IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.Nos.1999, 2003, 2005, 2006, 2008, 2009,
2010 & 2013 of 2023

W.A.No.1999 of 2023

1. The Chief Controlling Revenue Authority
and Inspector General of Registration
No.120, Santhome High Road
Mandaveli, Chennai 600 028.

2. The District Registrar
Chengalpattu
Kanchipuram District.

3. The Sub Registrar
Thiruporur, Chengalpattu Taluk
Kanchipuram District. .. Appellants

Vs.

Hiranandani Township Private Limited
Now Hiranandani Realtors Private Limited
Rep. by its Authorised Signatory R.Rajaratnam
No.514, Dalamal Towers
Nariman Point, Mumbai 400 021. .. Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 02.12.2021 made in W.P.No.17493 of 2012.

For the Appellants	:	Mr.Haja Nazeerudeen Additional Advocate General Assisted by Mr.P.Haribabu Government Advocate
For the Respondent	:	Mr.Srinath Sridevan Senior Counsel For Mr.M.S.Murali for R&P Partner

JUDGMENT
(Delivered by the Hon'ble Chief Justice)

We have heard Mr.Haja Nazeerudeen, learned Additional Advocate General, assisted by Mr.P.Haribabu, learned Government Advocate for the appellants and Mr.Srinath Sridevan, learned Senior Counsel for Mr.M.S.Murali, learned counsel for the respondent.

2. These appeals are filed by the State against the order of the learned Single Judge thereby allowing the writ petitions filed by the respondent and setting aside the show cause notices issued, thereby

reopening the issue of stamp duty paid by the respondent pursuant to the registered instrument.

3. Learned Additional Advocate General submits that the time period of three years provided under Section 33A of the Indian Stamp Act is directory in nature. The same cannot be held to be mandatory. Reliance is placed on the judgment of the Apex Court in the case of ***Inspector General of Registration, Tamil Nadu v. K.Baskaran [(2020) 14 SCC 345]***.

4. According to learned Additional Advocate General, the Apex Court interpreting Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 and Section 47-A of the Indian Stamp Act, 1899 set aside the judgment of this Court holding that the said provision is mandatory.

5. Per contra, learned Senior Counsel for the respondent submits that the time limit of three years prescribed under Section

33-A of the Indian Stamp Act is mandatory.

6. Relying upon the same judgment of the Apex Court in the case of ***Inspector General of Registration, Tamil Nadu***, supra, learned Senior Counsel submits that the Apex Court held that there are some limitations on the exercise of powers since no proceedings can be initiated against an order passed under Sub-sections (2) and (3) of Section 47-A of the Indian Stamp Act, if the time for preferring the appeal against that order has not expired or if more than five years have expired after passing of the order. It is further held that if the period of five years has expired, no suo motu powers can be exercised.

7. Upon hearing the respective counsel, the substratum of the matter is "*whether the period of three years as provided under the second proviso to Section 33-A(1) of the Indian Stamp Act for initiation of an enquiry is mandatory or directory*?"

8. For ready reference, we reproduce the dates of the execution/registration of the documents and issuance of show cause notices:

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
2	10326/2007	17.10.2007	1. 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	Hiranandani	M/s. Sai	1,90,00,000

			Reddy	Township Private Ltd.	Surya Realtors	
7	9753/2007	15.10.2007	T.Chandra sekar	Hiranandani Township Private Ltd.	M/s. Sai Surya Realtors	3,00,00,000
8	4387/2008	23.04.2008	1. R.Mayilvagan an 2. A.R. Rosekumar	Hiranandani Township Private Ltd.	M/s. Sai Surya Realtors and Developers	4,02,50,000

9. The show cause notices were issued on 8.8.2011. The show cause notices, as such, were admittedly issued after three years of the registration of the documents. The application of mind by the authorities to reopen the proceedings is also after three years.

10. For ready reference, Section 33-A of the Indian Stamp Act is reproduced thus:

> *"33-A. Recovery of deficit stamp duty.- (1) Notwithstanding 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 proper stamp duty payable under this Act in respect of*

such instrument has not been paid or has been insufficiently paid, such duty or the 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.

(2) The certificate of the Registrar of the district under sub-section (1) shall, subject only to appeal under sub-section (3), be final and shall not be called in question in any Court or before any authority.

(3) Any person aggrieved by a certificate of the Registrar of the district under sub-section (1) may appeal to the Chief Controlling Revenue Authority. Any such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may

be prescribed."

11. Section 33-A empowers the authority, if it is found that proper stamp duty payable under the Act in respect of such instrument has not been paid or has been insufficiently paid, to recover such duty or deficit, on a certificate from the Registrar of the district under the Registration Act, from the person liable to pay duty, as the arrear of land revenue. Sub-section (1) of Section 33-A, as such, empowers the authority to take steps for recovery of the stamp duty insufficiently paid or the stamp duty not paid.

12. The authority and power to conduct an enquiry under Section 33-A is circumscribed by two provisos. Second proviso to Section 33-A provides that no such enquiry shall be commenced after the expiry of three years from the date of registration of the instrument. Second proviso is couched in negative language, thereby, putting an embargo on the right of the authority to proceed under Sub-section (1) of Section 33A, after the expiry of three years

from the date of registration of the instrument.

13. A mode of showing a clear intention that the provision enacted is mandatory is by clothing the command in a negative form. Prohibitive or negative words can never be directory. The negative words are prohibitory and are ordinarily used as a legislative device to make a provision imperative.

14. The provision having been circumscribed by proviso, thereby putting limitations on the right of the authority to proceed after a period of three years, the authority certainly cannot reopen the proceedings after the expiry of three years.

15. Learned Additional Advocate General also did not dispute that the show cause notices issued to the original writ petitioners were after a lapse of three years of the registration of the documents. The same is an admitted fact. The learned Single Judge has also culled out the dates in the impugned order. The same is

also not a disputed fact.

16. In the light of the aforesaid facts and the legal proposition, it will have to be held that the authority did not possess the jurisdiction to issue the show cause notices. The said show cause notices, as such, are *coram non judice.*

For the foregoing reasons, the writ appeals are dismissed. There shall be no order as to costs. Consequently, C.M.P.Nos.17023, 17025, 16977, 16978, 17049, 17052, 17053, 17057, 17058, 17059, 17060, 17062, 17074 & 17075 of 2023 are also dismissed.

(S.V.G., CJ.) (D.B.C., J.)
05.02.2024

Index : Yes/No
Neutral Citation : Yes/No
kpl

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(kpl)

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