

(2010) 04 MAD CK 0346

Madras High Court

Case No: Writ Petition No. 41808 of 2002

Vasundhra

APPELLANT

Vs

Government of Tamil Nadu, The
Inspector General of
Registration and The
Sub-Registrar

RESPONDENT

Date of Decision: April 27, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226
- Stamp Act, 1899 - Section 75
- State Financial Corporations Act, 1951 - Section 29
- Transfer of Property Act, 1882 - Section 57, 69, 69(2), 69A

Citation: (2010) 5 CTC 545

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: S.R. Rajagopal, for the Appellant; P.S. Raman, Advocate General, for the Respondent

Final Decision: Dismissed

Judgement

P. Jyothimani, J.

The Writ Petition is for a direction against the Third Respondent, the Sub-Registrar, T. Nagar, to refund of excess stamp duty of Rs. 3,05,407/- collected from the Petitioner in respect of Sale Deed registered on 16.05.2002 as document No. 1117/2002 relating to the property situated at Door No. 5 (old No. 3), Balaji Avenue I Street, T. Nagar, Chennai-600 017. The Petitioner has purchased the above said property in a public auction conducted by a M/s. Park Town Benefit Fund Limited as a mortgagee exercising powers u/s 69 of the Transfer of Property Act for a consideration of Rs. 45 lakhs as a highest bidder. The Benefit Fund Limited being

mortgagee has executed a Sale Deed in favour of the Petitioner on 16.05.2002 which was registered as stated above and the said value has also been approved by the income tax Department.

2. It is stated that the Third Respondent has demanded further amount of stamp duty of Rs. 4,48,981/- based on the guideline value maintained by him. Ultimately, the Petitioner was asked to pay Rs. 3,05,407/- on the guideline value while the value for which he has purchased in the open auction was only Rs. 45 lakhs for which necessary stamp duty has been paid. It is stated that the Petitioner was forced to pay a sum of Rs. 3,05,407/- subsequent to the additional demand of Rs. 4,48,981/- for the purpose of getting the release of the document. Thereafter, the Petitioner has caused a legal notice to the Third Respondent on 25.07.2002 and filed the present Writ Petition. The Writ Petition is filed on the ground that he was the highest bidder in a public auction from the M/s. Park Town Benefit Fund Limited who has brought the property by exercising its power u/s 69 of the Transfer of Property Act, 1882 for the value of Rs. 45 lakhs. Therefore, the value for the assessment of stamp duty and the application of the guideline value is not proper and that inasmuch as the Petitioner has purchased in a public auction, there is no possibility of suppression of value and therefore, the levy of stamp duty, based on the guideline value prescribed by the Third Respondent Registering Authority is not valid in law.

3. In the Counter Affidavit filed by the Third Respondent while it is admitted that the Petitioner has purchased the property in an auction which was held as per Section 69 of the Transfer of Property Act by the mortgagee M/s. Park Town Benefit Fund Limited for Rs. 45 lakhs, on a verification from the guideline register, it was found that the value of the property is much more and therefore, based on the guideline value, the stamp duty was arrived at and on that basis, the Petitioner has also paid the value. Simply because the income tax Department has approved the value, it does not mean that it is equal to guideline value. Therefore, it is stated by the Third Respondent that the value of the property on the basis of the guideline value arrived at by the Registering Authority is perfectly valid in law and the guideline register supplied to assist the Registering Authority to decide as to whether the value has been properly and truly set out in the document. It is also stated that the auction conducted by the mortgagee by virtue of the power u/s 69 of the Transfer of Property Act cannot be equated to that of a public auction in respect of by the authorities like that of the housing board, etc.

4. It is stated that the matter was referred u/s 47-A(1) of the Indian Stamp Act for proper valuation and the procedure contemplated under the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 were followed and notice in Form-I was sent and served to the Petitioner on 25.06.2002 and final order came to be passed by the Special Deputy Collector (Stamps), Chennai on 25.06.2002 directing the Petitioner to pay Rs. 2,83,517/- as deficit stamp duty. The market value was fixed at the rate of Rs. 1,285/- per square feet and the Petitioner has not raised

any objection. It is also stated that the Petitioner having paid deficit stamp duty as demanded by the Third Respondent on 25.06.2002 after a statutory enquiry was conducted, cannot claim refund of the said amount. If only the Petitioner was aggrieved by the fixation of the market value u/s 47-A(1) of the Indian Stamp Act and as per Rule 9 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, she had a right of appeal, u/s 47-A(5) of the Indian Stamp Act and as per Rule 9 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 within the time stipulated and without availing such remedy, the Petitioner has filed the present Writ Petition for recovery of the said amount, which is not maintainable in law.

