IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

WP.Nos.10345, 10349, 10350, 8389, 8392 & 8395 of 2024
and W.M.P.Nos.11344, 11347, 11349, 9350, 9351 & 9354 of 2024

W.P.No.10345 of 2024
M/s.Sushil Infra Developers Private Limited
Rep by its Authorised Signatory
Mr.D.Senthilkumar
No.23, E.V.R.Salai (P.H.Road)
Periamet, Chennai – 600 003 .. Petitioner

Versus

1.The Inspector General of Registration
100, Santhome High Road
Chennai – 600 028

2.The District Revenue Officer
Collectorate Office
5th Floor, M.Singaravelar Maligai
No.32, Rajaji Salai
Chennai – 600 001

3.The Sub-Registrar
Office of the Sub-Registrar
Neelankarai
Chennai ..
Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned notice dated ..09.2023 issued by the 3rd respondent and the refusal checkslip dated 07.03.2024 in RFL/Neelankarai/8/2024 on the file of the 3rd respondent, quash the same and consequently direct the 3rd respondent to return the Original Sale Deed Document No.5028/2023 dated 03.04.2023 to the petitioner and register the Memorandum of Deposit of Title Deed dated 06.03.2024.

For Petitioner	:	Mr.V.Raghavachari for Mr.V.Balaji
For Respondents	:	Mr.B.Vijay Additional Government Pleader

COMMON ORDER

Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by way of this common order.

2. Challenge has been made to the refusal checkslips issued by the third respondent refusing to register the Memorandum of Deposit of Title Deeds in favour of M/s.Hinduja Leyland Finance Limited.

W.P.No.10345 of 2024

3. It is the case of the petitioner that the petitioner purchased the fifth floor of building known as Digital Zone-I, builtup area of 32536 sq.ft.,

together with an undivided share of land measuring 8391 sq.ft., out of 65775 sq.ft., by a registered deed of sale deed dated 03.04.2023 bearing Doc.No.5028/2023, land valued at the rate of Rs.2000/- per sq.ft, amounting Rs.1,67,82,000/- and the building valued at the rate of Rs. 1520/- per sq.ft. amounting to Rs.4,94,59,415/-, the total sale consideration is Rs. 6,62,41,415/-. The 3rd respondent valued the property based on the Circular No.5247/L1/2023-1 dated 30.03.2023 issued by the 1st respondent. The 3rd respondent issued notice dated ..09.2023 calling upon the petitioner demanding to pay Rs.34,02,651/- towards deficit stamp duty, Rs. 9,72,186/- towards deficit registration charges and Rs.463/- towards compliance fee, totally Rs.43,75,300/- within a period of one week, failing which he will referred the document u/s. 47A(1) of the Registration Act to the 2nd respondent.

4. Further, it is the contention that stamp duty, registration charges to the land and building are paid on the basis of the prevailing market value, which is more than the guideline value fixed by the 1st respondent dated 09.06.2017. After registration, the 3rd respondent has failed to return the original sale deed dated 03.04.2023 to the petitioner. The petitioner has

also obtained loan from M/s. Hinduja Leyland Finance Ltd on agreed terms of equated monthly installment at the rate of Rs.13,77,500/-. The Petitioner regularly repaid the said EMIS to the said Bank without any default. As of now the petitioner has paid a sum of Rs.1,65,30,000/-. The said Bank issued the loan on condition that petitioner is to deposit his title deeds along with original documents. Because of failure to return the original sale deed dated 03.04.2023, petitioner could not able to lease out the said property to the tenants for the reasons that original document registered before the 3rd respondent not returned. The 3rd respondent without considering the stamp duty and registration charges paid by the petitioner for the property purchased on 03.04.2023, on extraneous reasons referred the document to the 2nd respondent under Section 47A of the Registration Act and also referred to the Assistant Engineer, PWD to fix the value for the building. The Petitioner reliably understand that the Assistant Engineer sent the letter dated 21.08.2023 to the 3rd respondent and fixed the building value at Rs.5,19,18,202/- as against Rs.4,94,59,415/- purchased by the petitioner. However, the third respondent has not released the document. When they presented the document for registration of MoDT on 07.03.2024. The 3rd respondent refused to register the said MoDT dated 06.03.2024 and issued refusal check slip on the ground that the said document is subject to proceedings under Section 48 of the Revenue Recovery Act and as per the Circular of the 1st respondent dated 24.05.2012 vide No. 251/C1/2012, the document could not be registered. Hence, the petition.

