

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2019

Orders Reserved on 29.03.2019

Orders Delivered on 11.04.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.27379 of 2007 and 7422 of 2018  
& WMP No.9223 of 2018 in W.P.No.7422 of 2018

W.P.No.27379/2007:-

M/s.Ucal Machine Tools Ltd.,  
Rep. by its Managing Director,  
Mr.M.Sivaramakrishnan having office at  
Raheja Towers, 7th Floor, Sigma Wing,  
177, Anna Salai, Chennai 600 035. ...Petitioner

Vs.

1.Special Deputy Collector (Stamps),  
District Collector Office,  
5th Floor "M.Singaravelar Malagai",  
Rajaji Salai,  
Chennai 600 001.

2.District Revenue Officer,  
Office of the District Revenue,  
Officer (Stamps) Office,  
Chennai 600 001.

3.The Sub Registrar,  
Triplicane,  
Chennai 600 005.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorarified mandamus to call for the entire records pertaining to the notice issued by the first respondent herein in Form I dated Nil/12/2000 claiming a stamp duty of Rs.24,87,679/- and the consequential recovery notice dated 13.06.2007 in C.Pa.No.A2/163/2000 issued by the second respondent and for

recovery of alleged deficit stamp duty of Rs.24,87,682/- with interest and quash the same and also consequently direct the respondents to return the sale deed dated 19.08.1998 registered as Document No.1252 of 1999 in the office of the third respondent.

W.P.7422/2018:-

UCAL Fuel Systems Ltd.,  
Rep. by its DGM, Finance  
M.R.Shiva Kumar, having office at  
"Raheja Towers" Delta Wing-Unit No.705,  
No.177, Anna Salai, Chennai-2.

...Petitioner

vs

- 1.The Inspector General of Registration,  
The Registration Department,  
No.100, Santhome High Road,  
Chennai 600 028.
- 2.The Special Deputy Collector (Stamps),  
District Collector Office, 5th Floor,  
"M.Singaravelar Malagai",  
Rajaji Salai,  
Chennai 600 001.
- 3.The District Revenue Officer, (Stamps)  
Office of the District Revenue Officer,  
Chennai 600 001.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of mandamus to direct the respondents herein to allow the petitioner to take advantage of the 'Samadhan Scheme' implemented by the Government of Tamil Nadu under G.O.Ms.No.189 of 2017, issued by the Commercial Taxes and Registration Department and allow the remission of 1/3rd of the additional stamp duty demanded.

For Petitioner : Mr.Satish Parasaran  
in both W.Ps. Senior Counsel  
for Ms.Preethi Mohan

For Respondents : Mr.P.P.Purushothaman  
in both W.Ps. Government Advocate

## C O M M O N   O R D E R

W.P.No.27379 of 2007 is filed challenging the demand notice of the first respondent claiming the deficit stamp duty of Rs.24,84,679/- and the recovery notice dated 13.06.2007 issued by the second respondent for recovering the above said sum. Consequently, the petitioner seeks for a direction to the respondent to return the sale deed dated 19.08.1998 registered as Document No.1252 of 1999 at the office of the third respondent.

2. W.P.No.7422 of 2018 is filed for a mandamus directing the respondents to allow the petitioner to take advantage of the Samadhan Scheme implemented by the Government of Tamilnadu under G.O.Ms.No.189 of 2017 and allow the remission of 1/3rd of the additional stamp duty demanded.

3. The petitioner in both these writ petitions is one and the same.

4.The case of the petitioner, in short, in both the writ petitions is as follows:

a) The petitioner entered into an agreement of sale dated 26.02.1998 with their vendor to acquire the commercial unit measuring 1235.45 sq.ft. of land which is 0.955% of undivided share of the total extent of land measuring 1,29,367 sq.ft. The vendor companies intended to develop the entire common land and as per the development agreement, the vendor of the petitioner entitled to 47.5% of super built up area in the above common land in consideration of the vendor making available Schedule B land of the said agreement for the development project. In pursuant to the sale agreement entered by the petitioner with their vendor, a sale deed dated 19.08.1998 was entered into and registered as Document No.1252 of 1999 on the file of the Sub Registrar, Triplicane, Chennai. In view of the terms of the agreement entered between the parties, the petitioner cannot become the owner of the commercial unit unless they take a conveyance thereof in pursuance of the agreement of sale entered into either by a separate sale deed or by a Composite Deed of Conveyance covering the undivided share of land. However, the sale deed entered between the parties on 19.08.1998 is not a Composite Deed of Conveyance conveying the undivided share in the common land and the title and ownership of the super built up area. On the other hand, the said sale deed was in respect of undivided share of land alone. While such being the factual position, the Registering Authorities adopted the valuation of the property by including the value of the super built up commercial unit also and consequently issued a notice

in Form-I dated Nil/12/2000 claiming a deficit stamp duty of Rs.24,87,679/-. The petitioner filed their objection on 08.03.2001 and also requested for issuing a copy of the order made under Section 47A of the Stamp Act, which was not at all served on the petitioner at any point of time. However, without furnishing such copy, the District Revenue Officer issued a recovery notice dated 13.06.2007 to recover the alleged deficit stamp duty of Rs.24,87,682/-. Therefore, the petitioner challenged the Form-I notice and the recovery notice in W.P.No.27379 of 2007.

b) During the pendency of the above writ petition, the Government of Tamilnadu implemented a Scheme by name Samadhan Scheme in G.O.Ms.Nos.35 of 1999, 117 of 2002, 193 of 2004, 95 of 2007 and 132 of 2011, thereby allowing the parties to get benefits under the said Scheme, if they meet the conditions stipulated therein. The Scheme provides remission of 1/3rd of the difference of stamp duty already paid and the duty chargeable as per the guideline value prevailed on the date of registration of the instrument, if the dispute is pending as on 08.06.2017 with the District Revenue Officers (Stamps)/ Special Deputy Collectors (Stamps), Chief Controlling Revenue Authority and High Court under Sections 47-A(1), (3), (5), (6), (10) and 19-B(4) of the Indian Stamp Act, 1899 for determination of market value and in respect of instrument registered and pending with the Registering Officer as on 08.06.2017. In the present case, the instrument of the petitioner is certainly one covered by the provision of Section 47(A), as the Recovery Notice clearly refers to Section 47A. Though such recovery notice was issued, the petitioner was not served with any order passed under Section 47A. The petitioner was also not provided with any opportunity of hearing under Section 47A, apart from the fact that the order itself was not served on them. Had the order under Section 47A was served on the petitioner, they would have taken recourse to the appellate remedy. Nevertheless the petitioner approached this Court and filed W.P.No.27379 of 2007 challenging recovery notice and the said writ petition is pending before this court and therefore, the spirit of the Government Order introducing the Samadhan Scheme is extendable to the petitioner case as well, since the intention of the Government is to clear the backlog of instruments, which are pending and also yield revenue to the Government through the Settlement Scheme. The petitioner thus made a request through letter dated 22.03.2018 to the Inspector General of Registration to consider the petitioner under Samadhan Scheme. Since no reply was given, the petitioner filed the second writ petition by way of seeking mandamus.

5. Separate counter affidavits are filed by the respondents in both the writ petitions. The crux of the contention raised therein is as follows:

The petitioner has purchased the undivided share in land measuring 1235.45 sq.ft out of the total extent of 129367 sq.ft comprised in Survey Nos.279/1, 6, 8, 9, 281/1, 5 of Triplicane Village, from M/s.Carburetors Ltd one of the co-owners of the land in pursuance of the Sale Agreement dated 26.02.1998 with intent to acquire the commercial building unit detailed in Schedule-F therein. The aforesaid sale deed was registered as Doct.No.1252 of 1999 of Book1 on the file of the 3<sup>rd</sup> respondent. The sale consideration stated in the sale deed is Rs.1,19,37,500/-. Since it has been specifically mentioned in the sale deed the details of the commercial unit buildings also as subject matter of sale deed and the same was not subjected to levy of stamp duty by the petitioner, the 3<sup>rd</sup> respondent registered the sale deed and got the building valued by the Assistant Executive Engineer of the PWD Department. The value of the land as per guidelines register worked out to Rs.1,23,28,345/- (Rs.9663/- per sq.ft) which was adopted by the petitioner. But the value of the building worked out by the Assistant Executive Engineer of the PWD Department at Rs.1,91,35,980/- was omitted by the petitioner for levy of stamp duty. Hence, the 3<sup>rd</sup> respondent worked out the value of the land and building at Rs.3,14,64,400/- and referred the same to the 2nd respondent to determine the true market value of the property. Since the value of the building was worked out by the technical person by taking personal field inspection, the District Revenue Officer cannot exercise any quasi judicial power to re-determine the value of the said buildings. Hence, Form No.I notice dated 22.12.2000 was issued under Rule 4 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968 to show cause why the deficit stamp duty of Rs.24,87,679/- should not be collected from the petitioner. After analyzing the explanation of the Petitioner, Form No.II and Provisional order dated 04.09.2003 provisionally determining the deficit stamp duty at Rs.24,87,679/- were issued followed by the issuance of final order in No.163/2006 dated 13.10.2003 confirming the said deficit stamp duty. The petitioner without availing the efficacious statutory appeal remedy under Section (5) of Section 47-A of the Indian Stamp Act, 1899 before the Chief Controlling Revenue Authority, has filed this writ petition. The notification pertaining to Samadan Scheme issued in G.O.Ms.No.189/Commercial Taxes and Regn.Dept/dt.29-12-2017 provides for remission of 1/3<sup>rd</sup> of the stamp duty worked out by the registering officer. The said scheme notified by Government paves way for payment of 2/3<sup>rd</sup> of deficit stamp duty along out of the total deficit stamp duty worked out by the registering officer, provided that to avail the said scheme the proceedings

under Section 47-A should be pending before any authority or the Hon'ble High Court under Sub-Section (10) of Section 47-A as on 08.06.2017. Since the final order under Rule 7 of the Tamil Nadu Stamps (Prevention of undervaluation of Instruments) Rules, 1968 read with section 47-A(2) of the Indian Stamp Act, 1899 determining the market value of the property was finalized by this respondent on 13.10.2003 i.e. before the crucial date of 08.06.2017, the petitioner is not entitled to benefit under the said Samadhan Scheme.

6. Mr.Satish Parasaran, learned Senior Counsel appearing for the petitioner submitted as follows:

Though the first writ petition in W.P.No.27379 of 2007 is filed challenging the recovery notice, there is no necessity to consider such relief, if the relief sought for in subsequent writ petition W.P.No.7224 of 2018 is granted. In other words, if the petitioner is permitted to take advantage of the Samadhan Scheme implemented by the Government of Tamilnadu under G.O.Ms.No.189 dated 29.12.2017, thereby allowing the remission of 1/3 of additional stamp duty demanded, the petitioner will not press for the relief sought under the earlier writ petition. The Samadhan Scheme was introduced with an object to augment the arrear collection and effect quick realisation of the blocked revenue in pending cases and therefore, the present case of the petitioner would also fall under the scope and ambit of the Samadhan Scheme covered under G.O.Ms.No.189, since the writ petition filed challenging the recovery notice was pending as on the date of introducing such Scheme on 29.12.2017. It is enough if the challenge has blocked the revenue in order to bring the case under Samadhan Scheme. Challenge made by way of writ petition against the recovery proceedings, is undoubtedly a challenge made against the very levy and consequently, pendency of the writ petition would also cover the phrase "pending cases" under Section 47A and 19-B of the said Act, as contemplated under the said G.O. Even otherwise, the order passed under Section 47 was never served on the petitioner and to that effect, a specific averment is made in the affidavit filed in support of the writ petition. There is no specific denial of the same in the counter. An order passed and not served on the affected person, is to be construed as no such order is in existence and consequently, it has to be presumed that the matter is pending before the Authority. In any event, as the consequential recovery notice served on the petitioner is put to challenge in W.P.No.27379 of 2007, such challenge is enough to bring the case under the scope and ambit of G.O.MS.No.189 of 2017, consequently to grant the benefit of Samadhan Scheme to the petitioner.