5. Mr. S.R. Rajagopal, the learned Counsel for the Petitioner would vehemently contend that the sale effected by the mortgagee u/s 69 of the Transfer of Property Act should be treated as that of the sale effected by a Public Authority for the reason that in both the sales there is no possibility of suppression of value. It is his submission that inasmuch as the Petitioner was the highest bidder in an open auction for a sum of Rs. 45 lakhs, there is no reason for the Third Respondent to apply the guideline value for the purpose of imposing stamp duty. The reference for the purpose of valuation u/s 47-A(1) of the Indian Stamp Act would arise only in cases where there is a suspicion about the under valuation. In cases of public auction u/s 69 of the Transfer of Property Act where many people are participating, there is no possibility of any suppression or it is not even the case of the mortgagor that his property has been sold for a lower value and in such circumstances, it is not open to the Registering Authority to raise such issue. The Registering Authority cannot act as a mortgagor. It is his submission that the deficit claim was made only as reminder and that cannot be put against the Petitioner. He has also referred to the Black's Law Dictionary for the meaning of market value. It is his contention that as a bona fide purchaser for valuable consideration, the Petitioner cannot be made to suffer and mere payment of stamp duty by the Petitioner under compulsion cannot be put against her. It is also submitted that when the original mortgagor who is the owner of the property for whose failure, the mortgagee brought the property for sale u/s 69 of the Act himself has not raised any objection about the validity or otherwise of the sale, the claim of the Third Respondent for exorbitant amount of stamp duty is not permissible in law. He also relied upon the following judgments:

(i) [The Government of Tamil Nadu Vs. S. Jayalakshmi and Others,](#)

(ii) [The Special Deputy Collector \(Stamp\) Vs. Chemicals and Plastics Ltd.,](#) ; and

(iii) [Bharatia Pulverisers Private Limited, Kommuguda, Asifabad Mandal, Adilabad Dist. Vs. Sub-Registrar of Assurances, Asifabad, Adilabad and Another,](#)

to substantiate his contention that the Writ Petition under Article 226 of the Constitution of India is maintainable.

6. On the other hand, Mr. P.S. Raman, learned Advocate General has submitted that when once the procedure contemplated u/s 47-A(1) of the Indian Stamp Act has been followed and an enquiry conducted and Form-I notice has also been given to the Petitioner in which the Petitioner has participated and valuation has been fixed and it is after payment of such amount, it is not open to the Petitioner to come to this Court by filing a Writ Petition under Article 226 of the Constitution of India for recovery of amount. It is his submission that the Petitioner having failed to exercise her right of Appeal u/s 47-A(5) of the Indian Stamp Act is estopped now from making claim for refund of the amount. It is his further submission that the sale effected by the Public Authority in respect of the Government properties cannot be equated to that of the private sale effected by virtue of the power u/s 69 of the Transfer of Property Act. He would also submit that the judgments relied upon by the learned Counsel for the Petitioner are not applicable to the facts and circumstances of the case and therefore, it is submitted that entertaining such Writ Petition will make the statutory provision u/s 47-A(5) futile. Such futile Writ Petition cannot be entertained. He would also rely upon the judgment of the Hon"ble Supreme Court reported in [V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Ins. and Others](#),

7. I have considered the submissions made on either side and perused the entire materials available on record and also given my anxious thought to the issue involved in this case.

