

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.12.2020
DELIVERED ON: 08.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP NOS.29304, 29373 AND W.P.NO.29374 OF 2019
and

WMP Nos.29102, 29103, 29194, 29195, 29196, 19198, 19199 and
29200 of 2019

Godrej Properties Limited,
(A Company incorporated
under the provisions of
Companies Act, 1956)
Having registered Office at
Unit No.5C, 5th Floor,
Godrej One, Pirojshanagar,
Vikhroli East,
Mumbai-400079.
And Branch Office at
3rd Floor, Sudharshan Buildings,
92/5, Chamiers Road,
Nandanam Extension,
Chennai-600 018.

..Petitioner
in All three W.Ps

.Vs.

1. Accountant General (A &E), Tamil Nadu,
Office of the Accountant General (A &E), Tamil Nadu,
361 Anna Salai,
Teynampet,
Chennai 600 018.
2. The State of Tamil Nadu,
Represented by its Principal Secretary,
Commercial Taxes and Excise Department,
Fort St.George,
Chennai.
3. The Inspector General of Registration,
100, Santhome High Road,
Mylapore,
Chennai,
Tamil Nadu 600 028.

4. The Sub Registrar,
Poonamallee,
Magistrate Court Complex,
Poonamallee,
Chennai.
5. District Collector (Stamps),
Chennai Collectorate Building,
Rajaji Salai,
Chennai.

..Respondents
in All three WPs

Prayer in W.P.No.29304 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Audit Objection Para No.3/IIA,LAR No.20-19/14-15, dt.Nil, relating to Sub Registrar, Poonamalle and confirmed by the third respondent vide Order dated 11.02.2019 made in No.7023/J1/2015-2 (collectively Impugned Orders), quash the same and direct the respondents herein to register the Instruments presented by the petitioner and its customers, with regard to lands comprised in Survey Nos.157/2 (part), 158/2 (part), 158/3 (part), 158/4 (part), 158/5, 158/6, 158/7 (part), 158/8 (part), 170/5 (part), 170/6 (part), 170/7 (part), 178/6A(part), 181/1, 181/2A, , 181/2B, 181/2C, 181/2D, 181/3, 181/4, 181/6, 181/5, 181/7, 181/13, 182/1, 182/2(part), 182/11 (part) all measuring an extent of 9.99 Acres situated in Chembarambakkam Village, Poonamallee Taluk, Thiruvallur District.

Prayer in W.P.No. 29373 of 2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Audit Objection Para No.2/IIA,LAR No.20-19/14-15, dt. 27.08.2014, relating to Sub Registrar, Poonamalle and confirmed by the third respondent vide Order dated 11.02.2019 made in No.4024/J1/2015(collectively Impugned Orders), quash the same and direct the respondents herein to register the Instruments presented by the petitioner and its customers, with regard to lands comprised in Survey Nos.157/2 (part), 158/2 (part), 158/3 (part), 158/4 (part), 158/5, 158/6, 158/7 (part), 158/8 (part), 170/5 (part), 170/6 (part), 170/7 (part), 178/6A(part), 181/1, 181/2A, , 181/2B, 181/2C, 181/2D, 181/3, 181/4, 181/6, 181/5, 181/7, 181/13, 182/1, 182/2(part), 182/11 (part) all measuring an extent of 9.99 Acres situated in Chembarambakkam Village, Poonamallee Taluk, Thiruvallur District.

Prayer in W.P.No.29374/2019: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Audit Objection Para No.1/IIA,LAR No.20-19/14-15, dt.27.8.2014, relating to Sub Registrar, Poonamalle and confirmed by the third respondent vide Order dated 11.02.2019 made in No.4025/J1/2015 (collectively Impugned Orders), quash the same and direct the respondents herein to register the Instruments presented by the petitioner and its customers, with regard to lands comprised in Survey Nos.157/2 (part), 158/2 (part), 158/3 (part), 158/4 (part), 158/5 , 158/6, 158/7 (part), 158/8 (part), 170/5 (part), 170/6 (part) , 170/7 (part), 178/6A(part), 181/1, 181/2A, , 181/2B, 181/2C, 181/2D, 181/3, 181/4, 181/6, 181/5, 181/7, 181/13, 182/1, 182/2(part), 182/11 (part) all measuring an extent of 9.99 Acres situated in Chembarambakkam Village, Poonamallee Taluk, Thiruvallur District.

For Petitioners in
All WPs

: Mr.ARL.Sundaresan
Senior Counsel
for Mr.G.Vivekanand

For Respondents in
All WPs

: R. Sankaranarayan,
Additional Solicitor General of India
assisted by:
Mr.T.Ravi Kumar
for Respondent 1

: Mr.S.R.Rajagopal
Additional Advocate General
assisted by
Mr.T.M.Pappiah
Special Government Pleader
for Respondents 2 to 5

COMMON ORDER

All these Writ Petitions raise a common question touching upon the Suo motu powers of the Inspector General of Registration under Section 47-A of the Indian Stamp Act, 1899 (hereinafter called as 'the Act'). Hence all these Writ petitions are taken up together, heard and disposed of through this Common Order.

2.The subject property originally belonged to M/S Addison and Company, measuring an extent of 20.26 acres. The Petitioner Company which is involved in Real Estate Business and has undertaken various projects, was approached by the owner of the property and they entered into two development agreements on 07.09.2009 and 29.12.2010 and these documents were registered on the file of the 3rd respondent in Document No.1342 of 2009 and Document No.103 of 2011 respectively. Power of Attorney documents was also executed by the owner of the property in favour of the petitioner and the same was also registered on the file of the 4th respondent. That apart, a deed of assignment was also executed in favour of Godrej Seaview Properties Private Limited, for the purpose of executing the project on 26.03.2010 and the same was also registered on the file of the 4th respondent in Document No. 548 of 2010. This Assignee Company was a wholly owned subsidiary of the Petitioner Company. The owner of the property was also added as a confirming party in this document. In the year 2013, the Assignee Company got completely merged with the Petitioner Company by virtue of an order passed by the Bombay High Court.

