

State of A.P. and Others Vs Sagar Cements Limited, Mattampalli, Nalgonda Dist. and Others

Court: Andhra Pradesh High Court

Date of Decision: June 4, 2002

Acts Referred: Andhra Pradesh Stamp (Prevention of Under Valuation of Instruments) Rules, 1975 " Rule 3(3)

Constitution of India, 1950 " Article 226

Stamp Act, 1899 " Section 47A

Citation: (2002) 4 ALD 136 : (2002) 6 ALT 180

Hon'ble Judges: S.R.K. Prasad, J; S.R. Nayak, J

Bench: Division Bench

Advocate: Government Pleader for Revenue, for the Appellant; Viswarama Prasad, for M. Chandrasekhar Rao and M.S. Prasad, for the Respondent

Final Decision: Allowed

Judgement

S.R.K. Prasad, J.

Originally a Division Bench of this Court in a batch of writ appeals including WA Nos.458 and 459 of 1990 referred

the matter to Full Bench doubting the correctness of the decision rendered in Sagar Cements Limited v. State of Andhra Pradesh (1989 3 ALT

677). Thereafter, the matter came up before the Full Bench on 9-3-1998. The Full Bench directed the matter to be posted before a Division

Bench.

2. The respondents are the appellants herein . WP No. 3276/89 is presented against the refusal to receive and register the sale deeds relating to

the land bearing S.Nos.428/AA and S.No. 202 of Mattampalle and Pedaveedu villages respectively. The petitioner in the said writ petition is said

to have purchased Ac.8.10 guntas in S.No. 429-AA of Mattampalli village adjoining the compound wall of petitioners plant belonging to three

owners namely (1) Golamari Sowrireddy; (2) Tirumallareddy Chinnapareddy and (3) Tirumalareddy Bala Reddy at the rate of Rs. 3,000/- per

acre. Golamari Sowrireddy executed one sale deed and the other two vendors have executed another sale deed dated 1-9-1998 on a non-judicial

stamp paper on the basis of the sale consideration. Those two documents are said to have been submitted before the Sub-Registrar, Huzurnagar,

Nalgonda District. The 3rd respondent is said to have refused to admit those documents unless the stamp duty is paid at the rate of Rs. 9/-per

sq.yard for the land bearing No. 429/AA according to the value fixed in the basic value register by treating them as house sites in pursuance of the

instructions issued by the Inspector General of Registration and Stamps of Andhra Pradesh, Hyderabad in his proceedings No. MV3/977/ 1995

dated 4-9-1986. The petitioner has also purchased another piece of land to an extent of Ac.5-23 guntas in S.No. 202 of Pedaveedu village under

an agreement for sale dated 13-12-1988 at the market value of Rs. 12,500/- per acre. As per the basic value register, the stamp duty has to be

paid at the rate of Rs. 28/- per sq. yard treating it as land for house sites. It is alleged that as per the instructions issued by the Inspector General of

Registration and Stamps in his proceedings No. MV3/977/ 1985 dated 4-9-1986 house site rates should be applied to the agricultural lands sold

to Co-operative Housing or House Building Societies, Industrial Entrepreneurs, Real Estate holders, Acting as agreement holders, Educational and

Religious Institutions irrespective of the extent involved and the purpose for which it was purchased. It is further alleged that the basic value of the

land in S.No. 429/AA is fixed at the rate of Rs. 9/- per sq. yard while the land in S.No. 202 is valued at the rate of Rs. 28/- per sq.yard as house

sites and the valuation fixed by the respondents is illegal, arbitrary, contrary to law and without jurisdiction. The respondents have no authority to

issue instructions to fix the values of lands or properties or to treat the land of one category as that of another. The petitioner has assailed the order

on the ground that the land purchased is either waste land or agricultural land actually, and it cannot be valued as land for house sites and the

instructions issued by the respondents are invalid and void. The petitioner has also assailed the order stating that imposition of heavy stamp duty on

the land purchased is an unreasonable restraint on the fundamental right of a citizen and it is hit by Articles 14 and 19(1)(g) of Constitution of India.

Hence the petitioner has sought for a writ of mandamus directing the 3rd respondent to receive and register the sale deeds submitted by him.

The appellants who are respondents in the writ petition have supported the proceedings and contended that the petitioner is a cement

manufacturing company and it purchased Ac.8.10 guntas of land. It is contended by the respondents that according to Section 47A read with

Article 20 Schedule 1(a) of the Indian Stamp Act duty has to be paid either on the market value or on the consideration whichever is higher in

respect of instruments evidencing conveyance on sale. If the party fails to adopt such procedure, the Sub-Registrar has to keep the document

pending and refer the matter to the Collector u/s 47-A of the Indian Stamp Act for determination of market value and stamp duty payable thereon.

It is also contended by the respondents that it is the duty of the petitioner to set forth correct market value in the instrument and where the Sub-

registrar feels that the market value is not set forth, he has to keep the registration pending and refer it to the Collector for determination of correct

market value. It is further contended that only after elaborate local enquiry the market value of each survey number was determined and the

registers are also updated by the District Valuation Committee in consultation with the local revenue authorities. It is contended that instructions

were issued by the 2nd respondent in proceedings No. MV3/977/ 85, dated 4-9-1986 that rate per square yard should be made applicable to

lands sold to Co-operative Housing Societies etc., irrespective of the extent involved since the lands were purchased for non-agricultural purposes.

