



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.17490 to 17497 of 2012

W.P.No.17490 of 2012:-

Hiranandani Township Private Limited,
[now "Hiranandani Realtors Private Limited"]
Represented by its Authorized Signatory,
R.Rajaratnam
No.514, Dalamal Towers,
Nariman Point,
Mumbai - 400 021.

... Petitioner in All WP's

-Vs-

1. The Chief Controlling Revenue Authority
And Inspector General of Registration,
No.120, Santhome High Road,
Mandavelli,
Chennai - 600 028.
2. The District Registrar,
Chengalpattu,
Kancheepuram District.
3. The Sub-Registrar,
Thiruporur,
Chengalpattu Taluk,
Kancheepuram District.

... Respondents in All WP's

Prayer in W.P.No.17490 of 2012:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the First Respondent in Proceedings bearing No.53024/P1/2011, dated 10th April 2012 and the Certificate bearing No.8039/B2/2008, dated 4th October 2011 issued by the Second Respondent in respect of Agreement for Sale Dated 15th October 2007, registered as Doc.No.9752 of 2007 and quash the same and forbear the Respondents from initiating any further action basis the



Agreement for Sale dated 15th October 2007 registered as Doc.No.9752 of 2007, on the file to the third Respondent and/or pass such further or other orders as this Hon'ble Court may think fit and proper in the facts and circumstances of the case.

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Prayer in W.P.No.17491 of 2012

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 1st respondent in proceedings bearing No. 53024/P1/2011 dated 10th April 2012 and the Certificate bearing No. 8039/B2/ 2008 dated 4th October 2011 issued by the 2nd respondent in respect of Agreement for Sale dated 17th October 2007 registered as Doc. No. 10327 of 2007 and quash the same and forbear the respondents from initiating any further action basis the Agreement for Sale dated 17th October 2007 registered as Doc. No. 10327 of 2007 on the file do the 3rd respondent

Prayer in W.P.No.17492 of 2012

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 1st respondent in proceedings bearing No. 53024/P1/2011 dated 10th April 2012 and the Certificate bearing No. 8039/B2/ 2008 dated 4th October 2011 issued by the 2nd respondent in respect of Agreement for Sale dated 17th October 2007 registered as Doc. No. 10329 of 2007 and quash the same and forbear the respondents from initiating any further action basis the Agreement for Sale dated 17th October 2007 registered as Doc. No. 10329 of 2007 on the file do the 3rd respondent

Prayer in W.P.No.17493 of 2012

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 1st respondent in proceedings bearing No. 53024/P1/2011 dated 10th April 2012 and the Certificate bearing No. 8039/B2/ 2008 dated 4th October 2011 issued by the 2nd respondent in respect of Agreement for Sale dated 23rd April 2008 registered as Doc. No. 4387 of 2008 and quash the same and forbear the respondents from initiating any further action basis the Agreement for Sale dated 23rd April 2008 registered as Doc. No. 4387 of 2008 on the file do the 3rd respondent

Prayer in W.P.No.17494 of 2012

Writ Petition filed under Article 226 of the Constitution



of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 1st respondent in proceedings bearing No. 53024/P1/2011 dated 10th April 2012 and the Certificate bearing No. 8039/B2/ 2008 dated 4th October 2011 issued by the 2nd respondent in respect of Agreement for Sale dated 17th October 2007 registered as Doc. No. 10325 of 2007 and quash the same and forbear the respondents from initiating any further action basis the Agreement for Sale dated 17th October 2007 registered as Doc. No. 10325 of 2007 on the file do the 3rd respondent

Prayer in W.P.No.17495 of 2012

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 1st respondent in proceedings bearing No. 53024/P1/2011 dated 10th April 2012 and the Certificate bearing No. 8039/B2/ 2008 dated 4th October 2011 issued by the 2nd respondent in respect of Agreement for Sale dated 17th October 2007 registered as Doc. No. 10326 of 2007 and quash the same and forbear the respondents from initiating any further action basis the Agreement for Sale dated 17th October 2007 registered as Doc. No. 10326 of 2007 on the file do the 3rd respondent

