IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2020

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.Nos.2319 to 2322 of 2016
and
CMP Nos.16316 to 16319 of 2016

1. R.Mathiazhagan
2. D.Senthilkumar
3. P.Anbalagan
4. N.Sivakumar
5. R.Raghunathan @ K.R.Raghu Sundar
6. V.K.Sethusubramani ... Appellants in C.M.A.No.2319 of 2016

1. A.Murugan
2. S.Rajapandian ... Appellants in C.M.A.Nos.2320, 2321 and 2322 of 2016

Vs.

1. The Inspector General of Registration,
Inspector General Office,
No.100, Santhome High Road,
Chennai - 600 028

2. The Deputy Inspector General of Registration,
Collectorate, Salem - 636 001

3. The Special Deputy Collector (Stamps)
Salem, Namakkal,
Dharmapuri and Krishnagiri District
Collectorate, Salem - 636 001

4. The District Registrar [East]
District Registrar Office,
Ramasundaram Street,
Salem - 636 001

5. The Sub Registrar,
Valappadi, Salem District
... Respondents in all the Appeals

Prayer in C.M.A.Nos.2319 and 2320 of 2016

Civil Miscellaneous Appeals are filed under Section 47 A (10) of the Indian Stamps Act to set aside the order dated

15.10.2015 29/09/2015 passed in No.Ka.No.43558/UI/10, NA.KA.No. 17596/W1/2010 on the file of 1st respondent / the Inspector General of Registration-cum-Principal Revenue Controlling Officer, Chennai respectively.

Prayer in C.M.A.Nos.2321 and 2322 of 2016

Civil Miscellaneous Appeals are filed under Section 47 A (10) of the Indian Stamps Act to set aside the order dated 29.09.2015 passed in No.Ka.No.20721/U1/10 and No.Ka.No.20721/U1/10 respectively, on the file of 1st respondent / the Inspector General of Registration-cum-Principal Revenue Controlling Officer, Chennai respectively.

For Appellants : Ms. Chitra Sampath, Senior counsel for Mr.T.S.Baskaran

For Respondents : Mr.T.M.Pappiah Special Government Pleader

COMMON JUDGMENT

Since the issues involved in these appeals are one and the same, they are taken up together and a common order is being passed.

2. The brief facts of the case leading to the filing of the Civil Miscellaneous Appeals by the appellants are as follows:

(i) The Appellants in C.M.A.No.2319 of 2016 had purchased the undivided share of 66.67% in the agricultural lands measuring a total extent of Acres 51.69 and 8,790 Square feet in the Valappadi Village in Salem District under a registered sale deed dated 07-08-2006 (Document No.1566 of 2007) from one Smt.K.Selvi.

(ii) The Appellants in C.M.A.No.2320 of 2016 had purchased the undivided share of 34% in the agricultural lands measuring a total extent of Acres 21.81 in the Valappadi Village in Salem District under a registered sale deed dated 26-07-2006 (Document No.1516 of 2007) from one Smt.R.Rajamanickam and besides the said property, the appellants had also purchased other adjacent lands under the documents dated 26.07.2006 vide Document Nos.1517 and 1518 of 2007. Under document No.1566 of 2007 dated 07.08.2006 the balance 66% undivided share lands were purchased by R.Mathizhagan and others.

(iii) The Appellants in C.M.A.No.2321 of 2016 had purchased the undivided share of 34% in the agricultural lands measuring a total extent of Acres 20.82 in the Valappadi Village in Salem

District under a registered sale deed dated 26-07-2006 (Document No.1517 of 2007) from one Smt.R.Rajamanickam and besides the said property, the appellants had also purchased other adjacent lands under the documents dated 26.07.2006 vide Document Nos.1516 and 1518 of 2007. Under document No.1566 of 2007 dated 07.08.2006, the balance 66% undivided share lands were purchased by R.Mathizhagan and others.