The 2nd respondent further in his proceedings No. G7/19129/86 dated 15-1-1987 issued instructions stating that the District Valuation Committee

has to examine each case by conducting spot inspections and making local enquiries and fix the market value of the property. It is further

contended that since land is meant for non-agricultural purpose, the square yard rate has to be adopted. It is further contended that if the writ

petitioners feel that the market value of a property fixed is abnormal, they can represent the case before the District Valuation Committee or the

document can be kept pending and refer to the Collector u/s 47-A of Indian Stamp Act for determination. The petitioners without exhausting the

remedies provided under the Act cannot approach this Court and invoke the writ Jurisdiction.

3. Writ Petition No. 8365 of 1989 is filed by the Auto Technical Workers Welfare Association, Machilipatnam and petitioners contentions can be

briefly stated as follows:

The petitioner association with an intention of developing Autonagar, intended to acquire Ac.100.00 of land at Pothepalli village near

Machilipatnam and entered into an agreement of sale for purchase of about Ac.42.00 in the said village during 1982-83. The lands which are

proposed to be purchased are in S.No. 49, 49/1A, 81/142 and 82/1 of Pothepalli village. The value of the land per acre is Rs. 7,850/- for the

entire land. Five sale deeds are said to have been executed by various vendors. The petitioner also is said to have entered into an agreement of

sale with M/s. Ede Bhaskar Rao and Edu Devaiah an extent of Ac.2.45 1/2 cents in R.S. No. 46/142 and 44. Since the vendors failed to execute

the sale deed OS No. 55/87 was filed on the file of Principal District Munsif, Machilipatnam for specific performance and the same was decreed

on 16-6-1987. Subsequently, the vendors have received the entire sale consideration and agreed to execute the sale deed. The petitioner-

association has also entered into an agreement of sale with Koka Satyanarayana on 30-6-1983 and purchased Ac.21.42 cents in S.Nos.49/1A

and 82/1 at Rs. 7,850/- per acre and the vendor has delivered the vacant possession of the land on the same day. The petitioner has paid an

amount of Rs. 50,000/- by cheque bearing No. SSO 876382 in Canara Bank, Bandar and Rs. 10,000/- was paid on 8-2-1984 by cheque. The

said Koka Satyanarayana died intestate on 14-2-1984. Smt. Koka Satyanarayana Ratna Mani, w/o. late Satyanarayana agreed to execute the

sale deed and a draft sale deed for purchase of Ac.21.42 cents in S.No. 49/IA and 82/1 for Rs. 1,66,147/- was prepared and presented to the

3rd respondent by the petitioner-association for registration in December, 1986. The 3rd respondent is said to have refused to register the sale

deed for Rs. 7,850/-per acre and informed the petitioner that the value has to be part at Rs. 10/- per sq. yard. The petitioner-association

represented that the actual value of land was Rs. 7,850/-only per acre and in fact five sale deeds were registered by the 3rd respondent in the

same survey numbers for about 20 acres of land at the rate of Rs. 7,850/- per acre. As per the direction, the petitioner-association gave a

representation stating all the facts and requested the authorities to register the land on the actual value paid in acres and not in square yards.

Nothing was heard from the Deputy Inspector General of Registration and Stamps, Eluru and Joint Sub-Registrar-I, Machilipatnam. Thereafter,

the petitioner-association paid the entire sale consideration on 12-12-1987 to the vendor and the minor daughters, through bank and the vendors

made the endorsement on the agreement of sale. The petitioner has again approached the 3rd respondent for registration in July, 1988 and he has

been informed that the 2nd respondent has issued proceedings fixing Rs. 20/- per sq. yard. On the request of the petitioner, on 26-7-1988 the

proceedings of the 2nd respondent bearing No. A71308787 dated 30-11-1987 has been communicated to the petitioner. The petitioner-

association has approached the 3rd respondent for revising its orders and has given a representation in January, 1989. The 3rd respondent is not

willing to register the sale deed on the actual purchase value and he is insisting to adopt value fixed by the 2nd respondent. The petitioner-

association is a Welfare Association for the benefit of Auto Technical Workers and entire sale consideration is paid to the vendors. The

proceedings issued are assailed on the ground of refusal to admit the instrument for registration or refer the matter to Collector automatically on the

ground that the values mentioned in the basic register is higher than the value mentioned in the instrument and imposing such heavy stamp duty on

the land purchased is an unreasonable restraint on the fundamental right of a citizen to carry on the business, trade or occupation and it is hit by

Articles 14 and 19(1)(g) of Constitution of India. It is also assailed that the 2nd respondent has no jurisdiction to issue the proceedings without

reference and without notice to the petitioner. Hence the petitioner has sought for a direction declaring that the respondents 1 and 2 have no power

to issue general or specific instructions for fixing the basic value of the properties and further declare that the proceedings of the 2nd respondent

bearing No. A71308787 dated 30-11-1987 as illegal, null and void without jurisdiction and contrary to the provisions of Indian Stamp Act. The

petitioner further prays to direct the 3rd respondent to receive and register the sale deeds relating to land in S.No. 49/ 1A and 81 and 82 of

Pothepalli Village of Machilipatnam.