3. The petitioner obtained the planning approval for the development of the property and also obtained a building permission from the concerned Panchayat.

4. The further case of the petitioner is that in the normal course of its business, the Petitioner Company applied for Encumbrance Certificate on 05.12.2014 and found that certain adverse entries were made to the effect that there is a revenue loss caused to the 2nd respondent aggregating to the tune of Rs. 45,73,87,622/-. According to the petitioner, this adverse entry was made in the Encumbrance Certificate based on an Audit Objection raised by the 1st respondent. For proper appreciation, the following Tabular Column, will give a clear picture as to how the deficit was arrived at through the Audit Objection.

DATE OF DOCUMENT	NATURE OF DOCUMENT	REGISTRATION NUMBER AND YEAR	STAMP DUTY AND REGISTRATION FEE PAID	DEFICIT CLAIMS
07.09.2009	Development Agreement between Addison & Company Limited Chennai and Godrej Properties Limited Mumbai	1342/2009 Page No.2 in EC	8 Crores paid in advance 8%= 64,00,000 0 1%= 8,00,120 ----- 72,00,120 -----	17,28,00,000
26.03.2010	Assignment Deed by Godrej Properties Limited, Mumbai to its subsidiary Godrej Sea View Properties Pvt.Ltd.	548/2010 Page No.3 in EC	8% = 64,00,000 1% = 8,00,240 ----- 72,00,240 -----	17,27,99,800
29.12.2010	Development Agreement between Addison & Company Chennai and Godrej Sea View Properties Pvt Ltd for 4.827 acres	103/2011 Page No.4 in EC	6 Crores paid in advance S.D = 100 R.F = ----- 6,00,140 ----- 6,00,140	7,69,79,900
07.02.2013 To 13.10.2013	Agreement for Construction	81 Documents with Customers Page Nos. from 6 to 236 in EC	Stamp Duty payable by Customer	3,48,07,922
Total Deficit Claimed as Per E.C.No:- 17933/2014 = 45,73,87,622/-				

5. The petitioner claims that after noticing this adverse entry, they applied for a copy of the Audit Objection under the RTI Act and they received a copy on 24.12.2014. Thereafter, the petitioner issued a Legal Notice to the 4th respondent to delete the adverse entries on 09.01.2015. It is further stated that the 4th respondent started refusing to register the documents presented for Registration from the month of December 2018. It is at this point of time, the Impugned Order dt. 11.02.2019, came to be passed by the 3rd respondent confirming the Audit Objections raised by the 1st respondent. This order came to be implemented against the petitioner through three circulars issued by the Additional Inspector General (Stamp and Registration) to the District Registrar, Chennai South. Pursuant to the same, the 5th respondent issued Form-II against the petitioner. Three separate Form-II each dt. 02.08.2019, was served on the petitioner. The petitioner has therefore filed three Writ Petitions challenging the Audit Objection raised by the 1st respondent and also Impugned Order of the 3rd respondent dt. 11.02.2019.

6. The 1st respondent has filed a common counter affidavit in all the three Writ Petitions. The relevant portions in the counter affidavit are extracted hereunder:

"2. I have read the affidavit of L. Padmavathi filed in support of the above Writ Petition seeking for a writ of Certiorarified Mandamus calling for the records pertaining to the Audit objections para 1/11A, LAR No.20-19/14-15 relating to Sub Registrar, Poonammallee and confirmed by the 3rd respondent vide order dated 11/02/2019 made in No.4025/J1/2015 9 (Collectively Imp8gned Orders) quash the same and direct the Respondents herein to register the Instruments presented by the Petitioner and its customers, with regard to the lands comprised in Survey Nos.157/2 (Part), 158/2 (part), 158/3 (part), 158/4 (part), 158/5, 158/6, 158/7 (part), 158/8 (part), 170/5 (part), 170/7 (part), 178/6A (part), 181/1, 2A, 2B, 2C, 2D, 181/3, 4, 6, 5, 7, 13, 182/1, 182/2 (part), 182/11 (part) all measuring an extent of 9.99 Acres situated in Chembarambakkam Village, Poonamallee Taluk, Thiruvallur District and deny all the allegations therein save and except those that are specifically admitted herein.

I state that I am discharging Constitutional Functions as conferred by the Constitution of India under Article 148 to 151 which govern this respondent.

Audit observations are issued to the auditee institutions/Departments through Inspection Report. The audit of office of the Sub Registrar, Poonamallee was carried out by the Office of the Accountant General (E&RSA) Chennai and the Inspection Report was issued during the year 2014-15.

Based the scrutiny of the documents registered in the office of the Sub Registrar Poonamallee, audit raised certain objections and included the same in the Inspection Report issued during the year 2014-15. The gist of the Paragraphs are given below.

Paras 1&3/II A: As per the document, the developer was entitled to 70% share in the property in which he has right to alienate, mortgage, transfer or otherwise be in possession and enjoyment of the property in view of the recitals, the deed was required to be classified as 'sale deed' and levied Stamp Duty and Registration fees accordingly. However, Stamp Duty was levied and collected @ 8% on the payment of Rs.8 crore only ignoring the consideration specified in clause 10(1). Stamp Duty was collected to the extent of Rs.78 Lakhs against Rs.75.76 crores which resulted in short collection of Rs.74.97 crores.

Para 2/IIA: As per the deed of assignment, the assignor had assigned to the assignee all its rights and obligations acquired through the development agreement executed in favour of the assignor by the owner. Therefore Stamp duty was to be collected at Rs.18 crores against which the Stamp duty actually collected was Rs.72.01 lakhs. This resulted in short collection of Rs.17.28 crores.