W.P.No.10349 of 2024

5. It is the case of the petitioner that the petitioner purchased the sixth floor of building known as Digital Zone-I, builtup area of 31653 sq.ft., together with an undivided share of land measuring 8163 sq.ft., out of 65775 sq.ft., by a registered deed of sale deed dated 03.04.2023 bearing Doc.No.5022/2023, land valued at the rate of Rs.2000/- per sq.ft, amounting Rs.1,63,26,000/- and the building valued at the rate of Rs. 1520/- per sq.ft. amounting to Rs.4,81,16,295/-, the total sale consideration is Rs. 6,44,42,295/-. The 3rd respondent valued the property based on the Circular No.5247/L1/2023-1 dated 30.03.2023 issued by the 1st respondent. The 3rd respondent issued notice dated ..09.2023 calling upon the petitioner demanding to pay Rs.33,44,618/- towards deficit stamp duty, Rs.9,55,606/- towards deficit registration charges and Rs.476/-

towards compliance fee, totally Rs.43,00,700/- within a period of one week, failing which he will referred the document u/s. 47A(1) of the Registration Act to the 2nd respondent.

6. Further, it is the contention that stamp duty, registration charges to the land and building are paid on the basis of the prevailing market value, which is more than the guideline value fixed by the 1st respondent dated 09.06.2017. After registration, the 3rd respondent has failed to return the original sale deed dated 03.04.2023 to the petitioner. The petitioner has also obtained loan from M/s. Hinduja Leyland Finance Ltd on agreed terms of equated monthly installment at the rate of Rs.13,77,500/-. The Petitioner regularly repaid the said EMIS to the said Bank without any default. As of now the petitioner has paid a sum of Rs.1,65,30,000/-. The said Bank issued the loan on condition that petitioner is to deposit his title deeds along with original documents. Because of failure to return the original sale deed dated 03.04.2023, petitioner could not able to lease out the said property to the tenants for the reasons that original document registered before the 3rd respondent not returned. The 3rd respondent without considering the stamp duty and registration charges paid by the

petitioner for the property purchased on 03.04.2023, on extraneous reasons referred the document to the 2nd respondent under Section 47A of the Registration Act and also referred to the Assistant Engineer, PWD to fix the value for the building. The Petitioner reliably understand that the Assistant Engineer sent the letter dated 21.08.2023 to the 3rd respondent and fixed the building value at Rs.5,10,00,049/- as against Rs.4,81,16,295/- purchased by the petitioner. However, the third respondent has not released the document. When they presented the document for registration of MoDT on 07.03.2024. The 3rd respondent refused to register the said MoDT dated 06.03.2024 and issued refusal check slip on the ground that the said document is subject to proceedings under Section 48 of the Revenue Recovery Act and as per the Circular of the 1st respondent dated 24.05.2012 vide No. 251/C1/2012, the document could not be registered. Hence, the petition.

W.P.No.10350 of 2024

7. It is the case of the petitioner that the petitioner purchased the seventh floor of building known as Digital Zone-I, builtup area of 31912 sq.ft., together with an undivided share of land measuring 8230 sq.ft., out of 65775 sq.ft., by a registered deed of sale deed dated 03.04.2023 bearing

Doc.No.5024/2023, land valued at the rate of Rs.2000/- per sq.ft, amounting Rs.1,64,60,000/- and the building valued at the rate of Rs. 1520/- per sq.ft. amounting to Rs.4,85,10,630/-, the total sale consideration is Rs. 6,49,70,630/-. The 3rd respondent valued the property based on the Circular No.5247/L1/2023-1 dated 30.03.2023 issued by the 1st respondent. The 3rd respondent issued notice dated ..09.2023 calling upon the petitioner demanding to pay Rs.33,13,368/- towards deficit stamp duty, Rs.9,46,677/- towards deficit registration charges and Rs.455/- towards compliance fee, totally Rs.42,60,500/- within a period of one week, failing which he will referred the document u/s. 47A(1) of the Registration Act to the 2nd respondent.