(iv) The Appellants in C.M.A.No.2322 of 2016 had purchased the undivided share of 34% in the agricultural lands measuring a total extent of Acres 4.98 and 8790 square feet the Valappadi Village in Salem District under a registered sale deed dated 26-07-2006 (Document No.1518 of 2007) from one Smt.R.Rajamanickam and besides the said property, the appellants had also purchased other adjacent lands under the documents dated 26.07.2006 vide Document Nos.1516 and 1518 of 2007. Under document No.1566 of 2007 dated 07.08.2006 the balance 66% undivided share lands were purchased by R.Mathizhagan and others.

(v) When the documents were presented for registration, the same were subjected to Section 47 A of Stamp Act proceedings and the Special Deputy Collector Stamps/3rd respondent passed an order on 13-07-2007 fixing the market value of the properties covered under the deed of sale. The Appellants had paid the said amount and took delivery of the document on 17-07-2007.

(vi) By Letter Nos. 43558/U4/U2/07 dated 09-07-2012 [in CMA No.2319 of 2016]; 20721/U4/U2/10 dated 02.09.2012 [in CMA No.2320 of 2016]; 20721/U4/U2/07 dated 02.09.2012 [in CMA Nos.2321 and 2322 of 2016] issued by the 1st Respondent, the Appellants were called upon to attend a hearing on 24.07.2012 before the 1st Respondent (IG of Registration) in the proceedings initiated pursuant to suo moto power under Section 47 A(6) of the Indian Stamp Act. The Appellants appeared and offered their explanation that they were utilizing it only as an agricultural land. Hence, there cannot be discrimination among adjacent lands in arriving at a market value for some lands. Moreso, when there was no difference in the quality of the land or its commercial viability among the adjoining lands, the guideline value fixed was irrational and arbitrary. The Appellants also pointed out that there was basis on which such disparity is adopted in fixing the guideline value. So the Appellants prayed that the valuation already paid by them may be fixed. Thereafter, the Appellants had not been communicated about the order by the 1st Respondent.

(vii) Suddenly by a Letter dated 06-08-2015 issued by the 1st Respondent, the Appellants were again asked to come for an enquiry for the very same subject matter. The enquiry was finally conducted on 13.10.2015 and 30.09.2015 respectively.

The Appellants appeared and submitted their objections to the same. The Appellants had pointed out that the proceedings were barred under law and that the suo moto proceedings are a nullity. The Appellants also submitted the very same explanation as they did during the year 2012 enquiry. The 1st Respondent then had passed the impugned order on: 15-10-2015 and the same was communicated to the Appellants vide the Letter dated 30.10.2015 by 5th Respondent [in CMA No.2319 of 2016], Impugned order was passed on 29.09.2015 and the same was received by the appellants in CMA No.2320 of 2016 and the impugned order was passed on 29.09.2015 and the same was received by the appellants in CMA Nos.2321 and 2322 of 2016 on 9.10.2015.

(viii). On going through the impugned order, the Appellants were surprised to see some references to proceedings about which the Appellants were not aware of. So a request was made under the RTI Act seeking the copy of the proceedings mentioned in the impugned order. The information sought under the RTI Act was obtained by the Appellants on 28-11-2015. On perusing the same, it is seen that there is no notice as referred under the impugned proceedings. Hence the impugned order is exfacie illegal, invalid and void and also barred under the law Limitation. Even in respect of other documents there had been several corrections and interlineations in the notices alleged to have been sent to concerned parties in the year 2010, which had never been received by the Appellants. It is surprising that the impugned order does not make any reference to the enquiry conducted during the year 2012. In order to bring the proceedings under the cap of five years prescribed under the Section 47 A of Indian Stamp act on 13-07-2007.

(ix) Further, as per the proceedings under Section 47 A of the Stamps Act, the Special Collector Stamps / 3rd respondent had fixed the value of the property at Rs.1,13,07,400/- [C.M.A.No.2319 of 2016]; Rs.7,66,500/- [C.M.A.Nos.2320 and 2321 of 2016] and Rs.23,64,600/- [C.M.A.No.2322 of 2016]. Now the 1st Respondent by his impugned proceedings re-fixed the value of the property at Rs,7,51,25,400/- [C.M.A.No.2319 of 2016]; Rs.10,92,100/- [C.M.A.Nos.2320 and 2321 of 2016] and Rs.31,42,064/- [C.M.A.No.2322 of 2016].

