IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07..06..2024

Orders Pronounced on : 24..06..2024

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition Nos.28652 of 2022 and 4060 of 2023
&
W.M.P.Nos.27935, 27938, 27939 of 2022
4130, 4131, 4132 & 4133 of 2023

W.P.No.28652 of 2022:

1.Mrs.Anita Thomas

2.Santosh Ukkur

3.Mrs.Namita Jose

..... Petitioners

-Versus-

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

2.The Deputy Inspector General of Registration,
(Guideline Value Fixation), Chennai Zone,
Integrated Building for Commercial Taxes and
Registration Department,
Saidapet, Government Farm Village,
Chennai 600 035.

3.The District Registrar,
South Chennai,

Integrated Building for Commercial Taxes and
Registration Department,
Saidapet, Government Farm Village,
Chennai 600 035.

4.The Sub-Registrar,
Neelangarai Sub-Registrar Office,
Neelangarai, Chennai 600 041.

5.Hindustan Engineering Training Centre,
Having its Registered Office at
No.40, G.S.T. Road,
St. Thomas Mount,
Chennai 600 016.

Rep. By its Treasurer,
Mr.Ashok George Verghese

..... Respondents

Petition 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 order by proceedings dated 05.09.2022, bearing No.1701/E1/2022 on the file of the 2nd respondent passed in in connection with Deed of Exchange dated 21.10.2021 registered as Doc.No.11594 of 2021 on the file of the Sub Registrar, Neelangarai and to quash the same and consequently direct the respondents 1 to 4 to accept the valuation of the subject-land and the stamp duty and registration fees paid under the Deed of Exchange dated 21.10.2021 registered as Doc.No.11594 of 2021 on the file of the Sub Registrar, Neelangarai.

W.P.No.4060 of 2023:

Hindustan Engineering Training Centre,
Having its Registered Office at
No.40, G.S.T. Road,
St. Thomas Mount,
Chennai 600 016.
Rep. By its Treasurer,
Mr.Ashok George Verghese

..... Petitioner

-Versus-

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

2.The Deputy Inspector General of Registration,
(Guideline Value Fixation), Chennai Zone,
Integrated Building for Commercial Taxes and
Registration Department,
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South Chennai,
Integrated Building for Commercial Taxes and
Registration Department,
Saidapet, Government Farm Village,
Chennai 600 035.

4.The Sub-Registrar,
Neelangarai Sub-Registrar Office,
Neelangarai, Chennai 600 041.

5.Mrs.Anita Thomas

6.Santosh Ukkur

7.Mrs.Namita Jose

8.The District Revenue Officer (Stamps),
Office of the District Revenue Officer (Stamps),
District Collector Office,
5th Floor, Singaravelar Maaligai,
No.32, Rajaji Salai, Chennai -1,
Chennai 600 001.

..... Respondents

Petition 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 order by proceedings dated 05.09.2022, bearing No.1701/E1/2022 on the file of the 2nd respondent passed in in connection with Deed of Exchange dated 21.10.2021 registered as Doc.No.11594 of 2021 on the file of the Sub Registrar, Neelangarai and to quash the same and consequently direct the respondents 1 to 4 to accept the valuation of the subject-land and the stamp duty and registration fees paid under the Deed of Exchange dated 21.10.2021 registered as Doc.No.11594 of 2021 on the file of the Sub Registrar, Neelangarai.

For Petitioner(s)	:	*Mr.M.S.Krishnan, Senior Counsel Assisted by Mr.N.Senthil Kumar for Mr.R.Venkata Raman for petitioner in W.P.No.28652 of 2022* *Mr.Kaushik Ramaswamy for petitioner in W.P.No.4060 of 2023*
For Respondent (s)	:	*B.Vijay, Addl. Government Pleader for RR 1 to 4 in W.P.No.28652 of 2022 and RR1 to 4 & 8 in W.P.No.4060 of 2023* *Mr.M.S.Krishnan, Senior Counsel Assisted by Mr.N.Senthil Kumar for Mr.R.Venkata Raman for RR5 to 7 in W.P.No.4060 of 2023* *Mr.Kaushik Ramaswamy for R5 in W.P.No.28652 of 2022*

COMMON ORDER

In these writ petitions a common challenge is made to the orders passed by the 2nd respondent dismissing the appeal filed by petitioners in W.P.No.28652 of 2022, who are also arrayed as respondents 5 to 7 in W.P.No.4060 of 2023, and thereby confirming the order passed by the 3rd respondent determining the market value of the properties which are subject matter of the exchange deed presented by the petitioners in the writ petitions for registration.

