IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 1959 of 2015 (T)

PETITIONER :

M/S. POOMA CONVENTION CENTRE PRIVATE LIMITED,
REGD.OFFICE AT: 25/469/5, POOMA COMPLEX, MG.ROAD,
THRISSUR DISTRICT-680 001,
REPRESENTED BY ITS MANAGING DIRECTOR,
MR. R.O.ABDUL KADIRU.

BY SRI.JOSEPH KODIANTHARA,SENIOR ADVOCATE
ADVS.SRI.V.ABRAHAM MARKOS
SRI.BINU MATHEW
SRI.TOM THOMAS (KAKKUZHIYIL)
SRI.ABRAHAM JOSEPH MARKOS
SRI.ISAAC THOMAS
SRI.NOBY THOMAS CYRIAC

RESPONDENT(S):

1. THE DISTRICT REGISTRAR (GENERAL),
CHEMBUKAVU, THRISSUR CITY,
THRISSUR DISTRICT-680 020

2. THE SUB-REGISTRAR,
SUB-REGISTRAR OFFICE, CHIYYARAM,
THRISSUR DISTRICT-680 026.

3. DIRECTOR,
VIGILANCE AND ANTI CORRUPTION BUREAU,
THIRUVANANTHAPURAM-695 033

4. THE REGISTRATION INSPECTOR GENERAL,
THIRUVANANTHAPURAM-695 035

BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C).No. 1959 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE SALE DEED NO.4647/12 DATED 14.09.2012

EXHIBIT P2: TRUE COPY OF THE SALE DEED NO.4687/12 DATED 17.09.2012

EXHIBIT P3: TRUE COPY OF THE FORM II A NOTICE DATED 13.06.2013

EXHIBIT P4: TRUE COPY OF THE FORM II A NOTICE DATED 20.06.2013

EXHIBIT P5: TRUE COPY OF FORM III A NOTICES DATAED 02.08.2014 COLLECTIVELY.

EXHIBIT P6: TRUE COPIES OF PRIVISIONAL ORDERS DATED 31.07.2014 COLLECTIVELY.

EXHIBIT P7: TRUE COPY OF LETTER DATED 06.09.2014 OF THE PETITIONER.

EXHIBIT P8: TRUE COPY OF THE LETTER DATED 24.09.2014 OF THE 1ST RESPONDENT.

EXHIBIT P9: TRUE COPY OF THE PETITIONER'S LETTER DATED 21.10.2014

EXHIBIT P10: TRUE COPY OF THE LETTER DATED 24.10.2014 OF THE 2ND RESPONDENT.

EXHIBIT P11: TRUE COPY OF THE LETTER DATED 19.11.2014 OF THE 1ST RESPONDENT.

EXHIBIT P12: TRUE COPY OF THE JUDGEMENT DATED 25.11.2014 OF THIS HONOURABLE COURT IN WP.(C)NO.31409/2014

EXHIBIT P13: TRUE COPY OF THE COVERING LETTER DATED 20.12.2014 ALONG WITH COMPLETE SET OF DOCUMENTS.

RESPONDENT(S)' EXHIBITS: NIL
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/TRUE COPY/

P.A.TO.JUDGE

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[CR.]

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 1959 of 2015

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Dated, this the 25th day of February, 2015

JUDGMENT

Jurisdiction and competence of the first respondent to have issued Exts. P3 to P6 notices/provisional orders in connection with the steps for realization of the alleged deficit stamp duty under Section 45B of the Kerala Stamp Act (herein after referred to as the 'Act') as well as the correctness and sustainability of the said proceedings, are under challenge in this writ petition.

