

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.09.2017

Coram

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.35434 of 2003
and
W.P.M.P.No.43064 of 2003

R.Mohan (died)

1. Smt.Vijayalakshmi (wife)
2. Miss.Movita (daughter)

(Petitioners 2 and 3 are substituted as per order dated 13.07.2017 in W.M.P.No.94 of 2011 in W.P.No.35434 of 2003) ... Petitioners

Vs.

1. The Sub-Registrar (Dist. Registrar, South Chennai)
Office of the Sub-Registrar of Assurances
Saidapet, Chennai.
2. The District Revenue Officer (Stamps)
Office of the District Revenue Officer
V Floor 'M.Singaravelar Malligai'
32, Rajaji Salai, Chennai 600 001.
3. The Chief Commissioner of Income Tax-II
Office of the Chief Commissioner of Income Tax
121, Mahatma Gandhi Road,
Chennai 600 034.
4. The Director (Other Taxes)
Central Board of Direct Taxes
Ministry of Finance, North Block
New Delhi.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent connected with No.123/2003 on his file and that of the second respondent connected with Na.Ka.Si.Pa.No.74/2003 on his file and to quash the orders made therein and to direct the respondents 1 and 2 to return forthwith the original sale deed dated

04.12.2002 executed on behalf of the President of India in favour of the petitioner and registered by the first Respondent on 04.12.2002.

For Petitioners : Mr.S.Vennimalai

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate for R1 & R2

Ms.Hema Murali Krishnan for R3 & R4

ORDER

The petitioner has come forward with this Writ Petition praying to call for the records of the first respondent connected with No.123/2003 on his file and that of the second respondent connected with Na.Ka.Si.Pa.No.74/2003 on his file and to quash the orders made therein and to direct the respondents 1 and 2 to return forthwith the original sale deed dated 04.12.2002 executed on behalf of the President of India in favour of the petitioner and registered by the first Respondent on 04.12.2002.

2. It is the case of the original petitioner (since deceased and legal representatives brought on record as petitioners 2 and 3) that the pursuant to the auction notice issued by the third respondent, dated 10.11.1999 for the sale of property in question, the petitioner has participated and was declared as the highest bidder and the sale consideration determined was paid and duly acknowledged by third respondent on 22.02.2000 and that the property was handed over to the third respondent on the said date. The third respondent being an independent authority, namely, the Income Tax Department which has auctioned the property and in that auction, the petitioner being the successful bidder, the said registration of the sale deed was informed by the third respondent to the petitioner and the sale deed was executed by the fourth respondent representing on behalf of the President Of India conveying the property to the petitioner on 29.05.2002. The petitioner has paid the necessary stamp charges for the registration of the document, which was received by the first respondent and the second respondent called upon the petitioner to pay the differences in stamp duty by communication dated 04.04.2003. This was objected by the petitioner on 06.05.2003 and the first respondent has referred the document with regard to the difference in stamp duty to be determined under Section 47-A of the Indian Stamp Act and on 12.09.2003 and an order was passed by the second respondent determining the difference in stamp duty.

3. According to the petitioner, the first and second respondents have no power to claim the additional stamp duty, when the document has been registered and conveyed by the third and fourth respondents and that when there is no evidence or averment in the order that the sale has been fraudulently made and that the information was concealed, the provisions of Section 47-A of the Stamp Act are not attracted and it could not be invoked by the second respondent.

4. Per Contra, Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents 1 and 2, while referring to the counter affidavit filed by the first and second respondents, contended that the sale deed was executed as stated by the petitioner, but the market value as per the guideline value was Rs.64,73,320/- and the value furnished by the petitioner is Rs.39,86,000/- and that the stamp duty as per the valuation estimated by the Sub-Registrar is Rs.8,41,542/- and that the petitioner has paid Rs.5,18,500/-. There is a difference of stamp duty of Rs.3,23,042/-. In the counter filed by the second respondent, there are break-up details with regard to the land value and building value, in the form of calculation/statement, which is given below :

