



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Appeal (MD)No.1088 of 2018

1.The Special Deputy Collector (Stamps),
Kokkirakulam, Tirunelveli.

2.The Sub Registrar,
Sub Registrar Office,
Melapalayam, Tirunelveli. ... Appellants/Respondent

J.Lessley Invicta ... Respondent/Petition

Vs.

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 23.02.2017 in W.P(MD)No.3192 of 2017.

Prayer in WP(MD). 3192/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to release the sale deed registered before the 2nd respondent in Document No.4870/2014 dated 14.08.14 to the petitioner within the time fixed by this Honble Court and pass such other and further orders as this Honble Court may deem fit to the facts and circumstances of the case and thus render justice.

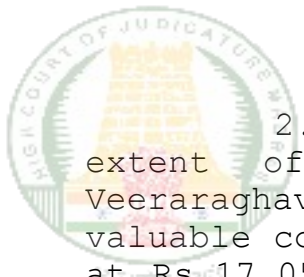
For Appellants : Mr.K.Chellapandian,
Additional Advocate General,
supported by Mr.M.Murugan,
Government Advocate.

For Respondent : Mr.H.Arumugam

JUDGMENT

PUSHPA SATHYANARAYANA, J

The appeal is preferred by the Special Deputy Collector (Stamps), Tirunelveli and the Sub Registrar, Melapalayam, Tirunelveli, challenging the order passed in W.P(MD)No.3192 of 2017, dated 23.02.2017. The relief sought in the writ petition is for mandamus seeking direction to the appellants to release the sale deed registered before the second appellant on 14.08.2014 to the respondent.



2.The first respondent had purchased punja lands to an extent of 22.84 cents situate in S.No.484/1A1, at Keezha Veeraraghavapuram Village, Palayamkottai Taluk, Tirunelveli for a valuable consideration of Rs.17,05,500/-. Having valued the property at Rs.17,05,500/- paid the stamp duty to the tune of Rs.1,19,550/- as per the market value. The second appellant, after due registration, referred the document to the first appellant under Section 47-A(1) of the Indian Stamp Act, 1899 (for brevity, 'the Act') for determining the market value alleging that the value mentioned in the sale deed is less than the guideline value and retained the original sale deed. Despite the request to return the said document, the second appellant refused to do so. The respondent has also given objections to the Form I and Form II notices. However, an order was passed by the first appellant on 10.11.2016 calling upon the respondent to pay stamp duty of Rs.5,58,096/-, as the respondent had paid Rs.1,19,550/-. The balance amount was sought to be paid within ten days from the date of receipt of the order. Challenging the same, the respondent had preferred an appeal before the Inspector General of Registration, Chennai which is said to be pending till today.

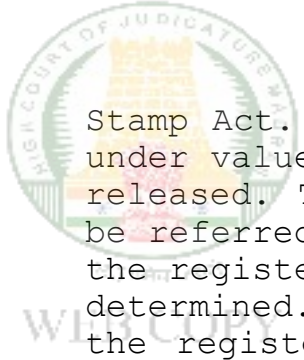
3.The issue as to whether the appellants are entitled to retain the document, after registration of the document on the ground of reference under Section 47-A(1) of the Act is no longer res integra as the same has been decided by this Court in a recent judgment of this Court in (Special Deputy Collector (Stamps) Vs.M.Alfred and others reported in 2017 (6) CTC 449.

4.Based on the said decision, the learned single Judge had allowed the writ petition and directed the second appellant to return the document dated 14.08.2014 within four weeks. Aggrieved by the same, the present appeal has been preferred by the revenue.

5.The learned Additional Advocate General appearing on behalf of the appellants contended that though reference is made under Section 47A(1) of the Act, document cannot be returned to the purchaser as the original document is required for the purpose of assessing the value of the document by the Collector. The learned Additional Advocate General further contended that though there was a samathan scheme published on 02.02.2018 in No.1265/N4/2017, the respondent did not avail such opportunity.

6.In reply, the learned counsel for the respondent submitted that it is not mandatory and it is only optional. As the appeal is pending before the Inspector General of Registration, the respondent did not avail such opportunity under the said scheme.