2. The petitioner company purchased two different items of properties situated side by side, belonging to the erstwhile owner, as per Exts. P1 and P2 sale deeds, executed on 14.09.2012 and 17.09.2012 respectively. In the case of Ext. P1, the total extent of land involved is 3.64 ares and the sale consideration paid is Rs.93,00,000/-, inclusive of Rs. 1,00,000/- fixed for the building situated therein. In the case of Ext. P2, total extent of land is 16.71 Ares and the sale consideration paid is Rs. 12,80,00,000/-, including the value of the improvements. It is pointed out that the value shown in Exts. P1 and P2 are above the 'fair value' notified by the

competent authority under Section 28A of the Act. In the case of Ext. P2, the total stamp duty payable being more than Rs. 1 Crore was referred to before the first respondent, who made an endorsement therein, certifying under Section 32 (1) (b) of the Act, that the stamp duty shown in respect of the said document was quite adequate.

3. Several months after execution of sale deeds as above, the petitioner was served with Exts. P3 and P4 notices dated 13.06.2013 and 20.06.2013 respectively, in Form II A issued by the first respondent, referring to the alleged instance of undervaluation, asking to submit explanation, if any. The said notices issued under Rule 4 of the Kerala Stamp (Prevention of undervaluation of Instruments) Rules, 1968 [herein after referred to as the 'Rules'] were followed by Exts. P5 and P6 notices and provisional orders dated 02.08.2014 and 10.07.2014 respectively, which were issued in Form III A, referring to Rule 6 of the aforesaid Rules. As per Ext. P5, value of the property covered by Ext. P1 was tentatively fixed by first respondent as Rs. 12,01,00,000/-, and the deficit stamp duty and the registration charges payable was worked out as Rs.1,21,88,000/-, which was required to be satisfied with liberty to file objections, if any, as mentioned in the notice.

In respect of Ext. P2 sale deed, value of the property was tentatively fixed as Rs.51,99,00,000/- and the quantum of deficit stamp duty and registration charges was shown as Rs.4,31,09,000/- vide Ext. P6, asking the petitioner to satisfy the same or to submit explanation/objections, if any.

4. On receipt of Exts. P5 and P6 addressed in the 'name' of the Managing Director of the Company; the petitioner submitted Ext. P7 reply dated 06.09.2014, stating that notice ought to have been addressed to the Company, who is the owner of the property, and requiring to furnish copies of the documents relied on in the concerned notices/proceedings, simultaneously requesting to grant 21 days' time from the date of service of the documents, for filing the objections and to have a hearing. Considering the request made by the petitioner, 21 days' time was granted as per Ext. P8 issued by the first respondent, however mentioning that copies of the deeds, if required, could be obtained by contacting the second respondent. The petitioner submitted Ext. P9 representation dated 21.10.2014 with a copy to the second respondent as well; when the petitioner was let known as per Ext. P10 dated 24.10.2014 issued by the second respondent, to satisfy the requisite fees for serving copies of the concerned title deeds. According to the

petitioner, the documents sought for by the petitioner were not copies of Exts. P1 and P2 title deeds, as mentioned in Ext. P10, but the documents relied on by the respondents to have issued Exts. P5 and P6 notices and the provisional orders.

5. In the course of further proceedings, the petitioner was required to submit explanation, if any, and to appear for a hearing scheduled to be conducted on 26.11.2014 along with copies of the relevant records, as per Ext. P11 notice dated 19.11.2014. This made the petitioner to approach this Court by filing W.P.(C) No. 31409 of 2014, challenging the course, proceedings and the authority of the respondents to have initiated proceedings against the petitioner. An alternative prayer was also made that before proceeding against the petitioner, the documents relied on by the respondents in Exts. P5 and P6 were to be furnished, so as to defend the proceedings properly. Considering the alternative prayer, necessary direction was given to the respondents 1 and 2 to serve copies of the relevant proceedings and the writ petition was disposed of as per Ext. P12 judgment dated 25.11.2014.