Particulars	Total Value in Rs.	Land Value in Rs.	Building Value in Rs.
Market value as estimated by the Sub-Registrar with ref. to guidelines supplied to registration department	64,73,320	49,87,320	14,86,000
Value as furnished by the writ petitioner	39,86,000	25,00,000	14,86,999
Stamp duty referred for the valuation estimated by the Sub-Registrar	8,41,542		
Stamp duty borne by the document	5,18,500		
Difference in stamp duty	3,23,042		

5. It is further contended by the learned Government Advocate that the deficiency in stamp duty in the instrument was referred to the District Revenue Officer (Stamps) (DRO) under

Section 47-A(1)(3) of the Indian Stamp Act for determination of market value and communication was sent to the petitioner in the prescribed form under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules. As there was no representation on the petitioner's side, another notice was sent and after careful consideration, deficit in stamp duty was arrived at and impugned order has been communicated to the petitioner to pay the deficit stamp duty failing which interest would attract at 2% per month. Since the petitioner has not remitted the amount of the deficit stamp duty till date, the deficit stamp duty together with interest was arrived at for the period between 28.12.2003 and 27.08.2017 which is extracted below as found in the counter affidavit of the second respondent:

Calculation of interest for the deficit stamp duty for the period from 28.12.2003 to 27.08.2017 involved in Rc.S.R.74/2003 of District Revenue Officer (Stamps), Chennai District.	
Date of Order of the District Revenue Officer	28.10.2003
Date of completion of two months	27.12.2003
Date from which interest to be calculated	28.12.2003
Date up to which interest calculated	27.08.2017
Rate of interest 2% per month for the period upto	28.08.2010
Rate of interest 1% for the period from 28.08.2010 to 27.08.2017	
Principal Amount	Rs.2,74,565
Interest for 80 months from 28.12.2003 to 27.08.2010 (2,74,565 x 80 x 2/100)	Rs.4,39,304
Interest for 84 months from 28.08.2010 to 27.08.2017 (2,74,565 x 84 x 1/100)	Rs.2,30,634.6
Total	Rs.9,44,503.6

6. The non-payment of deficit stamp duty ordered by the second respondent would result of loss of Revenue to the Government. Accordingly to the second respondent, the guideline

value for the area was Rs.1,112/- per sq.foot in 2003 and that the Writ Petitioner had registered the document based on the value of Rs.557.41 per sq.ft (approximately) and that the registered value was taken approximately at 50% of the guideline value and that the matter was referred to the authority under Section 47-A of the said Act and the DRO has determined the value at Rs.1,001 per Sq.Foot and asked the petitioner to remit the amount, failing which it would attract interest. According to the learned Government Advocate appearing for the respondents 1 and 2, in view of the decision of this Court reported in 2010 (5) CTC 545 (Vasundhra Vs. Government of Tamil Nadu, represented by Secretary, Revenue Department), the authority has got powers to decide about the deficiency in stamp value payable by the purchaser and that when there is no proper disclosure of the value, it is open for the authority concerned to take into account the market value or the value that may be applicable on the date of registration of the sale deed. Hence, the second respondent submitted that the Writ Petition has got to be dismissed and the petitioner may be directed to pay the amount together with interest as per the provisions of the Stamp Act.

7. The first respondent also has filed a counter affidavit and submitted that the petitioner has got a right of appeal under Section 47-A(5) of the said Act and without exhausting the appellate remedy, the petitioner has approached this Court. The first respondent has also drew the attention of this Court to under Section 47-A(1) of the Indian Stamp Act and Article 23 of Schedule-I to the Indian Stamp Act, which reads as follows:

"Section 47-A: Instruments of conveyance, etc., undervalued how to be dealt with: (1) If the registering officer appointed under the Registration Act, 1908 (Central Act XVI of 1908), while registering any instrument of conveyance, exchange, gift, release of benami right or settlement, has reason to believe that the market value of the property of which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, 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 market value of such property and the property duty payable thereon."

"Article 23 of the Schedule I to the Indian Stamp Act:

Description of Instrument	Proper Stamp Duty
23. Conveyance (as defined by Section 2(10)), not being a transfer charged or exempted under No.62-- (a) of immovable property situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Mdurai, Coimbatore, Salem and Tiruchirapalli and the City of Tiruvelveli.	Five rupees for every Rs.100/- or part thereof of the market value of the property which is the subject matter of conveyance.
(b) of any other property	Five rupees for every Rs.100/- or part thereof of the market value of the property which is the subject matter of conveyance.