2. **The brief facts leading to the filing of these writ petition are as follows:-**

(a) The petitioners in W.P.No.28652 of 2022 were the absolute owners of the land measuring an extent of 27 cents in S.No.1/1A1; 26 cents in S.No.1/1A1 and 46 cents in S.No.1/1A3, totally measuring an extent of 99 cents or thereabouts situate at Karapakkam Village, Sholinganallur Taluk, then Kancheepuram Distirct, now, Chennai District, having purchased the same through sale deed dated 28.09.1995 registered as Doc.No.4960 of 1995 on the file of the Sub Registrar, Adyar from one Natesan and others represented by their Agent-G.Mahan. The lands which were owned by the petitioners in W.P.No.28652 of 2022 are land locked and have no road access, as the lands are bounded by government poramboke lands and the larger extent of land owned by 5th respondent, who is the petitioner in the other writ petition in W.P.No.4060 of 2023, on the northern side of burial ground road, Karapakkam. The 5th respondent was owning lands measuring an extent of 15 cents in S.No.174/3A1, 31 cents out of 45 cents in S.No.174/3B, 31 cents out of 45 cents in S.No.174/3C, 11 cents in S.No.174/3D1 and 11 cents in S.No.1743/3D2, totally measuring about 99 cents or thereabouts. The lands owned by the 5th respondent are situated on the southern side of the burial ground of Karapakkam village and the same are not contiguous to their larger extent of property on which the 5th respondent is running an engineering college known as KCG College of Engineering. Therefore, both the petitioners and the 5th respondent in W.P.No.28562 of 2022 decided to exchange their respective lands for better enjoyment. Accordingly, they entered into a Deed of Exchange on 21.10.2021 which was registered as Doc.No.11594 of 2021 on the file of the 4th respondent. Before the execution of exchange deed, both of them made enquiries to get the market value guidelines of their properties. However, they were informed that no survey number wise market value guidelines were available for Karapakkam village and only streetwise guideline value are available in respect of all lands at Karapakkam village.

(b) On enquiry, they found that market value guidelines are fixed for nearby properties by street wise and there is no specific guideline value fixed for the subject-survey numbers. The street-wise market value guidelines as fixed by the departments are as under:-

Sl. No.	Street Name	Guideline Value (in Rupees)	Land Classification	Effective Start Date
1	Gangai Amman Koil Street & Extension	Rs.1340/- per square feet	Residential Class II Type-II	09.06.2017
2	Hindustan College	Rs.1675/- per square feet	Residential Class II Type-I	09.06.2017
3	Hindustan Engineering Training Centre	Rs.1675/- per square feet	Residential Class II Type-I	09.06.2017
4	KCG College Land	Rs.1340/- per square feet	Residential Class II Type-I	09.06.2017
5	KCG College Road	Rs.1340/- per square feet	Residential Class II Type-II	09.06.2017
6	Thendral Nagar to KCG College Link Road	Rs.1340/- per square feet	Residential Class II Type-II	09.06.2017
7	Burial Ground Road	Rs.502/- per square feet	Residential Class IV Type-II	09.06.2017

Therefore, the petitioners valued their lands at Rs.1673/- per square feet and the entire property was valued at Rs.7,22,40,003/- . The exchange deed was presented by them on 21.10.2021 before the 4th respondent for registration.

Though the exchange deed was registered as Doc.No.11594 of 2021 instead of releasing the same forthwith, the 4th respondent informed that the document has been referred for determination of the market value in respect of the subject lands. Thereafter, the 3rd respondent passed an order by his proceedings dated 25.02.2022 in proc. Na.Ka.No.018434/E1/2021 recommending Rs.6500/- per square feet as market value for the lands which are subject matter of the exchange deeds. Challenging the same, the petitioners in W.P.No.28652 of 2022 preferred an appeal before the 2nd respondent and the 2nd respondent in turn, determined the market value of the lands situate in the subject survey numbers at Rs.4200/- per square feet. It is this order which is now under challenge in the present writ petitions. The impugned order was challenged on the ground that when the guideline value in respect of nearby areas had already been determined, determining the market value once again for the same properties was without any authority and against the market value guidelines of the nearby streets and the same is nothing but an arbitrary and unilateral exercise of power. Moreover, such order passed by the 2nd respondent determining the market value is against the established law and the same cannot be sustained in the eye of law.

3. During the course of hearing of the writ petitions, the 4th respondent

filed his status report in W.P.No.28652 of 2022 stating as under:-

(i) that there is no survey number based market value guideline for Karapakkam village

(ii) the market value guideline for the entire Karapakkam village is fixed based on Streets/Town.

(iii) on verification of the deed of exchange, it was found that the parties did not mention any street name in which the lands are actually situated. Therefore, in order to find out, whether the market value of the properties which are the subject matter of the exchange deed was truly set forth or not, the Sub Registrar had referred the matter to the 3rd respondent for determination of market values for the subject lands.

