HONOURABLE SRI JUSTICE P.NAVEEN RAO

<u>WRIT PETITION NO.28332 OF 2008</u>

<u>Date: 13.11.2017</u>

<u>Between:</u>

The District Registrar of Assurance and Collector,
Bhimavaram, West Godavari District and another.

.....Petitioners

and

Ganta Rajanna, S/o Krishna Murthy,
R/o Madduri Vari Street, Gunupudi,
Bhimavaram-I, West Godavari District.

.....Respondent

The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.28332 OF 2008

ORDER:

This writ petition is filed by the District Registrar of Assurance challenging the decision of the III Additional District Judge (Fast Track Court), Bhimavaram in C.M.A.No.1 of 2004, dated 02.07.2007.

2. Heard learned Assistant Government Pleader for petitioner and the learned counsel Sri O.Manohar Reddy, for respondent.

3. To the extent necessary the facts are as under:

4. The respondent herein presented deed of conveyance dated 31.07.1997 before the Sub-Registrar-I of Bhimavaram. Having apprehended that valuation of market value by the respondent herein was far less and for determination of appropriate market value and stamp duty, the Sub-Registrar kept the document pending and referred the matter to the District Registrar under Section 47-A of the Indian Stamp Act, 1899 (Act, 1899). The District Registrar issued notice, dated 28.03.2000 in Form-II, calling upon petitioners to show cause on or before 10.04.2000 as to why the deficit stamp duty and registration fee should not be collected from them. On the ground that though notice was served, there was no response, the District Registrar proceeded to pass final orders, determining the market value of the property at 10,16,400/-, deficit stamp duty at 1,14,420/- and deficit registration fee at 4,770/- and directed payment of 1,21,980/-. Aggrieved thereby, respondent herein preferred appeal before the III Additional District Judge under Section 47-A (4) of

the

Act, 1899. Said appeal was allowed setting aside the orders of the District Registrar, against which, this writ petition is filed.

5. Learned Assistant Government Pleader submits that respondent herein has declared the value of the property far less than the prevailing market value and thereby tried to avoid payment of appropriate stamp duty. He submits that having found that declaration of the value of property was wrongly shown, the Sub-Registrar referred the matter to the District Registrar under Section 47-A of the Act, 1899. Though notices were served on the respondent herein, respondent failed to appear before the District Registrar. Thus, based on the material available on record, District Registrar determined the market value of the property at 10,16,400/- and accordingly, determined the stamp duty payable. He, therefore, submits that there was no illegality committed by the District Registrar. He submits that appellate authority erred in allowing the C.M.A.No.1 of 2004 and granting the relief on the ground that no notice was served before passing orders. He would further submit that even assuming that finding arrived at by the III Additional District Judge on the issue of not serving notice on the respondent is valid, he ought not to have decided the appeal on merits and ought to have remanded the matter to the District Registrar for fresh consideration and, therefore, on that ground grossly erred in holding against the decision of District Registrar. He, therefore, submits that matter be remitted to the District Registrar for consideration of the issue afresh.

6. Learned counsel Sri O.Manohar Reddy submits that order of the III Additional District Judge itself clearly points out that no notice was served on the respondent herein and, therefore, entire exercise undertaken by the District Registrar in quantifying the market value and stamp duty payable is wholly illegal. He further submits that even assuming that notice was caused to determine the market value under Section 47-A of the Act, 1899, the District Registrar has to follow the procedure as prescribed in Andhra Pradesh (Prevention of under Valuation of Instruments) Rules, 1975 (Rules, 1975) made in exercise of power vested under Section 75 read with Section 47-A of the Act, 1899. Rule 4 of the Rules, 1975, envisage detailed procedure to be followed by the District Registrar after the reference is received. Rule 5 of the Rules, 1975, mandate observing the various points to determine the value and in terms of Rule 7 of the Rules, 1975, final order of determination should be made by the District Collector. He, therefore, submits that it is mandatory for the District Registrar to follow the procedure, as envisaged in the Rules, to determine the market value even in the absence of parties and in the instant case, no basis is shown for such determination. Except holding market value at 10,16,400/-, there is no other material to show how that amount is arrived at and on that ground alone, the order of District Registrar is liable to be set aside.

7. Section 47-A of the Act, 1899 vests power in the District Registrar, on a reference, to determine the market value. The Rules made under the Act referred to above prescribe procedure of such determination and to assign due reasons in support of the decision. A bare perusal of the order of the District Registrar

would show that it does not contain reasons as to how he has arrived at market value. Merely because party has not appeared before him, he cannot straightaway pass an order fixing the market value without following due procedure as envisaged in Rules referred to above. Thus, there is merit in the contention of learned counsel Sri O.Manohar Reddy.

8. Before the III Additional District Judge the issue of whether notice was served on the respondent before undertaking exercise was considered elaborately. On analysis of the material available on record, the III Additional District Judge found that there was no proof of service of notice on the respondent before taking the decision.

9. It is useful to extract the relevant observations of the III Additional District Judge in paragraph-8 of the judgment. It reads as under:

> "8. The unmarked Photostat copies filed by the 2nd respondent have to be carefully perused at this juncture. The 2nd respondent filed bunch of Photostat copies but there is no proof to conclude that Form No.II was promptly sent to the appellant. There is no acknowledgement of the appellant on the Form No.II or did not file any acknowledgment by the respondents to establish that it was sent by registered post. Under the above circumstances it is highly doubtful whether the respondents have sent Form No.II to the appellant or not? The respondent failed to show documentary proof to determine the market value of that property. Even as per the respondents the deficit stamp duty payable is 1,14,000/- and deficit registration fee of 4,770/-. Thus, total deficit comes to a total of 1,21,980/-."

10. This finding of fact is arrived at by the III Additional District Judge on due consideration of the material on record. In order to ascertain whether there is any material in proof of contention that notice was served by the respondent and deliberately did not appear before the District Registrar, which could not be placed before the III Additional District Judge, this Court asked the learned Assistant Government Pleader to clarify. Learned Assistant Government Pleader fairly submits that there is no other material available on record.

11. Thus, I do not see any error in the decision arrived at by the III Additional District Judge in the appeal preferred by the respondent herein in setting aside the order of the District Registrar. Furthermore, as noticed above, there is no material on record to show as to how the District Registrar has arrived at the market value as 10,16,400/- to hold that wrong declaration was given by the respondent and to direct him to pay higher stamp duty. I do not see any perversity in the decision of the III Additional District Judge, warranting interference by this Court. Writ Petition is accordingly dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 13.11.2017
kkm

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.28332 OF 2008

Date: 13.11.2017

kkm