Explanation:--In the case of an instrument chargeable with the same duty as a conveyance under this Schedule, such instrument shall be charged with duty,--

(a) at the rate specified in clause (a) of this Article, if such instrument relates to immovable property situated within the Chennai Metropolitan Planning Area and the Urban agglomeration of Madurai, Coimbatore, Salem and Tiruchirappalli and the City of Tirunelveli; and

(b) at the rate specified in clause (b) of this Article, if such instrument relates to any other property.

Exemption:--Assignment of copyright under the Copyright Act, 1975 (Central Act 1 of 1957), Section 18."

8. According to the first respondent, a reading of the aforesaid provisions of the Act would make it clear the stamp duty is payable on the market value and not on the consideration. It is also stated by the first respondent in the counter that there is no suppression in the consideration paid. It is further stated that the Act does not recognize the price fetched in the public auction by any authority other than the

Collector or the Chief Controlling Revenue Authority or this Court to consider such price as market value. According to the first respondent, the market value of the property was appreciating day by day and the Government of India has acquired the property in 1996 and the subject value of the property is Rs.35,19,931/- under Section 269-UD(1) of the Income Tax Act. The property was put up for auction in 2000 after four years of acquisition and the Government of India acquired the property and that the sale deed was executed after a lapse of 3 years from the date of consideration, namely on 04.12.2002. It is further stated by the first respondent in the counter that it is not dispute between the Central Government and the State Government and it is the dispute between the petitioner and the State Government and the State alone is empowered to decide the market value of the property for the purpose of levy of stamp duty and prescribe the rate of duty in respect of the instruments other than those falling within Entry 91 in List I of the Seventh Schedule to the Constitution of India. Hence, the first respondent prayed that the Writ Petition may be dismissed.

9. The third and fourth respondents have filed a counter affidavit, wherein it is stated that the public auction was conducted by the CCIT-II, Chennai on 20.01.2000 and the petitioner was the successful bidder in respect of property and the bid amount was paid fully by 17.02.2000. The original documents were handed over to Shri.R.tamilmanid, Power of Attorney Agent of the petitioner. The draft sale deed was approved by the CBDT, vide letter dated 19.07.2001 and the sale deed was registered 04.12.2002 with the first respondent on behalf of the President of India based on the public auction, pursuant to the newspaper advertisement and that there is no suppression of the market value.

10. Heard both sides and perused the materials available on record.

11. It is an admitted case that the property in question has been purchased through public auction pursuant to the advertisement made in the newspaper and the document had been registered. It is also not in dispute that the authorities have invoked Section 47-A of the Stamp Act to determine the market value, as the value mentioned in the sale deed was approximately 50% of the guideline value and that the authorities have fixed it under higher price than what is disclosed by the petitioner and less than the guideline value.

12. The issue in this Writ Petition is as to whether the value disclosed in the sale deed executed on behalf of the President of India or the market value / guideline value will have to be taken into account for the purpose of arriving at the

stamp duty based on the provisions of the Stamp Act and whether the authorities have got powers under Section 47-A of the Act to determine the value.

13. The decision quoted by Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents 1 and 2, reported in 2010 (5) CTC 545 (cited supra), is a case of mortgage and there was a dispute between two private persons and when there was a dispute between two private persons through mortgage, the provisions of Section 47-A of the Act may not be attracted. In that decision, the learned Judge referred to the decision of the Apex Court in 2009 (7) SSC 438 (V.N.Devadoss Vs. Chief Revenue Control Officer-cum-Inspector and others), in which the sale effected was in respect of the properties of a Government under the Sick Industrial Companies (Special Provisions) Act, where the sale was effected as per the direction of the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) and there was open sale effected after the Assets Sales Committee (ASC) as per the directions of the BIFR, and the AAIFR has fixed the valuation of the property and it was in those circumstances, the Supreme Court held that Section 47-A of the Act has no application. Similarly, the learned Judge therein has also rendered a finding that there must be a reason to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set out in the instrument. Only in case of wilful under-valuation or improper disclosure of the value in order to evade the proper stamp duty, Section 47-A can be invoked.

