

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION No.14783 of 2022

Between:-

Gontu Rajini Priya

.... Petitioner

And

The District Registrar and Collector,
Guntur District, Andhra Pradesh & Others.

..... Respondents

Counsel for the petitioner : Mr.Paladugu Ganesh

Counsel for the respondents : G.P. for Stamps & Registration

ORDER:

The present Writ Petition is filed aggrieved by the Proceedings dated 17.09.2021 of the 1st respondent determining the market value of the site in Town Survey Nos.26/1, 26/2 of Guntur Municipal Corporation area, Kothapeta old ward No.5(New ward No.6), Block No.1, Door No.8-23-25 effected by the pending Document No.718/2021 as Rs.2,300/- per Square Feet to set aside the same and consider the market value at Rs.1,140/- per Sq.ft.

2. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Stamps & Registration appearing for the respondents.

3. The learned counsel for the petitioner with reference to the averments made in the Writ Petition submits that the petitioner purchased the above said property which is in a skeleton form,

raised 20 years back and is unfinished. He submits that when the document in respect of the said property was submitted for registration, the 2nd respondent kept the same pending *vide* D.No.718/2021 and referred the same to the 1st respondent for determination of market value of the semi finished multi storied building. He submits that the 1st respondent in exercise of powers under Section 47-A of the Indian Stamp Act(for short 'the Act') determined the market value as Rs.2,300/- per Sq.ft., and thereby concurred with the assessment made by the 2nd respondent. The learned counsel submits that before passing the impugned proceedings, the petitioner made a representation to fix the market value reasonably at Rs.1,140/- Sq.ft., but without considering the same, much less by providing an opportunity of hearing to the petitioner, the impugned proceedings have been issued. He submits that the said proceedings are liable to be set aside on the ground of violation of principles of natural justice as also statutory provisions viz., Section 47-A(2) of the Act.

4. The learned counsel also submits that the 1st respondent issued the impugned proceedings without taking into consideration the relevant Government Orders and the Circular instructions governing the fixation of market values of the properties situated in

commercial zones/urban areas etc., The learned counsel while stating that the petitioner had already paid an amount of Rs.5,69,000/- towards Stamp Duty and Registration Charges, contends that determination of the market value at Rs.2,300/- per Sq.ft., would cause serious prejudice and great financial hardship to the petitioner. Making the said submissions, the learned counsel seeks to allow the Writ Petition and grant the reliefs as sought for.

5. The learned Assistant Government Pleader for Revenue, on the other hand, with reference to the averments made in the counter-affidavit filed on behalf of the 1st respondent made submissions to sustain the impugned proceedings. He contends that the 1st respondent after undertaking a personal inspection and going through the relevant records, determined the market value, by giving opportunity to the petitioner and therefore the impugned proceedings warrants no interference by this Court. He also submits that the Writ Petition is not maintainable as the petitioner has an effective alternative remedy as per the provisions of the Act and therefore, the Writ Petition is liable to be dismissed.

6. This Court has considered the submissions made and perused the material on record. On an appreciation of the rival contentions, the point that falls for consideration by this Court is:

“Whether the impugned proceedings warrants interference by this Court in the facts and circumstances of the case?”

Point:

7. It is the main contention of the learned counsel for the petitioner that the impugned proceedings are liable to be set aside on the ground of violation of principles of natural justice as also the statutory provisions. In this regard, it may be appropriate to extract the relevant statutory provision, which reads thus:

47-A. Instruments of conveyance, etc., under-valued how to be dealt with – [(1) Where the registering officer appointed under the Registration Act, 1908, (Central Act 16 of 1908), while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument, and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon:

Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned.

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties an opportunity of making their representation 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 such instrument and the duty as aforesaid:

Provided that no appeal shall be preferred unless and until the difference, if any, in the amount of duty is paid by the person liable to pay the same, after deducting the amount already deposited by him:

Provided further that where after the determination of market value by the Collector, if the stamp duty borne by the instrument is found sufficient, the amount deposited shall be returned to the person concerned without interest].

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8. Thus, the above referred provision, more particularly Section 47(2) of the Act contemplates determination of market value of the property, after giving the parties an opportunity of making their representation and holding an enquiry in the manner prescribed under the Rules framed under the Act. In the present case, from a reading of the impugned proceedings, it would appear that an opportunity was afforded to the petitioner for making a representation and the same were submitted. However, in the impugned proceedings, there is no discussion as to why the petitioner's representation merits no consideration, much less reference to the contents therein. The opportunity provided under

the statute under Section 47-A(2) of the Act is not an empty formality. The authority concerned i.e., the 1st respondent is not only under a statutory obligation to afford an opportunity, but also consider the representation of the concerned party/the petitioner herein in the present case before determining the market value and assign reasons, if he is not accepting the said representation. The impugned proceedings in the absence of such a determination by the 1st respondent, without assigning the reasons, is not sustainable. Further, unless the reasons are assigned, the aggrieved party/petitioner would not be in a position to avail the statutory remedies by raising appropriate grounds before the appellate authority. It is well settled Law that reasons are heart and soul of the order and absence of the same, vitiates the order. The impugned proceedings as opined above, is not sustainable for want of reasons and in such circumstances, the contention of the learned Assistant Government Pleader for Revenue that alternative remedy operates as a bar, merits no acceptance.

9. Considering the matter in its entirety, the impugned proceedings are not sustainable and the same are accordingly set aside. The matter is remanded to the 1st respondent for determining the value of the subject matter property afresh, by

affording an opportunity to the petitioner, in accordance with Law, within a period of four (4) weeks from the date of receipt of a copy of this order. The petitioner is at liberty to make fresh representation and the 1st respondent shall take the same into consideration before passing appropriate orders.

10. Accordingly, the Writ Petition is allowed. No order as to costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

NINALA JAYASURYA, J

Date: 22.09.2023
BLV

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

W.P.No.14783 of 2022

Date: 22.09.2023

BLV