4. The appellants who are the respondents in the writ petition have supported the proceedings and contended that the petitioner who is an Auto

Technical Workers Association has not prepared the documents for registration and only an enquiry was made regarding the market value of the

property by the petitioner. It is contended that on the advise of the then Registering Officer, the petitioner put in a representation on 18-7-1988

and the land was purchased for other than agricultural purpose, and was only for industrial purpose and intended to be divided into plots. It is also

contended that the petitioner is required to pay Stamp duty in full and the possession is said to have been delivered. It is also contended that the

petitioner did not choose the procedure u/s 47-A of Indian Stamp Act and the Inspector General has duly authorized to issue the proceedings as

to the fixation of market value by the District Valuation Committee. It is also contended that the enquiry about the market value of the property by

the petitioner and informing the prevailing market value by the registering officer does not form part of refusal to register a document. It is also

contended that upon the representation put in by the petitioner the 2nd respondent issued proceedings as regards the market value upon which the

stamp duty is to be levied on paying spot visit by the District Valuation Committee duly constituted for this purpose. The petitioner was served a

copy of proceedings A/1308/8D dated 30-11-1987. It is further contended that the Registering Officer will on protest admit the document

pending reference of the case to Collector u/s 47 of Indian Stamp Act to fix the value and deal with the collection of deficit stamp duty if any. The

petitioner did not exhaust the said source and seek redressal in a Court of law. Hence they oppose the claim of the petitioner.

5. By a common Order dated 29th September, 1989 both the writ petitions were disposed of by our learned brother Hon"ble Sri Justice Jeevan

Reddy. The observations made by the learned single Judge at paras 15 and 17 reads as follows:

After giving my earnest consideration to the issue, I am of the opinion that the values stated in the Basic Value Register, lacking any statutory

sanction, cannot bind the registering officer. The Basic Value Register is prepared by the Government on the basis of its own enquiries. It has been

revising those values from time to time, again unilaterally, when the values are determined for all the properties in the State, the exercise is bound to

be generalized in nature. It can never be accurate with respect to each individual property or piece of land. For example, in urban areas the values

differ radically, depending upon whether the land is abutting the main road, or is just 10" or 15" away from the main road. The values of properties

depend upon several variable factors. Even in the case of agricultural properties the values of one survey-number may differ from the value of

adjoining survey number. Even within the same survey-number, if its extent is fairly large, one part may differ in value from the other part. Take the

letter of the Sub-Registrar, Huzurnagar, dated 29-9-1998, referred to hereinbefore. It determines the value of a group of survey numbers

comprised in 429, 430, 431, 432 and 433 at Rs. 3,000/- per acre if it is sold for agricultural purposes. At the same time, it says that its value

would be Rs. 18/- per sq. yard if the land is "located at road side". It further says that its value would be Rs. 9/- per sq. yard if it is located

inside." What does the expression "land located at road side" means? Is that value confined only to a strip of land along the road, or to the entire

survey-number, whatever be its extent? Similarly, it is not known what does the expression "inside" mean. A land situated 15" away from the main

road would be "inside" as well as a land situated 1500 meters away from the main road. Can both the lands be treated on the same par? Besides

the above inherent ambiguities, it is not known, how can the value differ depending upon the purpose for which the land is purchased? This aspect

has already been commented upon by me hereinbefore. All this discloses the inherent difficulty in determining the value of each survey-number or

each piece of property in the entire State by a single exercise. It appears from the U.P amendment, referred to above that Section 47-A as

introduced by the U.P Legislature contemplates Rules being made for determining the minimum values of properties. Only where the value shown

in a document is less than such minimum value, is the registering officer expected to refer to the matter to Collector after registering the document.

In our case, the concept of minimum value is not there. The value fixed is said to be the true and correct value and, as pointed out above, it cannot

be that. In my considered opinion, therefore, the instructions issued by the Government and the Inspector-General of Stamps and Registration to

the registering officers to abide by the values stated in the Basic Value Register and not to register any document which does not accord with the

value stated in the Basic Value Register are not only not sanctioned by law, but cannot also be justified by the principle enunciated in the preceding

paragraph No. 13. These instructions are not mere guidelines issued to guide and help the registering officers in forming the requisite opinion. They

are more in the nature of a "dokat". It leaves no room for any discretion on the part of the registering officers. The registering officers are bound

by the said Register. Having regard to the high incidence of Stamp and registration charges, and the constant upward revision effected by the State

Government in the basic value register from time to time, it would be extremely hard upon the citizens to hold that they should willy-nilly abide by

the values stated in the Basic Values Register. It may be that stamp revenue may have been one of the important sources of revenue in the days of

yore; but, today it constitutes an insignificant portion of the total State revenue. Other heads of revenue very substantial in nature-have come into

being over the years, like sales tax. Other types of revenue, like excise revenue, have increased substantially. Levying stamp and registration

charges at such a high figure and then taking them on to artificially determined values is bound to operate as a very heavy burden upon citizens. It is

precisely because of such high incidence of stamp and registration charges that in many rural areas particularly in Telangana region of the State,

rural folk particularly the poorer persons who purchase small pieces of land, do not get their documents stamped and registered according to law,

and on account of that, they come into trouble more often than not. A welfare State should try to reduce the incidence of such charges rather than

trying to increase them. As a matter of fact, this high rate of stamp and registration charges is also operating to drive the values of properties

upwards. If a property changes hands a five-times, the total expenditure on stamp and registration charges would be equal to the value of the

property itself. This is not to deny the legitimate right of the State to raise revenue by means of levying stamp duty. I only wish to emphasize that

both the considerations should be evenly balanced; raising revenue alone should not be the criterion. The stamp and registration charges should be

maintained at a reasonable level, keeping in view the fact that any abnormal incidence operates as an uncalled for burden upon citizens and also

tends to hamper the free dealing in properties. The result of this discussion is that the values stated in the Basic Value Register cannot be treated as

binding upon the registering officers, or upon parties who present documents for registration and that at the most, it can be treated as a guideline, a

relevant material, by registering officers.