14. Reliance was placed by the learned counsel for the petitioner in the decision of a Division Bench of this Court reported in 2009 (1) CTC 305 (The Government of Tamil Nadu Vs. S.Jayalakshmi), wherein the powers of the Collector and the authorities under Section 47-A had been discussed in detail. The power under Section 47-A of the Stamp Act can be exercised by the Registering Officer when he has reason to believe that the market value of the property which is subject matter of conveyance, has not been truly set forth with a view to fraudulently evade payment of stamp duty and that mere lapse of time between the date of agreement and the execution of document, will not be the determining factor that the document is under-valued. It was further observed by the Division Bench as held by the learned single Judge in that decision that unless there is any substantial and material evidence and reasons to believe that the market value of the property conveyed has not been truly set forth in the instrument, with an object to commit a fraudulent evasion of stamp duty to cause loss of revenue, it cannot be presumed that the power conferred under Section 47-A of the Indian Stamp Act is a routine one in respect of each and

every transaction.

15. The Apex Court and this Court have repeatedly held that the powers under Section 47-A is vested with the authority and their powers have not been curtailed. The contention of the first respondent in the counter affidavit is that the Central Government has acquired the property in 1996 and auction was held in 2000 and the sale deed had been executed in 2002 and there is a lapse of seven years from the date of acquiring and the date of execution of the sale deed and that there is a possibility of escalation of the value of the land and that the powers have been vested that the authority and the Stamp Act to determine the same under Section 47-A. It is no doubt and true that the authority is empowered to decide the same. But the said observation cannot be read in isolation. The authority only will have to take into account as to whether there was any fraudulent evasion in payment of the stamp duty and whether there is any wilful under-valuation or suppression or collusion between the parties. Admittedly, the impugned order is silent on these aspects. Even going by the counter affidavit filed by the respondents 3 and 4/Income Tax Department, it is clear that auction was conducted and that the sale deed was executed on behalf of President of India based on the public auction pursuant to the advertisement in the newspaper and there was no suppression of the market value. Further, the first respondent also in the counter in paragraph 5, stated that there is no suppression of the market value in the consideration paid. But a qualified sentence is made that this will not bar the authorities under Section 47-A from adjudicating the difference in stamp duty. This Court makes it clear that if any sale of property is done and property is conveyed by means of public auction or through the Court order, Section 47-A of the Act has no application, unless it has been established by means of proper finding by the authorities under Section 47-A that there is a suppression of fact, or wilful non-disclosure of the market value or collusion even under the public auction. In this case, there is no material evidence to establish that the petitioner has played fraud or suppressed any material information and the fact that the first and third and fourth respondents have categorically stated that in the counter affidavits that there is no suppression of the market value, and that there is no finding by the authority under Section 47-A of the Act with regard to these aspects, I find that the impugned orders are liable to be interfered with.

16. Further, as relied on by the learned counsel for the petitioner, in the decision reported in 2011 (1) MWN (Civil) 487 (Ponmari Trade Pack Vs. The Sub-Registrar, Office of the Sub-Registrar), it has been held as follows in paragraphs 16 and 17:

"16. having regard to the status of the

vendor, namely, a Government of Tamil Nadu organisation, the claim of the respondents on untrue value declared has to be rejected outright. Section 47-A of the Act confers jurisdiction on the authority only when there is an untrue declaration of the value in the instrument. A mere difference between the guideline value and the value declared in the instrument does not automatically raise a presumption of untrue statement as to the valuation of the subject property to assume jurisdiction under Section 47-A of the Act. There are no merits at all in the demand made under Section 47-A of the Indian Stamp Act, as none of the orders of the Respondents satisfy the requirement of Section 47-A of the Act; hence, the same have to fail.