7.The Division Bench of this Court in above said decision had elaborately gone into the object of the provisions of the Act as well as the Registration Act, 1908. It had also gone into the role of the registering authority as per which after receiving an instrument of conveyance and registering the same, unless the Registrar has a reason to believe that the market value therein has not been truly set forth, may, after registering such instrument, refer it to the Collector for fixing the market value of such property. Such reference is made under Section 47-A of the Indian



Stamp Act. If the Registrar is satisfied that the instrument is not under valued, immediately after registration, the document has to be released. Then the question would be whether the instrument has to be referred only on the value of the same. Once a reference is made, the registering authority has become functus officio and his role is determined. The Division Bench has held that there is no mandate for the registering authority to give a registered document itself to the Collector. It is relevant to refer Section 47-A of the Act which reads as follows:-

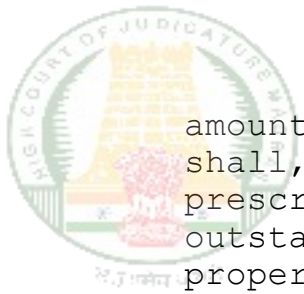
"47-A. Instruments of conveyance, etc. undervalued how to be dealt with.-(1) If the registering officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance (exchange, gift, release of benami right or settlement) has reason to believe that the market value of the property 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 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, 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 persons liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.

(4) Every person liable to pay the difference in the



amount of duty under sub-section (2) or sub-section (3) shall, pay such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due (interest at two per cent per month on such amount for the entire period of default).

Provided that where a person has preferred an appeal against the order sub-section (2) or sub-section (3), the interest payable under this sub-section shall be postponed till the disposal of appeal and shall be calculated on the amount that becomes due in accordance with the final order passed in appeal as if such amount had been determined under sub-section (2) or sub-section (3), as the case may be).

(5) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3), may appeal to such authority as may be prescribed in this behalf. All such appeals shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

(6) The Chief Controlling Revenue Authority may, suo motu, call for and examine an order passed under sub-section (2) or sub-section (3) and if such order is prejudicial to the interests of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit.

(7) The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3) if,-

(a) the time for appeal against that order has not expired; or

(b) more than five years have expired after the passing of such order.

(8) No order under sub-section (6) adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

(9) In computing the period referred to in clause (b) of sub-section (7), the time during which the proceedings before the Chief Controlling Revenue Authority remained stayed under the order of a Court shall be excluded.

(10) Any person aggrieved by an order of the authority prescribed under sub-section (5) or the Chief Controlling Revenue Authority under sub-section (6) may, within such time and in such manner, as may be prescribed by rules made



under this Act, appeal to the High Court.

(11). (Where the duty paid is found to be in excess as a result of an order passed on appeal or revision, the excess duty paid shall be refunded).

Explanation:- For the purpose of this Act, market value of any property shall be estimated to be the price which, in the opinion of the Collector or the Chief Controlling Revenue Authority or the High Court, as the case may be, such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance, exchange, gift, release of benami right or settlement".

8. As per Section 47-A which provides for dealing with under valuation of documents creates a charge over the property. So when there is a clear statutory security by way of charge over the outstanding amount, the registering authorities cannot have any powers to retain the document. The Registration Act, 1908 also does not provide for retention of the document after registration of the document as the Registrar has no power to do so the same. After observing that payment of stamp duty and the release of the document are intertwined with each other, the Division Bench had held that in the absence of any specific provision to withhold the document and the Registrar has to return the document. So far as the Collector is concerned, it is held that it is mandatory for the Collector to first to determine the duty payable and followed by certification of the Collector endorsing the same on the instrument. This procedure makes it amply clear that the return of the instrument is not possible till the stamp duty is paid.