Prayer in W.P.No.17496 of 2012

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 1st respondent in proceedings bearing No. 53024/P1/2011 dated 10th April 2012 and the Certificate bearing No. 8039/B2/ 2008 dated 4th October 2011 issued by the 2nd respondent in respect of Agreement for Sale dated 17th October 2007 registered as Doc. No. 10328 of 2007 and quash the same and forbear the respondents from initiating any further action basis the Agreement for Sale dated 17th October 2007 registered as Doc. No. 10328 of 2007 on the file do the 3rd respondent

Prayer in W.P.No.17497 of 2012

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 1st respondent in proceedings bearing No. 53024/P1/2011 dated 10th April 2012 and the Certificate bearing No. 8039/B2/ 2008 dated 4th October 2011 issued by the 2nd respondent in respect of Agreement for Sale dated 15th October 2007 registered as Doc. No. 9753 of 2007 and quash the same and forbear the respondents from initiating any further action basis the



Agreement for Sale dated 15th October 2007 registered as Doc. No.9753 of 2007 on the file do the 3rd respondent.

In all W.P.s

For Petitioner : Mr.M.S.Murali

for M/s.R and P Partners

For Respondents : Mr.S.Silambanan
Additional Advocate General

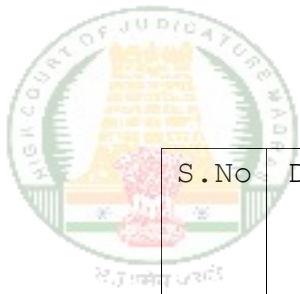
Assisted by Mr. Yogesh Kannadasan
Special Government Pleader.

COMMON ORDER

All the writ petitions have been filed to call for the records pertaining to the order of the first respondent in proceedings, bearing No.53024/P1/2011, dated 10.04.2012 and the Certificate bearing No.8039/B2/2008, dated 04.10.2011 issued by the second respondent and quash the same and forbear the respondents from initiating any further action basis the Agreement for sale in respect of the subject property.

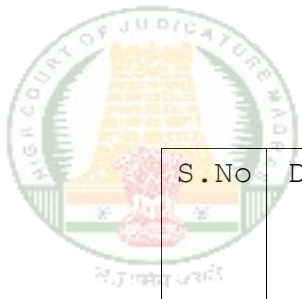
2. The petitioner is one and the same in all the writ petitions. The case of the petitioner is that the petitioner company had entered into an agreement for sale with its vendor and presented for registration before the third respondent and all the agreement for sale were registered in the following manner for the purchase of certain agricultural lands,

S.No	Doct. No	Date of execution	Vendor	Purchaser	Confirming Party	Consideration amount in crores
1.	10325/2007	17.10.2007	1. D.Suresh Reddy 2. M.R.K.S. Varma	Hiranandani Township Private Ltd.,	M/s.Sai Surya Realtors and Developers	3,50,59,999



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S.No	Doct. No	Date of execution	Vendor	Purchaser	Confirming Party	Consideration amount in crores
2.	10326/2007	17.10.2007	1. D. Peter Francis 2. P.Solomon Francis 3. S.Fathima Jeyamary 4.P. Antony Josephine	Hiranandani Township Private Ltd.,	M/s.Sai Surya Realtors and Developers	14,50,00,000
3.	10327/2007	17.10.2007	T.L. Sridharan	Hiranandani Township Private Ltd.,	M/s.Sai Surya Realtors and Developers	3,16,25,000
4.	10328/2007	17.10.2007	M. Kausalya	Hiranandani Township Private Ltd.,	M/s.Sai Surya Realtors and Developers	4,73,80,000
5.	10329/2007	17.10.2007	E. Rajendran	Hiranandani Township Private Ltd.,	M/s.Sai Surya Realtors and Developers	14,53,60,000
6.	9752/2007	15.10.2007	I. Narasimha Reddy	Hiranandani Township Private Ltd.,	M/s.Sai Surya Realtors	1,90,00,000
7.	9753/2007	15.10.2007	T.Chandrasekar	Hiranandani Township Private Ltd.,	M/s.Sai Surya Realtors	3,00,00,000



