

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Writ Appeal Nos.2489 & 2490 of 2010

Tata Coffee Limited
rep. by M.K.C.Pai
its Company Secretary
57, Railway Parallel Road
Kumara Park West
Bangalore 560 020.

Appellant in/Petitioner
both WAS.

Vs.

1. The State of Tamil Nadu
rep. by the Secretary to Government
Commercial Taxes & Registration
Government of Tamil Nadu
Fort St. George
Chennai 600 009.
2. The Sub Registrar
Anaimalai, Police Station Road
Anamalai 642 104
Coimbatore District.
3. The District Revenue Officer (Stamps)
Office of the District Collector
Collectorate
Coimbatore 641 018.

4. Tata Tea Limited
1, Bishop Lefroy Road
Calcutta 700 020.

Respondents in/Respondents
both WAS.

Appeals under Clause 15 of Letters Patent filed against
the common order dated 03.11.2010 made in W.P.Nos.31059 &
31062 of 2007.

Prayer in WP.31059 of 2007: Writ petition is filed under
Article 226 of the constitution of India, praying this Court
to issue a writ of certiorari calling for the impugned notice

in form-1, dated 27.07.2007 issued by the 3rd respondent, the District Revenue Officer, (Stamps) and to quash the same.

Prayer in WP.NO.31062 of 2007: Petitioner praying this court to issue a writ of certiorari calling for the impugned reference dated 21.5.2007 of the second respondent Sub-Registrar and to quash the same.

For Appellant : Mr.A.L.Somayaji, S.C.
For M/s. Abraham Markos

For Respondents 1 to 3: Mr.N.Vijay Narayan
Advocate General
Assisted by
Mr.T.M.Pappiah, Spl.G.P.

For Respondent-4 : Mr.Joy Joseph

J U D G M E N T

(Delivered by Huluvadi G.Ramesh,J)

These writ appeals are directed against the common order dated 03.11.2010 made in W.P.Nos.31059 & 31062 of 2007.

2. Heard Mr.A.L.Somayaji, learned Senior Counsel appearing for the appellant, Mr.Vijay Narayan, learned Advocate General appearing for the respondents 1 to 3 and Mr.Joy Joseph, learned counsel appearing for the fourth respondent and perused the materials available on record.

3. Facts in brief:-

The appellant Tata Coffee Limited is the subsidiary company of the fourth respondent / Tata Tea Limited. The case of the appellant is that since the tea plantation in South India were incurring heavy loss, the Board of Directors of Tata Tea Limited, by passing a Resolution dated 11.02.2005 authorized the sale of 4 tea estates and 1 coffee estate in Anamallais in Tamil Nadu and 3 tea estates in Kerala, including the Malakiparai Estate. Pursuant to the Resolution, the appellant appointed M/s.Ernst & Young to value the business of the aforesaid 5 estates in Anamallais and the adjoining Malakiparai Estate in Kerala and they valued the same between Rs.26.37 Crores and Rs.31.64 Crores. The writ petitioner engaged Mr.D.V.M.Premkumar, approved valuer to value the properties, who valued the 5 estates in Anamallais for Rs.42,95,61,412/- including the land, plant and machinery and building and Malakiparai estate at Rs.9,69,26,791/-.

4. The further case of the appellant is that after considering the relevant factors, the writ petitioner offered to purchase the property for Rs.55 Crores. Thereafter, a deed of transfer dated 31.12.2005 transferring 5 tea estates in Anamallais in Tamil Nadu to the writ petitioner was executed for an aggregate consideration of Rs.40,08,00,000/- and the sale deed was registered on 04.01.2006 at the Sub Registrar Office, Anamallai as Document P No.2 of 2006, thereby, an extent of 9873.86 acres have been transferred in favour of the writ petitioner.