Para 4/11A: As per the deed, the developer would execute the deeds as an owner as for as developer's share was concerned and as an agent in respect of owners share of the property. Accordingly, the developed portion with UDS would be sold comprehensively without any division. Hence the construction

Agreements were required to be treated as falling Under Article 5(1) and Stamp duty and Registration fees were to be levied accordingly. This resulted in shortfall in collection of Stamp Duty to the extent of rs.3.48 crores.

Paras 5,6 & 7/IIA : As the Consideration was passed from agent to principal at the time fo grant of power, the documents were required to be classified as power for consideration under Article 48(e) as per the Indian Stamp Act 1899. This resulted in short remittance of Stamp Duty to the extent of Rs.2.05 crores.

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5. With regard to the averments made in Para No.12 of the Writ Affidavit filed, it is submitted that Audit inspection report always issued to the Department and not to any individual or third party.

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10. With regard to the Grounds raised in para 17 of the Writ Affidavit filed, it is submitted that during the process of audit, this office has authority to verify, whether the classification of documents as assessed by the registering authority was right and proper. The failure of the Department collecting the Stamp Duty and Registration Fees as per the Indian Stamp Act, 1899 is pointed out as an Audit Objection and communicated to the Department through the Inspection Report issued during the year 2014-15.

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14. With regard to the Grounds related in Para 17 (ix) of the Writ Affidavit filed, it is submitted that the Audit objection was based on the criteria and which has been

expressed to the Department. It is for the department to revalidate the decision with reference to audit observation and further comply the audit observation or contest.

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17. With regard to the Grounds raised in para 17(vii) of the Writ Affidavit filed it is submitted that the objection was not raised on whimsical and fanciful classifications. Audit points out the deficiency / lacuna noticed during audit based on the rule provisions / criteria and issues objections to the Department which was verified by the Department. Based on such verification, Demand notice was issued by the department to the Petitioner.

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20. With regard to the averments made in para 19 of the Writ Affidavit filed it is submitted that the third respondent has accepted the Audit queries raised and had confirmed the order dated 11.2.2019.

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23. All other averments made in the Writ Petition not adverted to are dealt by the other Respondents. The Respondent is not a proper and necessary party to the present proceedings and therefore seeks for dismissal of the above Writ Petition filed against the First respondent.

7. The 4th respondent has also filed individual counter affidavits in all the three Writ Petitions.

8. The relevant portions in the counter affidavit filed in W.P.No.29304 of 2019, are extracted hereunder:

5. With regard to Paras 5 to 7 of the affidavit, I submit that a Deed of Development Agreement dated 29.12.2010 executed between Addison & Company Ltd., the Owner and Godrej

Properties Limited, the Petitioner as the confirming party to M/s. Godrej Sea View Properties Private Limited as the Developer agreeing to transfer 68% undivided share in the property to the developer in the owner's land in Sembarambakkam Village for the consideration of allotting 32% of constructed area by the developer to the owner. The said Development Agreement dated 29.12.2010 was presented for registration on 21.1.2011 and the same was registered as No.103/2011. The then 4th respondent considered that there is no transfer of any immovable property and the agreement is chargeable under Article 5(j) as an agreement not otherwise provided for and levied stamp duty of Rs.100/- and registration fee of Rs.6,00,000/-. But the 1st respondent has observed while conducting audit of this respondent's office that as per clause 10 of the agreement, 32% of the Sale consideration arising Sale of Owner's share of the saleable constructed area of 2,08,000 Sq.ft., at Rs.4000/- per Sq.ft., which works out to Rs.83,20,00,000/- and Rs.3,00,00,000/- as lump sum security aggregating to Rs.86,20,00,000/- is the consideration for such transfer of 68% of the land of the owner to the development. In clause 8 of the said development agreement, it is declared as follows:

"The Developer shall be entitled to 68% of the saleable constructed area, and 68% of all parking spaces, terrace areas and garden spaces and 68% of all the benefits arising from the development of the said property and 68% of the right in common areas, amenities and facilities provided in the new project and 68% undivided share, right title and interest in the subject property".

The 1st respondent has considered this clause amounts to transfer and the 3rd respondent has also concurred with the view of the 1st respondent. The right acquired under the said document No.1342/2009 has been assigned to M/s.Godrej Sea View Properties Private Limited under Deed of assignment dated 26.3.2010 registered as document No.548 of 2010 which is also challenged by the Petitioner under W.P.No.29373 of 2019.

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7. With regard to Para 12 of the affidavit, I submit that the Judgment of this Hon'ble Court in Park View Enterprises Vs. State of Tamil Nadu has no relevance to the case of the Petitioner. The said Judgment deal with whether the Insertion of Article 5(i) under Tamil Nadu Act 38 of 1987 ultra vires and the circular issued by the Inspector General of Registration dated 9.9.1998 is illegal. Article 5(i) was inserted to levy stamp duty on agreement relating to construction of a house or building the multi-unit house or building by the vendor on land sold by such Vendor and containing stipulation that such land together with such house or building or multi-unit house or building so constructed shall be held either individually or jointly by the Vendor of such land. To implement the said amendment effectively, the Inspector General fo Registration has issued a circular instructing the Sub Registrars that no agreement as aforesaid was not registered, to keep the Sale deed relating to conveyance of undivided share of land pending and inspect the property and levy stamp duty on the building constructed thereon and regular the Sale of Undivided share of land only after collecting the stamp duty on the value of building as prescribed under Article 5(i). This Hon'ble Court has elaborately discussed the various provisions of the Stamp Act, Registration Act and other relevant Acts and upheld the validity of Article 5(i) but declared the circular invalid. Hence the Judgment in Park view Enterprises cited supra is not all applicable to the case of the Petitioner.