(iv) the 3rd respondent after inspection of the lands by his proceedings dated 25.02.2022 in proceedings No.18434/C1/2021 determined the market value of the subject lands at Rs.6,500/- per square feet, which is the highest guideline value in the surrounding area.

(v) the 2nd respondent has taken into account various factors which have had bearing on the value of the properties and determined the market value as Rs.4,200/- per square feet for the subject-lands. As there was no category having value of Rs.4,200/- per square feet, the 2nd respondent has created a new category as "Residential Class I – Type III" which is the procedure prescribed by the 1st respondent. Hence, the market value guideline of Rs.4,200/- per square feet was fixed by the 2nd respondent which was in accordance with law.

(vi) as the parties were not willing to pay the deficit stamp duty and registration fees on the value calculated at Rs.4,200/- per square feet, the 4th respondent has referred the exchange deed to the Collector under Section 47-A (1) of the Indian Stamp Act, 1899 for determination of market value and collection of difference in stamp duty if any on such determination.

(vii) since the matter is pending with the collector under Section 47-A, the petitioners will have to workout their remedy before the Collector concerned. The entire process of fixing guideline value is as per the circulars issued by the 1st respondent - Inspector General of Registration.

(viii) when proceeding under Section 47-A(1) is pending with the District Revenue Officer (Stamps), Chennai, the petitioner can at the most approach the District Revenue Officer (Stamps) and submit their objections, if any; and if any such objections are received the same would be considered and decided on merits.

4. Heard both sides.

5. Mr.M.S.Krishnan, the learned senior counsel for the petitioners in

W.P.No.28652 of 2022 would submit that since the lands belonged to the petitioners in W.P.No.28652 of 2022 are landlocked and have no road access and the same are bounded by Government poramboke land and the larger extent of land owned by the the petitioner in W.P.No.4060 of 2023, both of the petitioners in W.P.No.28652 of 2022 and petitioner in W.P.No.4060 of 2023 had decided to exchange their lands. Accordingly, they entered into a deed of exchange on 21.10.2021. When the deed of exchange was presented for registration valuing the entire property taking note of the neighbouring lands' market value which were already fixed at Rs.1,675/-, though the deed was registered, it has been referred for fixing new guidelines of the properties which is contrary to the procedure. According to the learned senior counsel when the street-wise market value guidelines are already available, question of fixing new guideline values would not at all arise.

6. Mr.M.S.Krishnan would further submit that on presentation, though the deed of exchange was registered on 21.10.2021 instead of releasing the deed, the 4th respondent had sent a proposal form to the 3rd respondent for fixation of guideline value of the subject lands. The 4th respondent had in fact, recommended Rs.3,350/- for fixation of market value, however, the 3rd respondent District Registrar, had fixed the market value at Rs.6,500/- per

square feet. On appeal, the 2nd respondent has fixed the market value of the subject lands at Rs.4,200/- per square feet. According to the learned senior counsel, the orders of the 4th respondent would itself indicate that the lands of the petitioners in W.P.No.28652 of 2022 exchanged under the deed are landlocked and have no access and moreover, the lands are not house sites and they are surrounded by Buckingham Canal and burial ground and one has to pass the burial ground to reach the property. Having found that streetwise market value guidelines have already been fixed, by unilateral exercise of power, the 3rd respondent had fixed the market value of the properties at Rs.6,500/- per square feet without any supporting material evidence and hence, the very order of the 2nd respondent fixing the guideline value for subject lands is not sustainable in law.

7. Mr.M.S.Krishan has also brought to the notice of this court the guideline value already fixed for the neighbouring streets in which the maximum value fixed is found to be Rs.1340/- per square feet for the lands situated in Gangai Amman Koil Street and Extension and whereas value of the properties of Hindustan College is fixed at Rs.1,675/-. However, without taking note of the market value guidelines of the properties in the neighbouring streets, the registering authorities have unilaterally enhanced the market value of the

lands which are subject matter of the exchange deed and directed the parties to pay deficit stamp duty and penalty.

8. Mr.M.S.Krishnan would further submit that more than a year after the the 2nd respondent had passed the final orders on 05.09.2022 fixing the guideline value for the subject lands unilaterally, now, the matter has been referred to the Collector under Section 47-A of the Indian Stamp Act,1899. Therefore, the learned senior counsel would submit that the reference under Section 47-A of the Act is not valid in the eye of law.

9. According to the learned senior counsel, a reference under section 47-A is not maintainable as there was no undervaluation in the transaction or there was no intention on the part of the parties to undervalue the properties. Since there was no market value guidelines for the lands situated in the subject-survey numbers and as 'zero' value is given for the same, on considering the street wise market value guidelines fixed for the properties situated in the nearby streets, the petitioners computed the stamp duty on the reasonable market value and presented the document for registration. When such being the position, question of referring the document to the Collector under Section 47-A of the Stamp Act would not at all arise. At any rate, after determination of the guideline value, reference under Section 47-A is not valid, that too during the pendency of one

of the writ petitions.