5. According to the appellant, a stamp duty of Rs.3,20,64,000/- and in addition to a registration fee of Rs.40,08,000/- were paid. Since the Sub Registrar was of the view that the market value of the property has not been truly set forth in the document, a regular registration number was not given and it was withheld in view of the pendency of the proceedings under Section 47-A of the Indian Stamp Act (In short "the Act") and the document was released pursuant to the order passed in W.P.No.26525 of 2007. The second respondent has referred the matter to the third respondent under Section 47-A of the Act. Based on the Reference, the third respondent issued a notice in Form-I, dated 27.07.2007 to ascertain the market value of the property for the purpose of payment of Stamp Duty. The Writ Petitions in W.P.Nos.31059 to 31062 of 2007 came to be filed by the appellant, challenging the reference made by the second respondent under Section 47-A of the Act and the notice issued by the third respondent under Section 47-A(2) of the Act, mainly contending that the Reference order does not contain the reasons. In other words, the case of the appellant is that before making a Reference under Section 47-A of the Act, the third respondent should have set out reasons and mere stating guideline value of the property and the value set forth in the document would not suffice. The learned Single Judge accepting the case of the writ petitioner, by common order set aside the orders impugned and remanded the case to the third respondent for fresh consideration. Assailing the order, the present Writ Appeals have been filed.

6. Mr.AL.Somayaji, learned Senior Counsel for the appellant by taking this Court to the relevant provisions of Section 47-A of the Act and the decisions of this Court urged that before registration of document, the Sub Registrar should have applied his mind to come to the conclusion that the document is undervalued and after registration of the documents, can refer the matter to the Special Collector with reasons. Since nothing has been placed on record for application of mind of the Sub Registrar and the person, who registered the document is not available now, so at this point

of time, no useful purpose would be served in remanding the matter to the Sub Registrar. According to the learned Senior Counsel, the Reference under Section 47-A of the Act should contain reasons and mere stating the guideline value of the property and the demand for payment of deficit stamp duty would not be sufficient.

7. Per contra Mr.N.Vijay Narayan, learned Advocate General appearing for the respondent-State would contend that the appellant is no way prejudiced by the order of the learned Single Judge and in fact, there was absolutely no necessity to remand the case to the second respondent, as the appellant would be given ample opportunity by the third respondent at the time of fixing market value under Section 47-A(2) of the Act. It is further stated that the Reference contains the reason for referring the document to the third respondent under Section 47-A of the Act and hence, a direction can be issued to the third respondent to conclude the proceedings in a reasonable time, after providing opportunity to all necessary parties.

8. Since the issues have come to a narrow compass, the facts of the case need not be elaborated by this Court.

9. The main issue that arises for consideration in these Writ Appeals is whether the Reference made by the second respondent satisfies the requirement Section 47-A of the Act. For the purpose of convenience, the relevant section is extracted below:-

"47-A. Instruments of conveyance etc.,
under-valued how to be dealt with.-

(1) If the registering officer appointed under the Indian 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 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 proper duty payable thereon.

(2) On receipt of a reference under subsection (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, determine the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may, suo motu or otherwise, within five years from the date of registration of any instrument of conveyance, exchange, gift, release of benami right or settlement 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 the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any in the amount of duty, shall be payable by the person liable to pay the duty."

10. A reading of the above would make it clear that if the Registering Authority has any reason to believe that the market value of the property has not been truly set forth in the instrument, then, he can refer the same to the District Collector for determination of the market value, after registering the said document.

11. In the case of hand, a perusal of the reference made by the second respondent would disclose that the market value assessed by the party was Rs.40,08,00,000/- and the market value assessed by the Sub Registrar was Rs.2376,70,11,018/-, apart from the value of the building and machineries and the deficit stamp duty works out to the tune of Rs.191,81,98,130/-. Such a huge difference in the market value assessed by the appellant and the second respondent has led to the reference to the third respondent under Section 47-A(1) of the Indian Stamp Act, for determination of the market value and the stamp duty payable thereon.

12. According to the learned Senior Counsel for the appellant, the guideline value is not the deciding factor and the properties have been valued based on the reports of the approved valuers and unless the Sub Registrar comes to the conclusion that true market value has not been set forth in the documents, no Reference can be made. In this regard, the learned senior counsel appearing for the appellant referred to the decision of the Apex Court in State of Punjab v. Mohabir Singh [AIR 1996 SC 2994], wherein, in paragraph 5, it is held as under:

"The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be pre-determined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47A."