8. On fact it is clear that the Petitioner has purchased the property for a consideration of Rs. 45 lakhs in an auction conducted by Park Town Benefit Fund Limited being the mortgagee of the property by exercising its powers u/s 69 of the Transfer of Property Act. u/s 69 of the Transfer of Property Act it enables the mortgagee to sell the property which is the subject matter of mortgage in cases of default committed by the mortgagor in repayment of the mortgaged money and recover the money by the said sale without intervention of the Court. Section 69 of the Transfer of Property Act which is as follows:

69. Power of sale when valid.-- (1) A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this Section have power to sell or concur in selling the mortgaged property or any part thereof, in default, in the following cases and in no others, namely:

(a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist or Buddhist [or a member of any other race, sect, tribe or class from time to time specified in this behalf by [the State Government], in the Official Gazette];

(b) where [a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgagee by the mortgage-deed and] the mortgagee is [the Government];

(c) where [a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and] the mortgaged property or any part thereof [was, on the date of the execution of the mortgage-deed], situate within the towns of Calcutta, Madras, Bombay, [***] [or in any other town or area which the State Government may, by notification in the official Gazette, specify in this behalf.]

[(2)] [***] No such power shall be exercised unless and until--

(a) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of that thereof, for three months after such service; or

(b) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

[(3) when a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(4) The money which is received by the mortgagee, arising from the sale, after discharge of prior encumbrances, if any, to which the sale is not made subject, or after payment into Court u/s 57 of a sum to meet any prior encumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(5) Nothing in this Section or in Section 69-A applies to powers conferred before the first day of July, 1882]

makes it abundantly clear that such right has been conferred to the mortgagee to sell the property to recover the amount due to him. Inasmuch as there is a failure on the part of the mortgagor to make repayment and that power has been conferred without intervention of the Court which means that the sale is not effected at the supervision of the Court like in cases where the Company Court while selling the property of the Company which is the subject matter of liquidation pending before it at its supervision and Court confirms the sale. In such circumstances, when the Court brings the property of the company in liquidation for sale by public auction,

the concern of the Court is about the larger number of the creditors of the Company and a judicial check is imposed and in such circumstances, there are no possibility for the sale of the property for an undervaluation.

9. On the other hand, the various procedures to be followed for the purpose of effecting the private sale u/s 69 of the Act as it is seen in Section 69(2) of the Act only contemplates that notice to be given to the mortgagor requiring him to pay the principal money or part thereof and that cannot be said to be a sufficient safeguard from selling the property on undervaluation. The sale effected u/s 69 of the Transfer of Property Act is at the instance of the mortgagee whose individual intention is to recover the amount due to him from the mortgagor who has committed default in repayment of the amount. That can never be equated to that of sale effected like that of the Company Court as stated above.

10. Section 47-A of the Indian Stamp Act 1899 which is as follows:

47-A. Instruments of conveyance, etc. undervalued how to be dealt with.--

(1) If the Registering Officer appointed under the Indian Registration Act, 1908 (16 of 1908) while registering any instrument of conveyance, exchange, gift, release of benami right or settlement has reason to believe that the market value of the property which is the subject-matter of conveyance, exchange, gift, release of benami right or settlement, has not been truly set forth in the instrument he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard 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 conveyance, exchange, gift, release of benami right or settlement, 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 or otherwise, within five years from the date of registration of any instrument of conveyance, exchange, gift, release of benami right or settlement, 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 conveyance, exchange, gift, release of benami right or settlement, and the duty payable thereon and if after such examination, he has reason to believe that the market value of the 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 persons 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 (Tamil Nadu Amendment) Act, 1967.

(4) Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall, pay such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, interest at two per cent per month on such amount for the entire period of default.

(5) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3), may appeal to such authority as may be prescribed in this behalf. 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.

(6) The Chief Controlling Revenue Authority may, suo motu, call for and examine an order passed under sub-section (2) or sub-section (3) and if such order is prejudicial to the interests of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit.

(7) The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3) if,--

(a) the time for Appeal against that order has not expired; or

(b) more than five years have expired after the passing of such order.

(8) No order under sub-section (6) adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

(9) In computing the period referred to in clause (b) of sub-section (7), the time during which the proceedings before the Chief Controlling Revenue Authority remained stayed under the order of a Court shall be excluded.

(10) Any person aggrieved by an order of the authority prescribed under sub-section (5) or the Chief Controlling Revenue Authority under sub-section (6) may, within such time and in such manner, as may be prescribed by rules made under this Act, appeal to the High Court.