6. Pursuant to the above verdict, copies of the relevant documents including the letters written by the 3rd and 4th respondents and a copy of the 'anonymous letter', which formed the

basis for initiation of the said proceedings, were forwarded to the petitioner, as per Ext. P13 forwarding letter dated 20.12.2014. This made the petitioner to challenge the entire proceedings once again, mainly contending that no incriminating circumstance has been made out, to have issued the impugned notices/provisional orders, but for an 'anonymous letter' and that the said instance by itself cannot give rise any cause of action or 'reason to believe' for having issued the proceedings alleging undervaluation. In other words, the contention is that such a course has been pursued by the first respondent totally without any regard to the mandate of the relevant provisions of law and only as a malafide and arbitrary exercise, amounting to abuse of process of law.

7. A counter affidavit has been filed by the first respondent, referring to the sequence of events and circumstances which necessitated for issuance of notice to the petitioner. It is also pointed out that no proper valuation was done in Exts. P1/P2 title deeds and that value shown therein as consideration received was abysmally law. The authority of the first respondent to have issued the impugned proceedings is sought to be asserted with reference to the scope of the relevant provisions of law, particularly Section 45B (3) and that such proceedings were taken on the basis

of a complaint forwarded by the Vigilance and Anti Corruption Bureau routed through the 4th respondent/Inspector General of Registration, Thiruvananthapuram. The first respondent has also pointed out that, despite issuance of notices/proceedings and service of all the documents sought for by the petitioner and ordered to be given by this Court, as per Ext. P12 judgment, the petitioner has not so far chosen to file any explanation, nor has he turned up before the first respondent with relevant materials. It is stated that the writ petition is premature and has been filed by the petitioner only to protract things.

8. Heard Mr. Joseph Kodianthara, the learned senior counsel appearing for the petitioner as well as well as Mr. Joseph George, the learned Senior Government Pleader appearing for the respondents.

9. The sum and substance of the arguments of the learned counsel for the petitioner is that the property has been caused to be registered, on satisfaction of the agreed sale consideration, which admittedly is above the 'fair value' fixed by the competent authority under Section 28A of the Act, and further that sufficiency of stamp duty in respect of Ext. P2 has been certified by the competent authority under Section 32(1) (b) of Act; by virtue of

which no case of undervaluation will lie in respect of such conveyances under any circumstances. To invoke the power and procedure under Section 45B (3) by the first respondent, there has to be some 'reason to believe' that the value or consideration has not been properly set forth in the instrument, which is stated as totally absent in the instant case. The scope of the term 'reason to believe' is sought to be explained with reference to the law declared by the Apex Court in **Dr. Pratap Singh and another Vs. Director of Enforcement, Foreign Exchange Regulation Act and Ors. [AIR 1985 SC 989]**. Similarly, it is pointed out that, the attempt of the first respondent is to refix the 'market value', which course is not permissible in view of the position made clear by this Court as per the decision rendered in **State of Kerala Vs. Jino Joseph [2012 (2) KLT 265].**

10. The learned senior Government Pleader submits, on the other hand, that the present proceedings are only the continuation of the steps pursuant to Ext. P12 judgment passed by this Court and that the proceedings are never initiated with any malafide intent, nor is it an abuse to the process of law, more so when it was based on the letters/proceedings routed through the respondents 3 and 4 and further that there is 'reason to believe'

that there was undervaluation. It is also pointed out that, in spite of the opportunity given to the petitioner to file explanation, if any, no explanation was ever offered and as such, abuse to process of law is done by none other than the petitioner and not the respondents.

11. The scheme of the Statute, particularly the Kerala Stamp Act, contemplates payment of stamp duty based on the consideration paid or payable in respect of the conveyances. Considering the mounting increase in the instance of undervaluation and the loss of Revenue, the Government thought it fit to device some checks and measures, thus leading to incorporation of Section 28A in the Act w.e.f. 01.10.1994. The said provision reads as follows :

> "**28A Fixation of fair value of land** : (1) Every Revenue Divisional Officer shall, subject to such rules as may be made by the Government in this behalf, fix the fair value of the lands situate within the area of his jurisdiction, for the purpose of determining the duty chargeable at the time of registration of instruments involving lands.
>
> (2) The Revenue Divisional Officer shall, in fixing the fair value of a land under sub-section (1) have regard inter alia to the following matters, namely;-