8. Further, it is the contention that stamp duty, registration charges to the land and building are paid on the basis of the prevailing market value, which is more than the guideline value fixed by the 1st respondent dated 09.06.2017. After registration, the 3rd respondent has failed to return the original sale deed dated 03.04.2023 to the petitioner. The petitioner has also obtained loan from M/s. Hinduja Leyland Finance Ltd on agreed terms of equated monthly installment at the rate of Rs.13,77,500/-. The

Petitioner regularly repaid the said EMIS to the said Bank without any default. As of now the petitioner has paid a sum of Rs.1,65,30,000/-. The said Bank issued the loan on condition that petitioner is to deposit his title deeds along with original documents. Because of failure to return the original sale deed dated 03.04.2023, petitioner could not able to lease out the said property to the tenants for the reasons that original document registered before the 3rd respondent not returned. The 3rd respondent without considering the stamp duty and registration charges paid by the petitioner for the property purchased on 03.04.2023, on extraneous reasons referred the document to the 2nd respondent under Section 47A of the Registration Act and also referred to the Assistant Engineer, PWD to fix the value for the building. The Petitioner reliably understand that the Assistant Engineer sent the letter dated 21.08.2023 to the 3rd respondent and fixed the building value at Rs.5,05,79,449/- as against Rs.4,85,10,630/- purchased by the petitioner. However, the third respondent has not released the document. When they presented the document for registration of MoDT on 07.03.2024. The 3rd respondent refused to register the said MoDT dated 06.03.2024 and issued refusal check slip on the ground that the said document is subject to proceedings under Section 48 of the Revenue Recovery Act and as per the Circular of the 1st respondent dated 24.05.2012 vide No. 251/C1/2012, the document could not be registered. Hence, the petition.

W.P.No.8389 of 2024

9. It is the case of the petitioner that the petitioner purchased the second floor of building known as Digital Zone-I, builtup area of 32270 sq.ft., together with an undivided share of land measuring 8322 sq.ft., out of 65775 sq.ft., by a registered deed of sale deed dated 03.04.2023 bearing Doc.No.5021/2023, land valued at the rate of Rs.2000/- per sq.ft, amounting Rs.1,66,44,000/- and the building valued at the rate of Rs. 1520/- per sq.ft. amounting to Rs.4,90,53,850/-, the total sale consideration is Rs.6,56,97,850/-. The 3rd respondent valued the property based on the Circular No.5247/L1/2023-1 dated 30.03.2023 issued by the 1st respondent. The 3rd respondent issued notice dated ..09.2023 calling upon the petitioner demanding to pay Rs.32,69157/- towards deficit stamp duty, Rs.9,34,045/- towards deficit registration charges and Rs.498/- towards compliance fee, totally Rs.42,03,700/- within a period of one week, failing which he will referred the document u/s. 47A(1) of the Registration Act to the 2nd respondent.

10. Further, it is the contention that stamp duty, registration charges to the land and building are paid on the basis of the prevailing market value, which is more than the guideline value fixed by the 1st respondent dated 09.06.2017. After registration, the 3rd respondent has failed to return the original sale deed dated 03.04.2023 to the petitioner. The petitioner has also obtained loan from M/s. Hinduja Leyland Finance Ltd on agreed terms of equated monthly installment at the rate of Rs.13,77,500/-. The Petitioner regularly repaid the said EMIS to the said Bank without any default. As of now the petitioner has paid a sum of Rs.1,65,30,000/-. The said Bank issued the loan on condition that petitioner is to deposit his title deeds along with original documents. Because of failure to return the original sale deed dated 03.04.2023, petitioner could not able to lease out the said property to the tenants for the reasons that original document registered before the 3rd respondent not returned. The 3rd respondent without considering the stamp duty and registration charges paid by the petitioner for the property purchased on 03.04.2023, on extraneous reasons referred the document to the 2nd respondent under Section 47A of the Registration Act. However, the third respondent has not released the document. When they presented the

document for registration of MoDT on 07.03.2024. The 3rd respondent refused to register the said MoDT dated 06.03.2024 and issued refusal check slip on the ground that the said document is subject to proceedings under Section 48 of the Revenue Recovery Act and as per the Circular of the 1st respondent dated 24.05.2012 vide No. 251/C1/2012, the document could not be registered. Hence, the petition.