9. We are in perfect acceptance with the above judgment of the Division Bench. While dismissing the appeal preferred by the Collector, the Division Bench had also issued certain directions keeping in view that several Crores of Rupees are to be collected in view of the release of documents and the creation of charge alone is not a solution as the same is not being executed by the authorities which are as follows:

(i) The Secretary, Government of Tamil Nadu, Commercial Taxes and Registration Department, Fort St., George, Chennai is directed to consider appropriate amendment fixing a time limit for the Registering Authority to refer the instrument under Section 47-A of the Indian Stamp Act, 1899.

(ii) The Secretary, Government of Tamil Nadu, Commercial Taxes and Registration Department, Fort St., George, Chennai or the Inspector General of Registration and Controlling Revenue Authority shall issue appropriate Circulars or directions to the Collector, to comply with Rule 7(1) of Tamil Nadu State (Prevention of Undervaluation of Instruments) Rules, 1968.

<https://hcservices.ecourts.gov.in/hcservices/> above said judgment was passed on 09.10.2017. Pursuant to the same, the Government has issued Government Order in G.O.Ms.No.174, Commercial Taxes and Registration (J1) Department,



28.11.2017 giving necessary instructions to the District Revenue Officers (Stamps) and Special Deputy Collectors (Stamps) to strictly adhere to the time frame stipulated in Rule 7 (1) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968.

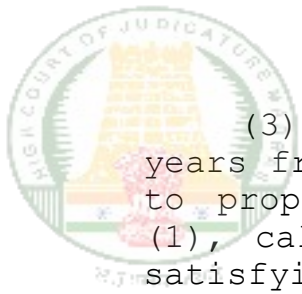
11. Insofar as fixing time limit for referring the document under Section 47-A of the Act, it has been proposed to amend the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 for fixing time limit of 15 days to refer a document under Section 47-A of the Act and to prescribe a time limit of 15 days for sending Form I notice by the District Revenue Officer (Stamps)/Special Deputy Collector (Stamps). Based on the said recommendation, the Government has fixed time limit of 15 days, after registration of an instrument by the Registering Officers for referring to the Collector under Section 47-A (1) of the Act and fixed time limit of 15 days from the date of receipt of the said proposal from the Registering Officer for the Collector under Section 47-A of the Indian Stamp Act to issue notice in Form I.

12. Though pursuant to the judgment of the Division Bench of this Court the Government has taken action and fixed time frame as 15 days. Whether that would cure the defect that is existing as on date, as the time frame is given only as a guideline and any breach of time would not lapse the proceedings. It is also reliably understood that the other States such as Maharashtra, Gujarat, Karnataka, Kerala and Rajasthan have enacted separate law relating to the stamps. To facilitate the process of bringing into force the amendments proposed in the state and to regulate the procedure relating to the levy of stamp duty by the State Government, the Government of Tamil Nadu also had introduced a Tamil Nadu Stamp Bill, 2013. The said Bill has been published in Part IV-Section 1 of the Tamil Nadu Government Gazette Extraordinary, Issue No.117, pages 89-125, dated 07.05.2013. However, it is stated that it is awaiting for the assent of the President of India.

13. The relevant provisions insofar as the issue in hand is concerned would be Section 29 of the proposed Bill, 2013 which reads as follows:-

29. (1) If the registering officer while registering any instrument relating to property, has reason to believe that the market value of the property which is the subject matter of the instrument has not been truly set forth in the instrument, he shall inform the person liable to pay the duty accordingly and if the said person fails to correct the same, he shall, after registering such instrument, refer the matter 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 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, determine the market value of the property which is the subject matter of the said instrument and the duty 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 relating to property, 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 such instrument 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.

(4) Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall, pay such duty within such period as may be prescribed. In default of such payment such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, interest at one per cent per month on such amount for the entire period of default.

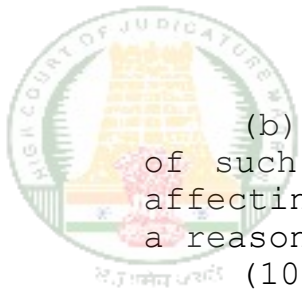
(5) If any officer is specifically appointed to perform the functions of the Collector under this section, then notwithstanding anything contained in the Tamil Nadu Revenue Recovery Act, 1864, such officer shall have the powers of a Collector under that Act for the purpose of recovery of the amount payable under sub-section (2) or sub-section (3).