(x) By the impugned proceedings, the 1st respondent had directed the appellants in C.M.A.No.2319 of 2016, to pay the deficit stamp duty and registration charges at Rs.57,43,620/-. Also, 1st respondent had directed the appellants in C.M.A.Nos.2320 and 2321 of 2016, to pay the deficit stamp duty and registration charges at Rs.29,308/-. Moreover, 1st respondent had directed the appellants in C.M.A.No. 2322 of 2016, to pay the deficit stamp duty and registration charges at

Rs.69,975/-.

(xi) Also, the 1st Respondent has directed the Appellants to pay the deficit Stamp Duty as well as the Registration Charges within a period of 60 days and further proceed to state that from 61st day 1% interest will be charged on the above said amount. Therefore, the impugned order of the 1st Respondent is malafide and materially irregular and is liable to be set aside. Unless the order of the 1st Respondent is stayed, the Appellants will be put to irreparable loss and hardship, hence these appeals.

3. In contrary, detailed separate counter affidavits are filed on behalf of the 5th respondent, wherein it is averred as follows:

[i] The appellants in C.M.A.No.2319 of 2016 had purchased a undivided share of 66.67% in the agricultural lands measuring a total extent of 51.69 acres and 8790 sq.ft., of site with building comprised in Survey Nos.60/2 and 67 other numbers in S.Vazhapadi village, A.Vazhapadi village and Thukkiyampalayam along with passage for Rs.33,91,129/- and presented the same for registration. The said respondent registered the said sale deed as Doct.No.1566 of 2006 of Book 1 and referred the same under Section 47-A(1) of the Indian Stamp Act, 1899 to the Special Deputy Collector (Stamps), Salem / 3rd respondent, herein for determination of true market value of the properties.

[ii] The appellants in C.M.A.No.2320 of 2016 had purchased a undivided share of 34% in the agricultural lands measuring a total extent of 21.81 acres in Survey No.51/6 and various survey numbers together with dilapidated buildings in S.Vazhapadi village and Thukkiyampalayam for Rs.6,30,000/- and presented the same for registration. This said respondent registered the said sale deed as Doct.No.1516 of 2006 of Book 1 and referred the same under Section 47-A(1) of the Indian Stamp Act, 1899 to the Special Deputy Collector (Stamps), Salem / 3rd respondent, herein for determination of true market value of the properties.

[iii] The appellants in C.M.A.No.2321 of 2016 had purchased a undivided share of 34% in the agricultural lands measuring a total extent of 24.82 acres in Survey No.60/1A and various survey numbers in A.Vazhapadi and S.Vazhapadi Villages for Rs.8,10,000/- and presented the same for registration. This said respondent registered the said sale deed as Doct.No.1517 of 2006 of Book 1 and referred the same under Section 47-A(1) of the Indian Stamp Act, 1899 to the Special Deputy Collector (Stamps), Salem / 3rd respondent, herein for determination of true market value of the properties.

[iv] The appellants in C.M.A.No.2322 of 2016 had purchased a undivided share of 34% in the agricultural lands measuring a total extent of 4.98 acres in Survey No.77/9 and various survey numbers together with building in S.Vazhapadi village and A.Vazhapadi village Thukkiyampalayam for Rs.7,66,360/- and presented the same for registration. This said respondent registered the said sale deed as Doct.No.1517 of 2006 of Book 1 and referred the same under Section 47-A(1) of the Indian Stamp Act, 1899 to the Special Deputy Collector (Stamps), Salem / 3rd respondent, herein for determination of true market value of the properties.

[v] Since the value determined by the said 3rd respondent was not in consonance with the true market value, the 1st respondent in powers conferred in Sub-Section (6) of Section 47-A of the Indian Stamp Act, 1899 took the matter on record for suo motu revision. A show cause notice dated 28.08.2010 was issued to the appellants, herein to show cause why the document should not be subjected to suo motu revision. Since the appellants had not responded to the said show cause notice, they were directed to appear for personal enquiry. On behalf of the appellants, 1st appellant, viz., Mathiazhagan and Murugan appeared before the 1st respondent and gave written submission stating that the properties in question are agricultural lands till date, the agricultural activities will be carried during the winter and kept idle during summer for want of water, the action taken by the 1st respondent under Section 47-A(6) is time barred one and the 3rd respondent determined the true market value which requires no interference.