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S.No	Doct. No	Date of execution	Vendor	Purchaser	Confirming Party	Consideration amount in crores
8.	4387/2008	23.4.2008	1.R.Mayilvaganan 2.A.R. Rosekumar	Hiranandani Township Private Ltd.,	M/s.Sai Surya Realtors and Developers	4,02,50,000

3. The lands comprised in various survey numbers situated at Thaiyur Village, Chengalpattu Taluk, Kancheepuram District (herein after called as "subject property"). The vendor had agreed to sell the subject property to the petitioner company and agreed to execute a sale deed in favour of the petitioner company, subject to satisfaction of clear and marketable title. Under the agreement of sale, the full sale consideration was paid by the petitioner company to the vendor and the vacant possession was also handed over to the petitioner company by its vendors. All the agreement for sale were presented for registration and the petitioner had paid Rs.100/- towards stamp duty, as per the Article 5(j) of the Schedule 1A of the Indian Stamp Act, 1899, as applicable in the State of Tamil Nadu (herein after called as "the Act") and also paid 1% on the sale consideration as registration fees. Accordingly, the above said manner of the agreement for sale were registered by the third respondent.

4. In pursuant to the said agreement for sale, the vendors executed the sale deeds in favour of the petitioner in the following manner,

S.No	Writ Petition No.	Agreement For Sale		Period of Limitation Expired on	Sale Deed	
		Doc.No	Presented for Registration on		Doc. No	Presented for Registration on
1	17490 of 2012	9752/2007	15.10.2007	14.10.2010	1104/2011	31.05.2010
2	17491 of 2012	10327/2007	17.10.2007	16.10.2010	1103/2011	31.05.2010
3	17492 of 2012	10329/2007	17.10.2007	16.10.2010	1106/2011	31.05.2010
4	17493 of 2012	4387/2008	23.04.2008	22.04.2011	1105/2011	31.05.2010



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S.No	Writ Petition No.	Agreement For Sale		Period of Limitat ion Expired on	Sale Deed	
		Doc.No	Presented for Registrat ion on		Doc. No	Presented for Registrat ion on
5	17494 of 2012	10325/20 07	17.10.200 7	16.10.2 010	3804/20 10	31.05.201 0
6	17495 of 2012	10326/20 07	17.10.200 7	16.10.2 010	4227/20 10	14.06.201 0
7	17496 of 2012	10328/20 07	17.10.200 7	16.10.2 010	1107/20 11	31.05.201 0
8	17497 of 2012	9753/200 7	15.10.200 7	14.10.2 010	1108/20 11	31.05.201 0

5. At the time of registering the sale deeds, the petitioner company had also paid the requisite stamp duty at 8% on the total sale consideration paid to its vendors, under Article 23(a) of the Act and also paid requisite registration fees at 1% on the sale consideration. After a period of nearly four years, the second respondent issued show cause notice under Section 33A of the Act, dated 08.08.2011, directed the petitioner company to pay a sum as deficit stamp duty in respect of the agreements for sale which were registered, within a period of 15 days from the date of receipt of the show cause notice. The said show cause notice revealed that as per Accountant General's Audit, by the letter, dated 17.09.2009 and 17.05.2010 on the file of the first respondent issued the show cause notice, thereby to show cause as to why the alleged deficit stamp duty should not be collected.

6. On receipt of the same, the petitioner had raised preliminary objections on 24.08.2011 that the claim for deficit stamp duty was time barred one as per the 2nd proviso to Section 33A(1) of the Act. Thereafter, the second respondent called upon the petitioner to attend a personal enquiry on 26.09.2011. The representatives of the petitioner company appeared before the second respondent on 26.09.2011 for enquiry and filed written objections. However, the second respondent issued certificate on 04.10.2011 for the recovery of the deficit stamp duty from the petitioner. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. The first respondent rejected the appeal by the impugned order dated 10.04.2012.