Para 17 of the order reads as follows:

Applying the principle of the said decision, it must be held that for attracting Section 47-A it is not enough to show that the consideration stated in

the instrument of sale etc., is less than the prevailing market value. It must be further shown that it is a case of under-valuation. Even though the

expression "" undervalued"" is not used in the body of Section 47-A but only in marginal note, still the relevance of marginal note cannot be ignored.

Even in the case of Section 52(2) of the Income Tax Act, the expression ""under statement"" did not occur in the body of Sub-section (2) or Sub-

section (1) but only in the marginal note, and yet the Supreme Court held that the marginal note is relevant to ascertain the intention of the

legislature. At this stage, I must hasten to make one aspect clear. In the case before the Supreme Court, the Court was dealing with the powers

and procedure of the Income Tax Officers. The function of an Income Tax Officer is quasi-judicial in nature. He has to make an assessment after

following the prescribed procedures, all of which are absent in the case of a registering officer acting u/s 47-A(1). The function of a registering

officer cannot be said to be quasi-judicial. He has neither time nor the machinery to determine the market value of properties which are subject-

matter of each of the documents brought before him. Now law prescribes the procedures which he must follow while making the said

determination. It would, therefore, be not proper to equate the function of a registering officer u/s 47-A(1) to that of an Income Tax Officer u/s

52(2) of the Income Tax Act. I may also clarify that in proceedings under the Income Tax Act, Wealth Tax Act, or Gift Tax Act, or for that

matter, under any other enactment, the authorities acting under those enactments are not bound by the recitals in a sale-deed etc., relating to the

amount of consideration. The ITO/WTO/GTO perform quasi-judicial function; they are assessing authorities, and they are obliged to make an

enquiry in accordance with the prescribed procedure. They will make their own enquiry, and come to their own conclusion as to the true

consideration that may have passed under a particular deed of sale, exchange, or gift, as the case may be. I am concerned herein only with the

power registering officers u/s 47-A(1). Having regard to the nature of the function, the language of the section, and all other concerns and

considerations mentioned hereinbefore. I hold that ordinarily the registering officer shall accept the consideration stated in the document as

representing the true market value, unless there is clear material before him to hold that the parties to the document have deliberately under-stated

the consideration with a view to avoid stamp duty. In this connection, he may also be entitled to look into the value stated in the Basic Value

Register for that property. Having regard to the generalized nature of the Basic Value Register, he may, as a working rule, treat a document as

under-valued if the consideration stated therein is less than 50% of the value stated in the Basic Value Register as in force on 30-6-1989. If the

consideration stated in the document is equal to 50% of the value stated in the Basic Value Register (as on 30-6-1989) or more he shall register

the same forthwith. Similarly, where the Basic Value Register as on 30-6-1989 states two or three different values depending upon the purpose for

which the land is being purchased, as has happened in this case, he shall ignore the higher values and shall adopt the lowest value as the value

prescribed in the Basic Value Register. This position shall obtain till a statutory basis is provided to the Basic Value Register.

In WP No. 3276/89 the following order has been passed while allowing the writ petition.

For the above reasons, WP No. 3276/89 is allowed. The sale deed relating to S.No. 429/ AA shall be registered, if presented for registration, at

a consideration calculated at the rate of Rs. 3,000/- per acre. Similarly, the sale-deed with respect to S.No. 202 shall be registered, if presented, if

the consideration shown in the document is calculated at the rate of Rs. 12,500/- per acre.

WP No. 8365/89 was disposed of with the following direction:

In the circumstances, the only direction that can be given in this case is to the Registering Officer to act in accordance with the directions given in

paragraph (17) above. So far as lands covered by the decree in OS No. 55/87 are concerned, the consideration stated in the judgment and

decree shall be treated as the market value, irrespective of the values stated in basic value register.

6. Aggrieved by the same, the respondents in both the writ petitions have preferred the present writ appeals.

7. The learned Government Pleader for the appellants contend that the Registration authorities have got a right to fix the value making use of the

basic value register and there has been no need to rely on the value mentioned in the sale deed. It is also contended by the learned Counsel for the

appellants that Section 47-A of Indian Stamp Act empowers them to fix the value and the basic value register has been prepared as per the

powers vested under the Andhra Pradesh Stamp (Prevention of Under valuation of Instruments) Rules, 1975. He has also placed reliance on Rule

3 of the said Rules stating that basic value registers are prepared under the said Rule and the same have come into force with effect from 7-8-

1986. By virtue of the Rules, the Registering Officer may also refer to the registers containing market value guidelines prepared under the Andhra

Pradesh Market Value Guidelines Rules, 1997. The learned Government Pleader for the appellants has relied on a catena of decisions in support

of his case namely :

(1) Mohd. Abbas Shafi v. Sub-Registrar (DB) (1996 (3) ALD 459)

(2) Sub-Registrar v. M. Damodar Reddy (1997(3) ALD 325)

(3) Ponnnavolu Sasidar Vs. Sub-Registrar Hayatnagar, and others,

(4) Siddula Madhukar and another Vs. Govt. of A.P. and another,

(5) Vidya Nagar Housing Co-operative Society Ltd., Hyderabad Vs. State of Andhra Pradesh and others,

Whereas, the learned Counsel for the respondents have placed reliance on (1) Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad,

A.P. and Others, ; (2) M. Nagasiromani v. Subordinate Judge, Kovvur (1995 (3) ALD 60) and contends that the basic value mentioned in the

register lack statutory basis. They have mainly challenged the rights of the appellants to fix the value of taking into consideration of the basic value

Register.