[vi] Based on the report of the committee headed by the Deputy Inspector General of Registration, Salem/ 2nd respondent herein, on personal inspection of the properties, vis-a-vis the defense of the appellants herein and the sale statics, the 1st respondent revised and determined the market value aggregating to Rs.7,51,25,400/-; Rs.10,91,636/-; Rs.3,53,19,190/- and Rs.31,41,975/- as against the value of Rs.1,13,07,315/-; Rs.7,66,496/-; Rs.37,93,500/- and Rs.23,64,564/- determined by the 3rd respondent, in proceedings Nos.43558/E1/07 dated 15.10.2015; 17596/E1/10 dated 29.09.2015; 20721/E1/10 dated 29.09.2015 and 20722/E1/10 dated 29.09.2015 respectively.

[vii] The lands in question in most cases are not abutting one to another, but scattered in various places. Hence, taking into account of the merits and demerits possessed by the lands, its location, status etc., different values have been determined by the 1st respondent. The initial show cause notice issued by the 1st respondent to take the matter under the purview of Section 47-A(6) of the Indian Stamp Act, 1899 is time barred one

at the time of enquiry before the 1st respondent.

[viii] The initial show cause notice issued by the 1st respondent to take the matter under the purview of Section 47-A (6) of the Indian Stamp Act, 1899, the appellants had not responded to the same. However, the appellants cannot raise a new objection stating that the action taken by the 1st respondent under Section 47-A(6) of the Indian Stamp Act, 1899.

[ix] The appellants were issued notices in the 1st respondent's letter no.43558/E1/97 dated 28.08.2010; No.17596/E1/10 dated 28.08.2010; No.40071/E4/97 dated 28.08.2010 and No.20722/E1/10 28.08.2010 respectively, why the matters should not be taken on record under Section 47-A(6) ibid for which, the appellants had not submitted any explanation. Hence it is presumed that the appellants had no objection in taking suo motu action to revise the value of the properties in question as against the determination of market value by the 3rd respondent. Hence for all the reasons, the respondents prays to dismiss the appeals.

4. Ms.Chitra Sampath, learned Senior Counsel for the appellants submits that the impugned orders passed by the 1st respondent are without jurisdiction and the order passed by the 3rd respondent through suo motu revision enhancing the value of the property is liable to be set aside because the same is passed without considering the submissions of the appellants. The 1st respondent failed to consider that the 2nd respondent by his proceedings under Section 47-A of the Stamp Act had refixed the value of the property for the purpose of stamp duty and registration charges and the same was also paid, hence the proceedings of the 1st respondent are vitiated and liable to be set aside.

5. The learned senior counsel for the appellants contends that the 1st respondent erred in holding that the appellants failed to submit objections for the show cause notices dated 28.08.2010 are incorrect, as no such notice was issued by the respondents to the appellants. The said date 28.08.2010 falls on saturday and that the reference of notice is made only to get over the limitation period.

6. It is the contention of the learned senior counsel for the appellants that the 1st respondent while considering the lands in question, in various parts arrived the value using different yardstick for some sub divisions nos.in Acres and for some sub division nos. in square feet but the entire property in question falls within one unit. Moreover, the 1st respondent erred in classifying the land based on the usage of the lands, as found in the year 2015, without considering the fact that the lands were purchased in the year 2007 as agricultural lands.

7. The learned senior counsel for the appellants has come out with a plea that the 1st respondent's finding that some portions of property are agricultural land, some are barren, some portions are vacant land and some properties are not maintained properly will clearly prove that the valuation for the property arrived as agriculture land is correct and the property cannot be valued in square feet. That apart, the impugned orders passed by the 1st respondent ar liable to be set aside on the sole ground that the proceedings have been initiated after a period of eight years from the date of obtaining the document, i.e., on 17.07.2007. Therefore, she pleaded to allow the present Appeals.