> (a) development of the area in which the land is situate such as the commercial importance, facilities for water supply, electricity, transport and communication;
>
> (b) proximity of the land to markets, bus stations, railway stations, factories, educational institutions or other institutions.
>
> (c) the geographical lie of the land, the nature of the land such as dry, waste, wet or garden land, fertility, nature of crop, yielding capacity and cost of cultivation; and
>
> (d) such other matters as may be provided in the rules made under this Act.
>
> (3) The fair value of land fixed under sub-section (1) shall be published in such manner as may be provided in the rules made under this Act.
>
> (4) Any person aggrieved by the fixation of fair value under sub section (1) may within thirty days of its publication under sub section (3) appeal to the Collector.

12. The fixation of 'fair value' by the competent authority, subject to the orders to be passed by the appellate authority, as mentioned therein, is the minimum value which is to be reckoned for the property in the area concerned, for computing the stamp duty for the purpose of registration. But <u>the fair value need not be the actual value paid</u>, in respect of a given transaction. The course

of action, where the value shown in the conveyance is less than the fair value or if the actual value/consideration doubted is more than the value declared, stands taken care of, by Section 45A and 45B, which are reproduced below :

> **"45A. Instrument not bearing stamp of sufficient amount as per fair value of land how to be dealt with.--** (1) Notwithstanding anything contained in this Act, the Registering Officer shall, while registering an instrument transferring any land, chargeable with duty verify whether the value of land or the consideration set forth in the instrument is the fair value of that land.
>
> (2) Where on such verification, the Registering Officer is satisfied that the value of the land or the consideration set forth in the instrument is not less than the fair value of the land, he shall duly register the instrument.
>
> (3) Where, on verification the Registering Officer finds that the value of the land or the consideration set forth in the instrument is less than the fair value of the land fixed under Section 28A, he shall, by order, direct the payment of proper stamp duty on the fair value of the land fixed under Section 28A within a period of seven days from the date of the order and on payment of the deficit stamp duty, he shall duly register such

instrument and certify by endorsement on the instrument under his seal and signature that proper stamp duty has been charged and paid..

(4) Any person aggrieved by an order under sub-section (3) may, within thirty days from the date of that order, appeal to the Collector within whose jurisdiction the land is situate.

(5) The Collector shall hear and dispose of the appeal in such manner as may be prescribed by rules made under this Act in that behalf and his decision thereon shall be final."

45B. Instruments undervalued how to be dealt with.-- (1) If the Registering Officer, while registering any instrument transferring any property, has reason to believe that the value of the property or the consideration, as the case may be, 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 value or consideration, as the case may be, 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, by order, determine the value of the property or the consideration and the duty aforesaid;

and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty and, on the payment of such duty, the Collector shall endorse a certificate of such payment on the instrument under his seal and signature.

(3) The Collector may, suo motu, within two years from the date of registration of any instrument 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 its value or consideration, as the case may be, and the duty payable thereon, and if after such examination, he has reason to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty and, on the payment of such duty, the Collector shall endorse a certificate of such payment on the instrument under his seal and signature.

(3A) xxxxxxx

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may appeal to the District Court within whose jurisdiction the property transferred is situate.

> (5) An appeal under sub-section (4) shall be filed within thirty days of the date of the order sought to be appealed against.
>
> (6) The District Court shall hear and dispose of the appeal in such manner as may be prescribed by rules made under this Act."