Explanation: 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 Chief Controlling Revenue Authority or the High Court, 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, release of benami right or settlement.

It contemplates that when the Registering Authority has reason to believe that the market value of the property, subject matter of conveyance has not been truly set forth in the instrument, he can refer the same to the Collector for determination of the market value of such property. The Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 framed as per the powers conferred to the State Government u/s 47-A and Section 75 of the Indian Stamp Act, in Rule 3 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 enables a procedure to be followed by the Registering Authority for the purpose of arriving at a conclusion as to whether the market value has been properly and correctly furnished in the document by enabling the Registering Authority to refer to the guideline register also which is narrated in the explanation to Rule 3(4) of the said Rules. For a better appreciation of the said duty of the Registering Authority, it is relevant to refer to Rules 3(3) and 3(4) along with explanation which are as follows:

3(3) The Registering Officer may, for the purpose of finding out whether the market value has been correctly furnishing in the instrument, make such enquiries as he may deem fit. He may elicit from the parties concerned any information bearing on the subject and call for and examine any records kept with any public officer or authority.

3(4) The Registering Officer may also look into the "Guidelines Register" containing the value of properties supplied to them for the purpose of verifying the market value.

Explanation: The "Guidelines Register" supplied to the officers is intended merely to assist them to ascertain prima facie, whether the market value has been truly set forth in the instruments. The entries made therein regarding the value of properties cannot be a substitute for market price. Such entries will not foreclose the enquiry of the Collector u/s 47-A of the Act of fetter the discretion of the authorities concerned to satisfy themselves on the reasonableness or otherwise of the value expressed in the documents.

12. Rule 4 which speaks about the procedure on receipt of reference u/s 47-A empowers the Collector to follow the procedure initially by sending notice in Form-I to the person who has presented the document for registration.

13. Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 is as follows:

4. Procedure on receipt of reference u/s 47-A.-- (1) on receipt of a reference under sub-section (1) of Section 47-A, from a Registering Officer, the Collector shall issue a notice in Form I,--

(a) to every person by whom, and

(b) to every person in whose favour the instrument has been executed, informing him of the receipt of the reference and asking him to submit to him his

representations, if any, in writing to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21 days from the date of service of the notice.

(2) The Collector may, if he thinks fit, record a statement from any person to whom a notice under sub-rule (1) has been issued.

(3) The Collector may for the purpose of his enquiry--

(a) call for any information or record from any Public Office, officer or authority under the Government or any local authority;

(b) examine and record statements from any member of the public, officer or authority under the Government or the local authority; and

(c) inspect the property after due notice to the parties concerned.

(4) After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order.

13. The various other rules contemplate that after enquiry by the Collector, the final order can be passed which is also subject to Appeal and the procedures for filing Appeal u/s 47-A(5) of the Act to the Chief Controlling Revenue Authority is also explained and even after such order of the Appellate Authority a further Appeal is provided to the High Court u/s 47-A(5)(10) of the Indian Stamp Act. Rule 15 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 also prescribes the manner of service of notice and orders to the various parties in respect of various proceedings.

14. On the facts of the present case, it is not in dispute that after the Petitioner has purchased the property in the auction brought out by the mortgagee, a Sale Deed was executed in favour of the Petitioner denoting the sale consideration of the property as Rs. 45 lakhs for which the stamp duty was paid by the Petitioner being the purchaser and when the document was presented the Third Respondent, Registering Authority has referred for valuation to the Collector u/s 47-A(1) of the Act having entertained a doubt as to whether the value of the property has been correctly set out by the Petitioner in the document. It is significant to note that u/s 47-A(I) of the Indian Stamp Act while the Registering Authority to entertains a doubt about the valuation on the belief that the market value of the property has not been truly set forth and it is not the purchase value or sale consideration reference is made. The term "market value" is certainly not a static concept but it is a changing event based on various circumstances. That is the reason why, Rule 3 of the above

said Rules enable the Registering Officer to refer to guideline register for the purpose of coming to a conclusion that the market value of the property has not been properly and truly set forth in the instrument.