17. As regards the reliance placed on the decision of the Division Bench of this Court reported in *The Government of Tamil Nadu Vs. S.Jayalakshmi*, 2009 (1) CTC 305, I agree with the submission of the learned counsel appearing for the Appellant that the decision would squarely come to the aid of the appellant herein and in the absence of any material to substantiate that the value declared by the appellant was not true, the question of assumption of jurisdiction under Section 47-A of the Indian Stamp Act, does not arise. This Court pointed out that under Section 47-A of the Indian Stamp Act, the Collector is vested with the authority to assume jurisdiction as regards exemption for the purpose of satisfying himself as to the correctness of the market value of the property, which is the subject matter of the findings on the duty payable thereon. When the subject matter of jurisdiction of the sale is a property conveyed by the Government of Tamil Nadu organisation, I fail to understand the reasoning of the respondents herein that the value disclosed in the instrument is against the guideline value. It may further be noted that the consistent view of this Court as well as that of the Apex Court is that the guideline value is merely a guide in the matter of ascertaining whether the valuation is truly disclosed in the instrument. Given the fact that the transaction is one at arms-length and given the peculiarity of the land allotted that the appellant had to incur further expenditure on development, I do not find any material to support the orders of the respondents to reject the value stated in the instrument of transfer."

17. Further, in a decision a Division Bench of this Court reported in 2001 (2) CTC 449 = 2001 (2) MLJ 458 (District Collector, Erode Dist. Erode Vs. M.Ponnusamy), it has been held that if the document is registered without any doubt as to the under-valuation of the document, or any reasonable belief as to the true value set forth in the instrument, and once it is registered, there is no further scope for holding the enquiry after registration regarding the value of the property for the purpose of reference. Therefore, necessarily before registering the document, the Registering Officer is entitled either to accept the valuation or refuse to accept the valuation. If he accepts the valuation also, he has to register the document; if he does not accept the valuation also, he shall register the document and then refer the same to the Collector. Therefore, once the document is registered, it pre-supposes that the Collector is satisfied about the valuation or it could be that he was not satisfied about the valuation, but followed it by a reference after registration. In that decision, the Division Bench further held that in that case, 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 and the only reason apparently found from his memo that it is contrary to the guidelines cannot be the ground for referring the matter to the District Collector under Section 47-A(1) of the Act, especially after having registered the document without any demur and on his satisfying about the market value.

18. Moreover, in the decision of this Court reported in 2002 (2) CTC 329 (Sukumaran.R. Vs. State of Tamil Nadu), it is held that it is rather extraordinary for the Registering Authorities or for the concerned Special Deputy Collector (Stamp Duty) to assess the market value and insist for payment of stamp duty on the basis of market value that prevails on the date of presentation of the documents.

19. Furthermore, in the decision reported in 2002 (3) CTC 544 (Rajappa.B. Vs. The Special Deputy Collector (Stamps)), this Court issued the following directions in paragraph 15 with regard to Section 47-A of the Indian Stamp Act:

"15. "While appreciating the anxiety expressed on behalf of the State by the learned Advocate General, this Court directs that:

(i) It is open to the Registering Authority to affix a seal, while releasing the original deed or conveyance or any other document indicating that reference is pending under Section 47-A with respect to under-valuation and assessment of Stamp Duty payable, as and when the proceedings reach finality, the same shall be intimated to the person who is

liable to pay stamp duty demanding payment of deficit stamp duty payable on the instrument.

(ii) The Registrar to make corresponding entries under Sections 54, 55 of the Registration Act, 1908, in the Register of indexes as to pendency of proceedings under Section 47-A.

(iii) On completion of adjudication as to the under-valuation by the competent authority as well as appeal or revision, if any, thereof, and depending upon the ultimate decision, the said authorities to recover deficit stamp duty according to law.

(iv) Till such proceedings reaches finality and deficit is paid, there will be a charge for the deficit stamp duty, which is the subject matter of transfer or conveyance.

(v) On payment of deficit stamp duty, if any payable, the Registrar may once again, on production of the original deed of transfer, make appropriate entry and recording the additional stamp duty paid and release of charge and also make consequential entries in the registers/indexes maintained under Sections 54, 55, etc., of the Registration Act.