W.P.No.8392 of 2024

11. It is the case of the petitioner that the petitioner purchased the third floor of building known as Digital Zone-I, builtup area of 32270 sq.ft., together with an undivided share of land measuring 8322 sq.ft., out of 65775 sq.ft., by a registered deed of sale deed dated 03.04.2023 bearing Doc.No.5026/2023, land valued at the rate of Rs.2000/- per sq.ft, amounting Rs.1,66,44,100/- and the building valued at the rate of Rs. 1520/- per sq.ft. amounting to Rs.4,90,43,750/-, the total sale consideration is Rs. 6,56,97,850/-. The 3rd respondent valued the property based on the Circular No.5247/L1/2023-1 dated 30.03.2023 issued by the 1st respondent. The 3rd respondent issued notice dated ..09.2023 calling upon the petitioner demanding to pay Rs.33,06,277/- towards deficit stamp duty, Rs.9,44,651/- towards deficit registration charges and Rs.472/-

towards compliance fee, totally Rs.42,51,400/- within a period of one week, failing which he will referred the document u/s. 47A(1) of the Registration Act to the 2nd respondent.

12. Further, it is the contention that stamp duty, registration charges to the land and building are paid on the basis of the prevailing market value, which is more than the guideline value fixed by the 1st respondent dated 09.06.2017. After registration, the 3rd respondent has failed to return the original sale deed dated 03.04.2023 to the petitioner. The petitioner has also obtained loan from M/s. Hinduja Leyland Finance Ltd on agreed terms of equated monthly installment at the rate of Rs.13,77,500/-. The Petitioner regularly repaid the said EMIS to the said Bank without any default. As of now the petitioner has paid a sum of Rs.1,65,30,000/-. The said Bank issued the loan on condition that petitioner is to deposit his title deeds along with original documents. Because of failure to return the original sale deed dated 03.04.2023, petitioner could not able to lease out the said property to the tenants for the reasons that original document registered before the 3rd respondent not returned. The 3rd respondent without considering the stamp duty and

registration charges paid by the petitioner for the property purchased on 03.04.2023, on extraneous reasons referred the document to the 2nd respondent under Section 47A of the Registration Act and also referred to the Assistant Engineer, PWD to fix the value for the building. The Petitioner reliably understand that the Assistant Engineer sent the letter dated 21.08.2023 to the 3rd respondent and fixed the building value at Rs.5,05,15,376/- as against Rs.4,90,53,750/- purchased by the petitioner. However, the third respondent has not released the document. When they presented the document for registration of MoDT on 07.03.2024. The 3rd respondent refused to register the said MoDT dated 06.03.2024 and issued refusal check slip on the ground that the said document is subject to proceedings under Section 48 of the Revenue Recovery Act and as per the Circular of the 1st respondent dated 24.05.2012 vide No. 251/C1/2012, the document could not be registered. Hence, the petition.

W.P.No.8395 of 2024

13. It is the case of the petitioner that the petitioner purchased the fourth floor of building known as Digital Zone-I, builtup area of 32518 sq.ft., together with an undivided share of land measuring 8386 sq.ft., out of 65775 sq.ft., by a registered deed of sale deed dated 03.04.2023 bearing

Doc.No.5023/2023, land valued at the rate of Rs.2000/- per sq.ft, amounting Rs.1,67,72,000/- and the building valued at the rate of Rs. 1520/- per sq.ft. amounting to Rs.4,94,30,970/-, the total sale consideration is Rs.6,62,02,970/-. The 3rd respondent valued the property based on the Circular No.5247/L1/2023-1 dated 30.03.2023 issued by the 1st respondent. The 3rd respondent issued notice dated ..09.2023 calling upon the petitioner demanding to pay Rs.33,66,288/- towards deficit stamp duty, Rs.9,61,797/- towards deficit registration charges and Rs.415/- towards compliance fee, totally Rs.43,28,500/- within a period of one week, failing which he will referred the document u/s. 47A(1) of the Registration Act to the 2nd respondent.

14. Further, it is the contention that stamp duty, registration charges to the land and building are paid on the basis of the prevailing market value, which is more than the guideline value fixed by the 1st respondent dated 09.06.2017. After registration, the 3rd respondent has failed to return the original sale deed dated 03.04.2023 to the petitioner. The petitioner has also obtained loan from M/s. Hinduja Leyland Finance Ltd on agreed terms of equated monthly installment at the rate of

