

(2007) 01 MAD CK 0040

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No"s. 1922 of 2004 5162, 8232, 9476, 9701, 10340 and 10441
of 2006

Dakshina Mara Nadar Sangam

APPELLANT

Vs

The Special Deputy Collector
(Stamps), Kokirakulam,
Tirunelveli, The Sub Registrar,
Karivalamvanthanallur, Sub
Registrar's Office,
Karivalamvanthanallur,'
Tirunelveli

RESPONDENT

Date of Decision: Jan. 1, 2007

Acts Referred:

- Registration Act, 1908 - Section 61
- Stamp Act, 1899 - Section 75

Hon'ble Judges: Chitra Venkataraman, J

Bench: Single Bench

Advocate: K. Srinivasan in W.P. No. 1922 of 2004, Mr. M. Vallinayagam in W.P. No. 5162, 8232 and 10340 of 2006, Mr. C. Godwin in W.P. No. 9476 of 2006 Mr. J. Anand Kumar in W.P. No. 9701 of 2006 and Mr. Harihara Ramachandran in W.P. No. 10441 of 2006, for the Appellant; Ramasamy, Additional Advocate General for Mr. Pala Ramasamy Special Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Chitra Venkataraman, J.

W.P.No.1922 of 2004 is for writ of Certiorarified Mandamus to quash the order dated 20.11.2003 passed by the Second Respondent Sub Registrar, Karivalamvanthanallur and the notice issued by the Special Deputy Collector (Stamps), Tirunelveli dated 10.12.2003 and to direct the Second Respondent to

release the gift deed registered as Document No. 1390 of 2003 dated 13.11.2003 to the Petitioner. W.P.No.8232 of 2006 is for Writ of Certiorari to quash the order dated 21.07.2006 passed by the first respondent Special Deputy Collector (Stamps), Tirunelveli.

2. W.P.No.9476 of 2006 is for Writ of Certiorari to quash the order dated 24.07.2006 passed by the first respondent the Inspector General of Registration cum Chief Revenue Controlling Officer, Chennai, confirming the order passed by the second respondent, Special Deputy Collector (Stamps), Tirunelveli dated 30.05.2005.

3. W.P.No.9701 of 2006 is for the issue of a writ of Certiorari and Mandamus to quash the order of the first respondent dated 3.8.2005 and to consequently direct the respondents herein to release the document of the petitioner in Document No.1784/2005 on the file of the second respondent.

4. W.P.No.10340 of 2006 is for Writ of Certiorari to call for the records of the second respondent Special Deputy Collector (Stamps), Tirunelveli dated 07.2000 in Form No.1 relating to Document No.2281 of 2000 dated 30.03.2000 on the file of the first respondent Sub-Registrar, Tirunelveli and to quash the same.

5. W.P.No.10441 of 2006 is for Writ of Certiorari to quash the notice dated 14.12.2005 passed by the Special Deputy Collector (Stamps), Madurai as illegal and without jurisdiction.

6. The grievance of the petitioners in these writ petitions is identical and hence, they are considered by this common order.

7. The grievance in common as projected by the Petitioners is that when a document presented for registration goes for reference u/s 47-A of the Indian Stamp Act, 1899, (hereinafter referred to as "the Act") to the Collector, the final determination under Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (hereinafter referred to as "the Rules") has to be made within a period of three months from the date of first notice viz., Form I issued under Rule 4. Any order passed beyond the time limit set forth in the Rule will make the order passed in terms of Section 47-A(2) of the Act as invalid, it being beyond the jurisdiction of the Collector. The petitioners contend that apart from the mandatory nature of the time limit set forth therein to pass an order, the same has to be reckoned from the date of issue of Form-I notice, it being the only first notice.

8. Mr.M.Vallinayagam, learned counsel appearing for the petitioners in W.P.(MD) Nos.5162, 8232 and 10340 of 2006, submitted that the limitation given in Rule 7 is absolute in its term for compliance. The starting point contemplated for the purpose of calculating the limitation is the first notice in Form-I specified under Rule 4. Hence, if any order is passed on the expiry of three months from the date of the issuance of the notice in Form I, the same is liable to be quashed as beyond the jurisdiction of the Collector to pass any final orders in this regard. Any order passed

after three months has to be struck down as one without jurisdiction. In this connection, learned counsel relied on the decisions of this Court reported in S.R. Sengotavelu Vs. The District Collector, The Tahsildar, The Special Deputy Tahsildar (Stamps), The Sub Registrar and The Special Tahsildar (Stamps), (2001) 2 M.L.J 458 (The District Collector, Erode Vs. Ponnusamy) and Rt.Rev. Lawrence, Mar. Ephaream, Auxiliary Bishop of Arch, Diocease by Attorney P.C. Chacko. Vs. The State of Tamil Nadu and others, to impress on the submission as stated above and hence, the document has to be released forthwith without any demand for additional stamp duty. He submitted that the Division Bench of this Court in the decision reported in (2001) 2 MLJ 458 (The District Collector, Erode Vs. Ponnusamy), considered the entire gamut of the provisions; going by the law declared, the second respondent concerned has no jurisdiction to pass any order u/s 47-A(2) of the Act. He also submitted that the usage of the term "shall" in Rule 7 of the Rules makes it clear that the time prescribed therein is a mandatory requirement and there cannot be any relaxation to this requirement to relax the time frame so as to enable one to pass an order at any time beyond 90 days.

9. In this connection, learned counsel also placed reliance on the decisions of the Supreme Court reported in Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others ; The Pondicherry Co-op Sugar Mills Ltd. Vs. L. Muruganathan, Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants" Association and Others, T. Vijayalakshmi and Others Vs. Town Planning Member and Another ; Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others ; Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt) (Dead) and Another, (R.Jeyapal Vs. Sattur Municipality & another); T.V. Ekambaram and two others Vs. The Co-operative Tribunal cum District Judge, Madurai and 2 others, Dr. J.J. Merchant and Others Vs. Shrinath Chaturvedi, and A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another,) and submitted that the legislature has used the language of compulsive nature, indicative of the intention that the authority concerned loses his jurisdiction when once the power is not exercised within three months calculated from the date of first notice. The mandatory requirement by use of the term "shall" is further made clear and disclosed in the form of a note appended to the amendment to Rule 7. He also referred to the provisions of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, and the explanatory memorandum referring to the amendment to Rule 7 of the said Rules.