10. Mr.M.S.Krishnan would lastly submit that the orders of the 2nd respondent suffer from mala fide and it also lack jurisdiction and hence, the same require interference at the hands of this court. Since the market value guidelines situated for the lands in the neighbouring streets are already available, the court can by itself determine the market value of the subject-properties taking into account the market value guidelines of the properties surrounded by the subject-properties coupled with the reports of the Sub Registrar and the District Registrar.

11. The learned senior counsel would add that though the order passed by the 2nd respondent on the appeal preferred by the petitioners in W.P.No.28652 of 2022 aggrieved by the order passed by the 3rd respondent determining the market value of the properties, is put under challenge, this court can undertake such exercise of determining the market value in exercise of its power under Article 266 of the Constitution of India and mould the relief and pass appropriate orders in order to meet the ends of justice.

12. The learned senior counsel in support of his submissions relied on the following judgements of the Supreme Court as well as judgements of this Court:-

(i) Gunwant Kaur and others v. Municipal Committee [(1969) 3 SCC 769];

(ii) Century Spinning and Manufacturing Company Ltd. v. The Ulhasnagar Municipal Council and another [(1970) 1 SCC 582];

(iii) V.N.Devadoss v. Chief Revenue Control Officer-cum-Inspector and others [(2009) 7SCC 438];

(iv) M.Sudakar v. V.Manoharan and others [(2011) 1 SCC 484];

(v) S.Manonmani v. The District Revenue Officer (Stamps), Coimbatore [2011 SCC OnLine Mad 1294 : (2011) 3 MWN (Civil) 483]

(vi) R.Jayanthi v. Special Deputy Collector (Stamps) [2014 SCC OnLine Mad 9452].

13. Mr.S.Kaushik Ramasamy, the learned counsel appearing for the petitioner in W.P.No.4060 of 2023 made his submissions in the line of the submissions made by Mr.M.S.Krishnan, senior counsel.

14. Per contra, Mr.B.Vijay, learned Additional Government Pleader would vehemently contend that the exchange deed in question has already been referred to the Collector under Section 47-A of the Indian Stamp Act, 1899 and this fact has been suppressed by the petitioners and since the petitioners have suppressed the said fact, the writ petitions are liable to be dismissed..

15. Mr.B.Vijay, would further contend that since the market value guidelines for the subject-properties are shown as “zero”, the matter has been referred to the District Registrar, who, in turn, on inspection assessed that the guideline value of the subject properties at Rs.6500/- per square feet and taken the same as market guideline value for computing the stamp duty payable on the exchange deed. The petitioners in W.P.No.28652 of 2022 preferred an appeal as against the order of the 3rd respondent and the 2nd respondent - District Registrar being appellate authority, upon considering the materials placed before him, reduced the value of the properties from Rs.6500/- to Rs.4,200/- per square feet. As the petitioners were not willing to pay the deficit stamp duty and penalty, the matter has been thereafter, referred to the Collector under Section 47-A for determination of the market value of the property as on the date of presentation of the document for registration. According to the learned Additional Government Pleader, once a proceeding under Section 47-A of the Indian Stamp Act has been initiated and one of the petitioners had, in fact, participated in the proceedings and filed objections, the writ petitions challenging the value fixed by the 2nd respondent-District Registrar are not maintainable.

16. Mr.B.Vijay would further contend that *de hors* the value fixed by the

2nd respondent, the Collector concerned shall independently determine the market value of the properties which are subject matter of the exchange deed by taking into account the various factors, hence, he prayed that the Collector may be directed to decide the issue to determine the market value of the properties independently de hors the findings of the registering authorities with regard to the guideline value of the subject properties. Hence, he prayed for dismissal of the writ petitions.

17. This court has considered the rival submissions and the materials placed placed on record carefully.

18. The exchange deed was admittedly presented on 21.10.2021 valuing the properties which are subject matter in the exchange deed at Rs.1675/- per square feet.

19. It is the specific case of the petitioners that lands which belonged to the writ petitioners in W.P.No.28652 of 2022 are landlocked and have lesser value. They are surrounded by the lands which belonged to the petitioner in the other writ petition and Buckingham Canal and burial ground and one has to pass through the burial ground to reach the property. The lands belonging to the petitioner in the other writ petition have also lesser value and no development on the land. Only for the better enjoyment, the respective land owners decided to exchange their lands and deed of exchange was sought to be registered.