13. Under both the provisions (Sections 45A and 45B), the registering officer is authorised to verify the value of the land consideration set forth in the instruments presented for registration and if it is not less than the fair value, he is bound to register as per Section 45A. On the other hand, if it is less than the fair value, it needs to be registered only on payment of stamp duty payable, reckoning the fair value as the relevant figure. Coming to Section 45B, if the registering authority is having reason to believe that value of the property or the consideration shown in the document not reflecting the true value/consideration, reference can be made to the Collector for determination of value or consideration after registering the documents. Suo motu power is also vested upon the first respondent to deal with the situation, as mentioned under Section 45B (3). The observation of this Court in paragraph 7 in **Pareekutty Vs. Sub Registrar (2010 (3) KLT 1005)** is relevant, which is extracted below :

> "7. The scope of enquiry under S.45B is whether the value of the land or the consideration set forth for transfer of property covered by the document presented for the registration is truly stated or not. For example, in a given case, it is possible that a document states the value or the consideration for the transfer which is not less than the fair value of the property or something more than the fair value of the property, but it may so happen having regard to the various facts and circumstances such value may not be the actual value of the property. S.45B authorises the registering authority to make an enquiry in such cases. However, the registering authority is bound to register the document, though he is satisfied that the document does not reflect the true value of the property. It is only after the registration the registering authority can refer the document to the Collector for appropriate further action contemplated under sub-s.(2) of the said Section."

14. From the above it is clear that the contentions raised by the petitioner in 'Ground (I)' of the writ petition that, *in so far as consideration shown in Exts. P1 and P2 is the fair value or more, no question of undervaluation is involved*, cannot be correct or sustainable. Equally or more unsustainable is contention raised in 'Ground J' with reference to Sections 31 and 32 of the Act, in view

of the certification of stamp duty on Ext. P2. This is obviously for the reason that the scope of enquiry at the said stage for causing the documents to be registered stands confined to the available materials on the given date, which cannot be fettered by any further course of action to be pursued, if there is 'reason to believe' that there was any instance of undervaluation. If any incriminating circumstance is brought to light, the suo motu power conferred upon the first respondent under sub Section 3 of Section 45B (which however prescribes a time limit of two years) and if the said authority comes across any material or circumstances necessitating a further enquiry, it is quite possible to pursue such an exercise to conduct an enquiry and to elicit the true state of affairs. There need not be any heartburn to the parties concerned, if the consideration shown in the document was the actual consideration paid in respect of the transaction. The position to the contrary is a fact which is to be established on the basis of evidence to be let in.

15. Considering the question whether such step pursued by the first respondent is with a malafide intent, or otherwise it is necessary to examine whether there was any 'reason to believe' to have had such exercise. The term 'reason to believe', cannot be considered or evaluated in a water tight compartment and scope

and applicability may vary from case to case, depending upon the facts and circumstances. Coming to the case is hand, the proceedings were initiated not as a matter of revelation to the first respondent on a fine morning, but on the basis of a complaint forwarded by the 3rd and 4th respondents as to the alleged instance of undervaluation. The materials brought on records reveal that an 'anonymous complaint' was received by the 3rd respondent in February 2012, referring to the 'deal' (forming subject matter of Exts. P1 and P2), struck for a total of Rs.64 Crores. This was forwarded by the 3rd respondent to the 4th respondent, as per letter No. E8-5056/12 dated 19.04.2012 for enquiry and further steps. The 4th respondent forwarded the said proceedings to the first respondent as per letter No. RR 5 10380/2012 dated 02.05.2012 with a direction to conduct an enquiry and to pursue further steps. It was on receipt of the proceedings as above, the first respondent issued Exts. P3 and P4 notices in Form II A under Rule 4 to the petitioner, seeking for immediate response/explanation. The said notices were issued in June 2013. Admittedly, despite receipt of said notices, no reply/objection or representation was preferred by the petitioner, which gave the 'reason to believe' that there was substance in the complaint, thus deciding to proceed further, leading to Exts. P5 and P6 provisional orders and notices issued in Form II A under Rule 5.