13. In the said case, the Apex Court, in paragraph 6, has also held that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. However, he is required to satisfy himself before registering the document as to whether true value is reflected in the instrument as it prevails in the locality. If he is satisfied, he can register the document. However, if he is not satisfied that the market value or the consideration has not been truly set forth in the document, he can register the document subject to his making reference under Section 47-A(1) of the Indian Stamp Act.

14. Coming to the case on hand, it is evident that the second respondent having not satisfied with the consideration stated in the document, has referred the matter to the third respondent. Therefore, the decision relied upon by the learned senior counsel appearing for the appellant in Mohabir Singh case will not come to the aid of the appellant.

15. At this juncture, it would be apt to refer to Rule 3 (3) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, which reads as under:

"3(3) The registering officer may, for the purpose of finding out whether the market value has been correctly furnished in the instrument, make such enquiries as he may deem fit. He may elicit from the parties concerned any information bearing on the subject and call for and examine any records kept with any public officer or authority."

16. A reading of Rule 3(3) would make it clear that if the correct market value has not been furnished in the document, then the Registering Officer may refer the same for determination of correct market value. As such, the second respondent herein, having found that the correct market value has not been furnished by the appellant, referred the matter to the third respondent for determination of the correct market value.

17. However, it is the contention of the learned senior counsel appearing for the appellant that in the reference made by second respondent to the third respondent under Section 47-A(1) of the Indian Stamp Act, there is not even an iota of reason for such reference and therefore, in the absence of any such reason adduced by the second respondent, referring the matter back to the second respondent is bad in law.

18. In the decision relied upon by the learned Senior Counsel for the appellant, the Full Bench of this Court in *G.Karmegam v. The Joint Sub-Registrar, Madurai* [2007 (5) CTC 737], it is held as follows:

"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 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."

19. In the instant case, it is not in dispute that by way of registered sale deed dated 04.01.2006, Tea Estate measuring an extent of 9873.86 acres have been sold in favour of the appellant. It is also not in dispute that the guideline value of the property is Rs.2,376 Crores, however the sale consideration was mentioned as Rs.40,08,00,000/-. After carefully analyzing the above facts and having come to the conclusion that the property was undervalued, extracted the facts in the Reference. Had the second respondent not applied his mind, the figures would not have been stated in the impugned Reference. Therefore, we are of the considered opinion that the impugned order satisfies the requirements of law and the dictum of the Full Bench, referred supra and we do not find any substance in the contention of the learned Senior Counsel for the appellant.

20. The next question that arises for consideration is whether the observations made in favour of the appellant by the Writ Court can be set aside without an appeal being preferred by the respondents.

21. It is settled law that while exercising the extraordinary jurisdiction under Article 226 of the Constitution of India, the High Court is empowered to issue directions and pass orders etc., It is useful to refer the decision of the Hon'ble Supreme Court in Bangalore Development Authority v. Vijaya Leasing Ltd. [(2013) 14 SCC 737]. In that case, the Government issued notification in the year 1971 to acquire certain piece of land for development of Bangalore Development Authority. Compensation was paid according to the Award dated 21.11.1983 and possession was taken on 09.12.1983. In the meanwhile, the original owner sold the property to the first respondent on 28.01.1995. The Government based on the inspection of the Minister, issued a notification dated 05.10.1999, de-notifying the acquisition proceedings, however, by a notification dated 27.06.2000, the said de-

notification was recalled. When a challenge was made to the notification recalling the de-notification dated 27.06.2000, the High Court by exercising the power under Article 226 of the Constitution, has set aside the de-notification dated 05.10.1999. However, the Division Bench in a Writ Appeal, while confirming the order of recalling the notification dated 27.06.2000, observed that the Single Judge was not legally justified in striking down the de-notification dated 05.10.1999. The Hon'ble Supreme Court following the earlier decisions of the Apex Court had reversed the order of the Division Bench and the relevant paras are extracted hereunder:-