8. With regard to Para 13 of the affidavit, I submit that the 1st respondent has conducted audit of accounts for the year 2013-14 in the month of April 2014 and observed that the Petitioner is entitled to property valued at Rs.86.20 Crores as per the Development Agreement registered as document No.1342 of 2009. Hence Rs.7,75,80,000/- towards stamp duty and registration fee is leviabale and there is a short collection of Rs.7,69,79,900/-. Hence the short collection

as observed by the 1st respondent was recorded by a note in the index of document No.103/2011 as per Circular No.251/C1/2012 dated 24.05.2012, issued by the 2nd respondent to as to make public know of the charge to Government on the properties relating to document No.103/2011.

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10.With regard to Para 15 of the affidavit, I submit that the 3rd respondent has considered the audit observation of the 1st respondent in detail and examined the provisions of the Stamp Act and decided to accept the observation of the 1st respondent. Accordingly the 3rd respondent has directed this respondent to take steps to collect the loss of revenue under his Letter No.7023/J1/2015 dated 11.2.2019. Hence this respondent has referred the document No.103/2011 to the 5th respondent herein under Section 47-A(3) of the Stamp Act for determination of market value and collection of difference in stamp duty if any on such determination.

11.With regard to Para 17 of the affidavit, I submit that Petitioner is having alternative remedy before the 5th respondent and when the order to be passed by the 5th respondent is not agreeable to the Petitioner, it can make an appeal to the 3rd respondent under Section 47-A(5) of the Stamp Act and hereafter if desired appeal can be made under Section 47-A(10) of the Stamp Act to this Hon'ble Court. It is submitted that no further documents could be registered in view of the circular of the 3rd respondent in No.251/C1/2012 dated 24.5.2012.

9.The relevant portion in the counter affidavit filed in W.P.No.29373 of 2019, is extracted hereunder:

5.With regard to Paras 5 to 7 of the affidavit, I submit that a Deed of Assignment dated 26.3.2010 executed by the Petitioner, the Developer/ Assignor and Addison & Company Ltd., the Owner/Confirming Party to and in favour of Godrej Sea View Properties Private Limited assigning their development right to

develop the owner's land in Sembarambakkam Village by constructing multi storied apartments granted to the assignor by the owner under a Development Agreement dated 7.9.2009 registered as No.1342/2009 was presented for registration on 26.3.2010 and the same was registered as No.548/2010. Consideration for assignment of development right was declared in the said Deed of Assignment as Rs.10000/-. The refundable advance of Rs.8 Crores paid by the Petitioner to Addison & Company under document No.1342/2009 and Rs.10000/- aggregating Rs.8,00,10,000/- treated as consideration for Development Agreement under document No.1342/2009 has been taken as consideration for this Deed of Assignment also. The then 4th respondent might have considered that there is no transfer of any immovable property and the subject matter of transfer is only the development right and levied stamp duty of Rs.64,00,000/- at 8% on the assumed consideration under Article 23 of Schedule 1 to the Indian Stamp Act.

10.The relevant portion in the counter affidavit filed in W.P. No. 29374 of 2019, is extracted hereunder:

5.With regard to Paras 5 to 7 of the affidavit, I submit that a Deed of Assignment dated 7.9.2009 executed between Addison & Company Ltd., the Owner and Godrej Properties Limited, the Developer agreeing to transfer 70% undivided share in the property to the developer in the owner's land in Sembarambakkam Village for the consideration of allotting 30% of constructed area by the developer to the owner. The said Development agreement dated 7.9.2009 was presented for registration on 7.9.2009 and the same was registered as No.1342/2009. The refundable advance of Rs.8 Crores to be paid by the Petitioner to Addison & Company was treated as consideration. The then 4th respondent might have considered that there is no transfer of any immovable property and the subject matter of transfer is only the development right and levied stamp duty of

Rs.64,00,000/- at 8% on the assumed consideration under Article 23 of Schedule 1 to the Indian Stamp Act. But the 1st respondent has observed while conducting audit of this respondent's office that as per clause 10 of the agreement, 30% of the Sale consideration arising Sale of Owner's share of the saleable construction area of 4,80,000 Sq.ft., at Rs.4,000/- per Sq.ft., which works out to Rs.192,00,00,000/- and Rs.8,00,00,000/- payable on expiry of 24 months from the commencement date aggregating to Rs.200,00,00,000/- is the consideration for such transfer of 70% of the land of the owner to the developer. In clause 4(ii) of the said development agreement, it is declared as follows:-

"The developer shall be entitled to the balance 70% of the saleable constructed area, including 70% of all parking spaces, terrace areas and garden spaces as also 70% of the benefits arising from the development of the said property and 70% of the right in common areas, amenities and facilities provided in the project and 70% undivided share, right, title and interest in the said property (hereinafter referred as to developer's share). The Developer shall be entitled to alienate, mortgage, transfer or otherwise be in possession and enjoyment of the same. The Developer's share shall belong absolutely to the Developer."

The 1st respondent has considered this clause amounts to transfer and the 3rd respondent has also concurred with the view of the 1st respondent. The right acquired under the said document No.1342/2009 has been assigned to M/s.Godrej Sea View properties Private Limited under Deed of assignment dated 26.3.2010 registered as document No.548 of 2010 which is also challenged by the Petitioner under W.P.No.29373 of 2019.

11.This Court has extracted only para 5 in W.P.No.29373 and W.P.No.29374 of 2019 since all the other averments made in those counter affidavits are common to the averments made in the counter affidavit filed in W.P.No. 29304 of 2019.