10. Touching on the scope of the provision contained in Rules 4, 6 and 7 of the Rules, learned counsel pointed out that the intention of the amendment was to reckon the time limit from the date of Form I Notice issued. He pointed out that prior to the Amendment to Rule 7 under G.O.(Ms.) No.69 Commercial Taxes and Religious Endowment Department dated 26.02.1997, Rule 7, as it then stood, contained no limitation for passing an order. Given the object on the introduction of the time frame in the Rule under the amendment introduced as per G.O.(Ms.) No.69

Commercial Taxes and Religious Endowment Department dated 26.02.1997, the first notice referred to therein has to be taken as the notice issued in Form I. By no stretch of interpretation, first notice referred to in Rule 7 could be taken as the one in Form II. He further submitted that considering the fact that the old provision carried no such time frame and in the context of the explanatory memorandum accompanying the amendment brought in, one has to construe the time limit as mandatory to start from the date of the first notice viz., the one issued under Rule 4.

11. He submitted that on reference u/s 47-A(1) of the Act, the Collector issues a notice first in Form I. Upon enquiry, the Collector determines provisionally the market value and the duty payable under Rule 4(4). Thereupon, he sends a notice in Form II under Rule 6 and calls upon the parties to the documents to lodge their objections. Considering the fact that the first and foremost of the notices to be issued by the Collector comes only under Rule 4, the one issued under Rule 6 could only be a second notice. As such, it stands to reason that the first notice referred to under Rule 7 is the one issued for the first time viz., under Rule 4.

12. Mr.K.Srinivasan, learned counsel appearing for the Petitioner in W.P.No.1922 of 2004 submitted that in terms of the Government Order introduced as explained in the abstract explaining the amendment to the Rules, the proceedings ought to have been completed within 90 days from the date of first notice. He further submitted that once the mandate is not complied with, the respondents should release the documents forthwith. Learned counsel placed reliance on the decisions reported in AIR 1974 SC 1682 and Sharif-ud-din Vs. Abdul Gani Lone, in support of his contention to emphasize on the mandatory requirement of complying with the time limit given in the Rule, failing which, the jurisdiction itself is not available u/s 47-A(2). He submitted that whenever a statute prescribes that a particular act is to be done on a particular manner it would be difficult to hold that the requirement is not mandatory.

13. While supporting the arguments of the learned counsel appearing for the petitioners in other writ petitions, Mr.Harihara Ramachandran, learned counsel appearing for the Petitioner in W.P.No.10441 of 2006, submitted that in contrast to the provisions in Rule 7, the amended Rule carries a comma immediately after the time frame given viz., "pass an order within three months, from the date of first notice determining the market value of the properties". The old provision carried a comma immediately after "pass an order" viz., "pass an order, determining the market value of the properties". He emphasized that under Rule 7, there is no reference to the determination as a provisional determination to treat the notice as one referable to the notice in Form II. Going by the plain words used in the Rule, the time limit of three months has to be reckoned only from the first notice, namely, the one given in Form I. In the context of a comma in the Rules immediately after the time frame given, quite apart from the mandatory requirement to pass an order within three months, the reckoning also has to be from the date of first notice.

Comparing the provisions with the appeal provisions in the Act, learned counsel submitted that if the time limit is to be considered as only recommendatory and not mandatory, it stands to reason that the appeal time also has to be construed as not mandatory. He also pointed out that although this Court directed the time frame as three weeks to make the reference u/s 47-A of the Act, a perusal of Rule 4 shows no such limitation therein and any further liberal view to hold the time limit requirement as directory would only introduce uncertainty in the determination bringing in an element of arbitrariness in the matter of exercise of the authority specified u/s 47-A. Learned counsel also placed reliance in support of his contentions to the decision reported in AIR 2004 Madras 362 apart from the decisions relied on by other learned counsel representing the petitioners.

14. The second respondent has filed a counter affidavit herein contending that the time limit given is only directory and not mandatory. The statute contained no limitation for exercise of the power u/s 47-A of the Act. Hence, the time prescribed in the Rule can at best only be recommendatory and not mandatory.

15. Learned Additional Advocate General appearing for the Respondents submitted that the notice contemplated in Rule 7 is the one relating to the intimation on provisional determination as per Rule 6. Rule 7 is the follow up of a provisional determination. There being no other notice on provisional determination leading to a final determination under Rule 7, it stands to reason that even assuming the limitation as not directory, the same has to be calculated only from the date of the notice issued under Rule 6 and not under Rule 4. He submitted that adopting the contextual reading of the provision, the notice referred to therein as the first notice could only mean the one intimating the provisional determination of the market value. He further submitted that considering the purport of the scheme of Section 47-A of the Act, the time limit of three months given under Rule 7 is to be viewed as a recommendatory one and not mandatory, and on that score, an order passed beyond the time limit will not become bad by any alleged notion of absence of jurisdiction on the part of the Collector to determine the differential duty. He also produced the copy of G.O.(Ms) No.69 Commercial Taxes and Religious Endowment Department dated 26.02.1997 and pointed out that the time frame was given keeping in mind the delay in the levy of deficit duty on under valued documents referred to in u/s 47-A of the Act and loss of revenue suffered on that account. In the circumstances, taking note of the recommendations of the Inspector General of Registration, Rule 7(1) was amended to pass an order expeditiously.

16. Heard counsel for the petitioners and the learned Additional Advocate General on behalf of the respondent.

17. Rule 7 went in for amendment by the State under G.O.Ms.No.69, Commercial Taxes and Religious Endowment Department, dated 26.2.1997 in exercise of the authority given u/s 75. A perusal of G.O.(Ms) No.69 Commercial Taxes and Religious Endowment Department, dated 26.02.1997 shows that the Amendment to Rule 7

was introduced with the intent on early determination of the market value of the properties and the duty paid by thereon on the instrument referred u/s 47-A of the Act. Prior to the Amendment Rule 7(1) read as follows :-

"The collector shall, after considering the representations received in writing and those urged at the time of the hearing and after a careful consideration of all the relevant factors and evidence placed before him, pass an order, determining the market of the properties and the duty payable on the instrument, communicate the order to the parties and take steps to collect the difference in the amount of stamp duty, if any."

Post Amendment, sub-rule (1) of Rule 7 is substituted as follows:-

"The collector shall, after considering the representations received in writing and those urged at the time of, hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case, after a careful consideration of all the relevant factors and evidence available with him pass an order within three months, from the date of first notice determining the market value of the properties and the duty payable on the instrument, and communicate the order so, passed to the parties and take steps to collect the difference in the amount of stamp duty, if any."