8. In order to consider the rival contentions of both the Counsel, it is necessary to refer Section 47-A of A.P. Stamp and Registration Act (Act 17

of 1986). Section 47-A reads as follows:

47-A Instruments of Conveyance, Etc., Under-Valued how to be deal with :--(1) Where the registering officer appointed under the Registration

Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement or release has reason to believe that the market

value of the property which is the subject-matter of such instrument has not been truly set forth in [he instrument the may keep pending such

instrument and refer the matter to the Collector for determination of market value of such property and proper duty payable thereon);

(2) On receipt of a reference under Sub-section (1), the Collector shall, after giving the parties opportunity of making their representation and after

holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the

subject-matter of such instrument and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to

pay the duty.

(3) The Collector may suo motu within two years from the date of registration of such instrument, not already referred to him under Sub-section

(1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the

subject-matter of such instrument and the duty payable thereon and if, after such examination, he has reason to believe that market value of such

property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance

with the procedure provided for in Sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the

duty.

Provided that nothing in this sub-section, shall apply to any instrument registered before the date of commencement of the Indian Stamp (Andhra

Pradesh Amendment) Act, 1971.

(4) Any person aggrieved by an order of the Collector under Sub-section (2) or Sub-section (3) may appeal to the appellate authority specified in

Sub-section (5). All such appeals shall be preferred within such time and shall be heard and disposed of in such manner, as may be prescribed by

rules made under this Act.

(5) The appellate authority shall be --

(i) in the cities of Hyderabad and Secunderabad, the City Civil Court;

(ii) elsewhere--

(a) the Subordinate Judge or if there are more than one Subordinate Judge, the Principal Subordinate Judge, having jurisdiction over the area in

which the property concerned is situated; or

(b) if there is no such Subordinate Judge, the District Judge having jurisdiction over the area aforesaid.

6. For the purpose of this Act, market value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate

authority, as the case may be, such property would have fetched or would fetch if sold in the open market on the date of execution of the

instrument of conveyance, exchange, gift, partition or settlement.

It is clear from the above Section that market value of any property has to be estimated by taking into consideration the price that would fetch in

open market on the date of the instrument of conveyance. It is also clear from a reading of Section 47-A of the Indian Stamp Act as amended by

A.P. Act, the Registering Officer has got a right to refer the matter to the Collector for determination of market value of any property if the value

has not been truly set forth in the instrument. As against the orders of the Collector, the appellate authority has been constituted. Obviously, the

petitioners in both the writ petitions have not exhausted the remedies provided u/s 47-A of the Act and have resorted to challenge the proceedings

by filing writ petition. It is clear that the proceedings were issued in pursuance of the clarification sought for by the petitioners by making a

representation. In fact, during the pendency of the writ petitions, interim orders have been obtained and pursuance to the said directions, the sale

deeds got registered in respect of petitioners in writ petition. The learned Counsel for the appellants contend that they have given an undertaking to

pay the deficit stamp duty, if any only on such undertaking the sale deeds have been registered.

The learned Counsel for the respondents in writ petition denied the same and contends that the writ appeals have become infructuous in view of

registering of sale deeds. If any document is obtained pursuant to the interim orders passed by this Court, they are always subject to the final

orders in the writ petition. Therefore, the contention of the learned Counsel for the respondents do not hold water. In that view of the matter, I

state that the writ appeals do not become infructuous.

I now refer to several ratio decidendi placed before us dealing with the aspect of legal validity of entries in the basic value register and

interpretation put on to Section 47-A of Indian Stamp Act.

In Sub-Registrar, v. M. Damodar Reddy 1997(3) ALD 325 (DB), it is held at para 8 that:

The Sub-Registrar has not only taken the values in the Basic Value Register but also the values of the properties in the vicinity on the basis of sales

made during January to May 1996 and also the revised guidelines issued by the -Government and the Rectification of Anomalies Committee. Thus,

the Sub-Registrar had sufficient material to have every reason to believe that the market value was not properly set forth in the instrument. The

action of the Sub-Registrar cannot, therefore, be faulted.

Para 9 reads as follows:

The contention of the learned Counsel for the respondent that the appellants ought to have heard the respondent and elicited information from him

to form an opinion that the market value was not truly set forth in the instrument, does not reflect the correct position of law. Sub-section (1) of

Section 47-A of the Act nor Rule 3 of the Rules support such an interpretation.

Para 10 of the above judgment reads as follows:

From a reading of Rule 3, it is manifest that for the purpose of satisfying himself about the market value, the registering officer may make enquiries.

He may elicit information from the party concerned. Thus, in the course of satisfying himself to form an opinion that the market value set forth in the

document is under-valued, the registering officer may hear the party concerned. It is not obligatory he should do so. If he has got sufficient

information, otherwise, about the true market value of the property, the officer need not hear the party. He may directly impound the document and

make a reference. Sub-rule (3) of Rule 3 of the Rules thus is only an enabling provision for the registering officer to get information regarding the

market value from the party in the course of his enquiry. Since the Sub-Registrar has sufficient information with regard to the market value from

other sources, as mentioned above, he thought that there was no reason to get any other information from the respondent to invoke Section 47-A

of the Act and refer the matter to the Collector.