7. In support of the above contentions, the learned Senior Counsel relied on the following decisions:

- i) 1965 (2) MLJ 411, A.M. Saffiulla & Co vs The State of Madras.
- ii) 2006(2) LW 126, The State of Tamilnadu vs. The Vikas Academy.

8. Per contra, the learned Government Advocate appearing for the respondents submitted as follows:

Form I notice under Section 47A was issued to the petitioner on 22.12.2000 and Form II notice was issued on 04.09.2003. The final order under Section 47A was passed on 13.10.2003 and sent to the petitioner by post. Though no proof of service for the said final order is available on record, it is to be presumed that the same was served on the petitioner, especially, when the consequential recovery notice was received by the petitioner on 13.06.2007 at the very same address. The Samadhan Scheme is applicable only when the matter is pending in those proceedings as contemplated under G.O.Ms.No.189. In this case, no matter was pending on the date of said G.O, as the order passed under Section 47A was not challenged by the petitioner.

9. Heard both sides and perused the materials placed before this Court.

10. The petitioner purchased the subject matter property from its vendor by way of sale deed dated 19.08.1998 registered as Document No.1252 of 1999 on the file of the Sub Registrar, Triplicane, Chennai. Subsequent to the registration, proceedings under Section 47A of the Indian Stamp Act was initiated, which has resulted in calling upon the petitioner to pay a deficit stamp duty of a sum of Rs.24,84,679/-. It is contended by the petitioner that they have not been served with any order passed under Section 47A except a recovery notice dated 13.06.2007 which is challenged in W.P.No.27379 of 2007. However, it is contended by the respondents that a final order under Section 47A was passed on 13.10.2003 and the same was served on the petitioner. Though such contention was raised, the fact remains that the respondents are not in a position to prove before this Court with material document to show and substantiate service of such order on the petitioner. When it is specifically denied that no such order was ever served on the petitioner, it is the bounden duty of the respondents to disprove such contention by placing materials before this Court as a proof of service of that order. The learned Government Advocate for the respondents fairly submitted that except an endorsement made in the order as if it was served on the

petitioner, there is no other proof available in the file in support of service of such order. Hence, in the absence of such proof, the legal presumption would be that the petitioner was not served with the order passed under Section 47A. At this juncture, it is relevant to quote the observation made by the Apex Court in a decision reported in 2001 (8) SCC 443, State of W.B. vs. M.R.Mondal, in respect of an order, which was not served on the affected person. At Paragraph No.16, the Apex Court has observed as follows:

"An order passed but retained in file without being communicated to the plaintiff can have no force or authority whatsoever and the same has no valid existence in the eye of the law or claim to have come into operation and effect. No reliance can be placed on the same to even assert a claim based on its contents."

11. In 1965 2 MLJ 411, A.M.Safiulla vs. The State of Madras, the Division Bench of this Court has observed at Paragraph No.17 as follows:

"17..... If the order of the assessing authority is not communicated to the assessee, it is impossible to conceive how he can exercise the right of appeal because he can show cause against the order of assessment only when he knows what it contains. The same considerations apply to the power of revision under Section 33. It stands to common sense that the assessee cannot show cause against the proposed revision unless he knows what the original order of assessment is and how the revising authority proposes to revise the order. This necessarily postulates that the assessee must know as completely as possible all the details of the order of assessment, and that only then he can have an effective and adequate opportunity of showing cause against the revision."

12. Perusal of the above decisions would show that an order passed but not communicated to the aggrieved party cannot put against such party, as the party was effectively prevented from challenging such order before the Appellate/ Revisional Forum, which he is otherwise entitled to do. Unless and until the order is communicated in the manner known to and acceptable by law, the said order cannot have any force for its implementation. In other words, till such order was communicated in a manner known to law, the presumption would be that the proceedings before such authority, who passed the said order, is still pending and not reached its finality.

13. Keeping the above legal position in mind, if we look into the facts and circumstances of the present case, it would undoubtedly show that the final order said to have been passed on 13.10.2003, having not been served on the petitioner, cannot have any force. Under such circumstances, the legal presumption would be that no such order was passed and on the other hand, the proceedings are still pending before the authority concerned. However, when a consequential recovery notice was issued on 13.06.2007, the petitioner has chosen to challenge the same and thus for all purposes, it should be construed that challenge against the proceedings initiated under Section 47A is pending as on the date of issuance of G.O.Ms.No.189 of 2017, introducing the Samadhan Scheme.