15. The word "truly set forth" no doubt contemplates a suspicion of the conduct of the purchaser in denoting the value of the property subject matter of the instrument sought to be registered. If the sale has been effected either at the supervision of the Court as it happens in the Company Court or a sale effected by the Governmental authorities for the value fixed by such authorities like the Housing Board selling plots to the individuals, there is no question of the Registering Authority to entertain a doubt as to whether the market value has been truly set forth or not.

16. But in cases of private sales which includes a sale effected u/s 69 of the Transfer of the Property Act which can never be said to be either a sale effected by the Public Authority or at the supervision of the Court since it is only a private sale effected by exercising the powers conferred under the Act and therefore, it cannot be concluded prima facie that simply because many public can participate in such a private sale, it has to be taken that in all those cases, the consideration should be treated as a market value as "truly set forth" for the purpose of payment stamp duty under the Indian Stamp Act. Therefore, it is immaterial in a private sale conducted u/s 69 of the Transfer of Property Act as to whether the mortgagor who is a original debtor has objected to such value or not. In fact such sales are effected only after sufficient notice to repay to the mortgagor by the mortgagee for payment of the amount and it is only in default such sales are brought out u/s 69 of the Act. There is scope for the mortgagor to work out his remedy to set aside the sale in the manner known to law for which one of the reasons may be gross under valuation which is detrimental to the interest of the mortgagor. But the non-exercise of such power by the mortgagor, itself not ipso facto does not mean that the valuation given or sale consideration for which a purchase was effected by the purchaser should be treated as market value. On the facts of the present case, after entertaining a doubt about the market value as it has not been properly set out, the Registering Authority referred the matter to the Collector for an adjudication u/s 47-A(l) of the Act and admittedly, Form-I notice was given by the Collector in which the Petitioner has participated and after the enquiry, the Collector arrived at the valuation and directed the Petitioner to pay deficit stamp duty of Rs. 2,83,517/-. It remains a fact that the Special Deputy Collector, Chennai has issued a notice in Form-I to the Petitioner on 25.06.2002 who passed the final order and that order having become final since admittedly, the Petitioner has not filed any appeal to the Chief Controlling Revenue Authority (Appellate Authority) u/s 47-A(5) of the Indian Stamp Act, certainly, it is not open to the Petitioner having paid the amount and document released, to file the present Writ Petition for the recovery of the amount of stamp duty already paid. The definition of "market Value" as given in Blacks Law Dictionary relied upon by Mr. S.R. Rajagopal, learned Counsel appearing for the Petitioner is of

no help to the Petitioner on the present factual scenario. The term market value as defined in the dictionary is as follows:

Market Value: The price property would command in the open market. The highest price a willing buyer would pay and a willing seller accept, both being fully informed, and the property being exposed for a reasonable period of time. The market value may be different from the price a property can actually be sold for at a given time (market price). The market value of an article or piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular article or piece of property.

17. A reference to the said term makes it very clear that it is a price for which the buyer is willing to pay and seller is willing to accept and the market value is different from the price. The definition itself makes it abundantly clear that such price which is forced by the necessities cannot be a market price.

18. The reliance placed by the Petitioner on the judgment of the Division Bench of this Court in *S.P. Padmavathi v. State of Tamil Nadu*, rep. by its [S.P. Padmavathi Vs. State of Tamil Nadu and Others](#), is not applicable to the facts of the present case. That was a case where pursuant to the decree for specific performance passed by the Civil Court the sale was effected and in the absence of any allegation of any undervaluation between the contesting parties it was held that the Registering Authority cannot invoke the provision of 47-A of the Indian Stamp Act unless there is reason to believe that there is a deliberate undervaluation. In that case, not only that there was no allegation of any undervaluation or like that of bona fide but in the absence of such allegations simply because there is a gap between the agreement of sale and execution of document it was held that it is not sufficient to invoke Section 47-A unless there are reasons to believe that an attempt for undervaluation has been effected to evade payment of duty. The relevant paragraphs for the purpose of this case are extracted hereunder:

23. We have already pointed out that, in the instant case, there is not such plea raised by the Respondents or even by the Registering Officer, who had passed the order u/s 47-A of the Act. There is no finding recorded that there was lack of bona fides or any reason to believe that there was undervaluation. The Registering Officer has purported to exercise his power in the instant case u/s 47-A of the Act to determine the market value only on the ground that there is a time gap between the agreement of sale and the date of execution of the Sale Deed and in the meanwhile the value of the property has gone up, without there being no lack of bona fides on the part of the parties to the document and no attempt on their part to fraudulently evade payment of proper stamp duty.