Para 11 reads as follows:

We have closely examined the judgment of the Division Bench in WA No. 176 of 1991. The decision is an authority to the proposition that--

the Basic Value Register would not empower the Registering Officer to blanketly hold that only because the document does not correspond to the

valuation as per the Basic Value Register, he must necessarily refuse to register the document. To hold the view he must do some more exercised

to collect some other materials which has to be taken into account in addition to the Basic Value Register for him to properly take the view of the

document as not representing the correct valuation. We must also hold that the working principle devised in the decision in Sagar Cements Limited

v. State of Andhra Pradesh (1989 (3) ALT 677) cannot be a ""made to order test"" for registering or refusing to register documents. The very test,

in many a cases may be divorced from realities and we feel that it would be a wholesome principle to leave to the discretion, to be properly

exercised in each case, to the Registering Officer guided not only by the Basic Value Register which may form part of the consideration but also to

be supplemented by such other materials as he may collect, even by a spot inspection if necessary, to reach a proper conclusion.

This Findings, infact, supports the view we have taken. The Sub-Registrar has taken into account not only the Basic Value Register but also other

factors which are germane for ascertaining the market value of the property. The learned Judge of the Division Bench, however, allowed the writ

appeal on the basis of the factual matrix of the case in the said appeal holding that the Collector did not make the reference in accordance with

Form I of the Rules.

In Vidya Nagar Housing Co-operative Society Ltd., Hyderabad Vs. State of Andhra Pradesh and others, , where one of us had an occasion to

deal with Section 47-A (1) and (6) of Indian Stamp Act, 1899. The relevant portion at para 8 and 9 reads as follows:

It is true that while determining the market value of the property the authorities cannot form their decision solely on the basis of basic value

register. But the rates shown in the basic value registers are certainly relevant consideration though not sole consideration for determination of the

market value of a property. If that is so, there was nothing wrong on the part of the Sub-Registrar in taking into account the rates shown in the

basic value register for the limited purpose of satisfying himself and taking further action contemplated u/s 47-A of the Act. As already pointed out

the impugned action is not an end in itself. It is the beginning of an end. The dispute necessarily has to go before the District Collector for

determination and the District Collector is bound to determine that issue after compliance with the provisions of the rules framed under the Act and

after giving an opportunity to the affected interest the petitioner society herein.

If Sub-sections (1) and (6) of Section 47-A of the Act are read together the only conclusion which can be arrived at is that the Sub-Registrar has

necessarily to satisfy himself before Registering a document that the market value of the property in question is truly stated in the instrument

presented before him. The Court does not find any merit in the submission of the learned Counsel for the petitioner that the rate of Rs. 35/- per sq.

metre fixed by the Government was fixed statutorily. It should be noted at the outset that the ULC Act itself does not fix the rate. Assuming that in

pursuance of the power granted to the appropriate Government u/s 20(1) of the ULC Act, this rate of price was fixed, then, at the most it will be

delegated legislation but not a parent legislation itself. Therefore, it is incredible to state and contend that a delegated legislation made by virtue of a

power granted by the ULC Act could control and limit the power statutorily granted to the Sub-Registrar of Stamps and Registration u/s 47 of the

Act

The relevant portion at para 7 and 8 reads as follows:

Section 47-A of the Stamp Act reads thus:

47-A Instruments of conveyance etc., undervalued-how to be dealt with :--(1) Where the registering officer appointed under the Registration Act,

1908, while registering any instrument of conveyance, exchange, gift, partition, settlement or release has reason to believe that the market value of the

property which is the subject-matter of such instrument has not been truly set forth in the instrument he may, keep pending such instrument and

refer the matter to the Collector, for determination of market value of such property and proper duty payable thereon.

Therefore, the question which arises for consideration is whether the third respondent Sub- Registrar had reason to believe or in other words

whether he had formed an opinion that the market value of the property in question had not been truly set forth in the instrument presented before

him on 16-11-1992. It is true that while determining the market value of the property the authorities cannot form their decision solely on the basis

of basic value register as held by this Court in the aforementioned decisions. But the question is whether for the formation of an opinion and belief

on the part of the registering officer, take into account the rates shown in the basic value register could be said to be totally irrelevant and

extraneous. If that is so, there was nothing wrong on the part of the Sub-Registrar in taking into account the rates shown in the basic value register

for the limited purpose of satisfying himself and taking further action contemplated u/s 47-A of the Act. As already pointed out the impugned action

is not an end in itself. It is the beginning of an end. The dispute necessarily has to go before the District Collector for determination and the District

Collector is bound to determine that issue after compliance with the provisions of the rules framed under the Act and after giving an opportunity to

the affected interest the petitioner society herein.

It is clear from the above that the basic value registers prepared which have no statutory force or basis cannot be taken into consideration while

fixing the market value. They cannot form sole consideration but they can be certainly given relevant consideration.