20. Though there was no survey number-wise market value guidelines for the lands situated at Karapakkam village, the properties which are subject-matter in the exchange deed were valued at Rs.1675/- taking into account the street-wise guideline value of the neighbouring streets.

21. It is relevant to note here that the Government have already fixed the value for the lands situated in the nearby street. There is no dispute over the availability of the street-wise guideline value for the lands situated in the streets surrounding the subject lands. On a careful perusal of such market value guidelines, it is seen that the maximum market value fixed was only Rs.1,340/- per square feet for the land situated in Barathyar Street. In 2017, for the land situated in Burial Ground Road was fixed at Rs.502/- per square feet. While referring the document for fixation of market value, the 4th respondent-Tahsildar had recommended Rs.3350/- per square feet as market guideline value. Though the 3rd respondent-District Registrar upon his inspection recorded that the property was not developed and the lands in and around the area were also not developed and the subject-lands are surrounded by Buckingham Canal and to reach the lands, one has to pass through the burial ground. The burial ground street guideline value, as already stated, was fixed at Rs.502/- per square feet, yet he adopted the value of TVS Emarald hamlet and

proceeded to record a further finding that on enquiry from the locals, he came to know that the market value of the lands would be around Rs.1500 to Rs.2000/- per square feet. Despite having recorded so, the 2nd respondent has unilaterally fixed Rs.6500/- per square feet as guideline value for the subject lands without any concrete and solid material evidence in this regard. Furthermore, the 2nd respondent has simply ignored the market value guidelines fixed for the lands situated in the nearby streets. The factors which were actually weighed by the 3rd respondent to arrive at such higher market guideline value are not really known to the court. There was absolutely no specific finding recorded by the 3rd respondent in this regard nor any materials were available before him.

22. Be that as it may, on appeal by the petitioners, having noted that TVS Emarald Hamlet is situated 2 km away from the lands which are subject matter of the exchange deed, the 2nd respondent proceeded to fix the market value of the subject lands based on the market value guidelines of the property which are situated 2 kms away. Though the 2nd respondent found that the subject lands are undeveloped and surrounded by Buckingham Canal and burial ground, without any proper enquiry, proceeded to fix such a higher market value unilaterally. This in the view of this court is not in accordance with the established procedure.

23. It is relevant to note here that as per the provisions under the Indian Stamp Act, 1899, guideline value of a property could be fixed only in accordance with law. By Act 13 of 2008, the State of Tamil Nadu inserted Section 47-AA to the Indian Stamp Act 1899. The said provision came into effect w.e.f. 01.06.2010 which reads as follows:-

> "**47-AA. Constitution of Valuation Committee.–** (1) The State Government shall, by notification, constitute a Valuation Committee under the Chairmanship of Inspector-General of Registration and such other member as may be specified for estimation, publication and revision of market value guidelines of properties in any area in the State at such intervals and in such manner as maybe prescribed, for the purpose of Section 47-A.
>
> (2) The Valuation Committee is the final authority for the formulation of policy, methodology and administration of the market value guidelines in the State and may, for the said purpose, constitute valuation sub-committee in each district comprising of such members as may be prescribed, for estimation and revision of the market value guidelines.
>
> (3) The sub-committee so constituted shall function under the Valuation Committee and shall follow such procedures as may be prescribed and shall

be subject to reconstitution whenever found necessary.”

24. The above provisions would make it clear that fixation of market value guidelines and revision of market value guidelines of properties shall be done only by the Valuation Committee. As provided under sub-section (2) of Section 47-AA, the Valuation Committee may constitute valuation sub-committee in each district comprising of such members as may be prescribed, for estimation and revision of the market value guidelines.

25. Rule 3 of The Tamil Nadu Stamp (Constitution of Valuation Committee For Estimation, Publication And Revision of Market Value Guidelines of Properties) Rules, 2010 deals with constitution of sub-committee which reads as under:-

> **3. Constitution of valuation sub-committee.—**
> (1) The Valuation Committee may constitute valuation sub-committee in each revenue district for the purpose of estimation and revision of the market value guidelines of the properties consisting of the following members.—
>
> (i) District Collector - Chairman;
>
> (ii) District Revenue Officer;
>
> (iii) Deputy Inspector General of Registration;
>
> (iv) District Registrars of the Concerned Registration district;

(v) District Registrar of the Head Quarters of the concerned revenue district-Secretary;

(vi) Assistant Director of Town Panchayats;

(vii) Assistant Director of Panchayats;

(viii) Regional Director of Municipalities and

(ix) Representatives of local bodies

(2) The office of the valuation sub-committee shall be located in the office of the District Collector and he is responsible to oversee the administration of the valuation sub-Committee. The District Registrar of the concerned revenue district shall deal with the correspondence and is also responsible for the compilation of the data relating to the market value of the properties, in accordance with the decision of the valuation sub-committee."