Rs.13,77,500/-. The Petitioner regularly repaid the said EMIS to the said Bank without any default. As of now the petitioner has paid a sum of Rs.1,65,30,000/-. The said Bank issued the loan on condition that petitioner is to deposit his title deeds along with original documents. Because of failure to return the original sale deed dated 03.04.2023, petitioner could not able to lease out the said property to the tenants for the reasons that original document registered before the 3rd respondent not returned. The 3rd respondent without considering the stamp duty and registration charges paid by the petitioner for the property purchased on 03.04.2023, on extraneous reasons referred the document to the 2nd respondent under Section 47A of the Registration Act and also referred to the Assistant Engineer, PWD to fix the value for the building. The Petitioner reliably understand that the Assistant Engineer sent the letter dated 21.08.2023 to the 3rd respondent and fixed the building value at Rs.5,13,97,791/- as against Rs.4,94,30,970/- purchased by the petitioner. However, the third respondent has not released the document. When they presented the document for registration of MoDT on 07.03.2024. The 3rd respondent refused to register the said MoDT dated 06.03.2024 and issued refusal check slip on the ground that the said document is subject to proceedings under Section 48 of the Revenue Recovery Act and as per the Circular of the 1st respondent dated 24.05.2012 vide No. 251/C1/2012, the document could not be registered. Hence, the petition.

15. It is the contention of the petitioners that the circular dated 30.03.2023 issued by the 1st respondent enhancing 33% charges was quashed by this Court by Order dated 18.12.2023 in W.P.No.12649 of 2023 and directed the 1st respondent to follow the guideline value as contemplated in the Rules prior to the enhancement circular dated 30.03.2023. Therefore, according to the petitioner when the document is registered, the respondent cannot refuse to register the MoDT.

16. No counter has been filed. However, it is the contention of the learned Additional Government Pleader that the documents in question were referred under Section 47-A of the Indian Stamp Act, 1899. Therefore, the MoDT were refused to be registered by the third respondent.

17. Mr.V.Raghavachari, learned Senior Counsel for the petitioners vehemently contended as follows:

a. the documents in question, sought to be registered are only Memorandum of Deposit of Title Deeds. According to him, in W.P.No.1638 of 2016 by order dated 27.01.2016, this Court has held that in registering MoDT, there is no transfer of title involved in the case on hand. Only for the purpose of getting loan, the Memorandum of Deposit of Title Deed is sought to be made. While holding that the respondent can have the first charge to recover the amount as finally fixed under Section 47-A of the Registration Act. The said order was confirmed in a Division Bench of this Court in W.A.No.253 of 2016 by judgment dated 14.03.2016. Hence, according to him, since, there is no transfer involved, for mere registration of the memorandum, the refusal checkslips issued by the authorities cannot be sustained in the eye of law.

b. For determining the value under Section 47-A of the Indian Stamp Act, 1899, the document is also not required. Much reliance is also placed on sub-section 3 to Section 47-A to buttress his submissions that the Collector may *suo motu* conduct enquiry and determine the value.

Similarly, sub-section 6 to Section 47-A that the Chief Controlling Revenue Authority, may also suo motu call for and examine an order passed under sub-section (2) or sub-section (3). Hence, it is the contention that refusal checkslip issued by the authorities cannot be sustained in the eye of law. According to him, even any further amount determined under Section 47-A of the Act, there will a charge over the immovable property with regard to that amount. Therefore, registering the MoDT will not take away the right of the revenue for recovery of that amount.

c. Memorandum can also be created by copy of the document and the petitioners may be permitted to register at least xerox copy of the title deed so that he can avail the loan from the banks. Further, it is stated that even petitioners are ready to furnish the bank guarantee to the respondents.

18. Whereas, the learned Additional Government Pleader submitted that once the document has been referred under Section 47-A, pending adjudication the document cannot be returned by the registering authority. This aspect has been declared by the Division Bench of this Court in the case of *Special Deputy Collector (Stamps) vs. M.Alfred and others*

reported in *2017 (2) CWC 896*. Similarly, other Division Bench of this Court in the case of *The Special Deputy Collector and another vs. K.Rajeswari* made in *W.A.No.1488 of 2017* by judgment dated *18.12.2017* has also held that the document cannot be returned when the proceedings under Section 47-A is pending. Hence, it is the contention that in all the writ petitions documents were already referred to the Stamp Collector for determining the market value. Therefore, at this stage, if the documents are returned and the MoDT are registered, it will have a serious complication later.

19. Further, if the MoDT are executed with the above same document when the adjudications are pending before the Stamp Collector, the secured creditor will get priority as per the amendment brought under SARFAESI Act. Therefore, even any charge is created over the property in view of priority of rights, the said charge will become insignificance in view of the priority right in favor of the secured creditor under the Special Act. Hence, opposed the writ petitions.