16. It is also to be borne in mind that the anonymous complaint obtained by the 3rd respondent was in February 2012; the same was forwarded to the 4th respondent in April 2012; which in turn was forwarded to the first respondent in May 2012 i.e. much prior to execution of Exts. P1 and P2 sale deeds in September, 2012. What is mentioned in the 'anonymous complaint' is as to the "Deal Struck in 2011" involving conveyance of property for Rs.64 Crores. Exts. P1 and P2 sale deeds were executed subsequently. It could be an agreement or such other document or instance, to have property sold for Rs.64 crores or for such other amount. It was on verifying the contents of Exts. P1 and P2, with reference to the figures given in the complaint preferred in February 2012 i.e. prior to execution of Exts. P1 and P2, and further since no explanation was forthcoming, from the part of the petitioner in response to Exts. P3 and P4 notices issued in Form II A under Rule 4, that the first respondent decided to pursue further, leading to issuance of Exts. P5 and P6 notices and provisional orders. Because of the silence on the part of the petitioner, there was every reason for the first respondent to believe that an

instance of undervaluation was involved; also in view of the relative value of the properties in the nearby areas, as mentioned in Exts.P5/P6. This being the position, the challenge raised by the petitioner against the above proceedings is not liable to be entertained at this stage.

17. With regard to the contention of the petitioner that the attempt of the first respondent is to refix the stamp duty based on irrelevant factors i.e. by reckoning the 'market value' of the property, it is true that 'market value' of the property is not the basis for fixation of the stamp duty, as made clear by this Court vide the decision reported in **2012 (2) KLT 265** (cited supra). The term 'value' mentioned under Section 45B is not liable to be interpreted as to mean the 'market value' and the stamp duty is to be reckoned on the basis of the 'actual sale consideration', which may be the one as shown in the document or something else, if it is the other way round. If in the enquiry to be conducted, it is established that the actual consideration paid was something more than the consideration shown in the document, there occurs the instance of undervaluation, which could be resolved as per the procedure prescribed realizing the deficit stamp duty and the registration charges. This position has also been made clear by

this Court while passing the judgment in **2012 (2) KLT 265** (cited supra), as evident from paragraph 14, which is extracted below :

> 14. However, circumstances are bound to occur where the actual consideration passed is higher than the fair value fixed under S.28A. S.45B states how such cases are to be dealt with. In such cases, if the registering officer has reason to believe that the value of the property or consideration has not been duly set forth, after registering such instrument, he can refer the same to the Collector for determination of the value or consideration and proper duty payable. S.45B(3) also empowers the Collector to initiate suo motu action within two years from the date of registration of an instrument which was not referred to him under sub-section (1) of Section 45B to call for and examine the correctness of the value or consideration set forth in the instrument and if he has reason to believe that the value or consideration has not been truly set forth in the instrument, to determine the value or consideration.

18. Yet another aspect, which stands against the case put up by the petitioner while seeking to challenge the impugned proceedings, is the course ordered to be pursued by this Court while passing Ext. P12 judgment, in the earlier round of litigation. In the 'opening paragraph' of the said verdict, it has been noted by

the learned Judge, that the petitioner had challenged the proceedings initiated against him under Section 45B of the Stamp Act read with relevant Rules governing the undervaluation, contending that respondents did not have authority to initiate proceedings. In the next sentence, reference is made to the 'alternative prayer' of the petitioner to the effect that, before proceeding against the petitioner, the documents sought to be relied on by respondents for having issued Exts. P5 and P6 were to be furnished, so as to enable the petitioner to defend the proceedings. It was accordingly, that the matter was disposed of, directing the respondents 1 and 2 to provide copies of the materials demanded by the petitioner as per Ext. P7 (same as herein) making it clear that, the proceedings shall not be finalized without providing sufficient opportunity to defend the case. This means, once the documents are served to the petitioner, it is for the petitioner to submit explanation/objection/representation, if any and the proceedings have to be taken to a logical conclusion, passing appropriate orders in accordance with law, which of course could be subjected to challenge, if any further grievance remains. For this reason also, interference is not possible in the instant case, which is rather pre-mature in all respects.

In the above circumstances, interference is declined and the writ petition is dismissed. It is made clear that no opinion is expressed with regard to the merits of the case and the same is left open.

P. R. RAMACHANDRA MENON,
(JUDGE)

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