12.Mr. ARL Sundaresan, learned Senior Counsel appearing on behalf of the petitioner in all the three Writ Petitions, made the following submissions:

- The Audit Objection made by the 1st respondent by treating the entire transaction as a conveyance chargeable with Stamp Duty under Article 23 of Schedule I of the Act, is patently erroneous since none of the documents transfer the title in favour of the petitioner with regard to the subject property.
- The 3rd respondent has blindly followed the findings of the 1st respondent and has straight away passed an order dt. 11.02.2019, even without mentioning under which provision of law this order was passed.
- There was absolutely no opportunity afforded to the petitioner before such an adverse order was passed and steps were taken to recover the Deficit Stamp Duty and Registration Fees from the petitioner.
- The impugned action sought to be taken against the petitioner has been initiated only in the year 2019 under Section 47-A of the Act, for the recovery of the Deficit Stamp Duty and Registration Fees towards documents executed on 07.09.2009, 26.03.2010 and 29.12.2010 and the entire exercise is barred by limitation and the respondents lack jurisdiction even to take action since it has to be taken within a period of five years from the date of Registration as per the provisions of Section 47-A of the Act.
- The concerned Sub Registrar had applied his mind and collected the Stamp Duty and Registration Fees after considering the nature of the documents and hence on receipt of the Audit Objection, the Registration Authority should have given an explanation justifying the Collection of Stamp Duty and Registration Fee and without doing so, it was straight away acted upon by the 3rd respondent and the Impugned Order has been passed on 11.02.2019.
- The learned Senior Counsel in order to substantiate his submissions also relied upon various judgements of the Hon'ble Supreme Court and this Court.

13. Mr. R. Sankaranarayan, learned Additional Solicitor General of India, appearing on behalf of the 1st respondent made the following submissions:

- The 1st respondent was discharging a constitutional function conferred under the Constitution of India under Article 148 to 151 and based on the Inspection Audit, Observations were issued to the Registration Department through a report during the year 2014-2015.
- On examining the nature of all the three transactions that took place through documents dt.07.09.2009, 26.03.2010 and 29.12.2010, the 1st respondent found that there was a short collection to the total tune of Rs.45,73,87,622/- (explained in the Tabular Column extracted supra).
- The Audit Objection was addressed only to the Department and not to the Petitioner and the Department has accepted the report and acted upon the same and the Audit Objection can never become a subject matter of challenge in a Writ Petition since it is more in a nature of a recommendation.
- Once an Audit Objection is made, it is for the concerned Department to revalidate the decision with reference to Audit Observation and further comply with the Audit Observation or contest the same. There is no requirement for the 1st respondent to justify his actions to the Petitioner and in fact the 1st respondent is not even a necessary party in this Writ Petition.

14. Mr. S.R.Rajagopal, learned Additional Advocate General appearing on behalf of respondents 2 to 5, made the following submissions:

- This is a case which involves a huge revenue loss for the Government due to shortage in Collection of Stamp Duty and Registration Fees and the 3rd respondent is vested with the powers under Section 47-A of the Act, to initiate proceedings and pass orders wherever it is found that the interests of revenue is affected. The five years prescribed under the provision does not bar the 3rd respondent to exercise the power and the proceedings cannot be held to be without jurisdiction. To substantiate this submission, the learned Additional Advocate General, relied upon the judgment of the Hon'ble Supreme Court in P.T.Rajan v. T.P.M. Sahir and Others reported in [2003 8 SCC 498].

- When a provision of law is relatable to performance of a public duty and any act done in disregard of the law applicable, causes serious prejudice and such a provision prescribing a time limit should only be treated as directory and not mandatory. Therefore, the Impugned Order passed by the 3rd respondent on 11.02.2019, is valid and the petitioner will have to necessarily participate in the proceedings initiated by 5th respondent.
- The 3rd respondent independently applied his mind and found that the development agreement dt. 29.12.2010, amounts to a conveyance. Similarly, on analysing the Assignment Deed dt. 26.03.2010, it was found that the refundable advance amount of rupees eight crores paid by the petitioner along with Rs.10,000/- shown in the document should have been aggregated as the total consideration for this Deed of Assignment and the Stamp Duty should have been levied accordingly. Likewise, the development agreement dt.07.09.2009, was also in the nature of a conveyance and the Stamp Duty should have been levied accordingly. The 3rd respondent did not blindly act upon the report of the 1st respondent and there was an independent application of mind which resulted in passing of the Impugned order dt.11.02.2019.
- The documents have only been referred to the 5th respondent under Section 47-A(3) of the Act, for determination of market value and collection of difference in Stamp Duty and the petitioner can always participate in the proceedings before the 5th respondent. Ultimately, if the petitioner is not agreeable with the Order passed by the 5th respondent, there is also a right of appeal to the 3rd respondent under Section 47-A(5) of the Act and a further Appeal under Section 47-A(10), before this Court. The petitioner without exhausting these remedies cannot be allowed to directly approach this Court.
- The Audit Objection made by the 1st respondent cannot be put to challenge in a Writ Petition and it is more in the nature of observations/findings of the 1st respondent made to the Registration Department and the petitioner will have no say over such a report.

- There are absolutely no merits in these Writ Petitions and the same is liable to be dismissed by this Court.

15. This Court has carefully considered the submissions made on either side and the materials available on record.

16. The following issues arise for consideration in the present case.

(a) Whether Audit Objections made by the first respondent can be put to challenge in a Writ Petition by a party who finds those objections going against his interest?

(b) When a *Suo motu* power is exercised by the 3rd respondent under the Indian Stamp Act, 1899, whether the same has to be exercised within the limitation period prescribed under the enactment or the period prescribed is only directory in nature and hence action can be initiated even beyond the period prescribed under the Indian Stamp Act, 1899?

(c) Whether the petitioner will have to participate in the proceedings initiated by the 5th respondent under Section 47-A (3) of the Indian Stamp Act, 1899, and exhaust the alternative remedy and on the said ground, the present Writ Petition is liable to be dismissed?

17. This Court will now deal with the first issue that arises for consideration:

The 1st respondent is a Constitutional Authority vested with independent powers under Article 148 to 151 of the Constitution of India. The 1st respondent is entitled to conduct Audit in the Government Departments, which also includes the Registration Department. Such an Audit was conducted in the office of the 4th respondent during the year 2014-2015 and the Audit raised certain objections and included the same in the Inspection Report issued during the year 2014-2015. It was found that there was a short collection towards Stamp Duty on all the three documents referred supra. On receipt of the Audit Objection, it is always left open to the concerned Department to revalidate the decision with reference to the Audit Observation and further comply with the Audit Observation or justify its stand and contest the findings of the Audit Observation. It is therefore purely in the nature of an internal communication between the 1st respondent and the concerned Department.