7. The learned counsel for the petitioner would submit that the petitioner company originally entered into agreement for sale with its vendors in the year 2007 on various dates and



registered the same before the third respondent. In pursuant to the same and completion of all necessary formalities, the vendors had also executed a sale deed in favour of the petitioner and all the sale deeds were duly registered by the third respondent in the year 2010 itself. Thereafter, that too after lapse of three years on 08.08.2011, the second respondent issued the show cause notice to call upon the petitioner company to pay the deficit stamp duty based on the Accountant General's Audit report. It is clearly barred by limitation as contemplated under 2nd proviso to Section 33A(1) of the Act. The said proviso does not empower the second respondent to issue any demand notice. In fact, after registration of agreement for sale, the vendors had duly executed the sale deeds and there is absolutely no loss to the Ex-chequer.

8. He further submitted that the second respondent issued the alleged certificate without stating any reasons whatsoever for issuance of the same. The second respondent also without considering the preliminary objections raised by the petitioner, mechanically issued the certificate. He also submitted that the second respondent had conveniently interpreted the proviso to Section 33A(1) of the Act, to state that the enquiry and personal hearing are distinct. The Accountant General had initiated enquiry within the time limit and as such the certificate is valid one. The section 33A(1) of the Act, does not empower the Accountant General to initiate an enquiry as contemplated under the said proviso is to be conducted by the second respondent for issuance of the said certificate.

9. The first respondent by the letter dated 17.05.2010 has directed the second respondent to take steps under Section 33A of the Act against the petitioner. Therefore, even according to the said letter dated 17.05.2010, they issued after period of limitation. Therefore, the enquiry itself is contrary to the provisions of law and as such the impugned order is liable to be set aside. He further submitted that the petitioner in pursuant to the agreement for sale, the sale deed itself executed and it has been completed even before the receipt of show cause notice from the second respondent. The first respondent has failed to consider the objections that the deed of "Agreement for Sale" cannot be considered as "Power for Consideration" for the reason that the same has no ingredients of Power of Attorney. The recitals of the agreement for sale does not find couple with power.

10. Per contra, Mr.S.Silambanan, learned Additional Advocate General filed counter and submitted that the petitioner entered into agreement for sale with various vendors. The recitals of the agreement for sale invariably finding place that the Accountant General raised an audit objection by the report



dated 17.09.2009 stating that all the documents ought to have been treated as "Sale Agreement cum Power of Attorney given for Consideration" and the action of the registering officer in having treated them as a mere agreement to sell has resulted in loss of revenue to the tune of Rs.1,97,36,000/- (Rupees One Crore Ninety Seven Lakhs Thirty Six Thousand only).

11. On receipt of the same, the first respondent by the letter dated 25.08.2010 by pointing out the recitals of the agreements for sale and made remarks that in the instant case, the consideration is fully received by the Vendor, possession handed over and the intended buyer is permitted to transfer the right over the property. Hence, in addition to agreement of sale, it should also be classified as a "Power for Consideration" since the consideration passed through this document alone. After examining the audit objection, the remarks made by the first respondent, the Government accepted the audit objection and the remarks made by the first respondent and directed the second respondent to initiate appropriate proceedings under Section 33A of the Act by the communication, dated 17.05.2010 to recover the loss. Accordingly, the second respondent, after issuance of show cause notice, dated 08.08.2011, conducted the enquiry and issued the certificate dated 04.11.2011 under Section 33A of the Act for recovery of deficit stamp duty. It was rightly confirmed by the first respondent.

12. The learned Additional Advocate General further submitted that the only ground raised by the petitioner is that the action initiated by the second respondent is clearly barred by limitation as per the 2nd proviso to Section 33A(1) of the Act. Though, the proviso stated as "shall ", it is directory in nature, and not mandatory. Therefore, the period of limitation does not apply to the case on hand, since, the petitioner evaded the stamp duty to the tune of Rs.1,97,36,000/- (Rupees One Crore Ninety Seven Lakhs Thirty Six Thousand only). It is a huge loss to the Ex-chequer and as such the respondents rightly passed the order to recover the deficit stamp duty from the petitioner. The recitals of the agreement for sale, clearly proved that the vendor received the entire sale consideration and had given a right to sell the property and also had given the entire possession of the property along with all original documents. Therefore, it can rightly be construed the said agreement for sale cum Power of Attorney for consideration.