26. Rule 3 thus makes it mandatory that sub-committee shall consist of all nine members under the Chairmanship of the District Collector concerned.

27. Rule 5 provides guidelines for the estimation of the market value by Valuation Sub-Committee which reads as under:-

"**5. Guidelines for the estimation of the market value by the valuation sub-committee.—**Each valuation sub-committee shall prepare the statement showing average rates of agricultural and non-agricultural lands, residential, commercial and industrial sites in the sub-district and municipal or local body area, considering the following general guidelines: —

(1) (a) In the case of lands other than house sites–

(i) Classification of land as dry, garden, wet and the like;

(ii) Classification under various classes of soil in the survey records;

(iii) Other factors which influence the valuation of the land in question;

(iv) Value of adjacent land or lands in the vicinity;

(v) As far as practicable the nature of crop and average annual yield from the land for five consecutive years till the determination and nearness to road and market, distance from village site, its location in general, level of land, transport facilities, facilities available for irrigation such as tanks, well and pumpsets.

(b) In the case of house sites –

(i) The general value of house site in the locality;

(ii) Nearness to road, railway station, bus route;

(iii) Nearness to market, shops and the like;

(iv) Amenities available in the place like public offices, hospitals and educational institutions;

(v) Development activities, industrial improvements in the vicinity;

(vi) Land tax and valuation of sites with reference to taxation records of the local authorities concerned;

(vii) Any other features having a special bearing on the valuation of the site;

(viii) Any other special features like bore-well in addition to public water supply, lawn, garden and swimming pool.

(c) Properties other than lands, house sites and buildings —

(i) The nature and conditions of the property;

(ii) Purpose for which property is being put to use; and

(iii) Any other special features having a bearing on the valuation of the property.

(2) (a) The value of agricultural lands may be classified as dry, wet or garden, generally and nearness to the village may be considered for fixing the rates to each class.

(b) The rate for the lands with coconut or arecanut plantations may be estimated as garden lands instead of land plus number of trees.

(c) Data provided by the concerned Superintending Engineers of the Public Works Department shall be the norm for valuation of buildings.

(d) All the market value guidelines statements approved by the valuation sub-committee are public records and shall be preserved as permanent records in the Office of the concerned District Registrar."

28. The above rule would make it further clear that before fixing the market value various factors have to be taken note of. In the case of house sites, general value of house site in the locality; nearness to road, railways station, but route, nearness to market, shops and the like; amenities available in the place like public offices, hospitals and educational institutions; development activities, value of the adjacent lands or lands in the vicinity; and several other factors have to be considered and taken into account.

29. On the contrary, in the instant case, without taking into account various factors set out under the Tamil Nadu Stamp (Constitution of Valuation Committee For Estimation, Publication And Revision of Market Value Guidelines of Properties) Rules, 2010, the 3rd respondent District Registrar has simply fixed the value without any evidence therefor. Therefore, the order of the 2nd respondent is not in accordance with law. Thus, this court is of the view that

if market value of a property in any particular survey number is to be fixed for the first time, after Section 47-AA has been inserted to the Indian Stamp Act by way of Tamil Nadu Act, only the sub-committee is competent to fix the market value of such property by taking into account various factors enumerated under Rule 5 of the Tamil Nadu Stamp (Constitution of Valuation Committee For Estimation, Publication And Revision of Market Value Guidelines of Properties) Rules, 2010. Therefore, order passed the District Registrar assuming the role of sub-committee is not valid in the eye of law.

30. Much reliance was placed on the delegation of powers on the District Registrar in the resolution passed by the State Level Committee in the meeting held on 23.11.2021.The said resolution would, however, indicate that District Registrar was delegated only to make an inspection and obtain concurrence from the committee. Therefore, merely based on such resolution which empowered the District Registration only to inspect the property, it cannot be said that power to fix market value for the subject properties was delegated and as such the District Registrar assumed the role of the sub-committee. The sub-committee should consist of 9 members as per rule 3 referred to herein above. Therefore, unilateral fixation of market value guidelines which came to be confirmed on appeal is totally contrary to the procedures established by law.

31. Now, much emphasis has been made to the reference made under Section 47-A. It is relevant to note that admittedly, some methodology has been adopted by the petitioners while presenting the deed of exchange for registration in respect of arriving at the market value for the stamp duty payable on the deed. Though survey number based market value guidelines have not been fixed, if the registering authority while registering the document has reason to believe that the value of the properties which are subject matter of the deed of exchange has not been truly set forth in the document or undervalued in order to evade the stamp duty, first he ought to have registered the document and then referred the matter to the Collector under Section 47-A of the Act for determination of market value of the property and for collection of proper stamp duty.