18. The learned Senior Counsel appearing on behalf of the petitioner advanced elaborate arguments with regard to the nature of document that was executed between the parties and the learned Senior Counsel questioned the observation made in the Audit Objection and submitted that there is a patent error on the part of the 1st respondent to have treated the entire transaction as a conveyance more particularly when the title has not passed on to the petitioner.

19 In the considered view of this Court, this Court need not deliberate on the merits of the findings of the 1st respondent made in the Audit Objection since an Audit Objection can never be made a subject matter of challenge in a Writ Petition.

20. The Hon'ble Supreme Court had an occasion to consider the issue as to whether the Court can grant relief by merely placing reliance upon the report of Comptroller and Auditor General (hereinafter called as 'CAG'). The Hon'ble Supreme Court held that the Court cannot act on such reports and these are reports which are placed before the Parliament, which may or may not accept the Report of CAG. It would be more relevant to extract the portions of the judgment of the Hon'ble Supreme Court in Arun Kumar Agrawal v. Union of India and Others reported in (2013) 7 SCC 1.

63. Durga Das Basu in Commentary on the Constitution of India, 8th Edn., 2009 at p. 6058 says:

"that the Public Accounts Committee is to examine the report of the Comptroller and Auditor General, in order to satisfy itself on certain points:

Firstly, it has to verify that the monies shown in the accounts as spent have actually been spent for the purpose for which Parliament granted them.

Secondly, it has to satisfy itself that the monies granted by Parliament have been spent by the Government 'within the scope of the demands'. This means that no expenditure should exceed the amount granted without fresh parliamentary approval, nor should the grant be appropriated for a new service not contemplated in the demand. Even if there is a surplus of a grant under one vote, it cannot be appropriated to another vote without sanction of Parliament.

The exercise of this function gives the Committee a comprehensive power of survey over the entire scheme of expenditure of the Government as well as the administration. Though the Committee has nothing to question the policies of the Government, it has to scrutinise the implementation of the policies through its review of the expenditure. Both in England ... as well as in India, it has been acknowledged that the present function includes a criticism of extravagant or wasteful expenditure of public money, in general, and in this connection, it is entitled to point out the weak points in the administration of the departments concerned, and also to ensure that proper action has been taken against delinquents guilty of irregularity or breach of the rules, though it has no power to enforce its comments by any direct administrative action.

Thirdly, the audit of the accounts of the State corporations is another important function entrusted to the Public Accounts Committee. Its importance is increasing with the ever-expanding State activity in the sphere of industry and enterprise."

64. In this connection it is useful to refer to the practice of the PAC, as set out in a note found in the website of the Lok Sabha which states as follows:

"Selection of subject for examination:

As the work of the Committee is normally confined to the various matters referred to in the Audit Reports, and appropriation accounts, its work normally starts after the Reports of the Comptroller and Auditor General on the accounts of the Government are laid on the Table of the House. As soon as the Committee for a year is constituted, it selects paragraphs from the reports of the Comptroller and Auditor General that were presented after the last selection of subjects by the Committee for in-depth examination during its term of office.

Assistance by Comptroller and Auditor General:

The Committee is assisted by the Comptroller and Auditor General in the examination of Accounts and Audit Reports.

Calling for information from Government:

The Committee calls for, in the first instance, background note and advance information from the Ministries/Departments concerned in regard to subjects selected by it for examination.

Evidence of the officials:

The Committee later takes oral evidence of the representatives of the Ministries/Departments concerned with the subjects under examination.

Report and minutes:

The conclusions of the Committee on a subject are contained in its Report which, after its adoption by the Committee, is presented by the Chairman to the Lok Sabha. Minutes of the sittings of the Committee form Part II of the Report. A copy of the Report is also laid on the Table of Rajya Sabha. The Reports of the Committee are adopted by consensus among members. Accordingly, there is no system of appending minute of dissent to the Report."

65. Action taken reports (ATRs) are then required to be made out by the Ministries. The Speaker has the power to issue directions under the rule and procedure. Direction 102 requires the Government to, as early as possible, furnish the PAC with a statement showing the action taken on the recommendations of the PAC Report. Parliament has before it not only the report of the CAG, the report of the PAC in the first instance drawn up after hearing the view of the Ministries, the action taken report including the replies of the Government and the further comments of the PAC on the replies of the Government.

66. We have referred to the report of the CAG, the role of the PAC and the procedure followed in the House, only to indicate that the CAG Report is always subject to scrutiny by Parliament and the Government can always offer its views on the report of the CAG.

67. The question that is germane for consideration in this case is whether this Court can grant reliefs by merely placing reliance on the CAG's Report. The CAG's Report is always subject to parliamentary debates and it is possible that PAC can accept the ministry's objection to the CAG Report or reject the report of the CAG. The CAG, indisputably is an independent constitutional functionary, however, it is for Parliament to decide whether after receiving the report i.e. PAC to make its comments on the CAG's Report.

68. We may, however, point out that since the report is from a constitutional functionary, it commands respect and cannot be brushed aside as such, but it is equally important to examine the comments what respective Ministries have to offer on the CAG's Report. The Ministry can always point out, if there is any mistake in the CAG's report or the CAG has inappropriately appreciated the various issues. For instance, we cannot as such accept the CAG report in the instance case.