8. The learned Senior Counsel for the Appellants relies on the following Judgments:

(i) Judgment of this Court in C.M.A.No.2573 of 2006 dated 19.11.2018 [R.V.Refractories V. District Revenue Officer (Stamps) collectorate and Chief Revenue Officer and Inspector General of Registration, wherein among other things it is held that,

> 'There is no whisper that the authority had reason to believe that the value declared is not correct. There is no allegation that the market value of the property has not been truly set forth. Merely because the guideline value in this case is different from the value shown in the document, which is as per the value in public auction, the department cannot disbelieve the transaction value of the property. The value set forth in the document is the bid value and accepted by the said state owned financial corporation. The registering authority has not shown any material as to how they came to the conclusion that the market value has not been truly set forth or that there is reason to believe that the market value has not been truly set forth or that there is reason to believe that the market value of the property has not been truly set forth with the intention to evade payment of proper stamp duty. The ingredients of Section 47-A(1) of the Indian Stamp Act, 1899 has not been satisfied in the present case.
>
> 25. .... It is clear therefore that guideline value is not sacrosanct as urged on behalf of the appellant, but only a factor to be taken note of if at all available in respect of an area in which the property transferred lies. In any event, therefore, if for the purpose of stamp act guideline value alone is not a factor to determine the value of

> property, its worth will not be any higher in the context of asssessing the true market value of properties in question to ascertain whether the transaction has resulted in any offence so as to give a pecuniary advantage to one party or the other'
>
> 16. In State of Rajasthan and others V. Khandaka Jain Jewellers, reported in AIR 2008 SC 509: (2007) AIRSCW 3619, the Apex Court held that the stamp duty in respect of the instrument of sale will have to be determined on the basis of market value of the property at the time when the document is tendered for registration.'

(ii) Judgment of this Court in C.M.A.No.2727 of 2009 dated 08.11.2017 [S.Saariga V. Chief Controlling Revenue Authority, Chennai and others wherein it is held that 'Future development shall not be the criterion for fixing the value of the property. When there is no evidence to show that it is not an agricultural land, the first respondent should not have presumed that it is not an agricultural land and it is only a house site'.

(iii) Judgment of this Court in C.M.A.Nos.198, 199 and 200 of 2015 and M.P.Nos.1 to 1 of 2015 [Kamel B.Sethiya and Mithun B.Sethiya V. The Sub Registrar, Hosur, Krishnagiri Taluk, Krishnagiri District and others] dated 24.08.2017, wherein it is stated that the 'Inspection Report of the District Registrar would clearly show that the lands in question though classified as house sites cannot be used as housesites as they have been surrounded by lakes, agricultural lands and hillocks. Most of the lands remained vacant with shrubs and bushes.'

9. Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the respondents represented that orders passed by the 1st respondent are in accordance with the powers conferred in Sub-Section (6) of Section 47-A of the Indian Stamp Act, 1899. The value of the properties in question have been revised by the 1st respondent only after obtaining the field inspection report from the committee headed by the Deputy Inspector General.

10. The learned Special Government Pleader for respondents takes a stand that the purpose of Sub-Section (6) of Section 47-A of the Indian Stamp Act, 1899 is to watch whether the initial authority determines the true market value by adhering the principles laid down in Rule 5 of the Tamil Nadu Stamps (Prevention of Undervaluation of Instruments) Rules, 1968. Mere payment of deficit stamp duty on the value determined by the 3rd respondent does not take away the powers enjoined on the 1st respondent under section 47-A(6) of the Indian Stamp Act, 1899 and that the contention of the appellants that the notice has been issued on saturday cannot be accepted because, there is no bar in working in holidays.

11. Besides the above, the learned Special Government Pleader for the respondents brings it to the notice of this Court that the fields in various subdivisions in question are surrounded by Sub Registrar's Office, vazhapadi, Athur Main Road, Post Office and the residential house sites and buildings. Hence the square feet rate has been adopted for the same reflecting the true market value. Therefore, the contention of the appellants that all the properties should evenly be treated as agricultural lands, cannot be accepted. The impugned orders passed by 1st respondent are valid in law and th at there is no need for interference in the hands of this Court, he pleaded.