The explanatory note to the amendment to Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, as contained in G.O.Ms.No.69 Commercial Taxes and Religious Endowment Department dated 26.2.1997, need to be extracted before considering the rival contentions:

"G.O.Ms.No.69, Commercial Taxes and Religious Endowment Department dated 26.2.1997.

ABSTRACT

Stamp Act - Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 - Prescribing three months time limit for determination of market value and stamp duty on instruments referred u/s 47 A of the Act -Amendment to rule 7 - Issued.

Read: From the Inspector General of Registration, Chennai letter No.22661/C2/96 dated 30.4.1996.

Order:

...

2. The Accountant General has pointed out that inordinate delay is noticed for obtaining written representations from the parties concerned and in passing final orders in respect of instruments referred to the Special Deputy Collectors (Stamps). Due to the delay in the levy of deficit duty on undervalued documents referred u/s

47A, huge arrears of stamp revenue remain uncollected for a long period. The Inspector General of Registration has suggested that rule 7(1) of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 may be amended prescribing that the Special Deputy Collector (Stamps), after considering the written representations, if any, and after considering all relevant facts and evidence available, shall pass the order determining the market value of the properties and the duty payable on the instruments referred to him u/s 47A of the Indian Stamp Act, within three months period."

18. To appreciate various contentions on the above-said Rules with reference to Section 47-A, we may have to see the scheme of the provisions relating to Section 47-A. The Indian Stamp Act, 1899, is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. As in any other fiscal enactment, the Indian Stamp Act provides for measures to counter-check undervaluation leading to an evasion. Section 47-A is a provision to deal with cases of undervaluation.

19. When an instrument is presented for registration before the registering authority, he has the statutory obligation to register the instrument and he has no jurisdiction to refuse registration of any particular instrument on the ground of undervaluation nor does the Act contemplates conferring an authority on the Registering Officer to call upon the person concerned to pay additional stamp duty on any determination of an undervaluation. The jurisdiction under the Act to decide on the differential duty payable on the determination of the market value not truly set forth in the document is vested only on the Collector as per Section 47-A(1). Whenever a document is presented for registration and where the registering authority has reason to believe that the market value of the property, which is subject matter of the instruments presented for registration, has not been truly set forth in the instrument, he shall register the document and refer the same to the Collector for determination of the market value of such property with the proper duty payable thereon. The decisions of this Court in AIR 2003 Madras 50 (Taj Madurai Vs. The Inspector General Of Registration And Another), touching on the scope of the jurisdiction of the registering authority u/s 47-A, held that the said Section does not confer any jurisdiction to the registering authority to refuse registration of any particular instrument on the ground of undervaluation nor does it authorise the registering authority to call upon the person concerned to pay additional duty. The only jurisdiction that the registering authority has on the document presented for registration is to register the instrument and has no authority to fix the market value for the purposes of demanding additional duty.

20. Where a registering authority has reason to believe that the instruments given for registration are undervalued by reason of the market value of the property not truly set forth in the instrument, the registering authority has to make a reference u/s 47-A(1) to the Collector for determining the market value of such property and the proper duty payable thereon in terms of Section 47-A(2). On receipt of such

reference u/s 47-A(1), the Collector holds the enquiry as per the prescribed procedure and then determines the market value of the property and the duty payable thereon. The difference in the amount of duty thereafter becomes payable by the person liable to pay the duty.

21. Section 75 of the Indian Stamp Act, 1899, empowers the State Government to make rules to carry out the general purposes of the Act. This delegated power enables the State Government to make Rules to carry out the purposes of the Act. Being a delegated legislation, the Rules made cannot override the statute but must come within the scope of the rule making power and conform to the provisions of the statute. In the decision reported in [General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another](#), the Apex Court held that before a Rule framed under the statute is regarded as a statutory provision or part of the statute, it must satisfy two conditions, namely, it must conform to the provisions of the statute under which it was framed and it must come within the scope and purview of the Rule. In the above circumstances, the Rules have to be interpreted in consonance with and to effectuate the object of the provisions of the Act.

22. The Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, is enacted by the State in terms of the powers conferred by Section 47-A and 75 of the Indian Stamp Act. These Rules prescribe the procedure for the determination of the market value in respect of an instrument referred to the Collector for determination of the market value and the duty payable thereon.

23. Sub Rule (1) of Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules 1968, deals with furnishing of statement of market value by the party presenting an instrument for registration. Sub Rule (2) directs the Registering officer to satisfy himself that the party presenting the document has attached to the instrument, a statement duly signed by the party executing the instrument giving the market value of the properties as required by Sub Rule (1) and 1-A. Sub rule (1) of Rule 3 provides for self assessment by the parties on the market value of the properties which are the subject matter of an instrument presented for registration. Sub-rule (3) of Rule 3 states that when an instrument is presented for registration for the purpose of finding out whether the market value has been correctly furnished in the instrument, the Registering Officer may make such enquiry as he deems fit. He can elicit information from the authorities concerned on the subject and call for and examine any records kept with any public officer or authority. Under Sub-Rule (4), the Registering Officer may also look into the guidelines for the purpose of verifying the market value.

24. Dealing with the extent of jurisdiction of the registering authority to refer the document to the Collector, a Division Bench of this Court, in the decision reported (2001) 2 MLJ 458 (The District Collector, Erode Vs. Ponnusamy) and [Taj Madurai Ltd. Vs. Inspector General of Registration, Chennai and Joint Sub-Registrar V, District](#)

Registrar Cadre, Madurai District, held that Sub Rule (3) of Rule 3 merely enables the Registering Officer "to arrive at a *prima facie* assessment" as to whether the market value has been correctly and truly furnished in the instrument or not. If the registering authority has reason to believe that the market value of the property has not been truly set forth in the instrument, he may have to refer the matter to the Collector for determination of the market value of such property. In any event, only after registering the instrument he can refer the matter to the Collector for determination of the marker value and the duty payable thereon. This Court further held "except the Collector, no authority under the Act can fix the market value and decide upon the proper stamp duty payable in respect of any instrument covered u/s 47-A of the Act." This Court also held that if the registering authority has not entertained any reasonable doubt as regards valuation of the property as prescribed u/s 47-A(1) of the Act, there cannot be a subsequent reference at any time as he likes. In the decision reported in (2001) 2 M.L.J 458 (The District Collector, Erode Vs. Ponnusamy), this Court held that the registering authority cannot retain the documents after registration indefinitely. This Court further held that considering the time frame given u/s 47-A(3) for *suo motu* revision by the Collector giving five years time, the registering officer cannot refer the documents after a period of five years. The Division Bench referred to Section 61 of the Registration Act to hold that there is no scope for retention of the document unless Section 47-A(1) of the Act comes into operation. The Division Bench affirmed the view that after registration, immediately or soon after the registration is complete, at any rate, within three weeks from the date of completion of the registration of the document, the registering authority should exercise the discretion to refer the instrument to the Collector u/s 47-A(1) of the Act. This Court held the direction to refer the document in three weeks to the Collector "as a salutary direction to see that Section 47-A(1) does not operate as an engine of oppression on the plea of under valuation."