21.As rightly contended by the learned Additional Solicitor General of India appearing on behalf of the 1st respondent, the Audit Inspection Report is always issued to the concerned Department and not to any individual or third party. No individual or third party will have any say on the Audit Report or Audit Objections. Ultimately, when it is sought to be accepted and implemented by the concerned Department, the action of the Department can become a subject matter of challenge. Incidentally, during those proceedings, the findings made in the Audit Inspection Report and which has been adopted by the Department, can be subjected to judicial scrutiny. To put it simply, if the Audit Objections remains as it is without being implemented or acted upon, no one can be allowed to challenge the same by way of filing a Writ Petition under Article 226 of the Constitution of India. This will typically happen in a case

where the Department justifies its action and contest the findings in the Audit Report. However, when the Department decides to accept and act upon the Audit Objection and take action against the concerned person, the Audit Observations / Objections, will be treated as if it is forming part of the action initiated by the concerned Department and therefore will be subject to judicial scrutiny. Even in such a case, the Audit Report cannot be challenged and only the consequential action initiated based on the Audit Objection can be put to challenge.

22. In view of the above discussion, this Court is of the clear view that the first portion of the relief sought for by the petitioner challenging the relevant portions of the Audit Objections made by the 1st respondent is not maintainable and the same is liable to be straight away rejected by this Court. In fact, the 1st respondent ought not to have been made as a party in the present Writ Petition and probably the 1st respondent was made a party since the Audit Objection was put to challenge. The first issue is answered accordingly.

23. This Court will now venture to decide the second issue. The 3rd, 4th and 5th respondents are authorities, who are merely the creatures of the Statute viz; The Indian Stamp Act, 1899. Any creature of the Statute can act only within the powers specifically conferred by the Statute. There is nothing called as an inherent power to such creatures of Statute and every power exercised by the concerned Authority has to be necessarily traced from the relevant provisions in the enactment. This Rule will also equally apply when it comes to exercising Suo motu powers.

24. Section 47-A of the Act, is the relevant provision which has to be taken into consideration to determine the Suo motu power conferred upon the 3rd respondent. For proper understanding, the provision is extracted hereunder:

"Section 47-A. Instrument 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 reference under sub-section (1), the Collector shall, after giving the parties 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; (3) 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, payable 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) 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 Court shall be excluded.

(10) Any person aggrieved by an order of the Authority prescribed under sub-section (5) of the Chief Controlling Revenue Authority under subsection (6) may, within such time and in such manner, as may be prescribed by rules made under this Act, appeal to the High Court.

Explanation.- For the purpose of this Act, market value of any property shall be estimated to be price which, in the opinion of the Controller 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 or benami right or settlement."

25. The above provision stipulates the power conferred on the Authorities to decide as to whether any instrument of conveyance, exchange, gift etc., has been undervalued and if so, to determine the proper value and to collect the appropriate Stamp Duty payable under the relevant instrument. A careful scrutiny of subsection 3 shows that a *Suo motu* power has been conferred on the Collector (the 5th respondent herein) to initiate such an action within a period of five years from the date of Registration of any instrument. It is therefore clear that the Act itself provides a limitation for exercise of *Suo motu* powers. Likewise, the Chief Controlling Revenue Authority (the 3rd respondent herein) has also been conferred with a *Suo motu* power to initiate such an action based on the Order passed under subsection 2 or 3 of Section 47-A. Again, the *Suo motu* power of the 3rd respondent is clearly circumscribed by a maximum period of five years to initiate such an action.

26. The submission of the learned Additional Advocate General to the effect that this period is only directory and not mandatory, is not acceptable to this Court. If the submission made by the learned Additional Advocate General is accepted, an unbridled power will be conferred on the Authority to initiate action at any time and it will go against the very object of the enactment. It must be borne in mind that the Sub Registrar even at the time of Registration, applies his mind on the document presented for Registration and decides the Stamp Duty payable on the document. Under such circumstances, even though such

determination can be subject to scrutiny by exercising a Suo motu power, the same cannot be done beyond the period of limitation prescribed under the enactment. The enactment specifically mandates such power to be exercised within five years from the date of Registration of any instrument, under subsection 3 and five years from the date on which Orders were passed under subsection 2 and subsection 3 of Section 47-A.

27. It will be relevant to take note of a recent judgment of the Hon'ble Supreme Court in this regard. The Hon'ble Supreme Court was dealing with three important questions that arose for consideration under the Act touching upon the powers of the Collector and the Inspector General of Registration. While dealing with these issues, the Hon'ble Supreme Court has given a very important and pertinent finding with regard to the exercise of Suo motu power and the period of limitation prescribed under the Act and the relevant portion in the judgement in The Inspector General of Registration, Tamil Nadu and Ors .v. K.Baskaran, reported in (2020) 5 LW 485 is extracted hereunder:

30. Sub-section (6) of Section 47-A of the Act empowers the Chief Controlling Revenue Authority, in exercise of suo motu power, to call for and examine the correctness of an order passed Under Sub-section (2) or Sub-section (3) of Section 47-A; and if the order is prejudicial to the interest of Revenue, the Chief Controlling Authority may make such enquiry or cause such enquiry to be made and either revise, modify or set aside such order and pass any order that it deems appropriate. There are some limitations on the exercise of said power, since no proceedings can be initiated against an order passed Under Sub-section (2) or Sub-section (3), if the time for preferring an appeal against that order has not expired, or if more than five years have expired after passing of the order. The intent is clear that if there be sufficient time to prefer a regular appeal challenging that order, the remedy of filing an appeal ought to be taken resort to. Further, if the period of five years has expired, no suo motu power can be exercised. Another limitation is prescribed by Sub-section (8), in terms of which no order in exercise of suo motu exercise of power can be passed which may adversely impact a person, unless that person has had reasonable opportunity of being heard. Apart from these limitations, the statutory provisions do not

impose any other restriction, and the power is conferred principally to ensure that no order passed Under Sub-sections (2) or (3) of Section 47-A is prejudicial to the interest of the revenue. The limitation in Sub-section (8) of Section 47-A, was high-lighted in paragraphs 33 to 36 of the judgment of the High Court in Rajendran v. The Inspector General of Registration, Tamil Nadu and Ors. (supra). In the present case, adequate notice was issued to the concerned persons and, therefore, there was no infirmity on that count. It is nobody's case that as on the date when the proceedings were initiated in exercise of the power Under Sub-section (6) of Section 47-A, the period for preferring the appeal had not expired, or that more than five years had expired after the passing of the order Under Sub-section (2) or Sub-section (3). In the circumstances, none of the limitations which the statute has imposed upon the exercise of power were present.