20. It is also worthwhile to notice a decision of a Full Bench (Madurai Bench) of this Court reported in 2007 (5) CTC 737 (Karmegam.G. Vs. The Joint Sub-Registrar, IV, Madurai), wherein it has been held as follows:

"6. A careful reading of the above provision (Section 47-A(1)(2)(3)) would show that if 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, he may, after registering such instrument, refer the same to the Collector for determination of proper market value of the property. The rationale behind the said Section is to neutralise the effect of undervaluation of the property, with a view to avoid evading stamp duty.

7. Registration of document is a sine qua non for referring the matter to the Collector, if the Registering Officer believes that the property is undervalued. No jurisdiction has been conferred on the Registering Officer to refuse registration, even if the document is undervalued. Besides, there is no authority for him to call upon the person concerned to pay additional stamp duty. Collector is the prescribed authority to determine the market value, after affording a reasonable opportunity of hearing to the parties. The Registering Officer cannot make a

roving enquiry to ascertain the correct market value of the property by examining the parties. However, it is expected that he has to give reasons for his conclusion for undervaluation, however short they may be. He can neither delay nor refuse registration of the instrument, merely because the document does not reflect the real market value of the property. In order to reach a conclusion, there is no bar for the Registering Officer to gather information from other sources, including official or public record. Valuation guidelines, prepared by the revenue officials periodically, are intended with an avowed object of assisting the Registering Officer to find out prima facie, whether the market value set out in the instrument has been set forth correctly."

21. It is also useful to refer a decision of a Division Bench of this Court reported in 1997 (2) CTC 617 = AIR 1997 Madras 296 = 1997 (2) LW 579 (S.P.Padmavathi Vs. State of Tamil Nadu and others), wherein it has been held that power under Section 47-A 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 and mere lapse of time between the date of agreement and the execution of the document will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to invoke the power under Section 47-A of the Act, unless there is lack of bona-fides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty.

22. It is also beneficial to refer a decision of this Court reported in 2008 (3) LW 286 = MANU/TN/1926/2008 (Tata Coffee Limited and K.Manohar Vs. State of Tamil Nadu, through Secretary to Government, Commercial Taxes and Registration and others), wherein, it has been directed as follows:

"25. In view of the above said discussion, the following principles are culminaed:

... ..

(2) the Registering Authority shall release the documents to the petitioners concerned with the endorsement in the form of affixing seal indicating that the reference under Section 47-A with respect to undervaluation and assessment of stamp duty payable is pending.

... ..

(5) In addition to the above said affixture of seal the concerned Registering Authority shall make corresponding entries in the Register maintained under the Registration Act, 1908, especially with reference to Sections 54 and 55, as to the pendency of Section 47-A proceedings, to be disclosed in the Encumbrance Certificates relating to the said properties.

(6) On completion of the entire adjudication in respect of undervaluation by the competent authorities including the Appeal and revision if any, based on the ultimate decision, the authorities are entitled to recover the deficit stamp duty in accordance with the provisions of the Stamp Act.

(7) Till such finality is reached and deficit stamp duty is paid in full as enshrined under Section 47-A(4) of the Act, there will be a charge on the properties which are the subject matter of such documents in respect of the amount of deficit stamp duty.

(8) On payment of the deficit stamp duty by the party, the Registering Authority, on production of the original deed of transfer shall make appropriate entry regarding the factum of payment of full stamp duty and discharging property from the charge as per Section 47-A(4) of the Act and also make consequential entries in the encumbrance and indexes maintained under Sections 54 and 55 of the Indian Registration Act, 1908."

23. Further, in the decision relied on by the learned counsel for the petitioner reported in 2008 (4) CTC 486 (Nalina Veeraraghavan Vs. The Chennai Metropolitan Development Authority), this Court referred to a decision of the Supreme Court reported in 2008 (1) CTC 60 (SC) (State of Rajasthan and others Vs. Khandaka Jain Jewellers), in which the Apex Court held that the stamp duty shall be payable on the market value prevailing at the time registration of the sale deed.

24. Moreover, in yet another decision relied on by the learned counsel for the petitioner reported in 2014 SCC Online Mad 9452 (R.Jayanthi Vs. Special Deputy Collector), this Court observed that, as rightly contended by the learned counsel for the petitioners that Section 47-A could be pressed into service only when the Registering Officer has reason to believe that the market value of the property has not been truly set forth and it is so done with an intention to fraudulently evade payment of proper stamp duty.