25. It must be noted that it is not in every case that a registered document goes for reference u/s 47-A. Referring to the scope of this Section in the decision reported in State of Punjab and Others Vs. Mohabir Singh etc. etc., the Hon"ble Supreme Court, held that where the Registering Authority is not satisfied of the value declared in instrument, he may make a reference to the Collector in accordance with the provisions of sub-section (1) of Section 47-A of the Act. However, before making reference, he is bound to register the document and he is not empowered to withhold the registration. The registration is however subject to the determination of the true market value of the property. Hence, registration *per se* does not lead to the conclusiveness to the value declared in the instrument.

26. The proceeding on a reference takes one to the procedure under Rule 4. Sub-rule (1) of Rule 4 states that on receipt of a reference u/s 47-A(1) of the Act from the registering authority, the collector shall issue a notice in Form 1 to a person in whose favour the instrument has been executed and the person by whom in the instrument is executed informing him of the receipt of the reference and call upon

him to submit his representation as to how the market value of the property has been truly set forth in the instrument and produce all evidence that he has in support of his representation. Sub-rule (2) of Rule 4 permits the Collector to record a statement from any person to whom a notice under sub-rule (1) has been issued. Sub-rule (3) of Rule 4 entitles the Collector to call for any information or record from any public office, officer or authority under the Government or any local authority, examine and record statement from any member of the public officer or authority under the Government or local authority and examine the record statements from any member of the public, officer or authority under the local authority and inspect the property after due notice to the parties concerned. Rule 5 gives the principles guiding the determination of the market value. For the purpose of these writ petitions, it is not necessary to get into the details of Rule 5, After observing this Rule, considering the representation from the person to whom Form I Notice was issued under sub-rule (1), and after examining the records and evidence, the Collector passes an order in writing under Rule 4(4) provisionally determining the market value of the properties and the duty payable. A reading of sub-rule (4) of Rule 4 makes it clear that the provisional determination of the market value and the duty payable hence is made only by the Collector alone after calling upon the executant and the person in whose favour the instrument is executed, to substantiate the value put forth in the instrument as true value and thereafter making a spot inspection of the property considering the various materials.

27. Rule 6 lays down the procedure to be adopted on the provisional determination of the market value of the properties and the duty payable. The Rule enjoins the Collector to communicate this provisional determination of the market value and the duty payable along with the notice in Form II to all persons who are to pay the duty and call upon them to lodge their objections/ if any, to such determination within the time stipulated in the notice. The Collector hears the parties on the specific date given in the notice or such other date as may be fixed. After considering the representation and all the relevant factors and evidence placed, the Collector passes an order under Rule 7 finally determining the market value of the properties and the duty payable on the instrument. Dealing with the provisions in the decision reported in [Ar. Narayanan Vs. Special Deputy Collector \(Stamps\) and The Sub Registrar-II](#) , this Court held that "an elaborate procedure has been prescribed for determining the proper market value of the property registered, procedure to be followed, opportunity to the person concerned, conclusion of pre-decisional and post-decisional opportunity to the person concerned before taking an appropriate decision, etc."

28. Rule 7, as it originally stood and prior to the insertion of the time limit of three months under G.O.Ms.No.69 dated 26.02.1997, carried no limitation whatsoever as to the time frame within which the order should be passed. The amendment brought under G.O.Ms.No.69 dated 26.02.1997 to Rule 7 on the suggestion of the Inspector General of Registration prescribes that the order determining the market

value and the duty payable on the instrument referred has to be made within three months from the date of first notice. The explanatory note to the amendment refers to the need for such a time bound action, considering the delay in the levy of deficit duty on the undervalued documents leading to huge arrears of stamp revenue uncollected for a long period. In the face of the given note, the petitioners emphasize that the time frame given in Rule 7 is a mandatory requirement to pass an order within three months from the date of issuance of first notice, namely, the notice given in Form-I, to finally determine the market value and the duty payable thereon under Rule 7 within the three months" time granted therein.

29. On the question whether the time prescribed has to be read as a mandatory requirement by reason of use of the term "shall" in Rule 7, learned counsel Mr.M.Vallinayagam referred to the decision of the Supreme Court reported in [Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others](#), to submit that although the use of "shall" or "may" by itself is not conclusive on the question of mandatory or directory nature of a provision, the memorandum indicates that the time frame was introduced to read "shall" as a mandatory requirement, that it is not permissible to read the mandate of three months time limit as recommendatory only. He submitted that any other view would only defeat the purport of introducing such a time frame. Learned counsel also referred to the decision reported in [The Pondicherry Co-op Sugar Mills Ltd. Vs. L. Muruganantham](#), wherein this Court held that although normally "shall" means "shall" only, yet, the use of the word "shall" or "may" is not conclusive on the question whether the particular requirement of law is mandatory or not. The guiding factor is the meaning and intent which the legislature wanted to assign when these terms are used in a provision. Learned counsel further referred to the decisions reported in [The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyा, Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan](#),) and [Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others](#), to emphasize on the fact that in the absence of anything contrary indicated in the provision, the statute ought to be construed as prescribing a mandatory requirement to pass an order in terms of the prescription in the provision.

30. The principles of interpretation on this aspect needs to be noted before considering the various contentions put forth before this Court. In the decision reported in [Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others](#), the Supreme Court observed "One of the fundamental rules of interpretation is that if the words of a statute are themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature". A reading of the various decisions of the Apex Court shows the well settled canon of interpretation that the question as to whether a provision is mandatory or directory depends upon the intent of the legislature and not upon the language used in the Section. The intention and meaning of the

legislation has to be ascertained not only from the phraseology of the provision but also from the context and the design of the provisions and the consequences that flow from construing it one way or the other.