It is observed in para 12 of the judgment in WA No. 176 of 1991 reported in D. Ratnasundari Devi and Others Vs. The Commissioner of Urban

Land Ceiling and Others, which reads as follows:

The instructions to follow the basic value register is under instructions issued by the Inspector General of Stamps and Registration. The Authority

to issue such instructions as been upheld by Division Bench of this Court in the decision in D. Ratnasundari Devi and Others Vs. The

Commissioner of Urban Land Ceiling and Others, . As flowing from the power of General Superintendence conferred upon the Inspector General

of Registration. But at the highest there are but executive directions of an administrative superior and cannot either override or substitute the

statutory requirements of the rules which enjoins upon the registering officer to make an enquiry to reach the conclusion of there being reason to

believe of the document being under-valid. We must hence hold that in the fact of the rule the basic value register would not empower the

registering officer to blanketly hold that only because the document does not correspond to the valuation as per the basic value register he must

necessarily refuse to register the document. To hold the view he must some more exercise to collect some other materials which has to be taken

into account in addition to the basic value register for him to properly take the view of the document as not representing the correct valuation. We

must also hold that the working principle devised in the decision in Sagar Cement Limited v. State of A.P. (1989) 3 ALT 677 Cannot be a ""Made

to Order Test"" for registering or refusing to register documents. The very test in many a cases may be diversified from realities and we feel that it

would be a wholesome principle to leave to the discretion to be properly exercised in each case to the registering officer guided not only by the

basic value register which may form part of the consideration but also to be supplemented by such other materials as he may collect, even by a

spot inspection if necessary, to reach a proper conclusion.

The learned Counsel for the respondents placed reliance on a decision reported in Ponnayolu Sasidar Vs. Sub-Registrar Hayatnagar, and others, ,

wherein it is held at para 14 that:

In this case, there is a scope for genuine doubt or controversy on the true nature of the land notwithstanding what has been mentioned in the basic

value register. In such a situation, it is, incumbent on the part of the registering authority to form a belief as envisaged by Section 47 of the Stamp

Act only after holding an enquiry in whatever form it may be, under Sub-rule (3) of Rule 3. As this has not been done and the documents have

been straightaway referred to the Collector the impugned action of the 1st respondent is illegal and contrary to law.

At para 12 it is observed as follows:

The entries in the basic value register are not conclusive and binding on the registering officer. In the course of enquiry, the parties may be able to

demonstrate that the value noted in the basic value register does not cover the property in question or that there is a palpable error in the entries or

that there is more relevant material which deserves to be preferred to the entries in the register. The Registering Officer cannot take the stand that

he would look into the basic value register and nothing more and form the belief on the basis of that register alone, more so when the basic value

register has no statutory basis.

The learned Judge has opined at para 13 of the Judgment as follows:

I am of the view that an enquiry under Sub-rule (3) of the A.P. Stamp (Prevention of Under-valuation of Instruments) Rules, 1975 is not only

mandatory but it also facilitates correct assessment of the value in consonance with the principles of natural justice.

It is stated in Maddula Nagasirmani v. The Subordinate Judge, Kovvur 1995 (3) ALD 60, that the market value has to be determined taking

them as only agricultural lands and it cannot be determined on the potential value of the land on the ground that there is a possibility of using the

land as house sites. The relevant portion at para 7 and 8 reads as follows:

A perusal of Section 47-A shows that it is only the market value which is to be determined and that the potential value based on nature of the land

and the future possibilities, is irrelevant. How the purchaser may put it to use subsequent to the purchase or develop the land is of no consequence

for valuing the land as on that date. Moreover the price at which the transaction was concluded between the petitioner and his vendor being at

arms length generally denotes the market value by itself, unless there is evidence to show that the said value was either a fancy price or a

concession granted because of certain relationship between the parties to the transaction. In the present case, there is no such allegation by the

department in the circumstances, the value shown which was in conformity with the valuation of the adjacent lands in the same Registrar's office

represents the market value of the land as agricultural land on that date does not require to be revalued u/s 47-A of the Stamp Act.

It is stated in Siddula Madhukar and another Vs. Govt. of A.P. and another, , at para 13 and 16 as follows:

There cannot be any doubt that the tax imposed is to be calculated on the basis of the rate when the instrument itself is executed. Such an

instrument, for the purpose of registration or otherwise in terms of the provisions of the Indian Stamp Act cannot relate back to the date of

execution of an agreement for sale. It is now well settled principle of law that there cannot be any intendment in relation to tax.

For the aforesaid reasons, we are of the opinion that the decision in Sub-Registrar's case (supra) does not lay down the Correct law and it is

overruled accordingly. However, there cannot be any doubt whatsoever that the registration authority, in case of dispute as regard the correctness

or otherwise of the market value of the land, will have to take recourse to the provisions contained in Section 47-A of the Act. We must also

observe that in a given case the Collector can also take suo motu notice thereof. The petitioners, therefore, my take recourse to the remedies

provided for under the Act.

The learned Counsel for the respondents has relied on a decision reported in Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P.

and Others, , wherein it is observed by Supreme Court that when there is no statutory basis for preparation of basic value register, it cannot form

any basis. The relevant portion reads as follows:

Section 47-A would thus clearly show that the exercise of the power thereunder is with reference to a particular land covered by the instrument

brought for registration. When he has reasons to believe it to be undervalued, he should get verified whether the market value was truly reflected in

the instrument for the purpose of stamp duty; the Collector on reference could determine the same on the basis of the prevailing market value.