24. This aspect may be viewed from another angle. It may be that the consideration mentioned in the document does not conform to the market value of the property as on the date of execution of the Sale Deed. But in the case where the value of the property goes down, it would not be open to the parties to mention a lesser sum than the one for which they agreed to purchase. This aspect is also important to determine whether the chargeable event is the instrument or the market value.

25. The Division Bench of this Court in [The State of Tamil Nadu and Another Vs. T.N. Chandrasekaran and G. Devandrakumar and Another](#), has clearly brought out this aspect of the matter, the relevant portion of which we have already extracted and, therefore, we do not consider it necessary to repeat it once again.

26. 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 u/s 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.

27. We may also point out that the decree passed on the original side of this Court directs the Plaintiff therein to deposit the amount of stamp duty payable on the consideration amount and the Defendants to register the Sale Deed in respect of the property belonging to the First Defendant, in favour of the Plaintiff for a sum of Rs. 2,75,000 as per the agreement dated 11.2.1985.

28. There are decisions which have taken different views. One set of decisions take a view that such a direction is not binding on the Registering Officer, who is not a party to the Suit and the other set of decisions take a view that as it is direction of the Court in a suit for specific performance, both parties are bound by it and, therefore, the value is fixed. We do not consider it necessary to go into this aspect of the matter, having regard to the conclusion we have reached, as above.

19. It was in [The Government of Tamil Nadu Vs. S. Jayalakshmi and Others](#), the Division Bench of this Court after referring to the various judgments including the judgment in S.P. Padmavathi v. State of Tamil Nadu, rep. by its Secretary to [S.P. Padmavathi Vs. State of Tamil Nadu and Others](#), stated supra and also taking note of the term market value which is a changing and vague concept as held in J. Jayalalitha v. State, represented by Additional Superintendent of Police, CBCID, Chennai, 2001 Supp CTC 1 in paragraph 27 held as follows:

27. On a consideration of the principles laid down in those decisions, it is clear that the term market value itself is vague, uncertain and a matter of guess work. The said issue also came up for consideration in the judgment reported in J. Jayalalitha and five others v. State, represented by Additional Superintendent of Police, CBCID,

Chennai, 2001 Supp. CTC 1 - and this Court has held as follows:

(36). The term Market value itself is vague, uncertain and a matter of guesswork. It is also not defined in the Indian Stamp Act. Explanation to Section 47-A of the said Act reads as follows:

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 Chief Controlling Revenue Authority of the High Court 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, release of benami right or settlement.

Author Manohar N. Dange in his book titled Valuation of Immovable Properties has stated that the price that a willing purchaser pays to a willing seller for a property having due regard with its existing conditions, with all its existing advantages and with its potential possibilities when laid out with most advantageous manner, excluding any disadvantages due to the carrying out of the scheme for the purpose for which the property is transacted and this relates how the market value applies to the valuation for compulsory purchases. He has quoted the judgment rendered by Justice Eve in *South Eastern Rail Company v. L.C.C.*, that the value to be ascertained is the value to the vendor, and not its value to the purchaser and that in fixing the value to the vendor all restrictions imposed on the user and enjoyment of the land in his hand are to be taken into account but the possibility of such restrictions being modified or removed for his benefit is not to be overlooked and that the market price is not a conclusive test of real value. According to the author, the concept of market value has to be understood in the light of what has been explained for the purpose of land acquisition and that the market value of a property may be different in practice for different angles. According to him, the market value for a purpose is to be decided with due relations to laws and purpose of the concerned valuer and the market value, though appears to be a very simple term, is very difficult to decide under particular circumstances. He went on to add that a proper research is necessary which could determine the market value since in one case, there can be heavy demand for smaller tenements with inadequate supply and in another case, the supply may be more than adequate but without any demand. According to the author, the size of the plot has got a direct bearing on the willing purchasers in the market. The market value of a land can be fixed only by taking into consideration several factors, like potentiality of a plot for development, shape of the plot, frontage and depth, modification for depth, value in the sense of value of additional cost less depreciation and the most important factors which a valuer should study in respect of a property are: (1) advantages to the property and (2) disadvantages to the property.