14. As rightly pointed out by the learned Senior Counsel for the petitioner, the object of introducing the Samadhan Scheme is to augment the arrear collection and effect quick realisation of blocked revenue in pending cases. Needless to say that filing the writ petition against the recovery notice and keeping the matter pending even as on the date of issuance of G.O.Ms.No.189 of 2017 would certainly indicate that the present case would also fall within the ambit and scope of the term "Blocked revenue in pending cases" and consequently, the petitioner is entitled to the benefit of Samadhan Scheme introduced in G.O.Ms.No.189 of 2017.

15. Needless to state that the object of introducing a Samadhan Scheme is to give an opportunity to the agitating persons against the recovery of revenue to come for a settlement without going into the merits of the contentions raised by such persons, by offering them a concession/remission in the total claim made by the authorities. Therefore, the nature of proceedings initiated by such persons pending at the time of issuance of the Samadhan Scheme is not material to decide whether those proceedings would fall under such Scheme and on the other hand, the essential requirement is as to whether such proceedings has an effect of blocking the revenue collection. When the Samadhan Scheme is introduced to remove such block and facilitate the revenue collection by granting some remission, the authorities are not entitled to go by the nature of proceedings pending at the relevant time instead of looking into the effect of such proceedings.

16. At this juncture, it is relevant to quote the decision of the Division Bench of this Court reported in 2006 (2) LW 126, The State of Tamil Nadu vs. The Vikas Academy Director's Compound, Arappalayam Cross Road, Ponnagaram, wherein it is observed that the correct test to determine as to whether the benefit of Samadhan Scheme would apply to a particular case or not is by finding out as to whether the proceedings has reached

its finality stage or whether pending at some stage resulted in blocked revenue. At paragraph Nos.6 to 8, it has been observed as follows:

"6. The Scheme of the G.O is to cut short the proceedings pertaining to stamp duty, which were frittering away the energy of the Department, and to encourage assesses to come forward to pay a reasonable amount of duty in accordance with the Scheme after declaration thereunder. It is seen from the preamble of the G.O that revenue due to the State running into crores of rupees was getting blocked and the public were also put into inconvenience being unable to get the original documents. In these circumstances, it was proposed to implement the Samadhan Scheme offering remission of 40% of the difference of stamp duty between what is chargeable on the value of the property as proposed by the registering officer and the duty already paid, in order to unlock the blocked revenue to the Government. The only contention of Mr. A.L. Somayaji is that in paragraph 4(i) of the G.O there is a reference only to proceedings pending before the registering officer and not before the other authorities, appellate or revisional. He also points out that the notification itself which is appended to the G.O does not contain a provision similar to clause 4(iii) on which respondents have placed reliance.

7. We are unable to accept the contention urged on behalf of the Revenue on both counts. In the first place, the appendix to the G.O only enumerates the various clauses of instruments to which the Scheme would be applicable. It is well settled that a Scheme will have to be considered as a whole. Clause 4(iii) of the Scheme exempts only proceedings pending for recovery of arrears under the Revenue Recovery Act. It is not disputed before us that the proceedings under the Revenue Recovery Act would be initiated only if the proceedings under the Act are over. The appeals before the Inspector General of Registration and the subsequent appeals before the High Court are provided under the Indian Stamp Act. It is settled law when an appeal is pending there is no finality to the proceedings. The proceedings are then deemed to be continuing. Any order to be passed in the appeal or revision will get merged with the order passed by the original authority. Undoubtedly, at one place the G.O seems to state that the proceedings should be pending adjudication before the adjudicating authority.