13. In support of his contentions, he relied upon the judgment of the Hon'ble Supreme Court of India passed in C.A.Nos.2586 to 2600 of 2020, dated 15.06.2020.

14. Heard Mr.M.S.Murali, learned counsel appearing for the



petitioner and Mr.S.Silambanan, learned Additional Advocate General appearing for the respondents.

15. The petitioner company had entered into an agreement for sale to purchase various properties on various dates such as 15.10.2007, 17.10.2007 and 23.04.2008 of various properties comprised in various survey numbers from different vendors. All the agreements were presented for registration on various Document numbers before the third respondent. Thereafter, in pursuant to the said agreements for sale, all the vendors had duly executed the sale deed in favour of the petitioner on 31.05.2010 and 14.06.2010, on the same day presented for registration before the third respondent. The third respondent had duly registered all the sale deeds by various Document numbers on the same day. While being so, the second respondent issued show cause notice on 08.08.2011 to show cause as to why the deficit stamp duty should not be collected. The said show cause notice in pursuant to the first reference cited, dated 17.09.2009 by the Accountant General and the second reference cited, dated 17.05.2010 issued by the first respondent. Therefore, on the receipt of the same, the petitioner submitted the preliminary objections that the show cause notice is barred by limitation, since, the 2nd proviso to Section 33A(1) of the Act provides only three years time for initiation of enquiry under Section 33A of the Act.

16. However, the second respondent conducted the enquiry and issued the certificate, thereby directed the petitioner to pay the deficit stamp duty to the tune of Rs.1,97,36,000/- (Rupees One Crore Ninety Seven Lakhs Thirty Six Thousand only). Aggrieved by the same, the petitioner preferred an appeal before the first respondent and the first respondent also dismissed the appeal and confirmed the certificate issued by the second respondent. The only point arose in all the writ petitions is that whether the proceedings initiated under Section 33A(1) of the Act is barred by limitation or not?.

17. It is relevant to extract the provisions under Section 33A(1) of the Act is as follows,

"33A. Recovery of deficit stamp duty - (1) Notwith-stand-ing anything contained in Section 33 or in any other provisions of this Act, if, after the registration of any instrument under the Registration Act, 1908 (Central Act XVI of 1908), it is found that the property stamp duty payable under this Act in respect of such instrument has not been paid or has been insufficiently paid, such duty or the



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deficit, as the case may be, may, on a certificate from the Registrar of the district under the Registration Act, 1908 (Central Act XVI of 1908) be recovered from the person liable to pay the duty, as an arrear of land revenue:

Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard:

Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument."

18. Thus, it is clear that no enquiry for the recovery of deficit stamp duty shall be commenced after the expiry of three years from the date of registration of the instrument. In all the writ petitions the agreements for sale were registered on 15.10.2007, 17.10.2007 and 23.04.2008. Whereas, the show cause notice issued by the second respondent only on 08.08.2011. i.e. After a period of three years from the date of registration of all the sale agreements. Therefore, the enquiry itself is vitiated as barred by limitation.

19. The learned Additional Advocate General vehemently contented that the 2nd proviso to Section 33A(1) of the Act, is only directory in nature and not mandatory. The provision under Section 33A(1) of the Act is only to collect the deficit stamp duty and no one can evade the stamp duty. If any authority concerned committed wrong, it shall not be an advantage of action to be taken into account to evade deficit stamp duty. Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative.

20. In support of his contentions, he relied upon the judgment in Civil Appeal No.2586-2600 of 2020 in the case of "The Inspector General of Registration, Tamil Nadu and ors Vs K.Baskaran.", is extracted hereunder:-

19.1 It is submitted on behalf of the Appellants that sub-sections (1) and (2) of Section 47-A do not prescribe any time limit and the stipulation in Rule 7 ought to be seen in the context and setting of various stages in the proceedings. It is submitted: -



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"...Rules 4-7 of Rules 1968 require the collector/authority to perform various tasks namely issuance of Form I notice by granting 21 days time to the parties to represent his case with evidence, consider the representations sent by the parties, verify the records, call for information or record from the public office, officer or authority, inspect the property after due notice and recording statements of the parties etc. Thereafter, the collector is required to provisionally determine the market value by taking into consideration of various factors mentioned in Rules and the same has to be communicated to the parties with Form II notice calling upon them to lodge their objections if any. Thereafter he has to consider the representations and points urged at the time of hearing and pass an order determining the market value of the properties and the duty payable on the instrument and communicate the said order. The entire exercise is time consuming and the same cannot be completed within 3 months time."