20. Heard both sides and perused the materials placed on record.

21. The refusal checkslips have been issued in refusing the registration of MoDT. Admittedly, the title deeds have not been returned to the petitioners. Since, the registering authorities has found undervaluation, the matter has been referred to the Stamp Collector under Section 47-A of the Act. The Indian Stamp Act, 1899 is purely a fiscal enactment made for fixing and collecting the Government revenue. Section 47-A makes it clear that once the document has been referred to the Stamp Collector, he has to determine the market value, on receipt of a reference, the Stamp Collector has to determine the market value. Sub-section (3) of Section 47-A authorises the Stamp Collector to exercise suo motu power to call for any instrument within five year from the date of registration for determining the market value. Sub-section (4) of Section 47-A deals with payment of duty determined, in the event of failure to pay such amount determined, the charge will be on the property affected in such instrument. Similarly, Sub-section (6) of Section 47-A authorises the Chief Controlling Revenue Authority to exercise suo motu and call for and examine an order passed under sub-section (2) or sub-section (3), if such order is prejudicial to the interests of revenue.

21. It is relevant to note that for reference under Section 47-A, it is very clear that if the registering authorities have reasons to believe that market value of the property which has not been truly set forth in the instrument, the registering authority may after registering such instrument refer the same to the Collector for determination of market value of such property. Section 47-A makes it clear that referring the instrument is a *sine qua non* for conducting enquiry under sub-section (2) of Section 47-A.

23. The word "Instrument" is defined under sub-section (14) of Section 2 of the Indian Stamp Act, 1899 reads as follows:

> *"2. Definitions.*
> *...*
> *(14) "Instrument".- "instrument" includes -*
> *(a) every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded:*
> *(b) a document, electronic or otherwise, created for a transaction in a stock exchange or depository by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded; and*
> *(c)any other document mentioned in Schedule I, but does not include such instruments as may be specified by the Government, by notification in the Official Gazette."*

24. Therefore, referring the instrument for conducting an enquiry is a

sine qua non. Even while exercising suo motu power within 5 years as per sub-section 3 to Section 47-A, the Collector has to call for and examine the instrument for the purpose of satisfying himself. Therefore, the contention of the learned Senior Counsel that for adjudication of the stamp, original document not to be referred cannot be countenanced. When the fiscal legislation itself makes it clear that instrument has to be referred only on verifying the instrument the enquiry will be proceeded, the contention of the learned Senior Counsel that the instrument is not essential for conducting enquiry cannot be sustained in the eye of law. It is also relevant to note that once a reference is made under sub-section (1) of Section 47-A, the Collector within 15 days from the date of receipt of such reference shall issue a notice in Form I.

25. Sub-rule (5) to Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1986 makes it clear that the registering officer shall refer an instrument under sub-section 47-A to the Collector, within fifteen days from the registration of such instrument. This Rule has been amended pursuant to the direction of a Division Bench of this Court in a judgment reported in (2017) 2 CWC 896.

26. In view of the said amendment, now, once the document is registered, the same can be referred to the Collector within fifteen days from the date of registration. After issuing a notice in Form I within a period of 15 days from the date of such reference, the Collector shall pass a final order within a period of three months as contemplated under Rule 7. The difference in the amount of duty determined by the Collector shall be paid within two months from the date of final order passed under sub-section (2) or sub-section (3) of Section 47-A as per sub-rule (3) to Rule 7.

27. Sub-rule 4 to Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1986 makes it clear that the Collector shall, after collecting the difference in amount of stamp duty and interest, if any, under Section 47-A, give a certificate in Form III by endorsement on the instrument. Therefore, for the purpose of making endorsement, the instrument has to be in the control of the authority. The differential amount determined or adjudicated under Section 47-A should be entered on the instrument.