28. The above observations made by the Hon'ble Supreme Court makes it very clear that there are limitations in exercise of the Suo motu power prescribed by the enactment. The Hon'ble Supreme Court has made it clear that if the period of five years has expired, no Suo motu power can be exercised. (emphasis supplied).

29. In the present case, the 3rd respondent decided to act upon the Audit Objection and the source of power is the Suo motu power conferred under Section 47-A of the Act. In this case, the documents were registered on 07.09.2009, 26.03.2010 and 29.12.2010. The Audit Objection was issued during the year 2014-2015. The 3rd respondent has proceeded to pass the Order only on 11.02.2019, to initiate action for undervaluation and Recovery of Deficit Stamp Duty. This Order passed in exercise of the Suo motu power conferred on the 3rd respondent is well beyond the period of limitation prescribed under the Act. It is this Order that has resulted in the action initiated by the 5th respondent under Section 47-A (3) of the Act. Such action is clearly beyond the bounds of the Act and as a creature of the Statute, the Authority cannot act beyond the powers conferred under the Act. The so-called revenue loss that will be suffered by the State, howsoever unpalatable, cannot justify an Authority from exercising a power not conferred on him. Therefore, the Impugned Order passed by the 3rd respondent dt. 11.02.2019 and the

consequential action initiated by the 5th respondent for Recovery of the Deficit Stamp Duty, is without jurisdiction and the same is liable to be interfered by this Court. The second issue is answered accordingly.

30. In view of the finding rendered by this Court in the 2nd issue, there is no requirement to deliberate on the 3rd issue since the 5th respondent cannot proceed further with the action initiated against the petitioner.

31. In view of the above findings, this Court has no hesitation in interfering with the Impugned Order passed by the 3rd respondent dt. 11.02.2019 and accordingly, the same is quashed. In view of the same, action initiated by the 5th respondent for Recovery of the Deficit Stamp Duty against the petitioner also becomes unsustainable and the same is also set aside. In view of this finding, the documents presented for Registration by the petitioner and its customers, will have to be entertained by the 4th respondent, if it is otherwise in order and subject to the payment of the prescribed Stamp Duty and Registration Fees.

32. In the result, all the three Writ Petitions are allowed in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

KP

To

1. Accountant General (A & E), Tamil Nadu,
Office of the Accountant General (A & E), Tamil Nadu,
361 Anna Salai, Teynampet, Chennai 600 018.

2. The Principal Secretary,
The State of Tamil Nadu,
Commercial Taxes and Excise Department,
Fort St. George, Chennai.

3.The Inspector General of Registration,
100, Santhome High Road,
Mylapore, Chennai, Tamil Nadu 600 028.

4.The Sub Registrar,
Poonamallee,
Magistrate Court Complex,
Poonamallee, Chennai.

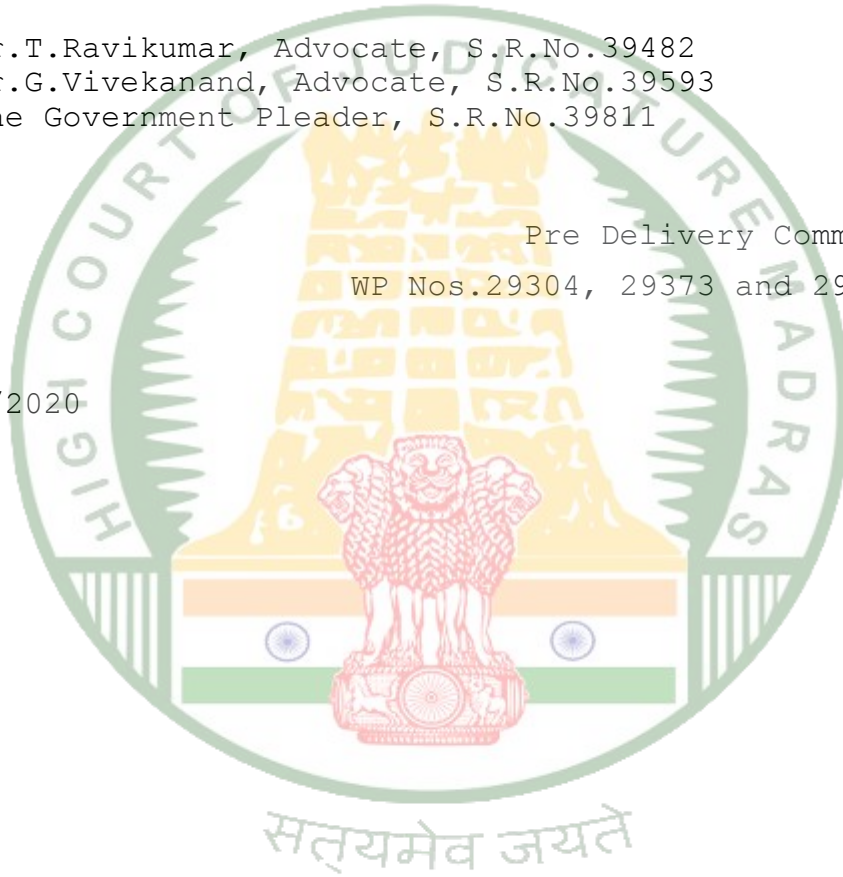
5.District Collector (Stamps),
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+1cc to Mr.T.Ravikumar, Advocate, S.R.No.39482
+1cc to Mr.G.Vivekanand, Advocate, S.R.No.39593
+1cc to the Government Pleader, S.R.No.39811

Pre Delivery Common Order in
WP Nos.29304, 29373 and 29374 of 2019

NMI (CO)

KKV/16/12/2020



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