12. Heard the learned counsel on either side and perused the documents placed on record.

13. After hearing the learned senior counsel Ms.Chitra Sampath and the learned Special Government Pleader (Registration) appearing for the respondents respectively and perusing the materials available on record, two issues arises for consideration in the present appeals challenging the order of the 1st respondent passed under Section 47A(6) of the Act. Firstly, as to whether 1st respondent has invoked the power available under Section 47A(6) of the Act, in accordance to the limitations prescribed under the Act and secondly, whether the reasons given for revising the stamp duty payable by the appellants was based on any materials with the registering Authority to form an opinion when the market value of the property has not been truly set out forth in the instruments. Section 47-A(6) and 47-A(7) of the Stamps Act has to be looked into and they are extracted hereunder:-

> 'Section 47-A(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.
>
> Section 47-A(7): The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3) if,-
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> (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.'

14. On a plain reading of the said provisions, it is

categorically clear that the 1st respondent has every jurisdiction to conduct and call for and examine and pass an order. If the order passed by the Registering authority is prejudicial to the interest of the revenue, he may make an enquiry or pass an order to such enquiry to be made subject to the provisions of the act and he may also initiate proceedings to revise, modify or set aside such order. However, such suo motu action should be confined within the limitation provided under Sections 47-A 47-B and 47A(7), not more than five years after passing of such orders passed under Section 47-A.

15. As far as present appeals on hand are concerned, with regard to C.M.A.No.2319 of 2016, no doubt the documents were presented for registration on 07.08.2006 and the same was referred for deficit stamp duty under Section 47-A on 13.07.2007 and the deficit was complied on 17.07.2007. With regard to C.M.A. Nos.2320, 2321 and 2322 of 2016 are concerned, the sale was registered on 26.07.2006 and the documents were referred under Section 47-A by the 3rd respondent in proceedings dated 13.07.2007 and after paying the deficit stamp duty, the documents were delivered on 17.07.2007.

16. It is further seen from the records and the arguments placed by the learned counsel for the respondents, who vehemently argued that there had been a notice sent under Section 47-A(6) as early as 28.08.2010, which is a show cause notice that was purported to be issued under Section 47-A(6) to show cause why the documents registered by the appellants not to be subjected to suo motu revision.

17. It was also further argued by the learned counsel for the respondents that since the appellants did not respond to the show cause notice dated 28.08.2010, the respondents were constrained to issue notice dated 20.07.2012, which was challenged in C.M.A. No.2319 of 2016 and notice dated 21.09.2012. challenged in C.M.A. Nos.2320, 2321 and 2322 of 2016. Though the learned Special Government Pleader argued vehemently by referring notice dated 28.08.2010 and produced the same, the appellants, who had taken a stand not only before this Court, but even before the 1st respondent had stated that they have not received any such notice dated 28.08.2010. The 1st respondent while dealing with the mandatory prescription of five years, within which period the 1st respondent ought to have invoked the suo motu powers under Section 47-A(6) had also referred the notice dated 28.08.2010 in its order, which is impugned in the present appeals.

18. However, the 1st respondent without even assigning any reason had blanketly rejected the contentions raised by the appellants merely stating that the show cause notice dated

28.08.2010 was presented in the file does not mean there was proper service of such show cause notice to the appellants. No acknowledgment card was found in the files, which was also contended by the appellants' counsel that no such notice has been issued to them.

19. It is also pertinent to note that the admitted notices dated 20.07.2012 and 21.09.2012 from the records that the appellants have responded immediately by approaching the 1st respondent for the enquiries by submitting their proper replies. However, it is not known why the respondents have not taken any further steps if at all they have issued such show cause notice dated 28.08.2010 to the appellants and what is the reason for not initiating steps immediately, but initiating the further proceedings belatedly, almost after two years after the alleged show cause notice dated 28.08.2010.

20. It is also seen from the records that there is not even a single piece of paper to show the service of show cause notice dated 28.08.2010 on the appellants. Had there been any proof filed before this Court, the respondents would be justified and are well within the mandatory period available under Section 47-A(7) of the Act.

