercial Taxes & egistration, Government of Tamil Nadu, Fort St. George, Chennai - 9 and others) 2008 (3) CTC 614 this Court held in para Nos. 11 (III) (12) and (13) as follows:

12. Therefore, the procedure for the District Collector to arrive at a final decision in respect of determination of market value and also to determine the difference in duty payable consists of four stages, viz.,

(a) issuance of Form I notice; calling upon the executant as well as the person in whose favour the document is executed to make representation regarding the market value along with documents and

evidence, giving 21 days'' time;

(b) After the first enquiry is conducted and provisionally market value is ascertained, provisional order has to be passed by the Collector and the same has to be communicated to the person, who is liable to pay duty along with Form No. II. In the said Form No. II, which has tobe given as per Rule 6, the Collector directs the person

liable to pay duty to lodge his objections or representations against the provisional order regarding market value and it is open to the Collector to give sufficient time as he desires, since no time limit is prescribed under the Rule.

(c) After issuing Form No. II on the date mentioned in the notice or on any other subsequent date and considering any other objection on the said date of enquiry, which is actually the second enquiry, and even in the absence of any party appearing, considering all relevant factors and evidence available with him, the Collector has to pass scuh final order as stipulated in Rule 7, within three months from the date of the first notice viz., the notice given in Form No. I and such final order shall be communicated to the parties to the document.

(d) Thereafter, it is for the Collector to take steps to collect the amount in the manner known to law, viz., Revenue Recovery Act and the party shall be liable to pay such difference amount within two months from the date of final order.

(e) This procedure of conducting enquiry by the Collector as per the above said Rules are made applicable not only in respect of the enquiry conducted by the Collector on reference from the Registering Authority u/s 47 - A (1), which is after registering the document, but also in respect of the powers of the Collector to conduct suo motu enquiry u/s 47-A (3) of the Act.

IV. (1) It is relevant to point out that in respect of Suo motu powers of the Collector for ascertaining the market value of the property, the said power is available to the Collector independently after the completion of the registering process by the Registering Authority without any reference u/s 47 - A (1) of the Act. However, suo motu powers of the Collector is restricted to 5 years from the date of registration of the instrument.

(2) As it is stated above, the procedure for such suo motu power is also as contemplated in Rules 4 to 7 of the Rules. However, it is also relevant to note that in respect of the powers of the Collector to conduct enquiry u/s 47-A (2) and also in respect of the time within which the Registering Authority should refer the matter for determination of market value to the Collector, nothing has been stipulated under the Act, either under Seciton 47-A (1) or 47-A (2), even though the Rules as stated above viz., Rules 4, 5, 6 and 7, the Collector is bound to give 21 days notice while asking for representation in Form I; the Collector, after assessment of the provisional market value while sending Form II, can fix the date of his choice, calling for objections in respect of provisional market value and ultimately, the Collector has to pass final order determining the market value, within three months from the date of first notice viz., notice in Form I.

10. Therefore, in the light of the above decision, it is clear that the second respondent has not fulfilled the criteria viz., passing the final order within the time stipulated under the Act and Rules.

11. Yet another contention raised by the learned counsel for the appellant is that even in the original order of reference made by the third respondent to the second respondent in form I notice, no reason was given for referring the matter to the second respondent for determining the alleged correct stamp duty. In this connection, the learned counsel for the appellant relied on the decision reported in (Tata Coffee Limitd, rep. By its Company Secretary M.K.C. Pai vs. State of Tamil Nadu, rep. By the Secretary to Government, Commercial Taxes & Registration, Government of Tamil Nadu, Fort St. George, Chennai - 9 and others) 2010 (6) CTC 262 for the proposition that before referring the matter recording of reasons is mandatory. In the above said decision, it was held that under Rule 4, the authority issuing notice should also state the reasons for issuing the same. Admittedly, in the present case, the third respondent has not assigned any reasons for reference of the matter for adjudication.