(6) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3), may appeal to such authority as may be prescribed in this behalf. All such appeals shall be preferred within two months from the date of receipt of such order, and shall be heard and disposed of in such manner, as may be prescribed:

Provided that no appeal shall be preferred unless the person aggrieved has deposited in such manner as may be prescribed twenty- five per cent of the difference in the amount of duty determined and payable under sub-section (2) or sub-section (3), as the case may be.

(7) The Chief Controlling Revenue Authority may, suo motu, or otherwise, call for and examine an order passed under sub-section (2) or sub-section (3) and if in his opinion such order is prejudicial to the interests of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit.

(8) The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3) if, - (a) the time for appeal against that order has not expired; or



(b) more than five years have expired after the passing of such order. (9) No order under sub-section (6) adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

(10) In computing the period referred to in clause (b) of sub-section (7), the time during which the proceedings before the Chief Controlling Revenue Authority remained stayed under the order of a Court shall be excluded.

(11) Any person aggrieved by an order of the Authority prescribed under sub-section (5) or the Chief Controlling Revenue Authority under sub-section (6) may, within two months from the date of receipt of such order and in such manner, as may be prescribed, appeal to the High Court.

(12) Where the duty paid is found to be in excess as a result of an order passed on appeal or revision, the excess duty paid shall be refunded.

14. Section 29 recommends reference of the matter to the Collector for determination of the market value of such property and the proper duty payable thereon and the Collector shall after giving the parties a reasonable opportunity of being heard determine the market value of the property. The Collector is also given suo motu powers to examine any instrument within five years from the date of registration for the purpose of determining the market value. Once the market value is determined, the person liable is to pay the amount determined as stamp duty within a specified time period failing which there will be a charge over the property. There is also power under the Tamil Nady Revenue Recovery Act, 1864 to the Officer appointed for this purpose to recover the amount payable. An appeal is also provided within two months from the date of receipt of the said order. The said appeal shall be entertained provided the appellant deposited 25% of the difference in the amount of the duty determined and payable under sub-section (2) or sub-section (3) as the case may be. As the above Bill is of the year 2013, this Court wanted to verify the status as on date. It is informed that it was returned to consider the amendment in Section 8-E and 8-F of the Stamp Act. Now after considering the above provisions, the Bill is to be placed in the next Assembly.

15. The above Bill of 2013, once passed and gets assent from the President would set at naught all the anomalies in this regard. It is also surprising that similar issue had come before various Division Benches of this Court, after this Bill has been passed. However, it is unfortunate that the same has not been brought to the knowledge of this Court. In the above circumstances, we are constrained to issue following direction:-

"(i) The Secretary to Government, Commercial Taxes and Registration Department, Government of Tamil Nadu, Fort St., George, Chennai is directed to follow up the above Bill with appropriate modification and get the same placed in the Assembly. Once it is published in the Government Gazette and the assent of the President may be obtained. The above amendment would set at naught many of the issues in this regard which has been coming up before this Court on and



off. The learned Additional Advocate General is directed to follow up the same considering the importance and the revenue of the State.

(ii) The Inspector General of Registration is directed to dispose of the appeal dated 09.01.2017 within a period of four weeks from the date of receipt of a copy of this order."

16. In the result, the writ appeal is disposed of. No costs. Consequently, C.M.P (MD) No. 7799 of 2018 is closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Special Deputy Collector (Stamps),
Kokkirakulam, Tirunelveli.

2. The Sub Registrar,
Sub Registrar Office,
Melapalayam, Tirunelveli.

Copy to;

1. The Secretary,
Commercial Taxes and Registration Department,
Government of Tamil Nadu,
Fort. St. George, Chennai.

2. The Inspector of General Registration, Chennai.

- 1 CC TO Mr. H. Arumugam , ADVOCATE IN SR No. 92737.
- +1 cc to Special Government Pleader, SR.No.
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- SMS
- DS SKN SAR1 19 11 2018 9P 7C

Judgment made in
Writ Appeal (MD) No. 1088 of 2018