(37) J.A. Parks in his book, *Principles and Practice of Valuation* (Fifth Edition by D.N. Banerjee) by referring to the judgment of the Supreme Court of British Columbia (Canada) in *Rowan v. City of Vancouver*, wherein it was held that "a recent market

price is not the best test of actual value. The whole evidence surrounding the transaction, the condition of market and other factors have to be weighed carefully, stated that valuation of immovable property is not an exact science and it is an inquiry relating to a subject abounding in uncertainties where there is more than ordinary guesswork and where it would be unfair to require an exact exposition of reasons for the conclusions arrived at. He has relied on the judgment of this Court in [M.S.O.S.P.V. Velayudam Chettiar and Others Vs. The Special Tahsildar for Land Acquisition, Madurai at Madurai Town](#), and on the judgment of Allahabad High Court rendered in [Chand Kiran Tyagi and Others Vs. State of Uttar Pradesh and Another](#), . The question of fair compensation is not an algebraic problem which would be solved by an abstract formula as there is room for interference and inclinations of opinion which being more or less conjectural, are difficult to reduce to exact reasoning or to explain to others and it is not fair to require an exact exposition of reason for the conclusions arrived at. The learned author has relied on the observations of Bhagwati, J., as he then was, in [Administrator General of West Bengal Vs. Collector, Varanasi](#), Bhagwati, J., observed in the above judgment as follows:

We are conscious that this process of determination of market value adopted by us may savour of conjecture or guess, but the estimation of market value in many cases must depend largely on evaluation of many imponderables and hence, it must necessarily be to some extent a matter of conjecture or guess.

The author has also relied on the observations of the Supreme Court in [Prithvi Raj Taneja \(Dead\) by Lrs. Vs. The State of Madhya Pradesh and Another](#), wherein the Supreme Court held that there is an element of guesswork inherent in most cases involving determination of the market value.

(38) In [G. Loganathan Vs. S. Chenniaya Chettiar](#), this Court observed that the Supreme Court and other Courts including Madras High Court have held that guideline value is not market value and it will be dangerous to value a property according to the guideline value because there is no guarantee of truth or correctness of the data given in the guideline value. The learned Judge also relied on the judgment of the Supreme Court rendered in [Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini \(Smt\) and Another](#), wherein it was held that the valuation register on the basis of the notification u/s 47-A of the Stamp Act is for collection of revenue and it cannot be the basis for determination of the market value of the land. It was further held, that from the decisions, it is clear that the guideline value cannot be the market value of the property as the guideline value is intended for the collection of revenue and market value is the criteria to value the Suit.

(39) When we consider the above principles, it is clear that guideline and market value are two different concepts and that the term Market value is vague, uncertain and a matter of guesswork. The market value, in my view, does not lie in the property contemplated to be purchased but lies in the mind of the person

contemplating to purchase the said property. From the discussion made above, it could be seen that guideline value and market value being two different concepts, the Trial Judge was not justified in taking the market value for arriving at the conclusion that there was a loss, since Explanation to Section 47-A of the Stamp Act, which has been extracted above, states that the market value will be the price the property would have fetched in open market.

The said judgment has also been confirmed by the Hon"ble Supreme Court of [R. Sai Bharathi Vs. J. Jayalalitha and Others](#), has ultimately held that in respect of the sale effected by the public authority in a public auction, there can be no doubt to be entertained about the undervaluation u/s 47-A(l) of the Act in paragraph 29, which is as follows:

29. This Court in the judgment reported in [A.J. Mapillai Mohadeen Vs. Sub-Registrar, Registration Department and Others](#), has considered the issue in respect of the value fixed by the Public Authority in a public auction sale. While deciding the said case, this Court has taken into consideration, the judgment reported in [Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi](#), [R. Sukumaran Vs. State of Tamil Nadu](#), [S.P. Padmavathi Vs. State of Tamil Nadu and Others](#), and the latest decision of the Hon"ble Supreme Court of India reported in [State of Rajasthan and Others Vs. Khandaka Jain Jewellers](#), has held that unless there is an undervaluation of the subject matter with fraudulent intention to evade proper payment of stamp duty, the Respondents cannot impose such a heavy stamp duty on the Petitioner with regard to the document in question and hence, the value fixed by the Public Authority in the Public auction cannot be doubted after reference u/s 47-A(l). The said case pertaining to the sale of the assets by the Tamil Nadu Industrial Investment Corporation which was taken possession in exercise of powers u/s 29 of the State Financial Corporations Act and the payment of the stamp duty in respect of such sale. This Court has ultimately held in the said decision that the market value stated in the instrument brought for registration should be taken to be correct and that value cannot be doubted or disbelieved.

20. Applying the definition of market value as elicited above, from the definition of the Black's Law Dictionary in the first place on the facts of the present case, there is no willing seller on the price to have the buyer who purchased in a private auction u/s 69 of the Transfer of property Act. As stated above, u/s 69 of the Transfer of Property Act, the mortgagee while exercising the power of sale cannot be treated as a willing seller in respect of the price since his desire is only to receive the amount due to him from the mortgagor who has committed default and the concern of the mortgagee is not about the price of the property. Therefore, the question of application of the market value to be taken as a conclusive one in a sale effected u/s 69 of the Transfer of Property Act is only a negatory. As correctly submitted by the learned Advocate General, the Hon"ble Supreme Court has decided that for the purpose of entertaining a doubt about the undervaluation in cases of sale effected

in open market based on the open offer, what is to be decided is the presence of the control by an authority regarding the price. That was reported in [V.N. Devadoss Vs. Chief Revenue Control Officer-cum-Ins. and Others](#), The Hon"ble Supreme Court in that case was referring to a sale effected in respect of the properties of a Government under the Sick Industrial Companies (Special Provisions) Act, 1985 where the sale was effected as per the direction of Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) effected as open sale after the Assets Sales Committee (ASC) as per the directions of BIFR and AAIFR have fixed the valuation of the property and it was in those circumstances has held that Section 47-A of the Indian Stamp Act has no application. Taking note of the fact that the sale under the Sick Industrial Companies Act, 1985 has been effected under the control and orders of the Statutory Authority namely BIFR and AAIFR by forming a Assets Sales Committee consisting of the members who are the representatives of IDBI, debenture-holders, special Directors of BIFR, etc. has held that there is possibility wilful undervaluation, in the following paragraphs:

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

and has decided that in respect of the property disposed of by the orders of the BIFR and AAIFR on the basis of value fixed by the Assets Sales Committee, there is no scope for applying the Section 47-A of the Act as follows:

16. Market value is a changing concept. The Explanation to sub-rule (5) makes the position clear that (sic market) value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there is no question of any intention to defraud the revenue or non-disclosure of the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AAIFR and that too on the basis of value fixed by Assets Sales Committee. The view was expressed by the Assets Sales Committee which consisted of members such as representatives of IDBI, debenture-holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any undervaluation and therefore, Section 47-A of the Act has no application. It is not correct as observed by

the High Court that BIFR was only a mediator.

Therefore, a reading of these judgments show that the crux of the issue to be considered is the nature of control by the authority concerned for the sale effected. In the absence any control by the Public Authorities even in respect of the sale effected by the mortgagee u/s 69 of the Transfer of Property Act, it cannot be said that the Registering Authority cannot entertain a doubt about the undervaluation u/s 47-A(l) of the Act. Further, as correctly submitted by the learned Advocate General that the Petitioner having been a party to the statutory proceedings u/s 47-A(l) of the Act before the Special Deputy Collector (Stamps) and suffered an order of adjudication and failed to file any further Appeal to the authority as contemplated u/s 47-A(5) of the Act, certainly it is not open to her to claim for return of amount by filing Writ Petition under Article 226 of the Constitution of India. Therefore, I am of the considered view that the Petitioner is not entitled for any relief claimed in this Writ Petition and the Writ Petition fails and the same is dismissed. No costs.