21. The expression "within three months from the date of first notice" is crucial. Is the description "first notice" referable to notice in Form I issued in terms of Rule 4(1)? The answer would obviously be in the negative. Form I notice itself must give twenty-one days to the concerned persons to respond. Depending upon their response, their statements would be recorded and/or certain



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information may be required to be called for, whereafter the Order in Form II is to be issued provisionally determining the market value. The concerned persons are entitled to raise objections in writing and must be afforded hearing. After fulfilling these requirements, the order in terms of Rule 7 can be passed. All these stages may not be completed in three months.

Further, the reference in Rule 7 is to the "first notice" and not to "notice in Form I". Considering the context and various stages preceding the stage of passing of the Order under Rule 7, the reference has to be to the first "notice in Form II". There could possibly be more than one notices in Form II, specially when the hearing is to take place on an adjourned date and that is why the period must be reckoned from the first notice in Form II. The expression immediately following "first notice" in Rule 7 is "determining the market value of the properties..." That is also indicative that the reference to the notice is one in Form II in the immediately preceding Rule 6.

22. We now deal with the question whether the stipulation of period of three months in Rule 7 is mandatory or directory.

23. Some of the decisions of this Court dealing with question as to in what circumstances and context a statutory provision can be considered to be mandatory or directory may first be noted.

A) In *State of Mysore and others v. V.K. Kangan and others*²¹

a bench of three Judges of this Court observed: -

"10. In determining the question whether a provision is mandatory or directory, one must look into the subjectmatter



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and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. No doubt, all laws are mandatory in the sense they impose the duty to obey on those who come within its purview. But it does not follow that every departure from it shall taint the proceedings with a fatal blemish. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the law-maker. And that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other."

B) In T.V. Usman vs. Food Inspector, Tellicherry Municipality, Tellicherry²², this Court was called upon to consider whether stipulation of period in Rule 7 (3) of the Prevention of Food Adulteration Rules, 1955 within which time the report of the analysis of the sample must be delivered, would be mandatory or directory. This Court quoted the following passage from the decision of the Constitution Bench of this Court:-
"10. In Dattatraya Moreshwar v. State of Bombay²³ it was held as under:
"[G]enerally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a



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public
duty and the case is such that to hold
null
and void acts done in neglect of this
duty
would work serious general inconvenience
or injustice to persons who have no
control
over those entrusted with the duty and
at
the same time would not promote the main
object of the legislature, it has been
the
practice of the Courts to hold such
provisions to be directory only, the
neglect
of them not affecting the validity of
the
acts done."

B.1) Thereafter, this Court considered
the effect of stipulation in
Rule 7(3):

"11. In Rule 7(3) no doubt the
expression "shall" is
used but it must be borne in mind that
the rule deals
with stages prior to launching the
prosecution and it is
also clear that by the date of receipt
of the report of
the Public Analyst the case is not yet
instituted in the
court and it is only on the basis of
this report of the
Public Analyst that the authority
concerned has to
take a decision whether to institute a
prosecution or
not. There is no time-limit prescribed
within which
the prosecution has to be instituted and
when there is
no such limit prescribed then there is
no valid reason
for holding the period of 45 days as
mandatory. Of
course that does not mean that the
Public Analyst can
ignore the time-limit prescribed under
the rules. He



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must in all cases try to comply with the time-limit.
But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution cannot be launched. May be, in a given case, if there is inordinate delay, the court may not attach any value to the report but merely because the time-limit is prescribed, it cannot be said that even a slight delay would render the report void or inadmissible in law.
In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to the court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Civil Appeal No.2586 of 2020 @ SLP (C) No.15790 of Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused



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entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred under Section 13(2) and that depends on the facts of each case and violation of the time-limit given in sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out."