Section 47-A conferred no express power to the Government to determine the market value of the lands prevailing in a particular area, village,

block, district or the region and to maintain Basic Valuation Registrar for levy of stamp duty for registration of an instrument etc. Equally it would

not be a basis to determine the market value u/s 23 of the Act, of the lands acquired in that area of town or the locality or the taluk etc. Evidence

of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land possessing same or

similar advantageous features would furnish basis to determine market value. Accordingly we hold that the basic value of registration has no

statutory base. It cannot form any basis to determine the market value of the acquired lands u/s 23 of the Act. The burden of proof is always on

the claimant to prove, in each case the prevailing market value as on the date of notification published in the State gazette u/s 4(1) of the Act with

reference to the sale deeds of the same lands or neighbour's lands possessed of same or similar advantages and features executed between willing

vendor and willing vendee or other relevant evidence in the reference Court.

9. As per the preamble of Constitution, India is a Sovereign, Socialist, Secular, Democratic, republic country. Laissez faire i.e., free market is a

pre-requisite in a democratic country. In a free and open market value of properties vary from time to time. To quote an example increase in rate

of interest and decrease in rate of interest in the international market and it indicate that interest never remain static. There is no machinery to verify

the variation in market rates and modify the same from time to time. Such a machinery is lacking and not contemplated in respect of proposed

basic value registers. Caution has to be exercised stating that apart from basic value, market value has to be taken into consideration before fixing

the value.

10. The attempt made by the learned Government Pleader for the appellants is to show that the amended rules Andhra Pradesh (Prevention of

Under-valuation of Instruments) Rules, 1975 are not brought to the notice of the learned single Judge in his case. There is some truth in it. The said

rules have been considered by our learned brother Hon"ble Sri Justice Ponnaveolu Sasidar Vs. Sub-Registrar Hayatnagar, and others, when it has

been brought to his notice. The attention of the learned Judge has been drawn to the provisions mentioned supra regarding the framing of A.P.

(Prevention of under valuation of Instruments) Rules, 1975 and also the enquiry to be conducted under Sub-rule (3) of Rule 3, The validity and the

correctness of the rule has been upheld in the said decision. On a close scrutiny of all the aforesaid decisions, the following principles emerge:

(1) The Basic Value Register cannot form the sole basis in fixing the valuation;

(2) Under Sub-rule (3) 6f Rule 3 of A.P. (Prevention of Under valuation of Instruments) Rules, 1975 the values mentioned in the basic value

register have also to be taken into consideration along with the other material in assessing the value;

(3) It is always open for the aggrieved person to carry the matter in appeal to the appellate authority, whenever he is aggrieved by the fixation of

the value as it has gained a statutory basis and by virtue of the said rule it cannot be said that the basic value mentioned in the register has to be

totally ignored;

(4) It is always open to the parties to demonstrate that the values noted in the basic value register does not cover the property in question or there

are palpable errors in the entries and there is more relevant material which deserves to refer as against the entries in the register.

11. I now proceed to deal with the case. The learned single Judge has passed an order which has no legal basis. It was contra to Section 47-A of

A.P. Stamp and Registration Act. The matter has always to be left open to the Registering Officers to fix the value as per Section 47-A of A.P.

Stamp and Registration Act. If anybody is aggrieved appeal can be preferred to the appellate authority constituted under the statute. It will

adjudicate the same. The request of the learned Counsel for the respondents to retain the direction given by the learned brother Hon"ble Sri Justice

P.B. Jeevan Reddy in the writ petitions have no legs to stand. When alternative and efficacious remedies are provided under the statute, it is not

open to them to approach this Court invoking writ jurisdiction without exhausting the said remedies provided under the said Act. Infact, the sale

deeds were not presented for registration in the beginning. They have made an enquiry about the value for which the stamp has to be paid for

registration and thereafter obtained proceedings. They allege refusal on the part of the authorities to register the documents. Without exhausting the

remedies provided u/s 47-A of A.P. Stamp and Registration Act, they filed writ petitions, and obtained interim orders and got the documents

registered on certain count. The competent authority or the authority provided u/s 47-A of the Indian Stamp Act has to determine the value for

payment of stamp duty. Another contention canvassed by the learned Counsel for the respondents is that the agricultural lands have to be valued as

agricultural lands since they are being used for the same and the future potential value cannot be taken into consideration on the ground that there is

a possibility of using the land or dividing it as house sites. There is much force or substance in the said contention of the learned Counsel for the

respondents. The market value is determined on the basis of which a willing purchaser offers to pay when it is an agricultural land, the future

changes that are likely to take place cannot form basis for fixing the value. In that view of the matter, the value of the property has to be fixed on

the date of execution of the document but not on the date of agreement of sale. It is too premature to consider those things at this stage. There is

no question of giving blanket protection when the assessment is yet to be made on that basis. The writ petitioners have to work out their remedies

before the appropriate forums provided under the Act. They cannot invoke the writ jurisdiction on the ground of some future action. The orders

passed in respect of WP No. 3276/89 cannot be sustained in view of the statutory basis given in considering the basic value register. Therefore, it

cannot be said that they are not entitled to take into consideration of basic value, the same cannot be looked into. Insofar as the sale transactions

are concerned, authorities are at liberty to deal as per the amended provisions of A.P. Registration and Stamp Act. OS 55/87 is said to have been

filed. It is for the registering authorities to fix the value at the time of registration as per Section 47-A of the A.P. Registration and Stamp Act and

this Court cannot interfere with the proceedings. The reliefs claimed in the writ petitions are misconceived. The writ petitions are liable to be

dismissed. Both the writ appeals are liable to be allowed.

12. In the result, the orders passed in WP No. 3276/89 and WP No. 8365/89 are set aside and they are dismissed. Both the writ appeals are

allowed. In the circumstances, each party do bear their, own costs.