32. Under Section 47-A of the Indian Stamp Act, 1899, a reference can be made to the Collector for determination of the market value of property and the proper duty payable thereon only in the case where the registering officer has reason to believe that the market value of the property which is the subject-matter of the instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the

parties in order to evade stamp duty.

33. In the case of **V.N.Devadoss v. Chief Revenue Control Officer-cum-Inspector [(2009) 7 SCC 438],** the Hon'ble Supreme Court has held as follows:-

> "**13.** Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject-matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of bona fides of the parties to the document by attempting fraudulently to undervalue the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty."

34. Admittedly, now a reference has been made on the ground that the properties were undervalued in order to evade stamp duty, but, however, much after the 2nd respondent passed a final order on 05.09.2022 fixing the guideline value for the properties under dispute at Rs.4,200/- per square feet and

dismissing the revision filed by the petitioners as against the order of the 3rd respondent passed on the reference made by the 4th respondent determining the market value of the properties and pending one of the writ petitions, now, a reference under Section 47-A has been made to the Collector for determination of market value and collection of difference in stamp duty if any on such determination only on 08.11.2022. Such reference cannot however be a ground to hold that the writ petitions are not maintainable.

35. As already stated above, if at all the registering officer, while registering the exchange deed in question had reason to believe that the value of the market value of the property which is subject matter had not been truly set forth in the instrument, he ought to have registered such instrument and referred the matter to the Collector under Section 47-A of the Indian Stamp Act, 1899 for determination of the market value of the property within the time stipulated under the Act, and not on the basis of the value fixed one year after the date when the document was presented for registration. Therefore, this court is of the considered view that mere reference under Section 47-A will not have any significance to decide the writ petitions.

36. Now, challenge has been made as to the fixation of the guideline value. As this court has already held that the District Registrar has no power

and the sub-committee alone is competent as per rule 3 of the Tamil Nadu Stamp (Constitution of Valuation Committee For Estimation, Publication And Revision of Market Value Guidelines of Properties) Rules, 2010 to fix the market value guideline of the properties, the market value fixed by the 2nd respondent in modification of the order of the 3rd respondent fixing the market value, which is impugned in the writ petitions, has to be necessarily quashed.

37. Mr.M.S.Krishnan placing much reliance on the judgement of the Hon'ble Supreme Court in **Gunwant Kaur and others v. Municipal Committee, Bhatinda and others [(1969) 3 SCC 769]** would submit that the writ court can go into the question of facts if there are sufficient materials available on record and the court itself can fix the market value of the properties when the matter is established on record.

38. Though there is no dispute regarding the settled position of law which the learned senior counsel has presented before the court , the facts remain that market value has to be fixed taking to consideration of various factors including documents and evidence and in terms of guidelines set out under rule 5 of the Tamil Nadu Stamp (Constitution of Valuation Committee For Estimation, Publication And Revision of Market Value Guidelines of Properties) Rules, 2010. In such view of the aspect of the matter, this court is

of the view that merely based on the documents filed before this court in the form of typed-set of papers, it may not be proper for this court to assume the role of the sub-committee or Collector to determine the market value of the properties.

39. In view of the foregoing discussions, writ petitions succeed and the orders impugned in the writ petitions are liable to be set aside. Though a reference made under Section 47-A of the Indian Stamp Act, 1899 is found to be not valid in the eye of law, now directing the sub-committee to fix the new market value guideline for the properties which are subject matter in the deed of exchange in the considered opinion of this court would not serve any purpose at all as the market value guidelines are not the actual market value. The guideline value is only a guiding factor and it cannot be the real value or in other words, the guideline value fixed by the registration department is not final but only a *prima facie* rate prevailing in an area. The term “market value” has not been defined in the Indian Stamp Act, 1899. It is, however, settled law that 'market value' of the property shall be estimated to be the price which such property would have fetched or would fetch if sold in the open market on the date of execution of any instrument. The guideline value fixed by the registration department, as already stated, is not final it is only a *prima facie* rate prevailing

in an area. It is always open to a person seeking registration of a instrument to prove actual value of the property in the particular area which is the subject-matter of such instrument. The guideline values fixed and supplied to registration department were intended merely to assist them to ascertain *prima facie* whether the market value has been truly set forth in the instrument. The guideline values of the properties cannot be taken as substitute for market value or the guideline values will not foreclose the enquiry of the Collector under Section 47-A of the Act. The guideline value are prepared based on data gathered broadly with reference to classification of lands, grouping of lands and the like. Therefore, the guideline value fixed by the authorities cannot be held to be the exact market value.

40. Even while determining the market value the Collector is required to provisionally determine the market value by taking into consideration various factors mentioned in the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 and not merely the guideline value.