C) In P.T. Rajan vs. T.P.M. Sahir and others²⁴ the principles were summed up as follows: -

"48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a wellsettled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See Shiveshwar Prasad Sinha v. District Magistrate of Monghyr²⁵, Nomita Chowdhury v. State of W.B.²⁶ and Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana²⁷.)

49. Furthermore, a provision in a statute which is procedural in nature although employs the word



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"shall" may not be held to be mandatory if thereby no prejudice is caused. (See Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur²⁸, State Bank of Patiala v. S.K. Sharma²⁹, Venkataswamappa v. Special Dy. Commr. (Revenue)³⁰ and Rai Vimal Krishna v. State of Bihar³¹.)"

21. In the above case, it is arising out of the provisions under Section 47A of the Act and Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of instruments) Rules, 1968 . The Hon'ble Supreme Court of India held that the period of three months as contemplated under Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of instruments) Rules, 1968, is directory in nature. Further, held that a period of three months to the general object of the provisions are considered, the fixation of period has to be taken to be directory. Otherwise, the very object of sub-serving public interest and securing public revenue would get defeated. However, the above judgment has dealt with the provisions under Section 47A of the Act and Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of instruments) Rules, 1968 .

22. The provisions under 47A of the Act arose, while any deed of conveyance presented for registration, if the registering authority has reason to believe that the market value of the property of which is subject matter of conveyance has not been truly set forth in the instrument, the registering authority after registering such documents, refer such documents to the Collector, for determination of market value of such property. Till such time the said document is treated as pending document. Whereas, as per the provisions under Section 33A of the Act, after registering of any deed of conveyance under the Registration Act, if it is found that the proper stamp duty payable has not been paid or has been insufficiently paid, such duty or the deficit as the case may be made on a certificate from the Registrar of the Registration District, be recovered from the person liable to pay the duty, as an arrear of land revenue. Though, in both the provisions meant to collect insufficient stamp duty, one is pending registration and another one is after registration. Therefore, the judgment cited by the learned Additional Advocate General is not helpful to the case on hand.

23. That apart, the Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of instruments) Rules, 1968, contemplates the collector shall after considering the



representations received at the time of hearing and after careful consideration of all the relevant factors and evidence, pass orders within a period of three months, determining the market value of the property. Therefore, the Hon'ble Supreme Court of India, held that the Rule 7 of the Tamil Nadu Stamp (Prevention of undervaluation of instruments) Rules, 1968 is only directory in nature and not mandatory.

24. Admittedly, the enquiry was initiated by the second respondent after completion of three years and issued certificate as contemplated under Section 33A of the Act. It is also curious to note that even before the issuance of show cause notice dated 08.08.2011, in pursuant to the agreements for sale, all the vendors, executed sale deeds in favour of the petitioner and all the sale deeds were duly registered and released in favour of the petitioner. Therefore, there is no loss to the Ex-chequer.

25. In view of the above, having regard to the statutory provisions, the impugned proceedings of the First Respondent in Proceedings bearing No.53024/P1/2011, dated 10th April 2012 and the Certificate bearing No.8039/B2/2008, dated 4th October 2011 issued by the Second Respondent in respect of Agreement for Sale Dated 15th October 2007, registered as Doc.Nos.9752 of 2007, 9753 of 2007, 10328 of 2007, 10326 of 2007, 10325 of 2007, 4387 of 2008, 10329 of 2007 and 10327 of 2007 are hereby quashed.

26. Accordingly, these writ petitions are allowed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mn

To

1. The Chief Controlling Revenue Authority,
And Inspector General of Registration,
No.120, Santhome High Road,
Mandavelli,
Chennai - 600 028.
2. The District Registrar,
Chengalpattu,
Kancheepuram District.



3. The Sub-Registrar,
Thiruporur,
Chengalpattu Taluk,
Kancheepuram District.

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+1cc to M/s.R and P Partners, Advocate, S.R.No.63343

W.P.Nos.17490 to 17497 of 2012

MN (CO)
CT 20/01/2022