"13. To appreciate the legal position we only wish to refer to two of the decisions of this Court reported in *Dwarka Nath v. ITO* [AIR 1966 SC 81 : (1965) 2 SCJ 296] and *Gujarat Steel Tubes Ltd. v. Mazdoor Sabha* [(1980) 2 SCC 593 : 1980 SCC (L&S) 197] . In *Dwarka Nath* case [AIR 1966 SC 81 : (1965) 2 SCJ 296] the Supreme Court stated as under: (AIR pp. 84-85, para 4)

'4. ... This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under

a federal structure. Such a construction defeats the purpose of the article itself.'

14. Similarly in Gujarat Steel Tubes case [(1980) 2 SCC 593 : 1980 SCC (L&S) 197] , the relevant principles can be culled out from paras 73 and 81: (SCC pp. 624-25 & 627)

'73. While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, judicial daring is not daunted where glaring injustice demands even affirmative action. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being Anglophilic or Anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes not [Ed.: The word "not" is emphasised in original as well.] when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.

81. ... Broadly stated, the principle of law is that the jurisdiction of the High Court under Article 226 of the Constitution is limited to holding the judicial or quasi-judicial tribunals or administrative bodies exercising the quasi-judicial powers within the leading strings of legality and to see that they do not exceed their statutory jurisdiction and correctly administer the

law laid down by the statute under which they act. So long as the hierarchy of officers and appellate authorities created by the statute function within their ambit the manner in which they do so can be no ground for interference.'

(emphasis added)

15. We are of the view that the above principles when applied to the case on hand, it can be safely concluded that the order of the learned Single Judge in the light of the peculiar facts noted therein cannot be faulted. We also wonder as to why the Hon'ble Minister concerned should have taken upon himself the extraordinary effort of making an inspection for which no special reasons were adduced in the report. That apart none of the reasons which weighed in the report of the Hon'ble Minister reflected the true facts. The conclusion of the Hon'ble Minister that the possession continued to remain with the owner was contrary to what was found on records. The mahazar dated 9-12-1983 as noted by the learned Single Judge from the original file reveals that the conclusion of the Hon'ble Minister was ex facie illegal and untrue. The said conclusion obviously appeared to have been made with some ulterior motive and purpose and with a view to show some undue favour to the first respondent herein. The acquisition became final and conclusive as far back as on 15-7-1971 when Section 6 declaration came to be issued. At no point of time was there any challenge to either preliminary Notification dated 21-9-1967 or the final declaration notified on 15-7-1971. Even the award dated 21-11-1983 approved on 29-11-1983 was not the subject-matter of challenge in any proceedings. "

22. Applying the principles laid down by the Hon'ble Supreme Court and in view of our discussion and findings supra and also taking note of the fact that a deficit stamp duty of Rs.191,81,98,130/- has been demanded by the respondent in the year 2006, however, the third respondent could not conclude the proceedings under Section 47 of the Act even after lapse of twelve years, the order of the learned Single Judge remitting the matter to the second respondent is liable to be set aside and accordingly, it is set aside. The third

respondent shall issue notice to the necessary parties and pass appropriate orders purely on merits and in accordance with law. The entire exercise shall be concluded within a period of three months from the date of receipt of a copy of this judgment. The parties are directed to cooperate for early disposal of the matter.

23. The writ appeals are disposed of accordingly. There shall be no order as to costs. Consequently, M.P.No.1 of 2010 in W.A.No.2489 of 2010 and M.P.Nos.1 and 2 of 2010 are closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

k p l / r n s

To

1. The Secretary to Government
Commercial Taxes & Registration
Government of Tamil Nadu
Fort St. George
Chennai 600 009.
2. The Sub Registrar
Anaimalai, Police Station Road
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Coimbatore District.
3. The District Revenue Officer (Stamps)
Office of the District Collector
Collectorate
Coimbatore 641 018.

+ 2 ccs to Mr.Abrahammarkes, Advocate SR.62286, 62287

W.A.Nos.2489 & 2490 of 2010

SSI (CO)
EU(01/10/2018)