12. The learned counsel for the appellant also relied on the decision reported in (Periasamy and another vs. The Chief Controlling Revenue Authority, State of Tamil Nadu, Chennai - 600 028 and others) 2009 (6) CTC 632 for the proposition that final order should be passed by the District Collector within three months from the date of first notice provided under Rule 4 and if the final order is passed beyond that period, it is violative of Rule 7. The above decision was rendered by this Court by following the decision reported in ((Tata Coffee Limited vs. State of Tamil Nadu, rep. By the Secretary to Government, Commercial Taxes & Registration, Government of Tamil Nadu, Fort St. George, Chennai - 9 and others) 2008 (3) CTC 614 mentioned supra.

13. Therefore, all the three grounds of attack raised by the learned counsel for the appellant are well founded inasmuch as there is no compliance of the same by the respondents.

14. Yet another argument was made by the learned counsel for the appellant that the respondents, before finalising the rate should compare the land in question with some other land with reference to the nature, extent, value etc., and the onus is also on the revenue to establish that market value was not truly setforth and the market value, as claimed by the department, is contemporaneous to the document presented for registration.

15. In this case, when we read the order passed by the first respondent/ appellate authority, the first respondent only stated that he relied on the report filed by the Deputy Inspector General of Registration for taking into account the prevailing guideline value as the proper value and he has accepted the two documents, which were said to have been registered in the same layout on the West. The first respondent also stated in the order that in respect of the very same area, another document was registered for Rs. 80/-per square feet, but the first respondent has not given any reason at all as to why he fixed the valuation of the property of the appellant at Rs. 90/-per square feet. Therefore, it is clear that the appellate authority

has not exercised due diligence or stated anything as to in what way, the value was fixed in the case of the appellant. Furthermore, the appellate authority, before seeking a report from the Deputy Inspector General of Registration and relying on the same for fixing the valuation, has not furnished a copy of the same to the appellant nor sought for any explanation from the appellant to the report filed by the Deputy Inspector General of Registeration.

16. Though a feeble attempt was made by the learned Additional Government Pleader to contend that the first repsondent has not accepted the report filed by the Deputy Inspector General of Registration as it is, the fact remains that the report was relied on by the first respondent without furnishing a copy of the same to the appellant. Under those circumstances, I hold that the order passed by the first respondent, relying on the report of the Deputy Inspector General of Registration without furnishing the same to the appellant is unsustainable.

17. As per the decision of this Court reported in Ezhilarasi and C.T. Kaliaperumal Vs. The Inspector General of Registration, The Special Deputy Collector (Stamps) and Joint Sub Registrar guideline value is not a final authority on the market value of the property but the department has to go by various parameters set down in the Rules for determination of the market value, if they have a reasonable belief that the market value of the property has not been truly setforth in the instrument. In other words, the data land, which is sought to be compared, should contain the details, which will throw light as to how the data land in its nature, extent and value is comparable with that of the property which is the subject matter of the litigation. The onus is on the department to establish that the market value of the property has not been truly set forth and market value, as claimed by the department is contemporaneous to the document, tendered for registration. In fact, Rule 5 prescribes principles for determination of market value. In case of house site (i) the general value of house site in the locality (ii) nearness to road, 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 partiex.

18. Applying the above said decisions in this case, it is clear that the respondents have not fulfilled the parameters laid down therein. As mentioned above, the third respondent, at the time of reference, has not given any reasons for making such reference, as required. Secondly, the second respondent has not served the form II notice to the appellant, in the manner it is required to be served and passed the final order beyond the time stipulated in the Rules. Thirdly the first respondent/appellate authority has not furnished the copy of the report received from the Deputy Inspector General of Registration, which he relied on at the time of

rejecting the appeal filed by the appellant. Therefore, for all these reasons, the impugned orders passed by the respondents are vitiated and they are liable to be set aside.

19. In the result, the appeal filed by the appellant is allowed by setting aside the orders passed by the respondents 1 and 2. No costs.