31. Again, in the decision reported in [P.T. Rajan Vs. T.P.M. Sahir and Others](#), the Apex Court held, at page 515 :

"45. A statute as is well known must be read in the text and context thereof. Whether a statute is directory or mandatory would not be dependent on the user of the words "shall" or "may". Such a question must be posed and answered having regard to the purpose and object it seeks to achieve.

The Apex Court further held:

"48. Even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See Shiveshwar Prasad Sinha v. District Magistrate of Monghyr AIR 1966 SC 144 Nomita Chowdhury v. State of W.B. (1999) 2 Cal LJ 21 and Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana (1997) 1 CHN 189."

32. Referring to the consequence of an act not performed within the statutory time limit, in the decision reported in [Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others](#), the Apex Court held that where an Act prescribes a statutory time limit for the performance of an act by a statutory body and the consequences of such non performance, then the time limit for the performance of the duty must be construed strictly to be within the time frame. However, where the Act is silent as to the consequences of non-performance, then the principle of time limit is "ordinarily directory." Ultimately, the endeavour should be to look to the subject matter and the importance of the provision to the general object intended to be served by the Act. The Apex Court referred to the decision reported in [Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others](#), the extract of which may usefully be seen here too:

"Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done"

33. It may be noted that Section 75 of the Indian Stamp Act 1899, empowers the State to formulate the Rules to carry out the general purposes of the Act. It is a well settled principle that Rules subserve the object of the Act and are consistent with and conform to the provisions of the statutes under which it is framed. In the background of this, one has to note that the Rules framed by the State Government prescribing the procedure as to determination of the market value and the additional duty payable thereon has to be understood as pure and simple a procedural provision in the matter of determination of the market value. It may also be seen that once the provisions of Section 47-A(1) is set in motion, the procedure contemplated under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 are put into operation only as a step in furtherance of the object given u/s 47-A. The first of the steps undertaken by the Collector on a reference is to call upon the parties to the instrument to submit their representation to substantiate that the market value of the property has been truly set forth in the instrument and to produce evidence in support thereof. For this purpose, the Collector issues a notice in Form-I and calls upon the parties to the instrument to submit their representation within 21 days from the date of service of notice in Form I. At this stage, issuance of Form I under Rule 4(1) does not, per se, lead to a determination by the Collector even provisionally as to the market value of the property and the differential duty payable thereon. All that it requires is an information called for from the parties to show how the market value of the property indicated in the document is truly set forth therein. The notice issued by the Collector in Form-I also requires the parties to the document to produce all evidence that he has in support of his representation on the value indicated in the document. Thus the notice issued under Rule 4(1) collects the base for the purpose of enquiry in terms of Rule 4(3). On conducting the necessary enquiry as per Sub Rule (3) as well as Rule 5, upon considering the representation and on the basis of information collected, the Collector passes an order in terms of Sub Rule (4) of Rule 4 to determine the provisional market value of the properties and the duty payable. In so provisionally determining the market value, Rule 5 gives the guideline to govern such exercise. Thus given the object of the Rules, the usage of the word "shall" in Rule 7 with reference to the time limit stated therein needs to be read as not limiting the effect of Section 47-A, but effectuating the object of Section 47-A. On the other hand, the Rules have to be read as effectuating the purport of Section 47-A. Consequently, I do not accept the submission of the counsel appearing for the petitioners that an order passed beyond three months is unenforceable. I hold that the use of the word "shall" and Rule 7 has to be construed only as directory and not mandatory.

34. It must be noted that the provisional determination of market value and the duty payable under Sub Rule (4) of Rule 4 comes only on the observing of the formalities prescribed under Sub Rule (1), Sub Rule (2) Sub Rule (3) and Rule 5. Only when a notice is issued in Form II in terms of Rule 6, for the first time the parties are put on

notice as regards the provisional determination of the market value and the duty payable thereon. Until such time, the entire exercise is in a very nascent stage that the petitioners or the parties do not have any inkling of what would be the provisional determination of the market value of the property and the duty payable thereon on the instrument registered by the registering authority. When once such a provisional determination of the market value is arrived at, a notice is given indicating the same through Form-II as prescribed under Rule 6.

35. A perusal of Rules 6 and 7 show that a provisional determination, by itself, does not become a final determination automatically. Even in the matter of reference to the Collector for provisional determination as per Sub Rule (4) of Rule 4, no enquiry, as such, is undertaken by the registering authority by giving notice to the parties to the document on the valuation. Rule 4(1) merely contemplates a notice to the parties herein after reference only to elicit the information from the parties as to the value shown in the instrument. Even when the Collector goes for inspection and when observing the principles given under Rule 5, there is no indication as to the provisional determination of the value. The principles laid down under Rule 5 coupled with the materials disclosed in the course of enquiry under Sub Rule (3) to Rule 4 enables the Collector to arrive at the provisional determination of the value and the additional duty payable thereon as stated under Sub Rule (4) of Rule 4. Only thereafter, a notice is given in Form-II in terms of Rule 6, indicating the provisional determination and the additional duty payable thereon. The one and only notice for the purpose of Rule 7, hence, is the one indicating the provisional determination of the market value issued in terms of Rule 6 and not any other notice issued prior to the provisional determination. A notice leading to an enquiry for the purpose of fixing a provisional determination is not the same as the one issued indicating a provisional determination calling for objections to finally determine the market value and the duty payable thereon. In the view thus taken by me on the scheme of the Rules relating to the determination of the market value for the prevention of undervaluation of instruments, I do not find any justification to accept the submissions of the petitioners herein that the notice in Form I, although called a notice, is in effect and reality, a notice as regards the provisional determination of the market value. As already noticed, the notice under Form-I is only a step in aid for holding an enquiry to reach a satisfaction as to whether the market value had been truly furnished in the instrument. Where the materials do not support the statement in Form-I, after examining the records and evidence before him, and after considering the representation, the Collector passes an order in writing provisionally determining the market value of the property and the duty payable thereon.

36. A perusal of the provisions of Rule 6 shows that once a provisional determination of the market value is reached as per Sub Rule (4) of Rule 4, the parties to the document are, for the first time, put on notice as to the provisional determination of market value, and objections are called for after considering the

representation. The provisional determination either gets confirmed as it is or goes for such modification as are warranted in terms of the objection filed to the notice in Form-II to result in a final determination of the market value of the property and the duty payable thereon under Rule 7. The provisions in Rule 7 is the final concluding part on the provisional determination of the market value and the additional duty payable thereon. The final order is communicated to the parties calling upon them to pay the difference in the amount of stamp duty, if any. The order passed thus comes to be made in terms of Sub Section (2) of Section 47-A.