25. It is also to be noted in this case that the Writ Petition was filed in 2003 and it is contented by the learned Government Advocate appearing for the respondents 1 and 2 that the matter has got to be relegated to the appellate authority. But this Court feels that at this distant point of time, the petitioner cannot be asked to file appeal and decide the issue before the appellate authority. That apart, there is no disputed questions of fact in this case and it is only a question of interpretation, more particularly, regarding Section 47-A of the Indian Stamp Act and its provisions. When the facts are admitted, the petitioner need not be relegated to the alternative remedy of appeal.

26. Wherever necessary, the documents can be returned to the parties concerned with an endorsement that the properties cannot be alienated till the issue in question, more particularly, regarding Section 47-A of the Indian Stamp Act, is decided.

27. In view of the foregoing discussion and the law laid down in the decisions cited supra, the Writ Petition is allowed. The respondents 1 and 2 are directed to return the original sale deed in case it is with-held by the Sub-Registrar, within 45 days from the date on which this order copy is made ready. No costs. W.P.M.P. is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cs

To

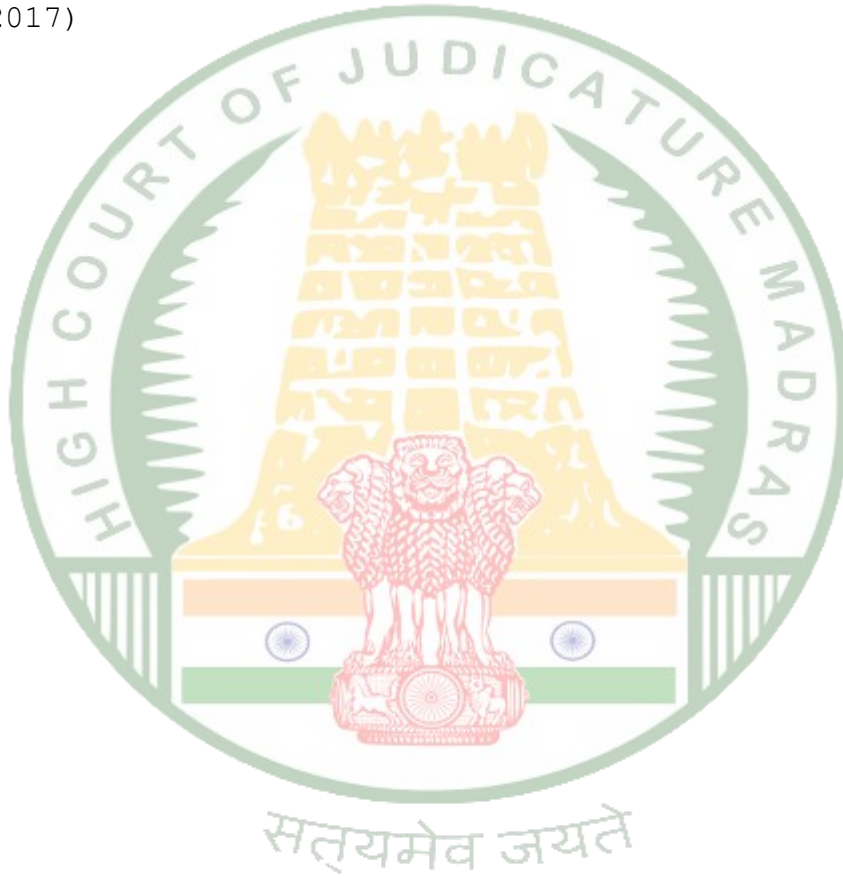
1. The Sub-Registrar (Dist.Registrar, South Chennai)
Office of the Sub-Registrar of Assurances,
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121, Mahatma Gandhi Road,
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4. The Director (Other Taxes)
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Ministry of Finance, North Block,
New Delhi.

+1cc to Mr.V.Shanmugam, Advocate, S.R.No.65267
+1cc to the Government Pleader, S.R.No.65515

W.P.No.35434 of 2003

PVS (CO)
GN(12/10/2017)



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