However, the order emphasizes that the Scheme will not apply to cases pending for recovery of arrears under the Revenue Recovery Act. The proceedings under the Revenue Recovery Act would commence only after all the proceedings are over including the appeal and revision. If the intention of the Government was to exclude proceedings in appeal, it could have been stated so explicitly that the benefits will extend only in cases where the original authority had not passed the order or that the scheme will not apply to proceedings under appeal instead of having stated that the scheme will not apply to cases pending for recovery of arrears under the Revenue Recovery Act. The exclusion thus incorporated in the Government Order is very specific and hence, it is not open to the Revenue to read into the provision by inference. The Order has to be read as a whole, if read as a whole, it is clear that the Scheme was intended to cover all the proceedings which were pending either before the first authority or before the appellate authority or revisional authority.

8. One more aspect needs to be looked into. The learned single Judge has noticed that in several cases the original authority passes an order within a short period immediately after the registration, while in some other cases, the proceedings are kept open before the original authority for more than five to six years. Therefore, it would be anomalous to hold that a proceeding which was quickly disposed of shall not have the benefit of the Samadhan Scheme, and that a proceeding which was kept pending on the file of the original authority for several years should alone receive the benefit of the Scheme. Therefore, the correct test would be whether the proceedings had reached the finality stage or whether pending at some stage resulting in blocked revenue. Therefore, the interpretation sought to be placed by the revenue on the G.O cannot be sustained."

17. Though, a feeble attempt is made by the respondents to contend as though the writ proceedings initiated under Article 226 of the Constitution of India would not cover the cases in respect of instruments, which are pending as on 08.06.2017, I do not think that such contention is legally sustainable for the simple reason that the writ proceedings blocking the realisation of revenue in respect of the instruments covered under Section 47A and 19-B of the Indian Stamp Act, 1989, would also fall within the scope and ambit of the term "pending cases" referred to in the said G.O. and therefore, it cannot be said

that the writ petition will not be construed as the case either blocking the revenue or determining the market value in respect of the subject matter instrument.

18. Even though the petitioner has filed the first writ petition challenging the recovery notice and thereby blocked the realisation of the revenue under Section 47A of the said Act, subsequently they have chosen to opt to seek benefit under the Samadhan Scheme on introduction of G.O.Ms.No.189 of 2017 dated 29.12.2017. Admittedly, when the said G.O. was issued, the challenge made by the petitioner against the recovery notice was pending in W.P.No.27379/2007. Therefore, the petitioner's case would squarely fall under the scope and ambit of G.O.Ms.No.189 of 2017.

19. When W.P.No.7422 of 2018 was earlier taken up for hearing on 28.03.2018, this Court issued an interim direction permitting the petitioner to deposit a sum of Rs.16,58,454/- before the second respondent on or before 02.04.2018, also by observing that if any such deposit was made, the same shall be construed as the one made under the Samadhan Scheme introduced in G.O.Ms.No.189 of 2017, however without prejudice to the contentions of either parties in the writ petition. It is stated that as per the above interim order, the petitioner has deposited the said sum within the time stipulated.

20. In view of the above stated facts and circumstances, W.P.No.7422 of 2018 is allowed and the respondents are directed to allow the petitioner to take advantage of Samadhan Scheme implemented by the Government of Tamil Nadu under G.O.Ms.No.189 of 2017 dated 29.12.2017 and allow the remission of 1/3rd of the additional stamp duty demanded in respect of the subject matter sale deed. Consequently, the respondents shall release the subject matter sale deed to the petitioner within a period of two weeks from the date of receipt of a copy of this order, if not already released.

21. In view of the order already passed in W.P.No.7422 of 2018 as stated supra, W.P.No.27379 of 2007 is closed, as no further order is necessary in this matter. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vri

To

1.Special Deputy Collector (Stamps),  
District Collector Office,  
5th Floor "M.Singaravelar Malagai",  
Rajaji Salai,  
Chennai 600 001.

2.District Revenue Officer,  
Office of the District Revenue,  
Officer (Stamps) Office,  
Chennai 600 001.

3.The Sub Registrar,  
Triplicane,  
Chennai 600 005.

4.The Inspector General of Registration,  
The Registration Department,  
No.100, Santhome High Road,  
Chennai 600 028.

+2cc to Ms.PreethiMohan, Advocate Sr.35985, 35986  
+1cc to the Government Pleader Sr.36267

W.P.NOS.27379 OF 2007 & 7422 OF 2018

jp[co]  
srg 02/05/2019

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