37. In the background of these provisions, by no stretch of interpretation, the notice contemplated in Form-I under Rule 4(1) leading to an enquiry for the provisional determination could be treated as the first notice on the provisional determination of market value for the purposes of passing a provisional order of determination in terms of Rule 6. In the scheme of the procedure prescribed, it is difficult to accept the plea of the petitioners that the notice contemplated under Rule 7 as the first notice could only have reference to the one issued under Rule 4(1).

38. Coming to the question as to the time limit set forth in Rule 7, the petitioner submitted that, in any event, the Collector has to pass an order on the final determination within three months be it from the date of the Form-I notice or Form-II notice.

39. I do not accept this contention of the learned counsel appearing for the petitioners in the various writ petitions. As already noted, Rule 4 is concerned about the first stage when a reference is made. At the stage of notice in Form-I, there is no determination of provisional market value by the Collector. He only seeks the parties to the document to substantiate the value set forth in the document. Only thereupon, the Collector proceeds for the provisional determination of the market value of the properties. This is found under Sub-Rule (4) of Rule 4. For the first time after reference, the notice comes from the Collector to the parties indicating the provisional market value and the duty payable thereon and the parties are called upon to lodge their objections. Thereafter, the Collector proceeds to pass the final order after careful consideration of the materials. The comma originally in the unamended provision "after passing order" is not there in the amended provision. That does not make any difference to the provision to read the time limit as mandatory as has been suggested by one of the counsel appearing for the petitioners. Learned counsel submitted that if the statute contemplates a notice in Form-II as the first notice, certainly it would have stated so. He further submitted that, given the fact that the one and the only notice given first after reference is the Form-I notice alone under Sub Rule (1) of Rule 4, it stands to reason that the three months time limit has to be construed only from the date of the first notice viz., Form 1. He insisted further that when the Rule does not refer the first notice as having reference to the provisional determination, it is not possible to construe the same as one issued under Form-II.

40. I do not accept this line of reasoning. As rightly submitted by the learned Additional Advocate General appearing for the respondents, the order to be passed under Rule 7 follows a notice under Rule 6 wherein the parties are put on notice about a provisional determination of the market value of the properties and the duty payable. The proceedings under Rule 7 is only a follow-up on the notice given on the provisional determination. The starting point in fact, for the purpose of Rule 7, is a provisional order determined in terms of Rule 4(4), about which a notice is given only under Rule 6. The mere fact that Rule 7(1) refers to the notice as the first notice does not mean that it has reference only to the one under Rule 4(1). Given the purport of the notice under Rule 4(1) and the context of the reference to a notice with reference to which the order is passed under Rule 7, I do not find any justification to give any emphasis to the word "first notice" in Rule 7 as referable to the notice in Form I.

41. Section 47-A is a provision introduced to neutralise the effect of undervaluation with a view to evade stamp duty. The exercise of authority u/s 47-A is not a matter of routine procedure to be exercised. The assumption of jurisdiction to pass an order u/s 47-A(2) arises only where circumstances exist suggesting fraudulent evasion. Given this object, the Rules which are introduced have to subserve to the object of the enactment. The procedure laid down in exercise of power u/s 75 enables the State to enforce the substantive law given u/s 47-A of the Indian Stamp Act. To use the picturesque expression of Therman Arnold, substantive law is a mere canonised procedure and procedure is unfrocked substantive law. Hence, the entire topic on how to deal with instruments undervalued is covered by substantive law u/s 47-A. Rules only cover part of the procedure made in furtherance of the object of Section 47-A. Hence, the entire provisions contained in the procedure relate to the purpose and subject matter of Section 47-A and do not intend in any manner to curtail the effect of Section 47-A(2).

42. The petitioners in these writ petitions placed heavy reliance on the intention of the State introducing a time frame. Hence, given the object of prescribing such time limit, the word "shall" with reference to the passing of an order shows a mandatory duty imposed on the Collector to pass an order within the said time limit. Hence, the failure to pass a final determination results in an automatic ouster of jurisdiction and the order, a nullity.

43. I do not agree with the submission of the petitioners. Guided by the law declared by the Apex Court in several decisions to the effect of "shall" in a provision, one has to consider the purport of the provisions contained in Section 47-A and the object sought to be achieved by incorporating such a provision in the Act. As already noted, Indian Stamp Act is a fiscal enactment and Section 47-A is a provision introduced to check instances of undervaluation intended to put a fetter on the exercise of jurisdiction by prescribing the time limit. In terms of the law declared, I hold that the usage of "shall" is only with reference to passing of an order but not relatable to the

period of three months prescribed therein. To hold otherwise would only defeat the very object of Section 47-A(2). It may be further noted that the Rules themselves are introduced only to carry out the object of the provisions contained in Section 47 of the Act. The purport of exercise of the delegated legislation given u/s 75 is only to aid in the execution of the authority reserved u/s 47-A. The Rules must subserve the object of the legislation. Hence, what is contemplated u/s 47-A(2) cannot be overridden or controlled by any such conditions in the form of Rules made in exercise of the power given u/s 75.

44. Section 47-A is not a matter of routine exercise in respect of each and every transaction presented for registration. Not all documents go for reference u/s 47-A. The fact that a document is referred u/s 47-A(1) to the Collector does not mean that the reference ends up with the passing of an order u/s 47-A(2). A reference u/s 47-A(1) only results in the Collector finding out the true value of the property. The reference from the Registering Officer comes only where the officer entertains a doubt about the correctness of the value stated in the document. The opportunity given in Form-I at the pre-decisional stage is not the same as the one on post-decisional stage when a notice is given in Form 11 on a provisional determination leading to the passing of a final order under Rule 7. The exercise of an authority u/s 47-A(2) comes only after observing the procedure as given under the Rules. The first of the indications as regards the provisional determination comes only when the Collector sets forth the basis for provisional determination of the market value when he issues notice in Form-II, wherein, the copy of the order passed is annexed to the notice calling upon the parties to the document to put forth their objections and representations. This notice of provisional determination is the basis for passing the order under Rule 7. Going by the provisions and the arrangement of the course of action taken culminating into the final determination, the first notice referred to in Rule 7 necessarily means the notice issued under Rule 6 in Form-II. To hold that the "first notice" referred to in Rule 7 really refers to the one issued under Form-I, would really distort the entire exercise contemplated under the Rules. There is no warrant to hold that Form-I notice issued indicates the basis for passing a final order under Rule 7. When the reading of the provisions under Rule 7 shows that the final order itself comes only on the basis of and as a result of the provisional determination, it is difficult accept the contention that in the absence of a clear indication that the "first notice referred to is referable to the provisional determination, the reference to the "first notice" in Rule 7 would only have relevance to Form-I notice. The terminology used as "first notice" has to be read from the context in which it is used and not by the mere reference as "first notice" to hold that it should start only from Form-I notice, which is the one and only notice issued on a reference u/s 47-A(1). In the circumstances, quite apart from the fact that the time limit of three months prescribed therein is only a directory requirement, the contention that the reference of the "first notice" in Rule 7 is only as regards the Form-I notice, lacks any support even from any rule of construction

or a contextual reading. The meaning to be ascribed to the "first notice" referred to in Rule 7, hence, has to be understood in the context in which it is used and not by a mere reference, devoid of its purport. In the circumstances, I reject the plea of these petitioners on this aspect.