28. It is relevant to note that the Division Bench of this Court in the

case of *Special Deputy Collector (Stamps) vs. M.Alfred and others* reported in *2017 (2) CWC 896* held as follows:

> *"17. The Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (hereinafter referred to as 'the Rules') has been made in exercise of powers conferred under Sections 47-A and 75 of the Indian Stamp Act, 1899. Rule 4 provides for the procedure for reference, to be followed by the Collector. Rule 7 speaks about the final order determining the market value. We are concerned with the procedure to be adopted. What is relevant for the purpose for deciding the issue is Rule 7 (3) and (4). As per Rule 7(3), after the adjudication is over, the difference in the amount of duty determined by the Collector shall be paid within two months from the date of final order passed under sub-section (2) or sub-section (3) of Section 47-A of the Indian Stamp Act. Therefore, once the adjudication is made, then the duty determined is mandatory to be paid. Under sub-clause (4) of Rule 7, the Collector shall, after collecting the difference in amount of stamp duty and interest, if any, under Section 47-A of the Act, give a certificate in Form III on the instrument. If we read sub-clauses (3) and (4) of Rule 47(7), the registering authority and the Collector are mandated to perform their respective roles. Payment of the duty determined is mandatory, followed by the certification of the Collector by way of an endorsement on the instrument.*
>
> *18.Hence, unless these two requirements are satisfied, there is absolutely no question of releasing the instrument in the absence of any right accrued through the provisions. However, the outer limit given under adjudication under Rule 7 being procedural cannot be construed to mean that the proceedings are not liable to be conducted thereafter. Being procedural, it is only directory and not*

> *mandatory. Sub-clause (3) of Rule 7 being a mandatory provision, and on such compliance, a Collector is duty bound to comply with sub-clause (4).”*

29. Similarly, other Division Bench of this Court in the case of *The Special Deputy Collector and another vs. K.Rajeswari* made in *W.A.No.1488 of 2017* by judgment dated *18.12.2017* also took a similar view. In the above referred both Division Benchs, I was a party. Therefore, when the law is declared by the Division Bench in this regard, it cannot be said that the pending adjudication under Section 47-A the document should be returned. Though earlier in a writ petition in W.P.No.1638 of 2016 by order dated 27.01.2016 , this Court directed the registration of MoDT on the ground that there is no title passes, in view of the later Division Bench Judgments and considering the various provisions of same Act, this Court is of the view that the authorities cited by the learned Senior Counsel cannot be applied, since all the relevant provisions have been elaborately dealt by the Division Benchs in the later judgments.

30. The submissions of the learned Senior Counsel to the effect that at least the MoDT may be permitted to be registered with xerox copy is

concerned, it is relevant to note that even such memorandum is accepted by the secured creditor, it also amounts to mortgage by deposit of title deeds. If the mortgage is created in favour of the secured creditor, now in view of the latest amendment under the SARFAESI Act, the secured creditor will have the priority right over the property and all other charges including the Government debts. Therefore, even assuming that the charge on the property is automatic under 47-A (4), as the determination and the adjudication is not taken place and the mortgage will be created, secured creditor get a precedence and priority over other charges that may be created later on the basis of adjudication, that will in fact lead to the situation that the revenue may lose automatically. The revenue to the State cannot be recovered, there will also be a situation that after the buyer has secured huge amount of loan than the market value of the property and commits a default, only a secured creditor will have the first charge.

31. Further, contention that now the value is sought to be recovered on the basis of 2017 guideline, since the circular in this regard is already quashed such value cannot be claimed. It is to be noted that the guideline value is not a substitute for market value. Merely because the document

are valued on the basis of guideline value, the same is not a bar for registering authorities to believe that true market value is not set out in the instrument in that case, they can refer the instrument for adjudication under Section 47-A of the Act.

32. Such view of the matter, this Court is of the view that when the adjudication proceedings is pending under Section 47-A of the Indian Stamp Act, 1899 seeking return of document and also registering the memorandum of deposit of title deeds cannot be permitted in the eye of law. Hence, the contention of the learned Senior Counsel Mr.V.Raghavachari cannot be countenanced, let the authorities expedite the proceedings initiated under Section 47-A and complete the same within the mandatory period stipulated under Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1986 and pass appropriate orders.

33. Accordingly, these writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

29.04.2024

dhk

Index	: Yes/No
Internet	:Yes/No
Neutral Citation	: Yes/No

To

1.The Inspector General of Registration
100, Santhome High Road
Chennai – 600 028

2.The District Revenue Officer
Collectorate Office
5th Floor, M.Singaravelar Maligai
No.32, Rajaji Salai
Chennai – 600 001

3.The Sub-Registrar
Office of the Sub-Registrar
Neelankarai
Chennai

N. SATHISH KUMAR, J.

dhk

WP.Nos.10345, 10349, 10350,
8389, 8392 & 8395 of 2024

29.04.2024