21.It is pertinent to point out that the power under Section 47(A) of the Act confers on Collector, suo motu power within five years from the date of registration of any instrument of conveyance etc., not already referred to him under Section 47(A)(1), to 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 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 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 under Section 47(A)(2) of the Act and the difference if any in the amount of duty shall be payable by the person liable to pay the duty. As the impugned notice is issued after five years, the same cannot be sustained.

22. This Court is not convinced with the arguments advanced by the learned Special Government Pleader appearing for the respondents that the notice dated 28.08.2010 was served on the appellants and the authorities are well within the limitation period for invoking the powers under Section 47-A(7). It is also clear that the alleged notice issued on 28.08.2010 cannot be relied upon by the respondents, as the respondents failed to prove that such notice being served on the appellants, nor they

have referred about the said two notices dated 28.08.2010 in the subsequent notices in the reference column. It is also pointed out by the appellants' counsel that the alleged notices and other papers served on them have lots of corrections, which would prove that the respondents have not sent any notice and all these documents are fabricated one and subsequently made up by the officials.

23. As such, the suo motu revision should have been initiated on or before 16.07.2012 in all the cases. However, it is seen from the records the 1st notice that were received by the appellants were on 20.07.2012 with regard to C.M.A No.2319 of 2016 and 21.09.2012 with regard to CMA Nos.2320, 2321 and 2322 of 2016. As such in all the appeals, the respondents, who ought to have initiated the action on or before 16.07.2012 and in the instant case, it was initiated well beyond the prescribed period of five years, ie. after 16.07.2012. Though the delay in sending the notices under Section 47-A(6) is very meager, this Court has got no power to condone the delay of even one day beyond the period prescribed under the said act. Once a statute prescribes a period limitation for initiation of action, the same should be initiated within the prescribed mandatory period, unless the Act itself provides for condonation of such limitation within which the authorities or the courts can exercise the powers to condone such delay. As such, it is clear from its statute that the five years period prescribed for initiation of suo motu revision by the 1st respondent as against the decision taken by the 3rd respondent herein, who initially passed orders under Section 47 (A) as early as on 13.07.2007, was complied by the appellants on 17.07.2007 itself. The act has provided a wider limitation of five years for initiating suo motu revision and the reason for such wider period is that the Government should not lose the revenue. The authorities cannot sleep over the matter and take a decision and they ought to have taken steps before expiry period of limitation provided under the Act.

24. Admittedly, the commencing of the proceedings after a period of five years is in violation of mandatory provisions. Therefore, this Court is of the considered view that the action taken by the 1st respondent in issuing a show cause notice dated 20.07.2012 in C.M.A.No.2319 of 2016 and 21.09.2012 with regard to C.M.A.Nos.2320, 2321 and 2322 of 2016 is beyond the mandatory period of five years and is without jurisdiction and the orders passed on the basis of such show cause notice and subsequent enquiry conducted also cannot stand scrutiny in the present appeals.

25. That apart, the orders passed on the basis of the inspection conducted based on the show cause notice, which was

issued beyond the mandatory period cannot also be held in consonance with the act, hence the impugned order passed by the 1st respondent is vitiated for the violation of mandatory provisions prescribed under the Act and accordingly, the same is set aside. Since the impugned order is set aside on the ground of jurisdictional error, this Court is not inclined to the deal with the merits of the decision rendered by the 1st respondent with regard to the revisional value fixed based on the report submitted by the 2nd respondent.

In view of above, the Civil Miscellaneous Appeals stand allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Inspector General of Registration,
   Inspector General Office,
   No.100, Santhome High Road,
   Chennai - 600 028

2. The Deputy Inspector General of Registration,
   Collectorate,
   Salem - 636 001

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   District Registrar Office,
   Ramasundaram Street,
   Salem - 636 001

5. The Sub Registrar,
   Valappadi, Salem District

6.The Inspector General of Registration,
cum Principal Revenue Controlling Officer,
Chennai.

7. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+4cc to Mr.T.S.Baskaran, Advocate, S.R.No. 12749

C.M.A.Nos.2319 to 2322 of 2016 and
CMP Nos.16316 to 16319 of 2016

RV(CO)
GN(24/02/2020)