45. Learned counsel for the petitioners submitted that reading "shall" as directory would defeat the object of the Rules introducing a time frame as disclosed in the explanatory note. By no stretch of interpretation, the prescription of the time frame can be read as having a nullifying effect on the results of a provisional determination indicative of evasion of stamp duty by undervaluation and thereby defeat the object of Section 47-A. The explanatory note merely expresses the need for an amendment in the context of huge arrears of stamp revenue remaining uncollected for a long period. In any event, the Rules cannot be understood as posing a hurdle in the exercise of an authority u/s 47-A(2) by reading the limitation into the Section as an absolute one.

46. Mr. Harihara Ramachandran, learned counsel for the writ petitioner in W.P.No.10441 of 2006, submitted that if the time limit for passing an order is not held to be mandatory, it stands to reason that the time limit for filing an appeal also cannot be held as an absolute one. I do not accept this line of reasoning presented by the learned counsel. The provision relating to Section 47-A is concerned about the jurisdiction of the authorities to deal with instruments, conveyances etc., which, according to the registering authority, are not truly valued for the purpose of stamp duty. The provisions contained in Section 47-A are intended to check evasion of stamp duty by undervaluing the property. It confers jurisdiction on authorities to consider as to whether the instrument presented for registration carry the true and correct value of the property.

47. In contrast to this provision, appeal provisions are corrective remedies given to a party aggrieved on the valuation fixed. It is a substantive right given to an aggrieved party to challenge wherever the parties have a grievance on the value determined and the duty demanded. The remedy by way of an appeal and the jurisdiction of the statutory authority to intervene wherever there is an undervaluation has to be understood in the context of the different areas of operation. The statute provides for checks and balances in the form of countering the attempt on undervaluation, and at the same time, balance such an exercise wherever it needs to be by affording an appeal remedy to an aggrieved party. In the circumstances, one cannot mix the scheme of these provisions to say that an appeal remedy and the authority u/s 47-A go for same treatment.

48. Mr. K. Srinivasan, learned counsel appearing for the petitioner in W.P.No.1922 of 2004, submitted that when the Government Order refers to the time to be observed, the intention is clear that time limit set forth therein is a mandatory requirement to be complied with and placing reliance on the decision reported in A.C. Razia Vs. Government of Kerala and Others, learned counsel submitted that

considering the interest of the parties, the Rules cannot be read as directory.

49. Short of repetition, it must be stated that considering the object of Section 47-A, the scope of the Rules has to be understood as one to further the cause of Section 47-A and not nullifying the scope of the very provision. The consequence of an action taken pursuant to a reference u/s 47-A(1) has to be understood by giving a meaningful interpretation to Rule 7. As rightly submitted by the learned Additional Advocate General, if the intention of passing an order under Rule 7 is contemplated immediately on issuance of Form-I notice, then even at the stage of giving this notice to the parties to the document, the exercise contemplated under Rule 7 consequent on an enquiry would have been indicated.

50. Learned Additional Advocate General also referred in an unreported decision in W.P.No.2707 of 2004 dated 16.2.2006, wherein this Court held that there is no time limit prescribed in Section 47-A(2) for determination of the market value of the property. Hence, this Court rejected the prayer for quashing of the order on the ground that the order u/s 47-A(2) was not passed within a period of three months from the date of the first notice. In the light of the above decision and for the reasons that I have stated above, I uphold the stand of the respondents.

51. It must however be noted that the passing of an order under Rule 7 must necessarily be within a reasonable time and not postponed indefinitely to the prejudice of the State as well as to the parties to the instrument. What would be a reasonable time for passing an order finally would depend on the facts and circumstances of each case. It may also be kept in mind that Section 47-A(3) provides for five year time limit from the date of registration of an instrument for initiating suo motu revision. The invoking of the jurisdiction u/s 47- A(1), however, oust the jurisdiction u/s 47-A(3). In the above circumstances, the reasonable time limit for passing an order must always have some relevance, keeping in mind what is stated in Section 47-A(3).

52. The decision of this Court reported in (2001) 2 MLJ 458 (The District Collector, Erode Vs. Ponnusamy) is concerned about a reference made after two years on receipt of notice from the parties. This Court, in the said decision, touched on the jurisdiction of the registering officer to register the document either accepting the valuation or after registering the document, refer the same to the Collector for further processing. The decision reported in S.R. Sengotavelu Vs. The District Collector, The Tahsildar, The Special Deputy Tahsildar (Stamps), The Sub Registrar and The Special Tahsildar (Stamps), does not touch on the aspects projected in the proceedings before this Court. In the circumstances, I do not find there is any justification in the submissions of the petitioners placing reliance on the above-said decisions. The above said decisions deal with the provisions in general and not with reference to the issues raised herein.

53. Mr.Harihara Ramachandran, learned counsel for the petitioner in W.P.No.10441 of 2006, submitted that in so far as his writ petition is concerned, no reasons were disclosed before issuing Form-I notice. The document in this case was registered on 18.10.2005. Form-I notice was issued on 14.12.2005 received by the petitioner on 28.12.2005. The said notice fixed the deficit duty payable at Rs.1,60,883/- . Learned Additional Advocate General fairly stated that given the scope of the jurisdiction of the registering authority, the demand in Form-I is totally unsustainable. The jurisdiction for determination of the market value and the duty payable thereon lies with the Collector who alone has the jurisdiction to demand the deficit duty payable. Hence, on the facts of the case and in terms of the provisions of the Act, the demand is liable to be set aside. However, considering the notice issued calling upon the petitioner to substantiate the market value stated in the instrument as true and correct, the petitioner has replied to the said notice defending the value. The authorities concerned, hence, need to proceed in accordance with the provisions of the Rules relating to determination of the market value and the duty payable thereon. The demand, hence, cannot be enforced or taken as a determination of a duty payable in terms of Rule 7. In the circumstances, the W.P.No.10441 of 2006 stands partly allowed, only to the extent of deleting the demand.