41. Rule 5 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 provides for guidelines for determination of market value which reads as under:-

"5. Principles For Determination Of Market

Value:- The Collector shall, as far as possible, have also regard to the following points in arriving, at the provisional market value -

(a) In the case of lands-

(i) classification of the land as dry, manavari, wet and the like;

(ii) classification under various tarams in the settlement register and accounts;

(iii) the rate of revenue assessment for each classification;

(iv) other factors which influence the valuation of the land in question;

(v) points, if any, mentioned by the parties to the instrument or any other person which requires special consideration;

(vi) value of adjacent lands or lands in the vicinity;

(vii) average yield from the land, nearness to road and market, distance from village site, level of land, transport facilities, facilities available for irrigation such as tank, wells and pumpsets;

(viii) the nature of crops raised on the land; and

(ix) the use of land, domestic,

commercial, industrial or agricultural purposes and also the appreciation in value when an agricultural land is being converted to a residential, commercial or an industrial land.

(b) In the case of house sites-

(i) the general value of house sites in the locality;

(ii) nearness to roads, railway station, bus route;

(iii) nearness to market, shops and the like;

(iv) amenities available in the place like public offices, hospitals and educational institutions;

(v) development activities, industrial improvements in the vicinity;

(vi) land tax valuation of sites with reference to taxation records of the local authorities concerned;

(vii) any other features having a special bearing on the valuation of the site; and

(viii) any special feature of the case represented by the parties.

(c) In the case of buildings-

(i) type and structure;

(ii) locality in which constructed;

(iii) plinth area;

(iv) year of construction;

(v) kind of materials used;

(vi) rate of depreciation;

(vii) fluctuation in rates;

(viii) any other features that have bearing on the value;

(ix) property tax with reference to taxation records of local authority concerned;

(x) the purpose for which the building is being used and the income if any, by way of rent per annum secured on the building; and

(xi) any special feature of the case represented by the parties.

(d) Properties other than lands, house sites and buildings-

(i) the nature and condition of the property;

(ii) purpose for which the property is being put to use; and

(iii) any other special features having

a bearing on the valuation of the property."

42. On a careful perusal of the principles set out in the said rule, what is sine qua non is - grant of opportunity of being heard after taking into account various factors and also recording evidence, value has to be fixed, but that has not been done in the instant cases. Before arriving at final value, the collector has to pass an order provisionally determining the market value of the property and the duty payable as per Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. After hearing the objections, he shall pass final order as per Rule 6 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968**.** Therefore, the authorities without following such mandatory procedures cannot simply take into account the guideline value as market value and demand deficit stamp duty and penalty. Under Section 47-A, the Collector alone has the power to determine the correct market value by following the established procedure. Therefore, this court is of the view that it may not be proper for this court to undertake the process of roving inquiry in that regard.

43. There are already procedures for fixation of market value by the collector. This court has already concluded that reference already made under Section 47-A of Indian Stamp Act, 1899 is not valid in the eye of law. Despite

the conclusion of this court that reference is not valid in the eye of law as the market value guidelines have not been fixed for the subject survey numbers, this court is of the view that in order to give finality to the issue and to have the market value for the properties, it would be appropriate to direct the Collector (Stamps) to determine the market value of the properties as per rules taking into account various factors and after giving opportunity to the parties. The petitioners in W.P.No.28652 of 2022 and and the petitioner in W.P.No.4060 of 2023 are at liberty to produce whatever the documents in their possession in support of their claim in respect of the market value of the properties and the Collector shall take into consideration of the same while passing orders.

In the result, the writ petitions are allowed. The orders impugned in the writ petitions are set aside and the reference already made under Section 47-A of the Indian Stamp Act, 1899 is declared to be not valid in the eye of law. Since market value guidelines have not been fixed for the properties and the market value guidelines fixed by the 2nd respondent has been set aside by this court, the Collector is the competent authority under Section 47-A to decide the matter, the Collector is directed to determine market value as required under Section 47-A independently on merits after giving opportunity to the petitioners in the writ petitions. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected WMPs are closed.

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

24 ..06..2024

To

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

2.The Deputy Inspector General of Registration,
(Guideline Value Fixation), Chennai Zone,
Integrated Building for Commercial Taxes and Registration Department,
Saidapet, Government Farm Village,
Chennai 600 035.

3.The District Registrar,
South Chennai,
Integrated Building for Commercial Taxes and Registration Department,
Saidapet, Government Farm Village,
Chennai 600 035.

4.The Sub-Registrar,
Neelangarai Sub-Registrar Office,
Neelangarai, Chennai 600 041.

N.SATHISH KUMAR.J.,

kmk

Pre Delivery Common Order
in
W.P.Nos.28652 of 2022 and 4060 of 2023

24..06..2024