54. W.P.No.1922 of 2006 seeks the quashing of the order dated 20.11.2003 relating to Form-I notice. The petitioners are hereby directed to submit their defence to the said notice.

55. W.P.No.5162 of 2006 challenges the enquiry notice dated 27.1.2006 passed by the Special Deputy Collector, fixing the deficit stamp duty payable in Form-I itself. The second respondent has to observe the provisions of Sub Rule (2) and (3), Rule 5, and then provisionally determine the value to pass orders ultimately under Rule 7, after the procedure thereon.

56. WP.No.8232 of 2006 is for Writ of Certiorari to quash the order dated 21.07.2006 passed by the first respondent Special Deputy Collector (Stamps), Tirunelveli. The petitioner challenges Form-II in the proceedings issued by the Special Deputy Collector (Stamps). Considering the order passed, the writ petition stands dismissed. The petitioner shall cooperate in filing objections to the notice and participate in the proceedings in accordance with law.

57. In W.P.No.9476 of 2006, the petitioner has prayed for the issue of a writ of certiorari to quash the order dated 24.7.2006. The allegation of the petitioner herein is that no notice was sent by the registering authority under the Rules. No notice in Form-I was issued nor the report of the registering authority on the provisional conclusion. The Form-II notice issued contained no details as to the service of notice in Form-I. The order dated 30.5.2005 impugned in the writ petition was passed without observing the requirements of the Rules. It is stated that the sale deed was registered on 23.10.2001. The Sub Registrar sent a communication on 22.11.2001 directing the petitioner to settle the stamp duty as per the Samadhan Scheme given

under G.O.No.117 dated 26.9.2002. Only thereafter, the second respondent, namely, the Special Deputy Collector issued a communication directing the petitioner to submit his objections. A perusal of the order dated 30.5.2005 from the Special Deputy Collector shows that the petitioner had not replied to the notice issued and that the value was provisionally determined. In the circumstances, the petitioner was called upon to remit the differential duty. As already noted, the only authority entitled to fix the market value u/s 47-A is the Collector. The petitioner appealed to the first respondent, the Inspector General of Registration. By order dated 24.7.2006, the first respondent, however, rejected the said appeal. In the light of the procedure prescribed in the Rules, there being no observance of the same, I do not find any justification to uphold this order. It is however open to the authorities concerned to initiate proceedings in accordance with law.

58. W.P.No.9701 of 2006 relates to a case wherein the sale deed was registered on a decree obtained in a suit filed for specific performance. Learned counsel appearing for the petitioner submitted that the notice issued by the second respondent dated 15.7.2005 calling upon the petitioner to pay Rs.85,320/- towards deficit stamp duty is totally against the decision of this Court reported in 1997 Writ L.R. 396 (Padmavathi, S.P. Vs. State Of Tamil Nadu, etc.) Learned Additional Advocate General fairly submitted that the said decision covers the issue therein. He further submitted that the jurisdiction u/s 47-A(1) even for a reference require the satisfaction of the registering officer to have a reasonable belief that the instrument had been undervalued or the value had not been truly set forth in the instrument. This Court held:

"23. Therefore, we are of the view that in the case of instrument of conveyance executed pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of undervaluation or lack of bona fides, the mere fact that there is a time gap between the agreement of sale and the execution of the document, is not sufficient to the Registering Officer to invoke his power under Sec.47-A of the Act, unless there are reasons to believe that there is an attempt on the part of the parties to the instrument to deliberately undervalue the subject of transfer with a view to evade payment of proper stamp duty.

This Court further held.....

"28. In the case of instrument of conveyance executed pursuant to the decree for specific performance passed by the Civil Court in which there is no allegation of deliberate under-valuation or lack of bona fides in valuing the subject of transfer with a view to evade payment of proper stamp duty, the mere fact that there is a time gap between the agreement of sale and the execution of the document by itself is not sufficient for the Registering Officer to invoke his power under Sec.47-A of the Stamp Act, unless there are reasons to believe that there is an attempt on the part of the parties to the instrument to undervalue, with a view to evade payment of proper stamp duty."

In the light of the abovesaid decision, the writ petition has to be ordered and the demand quashed.

59. W.P.No.9701 of 2006 is allowed, in view of the decision reported in 1997 WLR 396 (Padmavathi, S.P. Vs. State Of Tamil Nadu, etc.) and the order impugned is hereby quashed.

60. WP.No.10340 of 2006 is for Writ of Certiorari to quash the notice issued by the second respondent Special Deputy Collector (Stamps), Tirunelveli dated .07.2000 in Form No.I. The determination of the extent of undervaluation with out a proper enquiry cannot be made. In the circumstances, the respondents can not demand any deficit duty based on this determination without affording an opportunity to the petitioner in the manner specified under the Rules. The authorities concerned shall proceed with the enquiry without insisting on the payment of deficit duty and pass orders after affording an opportunity in accordance with the Rules.

61. To conclude, I hold that the jurisdiction of the Collector u/s 47- A(2) is not nullified by reason of a time limit prescribed under Rule 7 to pass an order for final determination of the market value and the deficit stamp duty payable on an instrument. The use of the term "shall" does not make the time frame given as one for mandatory compliance and hence, the same has to be read as directory. The "first notice" referred to in Rule 7 has relevance and reference to the notice issued in Form-II indicating the provisional determination of the market value as given under Rule 6 to pass an order in terms of Section 47-A(2) of the Indian Stamp Act, 1899. In the above circumstances, except for the orders passed on the individual merits of the writ petitions referred to above, I dismiss the writ petitions. No costs. The writ petitions as to the scope of Rule 7 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, as amended by C.O.Ms.No.69, CT & RE Department dated 26.2.1997, are dismissed except to the extent stated above on the individual merits of each one of the petitions. Connected M.P.No.1 of 2006 in W.P.No.8232 of 2006, M.P.No.1 of 2006 in W.P.No.9476 of 2006, M.P.No.1 of 2006 in W.P.No.9701 of 2006, M.P.No.1 of 2006 in W.P.No.10340 of 2006 and M.P.Nos.1 and 2 of 2006 in W.P.No.10441 of 1007 are closed.