

(2008) 07 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 2359 of 2008

A.J. Mapillai Mohadeen

APPELLANT

Vs

Sub-Registrar, Registration Department and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14
Stamp Act, 1899 — Section 17, 27, 3, 47A, 47A(1)
State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2008 Mad 256 : (2008) 5 CTC 239 : (2008) 7 MLJ 506 : (2009) 5 RCR(Civil) 240 : (2009) 106 RD 282

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Radha Gopalan, for the Appellant; N. Senthil Kumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—This writ petition is filed praying for a declaration declaring that the petitioner is liable to pay and the respondents are entitled to claim the stamp duty only on the value recited in the sale deed document No. 1620 dated 4.4.2007 executed by TIIC, a public authority, in favour of the petitioner herein in respect of property measuring 1.23 acres with building in R.S. No. 77/4 and also 0.05 cents out of 0.85 cents in R.S. No. 77/6 situated in Kuladeepamangalam Village, Tirukovilur Taluk, Villpuram District.

2. With consent of the parties, the Writ Petition is taken up for final disposal.

3. The case of the petitioner is as under:

(i) The property originally belonged to M/s. Sri Raghavendra Splints Industries, Tirukoilur Taluk, a partnership concern having its Head Office at Tirukoilur and factory at R.S. No. 77/4 Kuladeepamangalam Village, Tirukoilur Taluk. The said property was mortgaged with the Tamil Nadu Industrial Investment Corporation

(hereinafter called TIIC). As the said Sri Raghavendra Splints Industries had committed default, TIIC foreclosed the loan by taking possession of the property u/s 29 of the State Financial Corporations Act, 1951, and conducted the tender-cum-public auction on 29.11.2006 bringing the property for auction. The petitioner had offered the highest bid amount of Rs. 4 lakhs in the tender-cum-public auction and TIIC accepted the offer of the petitioner and agreed to sell the properties viz., property measuring 1.23 acres with building in R.S. No. 77/4 and also 0.05 cents out of 0.85 cents in R.S. No. 77/6 situated in Kuladeepmanagalm Village, Tirukovilur Taluk, Villupuram District. The auction was confirmed on 06.03.2007.

(ii) In view of the acceptance of the offer, TIIC executed sale deed over the properties by a sale deed dated 5.4.2007 and pursuant to the said sale deed, possession was also handed over to the petitioner. In order to register the sale deed, as the value of the property was Rs. 4 lakhs, the petitioner paid Rs. 32,000/- towards stamp duty. But, the 1st respondent, without accepting the same, sent the document to the 2nd respondent for proper valuation and notification. Thereafter, the 2nd respondent has fixed the stamp duty at Rs. 2,16,000/- taking into account the market value of the property and issued the proceedings to the effect that the petitioner has to pay Rs. 2,16,000/-, else the documents will not be released. Aggrieved over the same, the petitioner preferred an appeal dated 23.1.2007 before the 3rd respondent stating that he purchased the property from TIIC, which is a public authority and, therefore, he is not liable to pay more than what is stated in the sale deed and the said appeal is pending.

(iii) It is not the case of the respondents that the petitioner has paid consideration more than what has been recited in the deed of conveyance executed by TIIC; moreover, it is beyond one's apprehension that TIIC, a statutory body, would receive excess amount that what has been actually paid and recited as sale consideration in the deed of conveyance executed by it in favour of the auction purchaser; merely because the market value is high, the 1st respondent cannot have any reason whatsoever to doubt about the consideration paid by him to TIIC.

(iv) Since the document has not been released, the petitioner is put to serious loss and irreparable hardship and having no other alternative remedy, he has approached this Court.

3. In the counter affidavit filed by the respondents, the sale consideration of Rs. 4,00,000/- paid by the petitioner to the TIIC is not denied. They have stated that the value of the property, as per Guideline, worked out to Rs. 23,43,936/- and hence it was referred to the Collector for determination of the value of the property in question and the petitioner has also consented to refer the document to the Collector in his letter dated 27.6.2007. According to the respondents, they have acted in accordance with the provisions of The Indian Stamp Act and The Prevention of Undervaluation of Instrument Rules.

3.1. With regard to the grounds raised by the petitioner, the respondents in their counter affidavit have submitted as under:

(i) As per Section 47A(1) of The Indian Stamp Act, the 1st respondent and the 2nd respondent determined the value of the property as Rs. 31,00,000/- (site value - Rs. 20,09,088/-; Building value - Rs. 10,90,912/-) and the required Stamp Duty is Rs. 2,48,000/-; the petitioner paid the Stamp Duty of Rs. 32,000/-; the deficit Stamp Duty of Rs. 2,16,000/- was directed to be paid by the petitioner and the same is correct, legal and well within the rules and regulations of Prevention of Undervaluation of Instrument Rules.

(ii) Section 47(A) of the Indian Stamp Act clearly states that while registering any instrument of conveyance, if there is reason to believe that the market value of the property which is the subject matter of conveyance has not been truly set forth in the instrument, the said document may be referred to the Collector u/s 47(A) of the Indian Stamp Act for determination of the market value of such property.

(iii) The petitioner had purchased the property in the auction conducted by TIIC and the sale deed was also executed by the statutory authority. When it was presented for registration, the registering authority, i.e. the 1st respondent had reason to believe that the market value of the property had not been truly set forth in the instrument, and, therefore, the same was sent to the Collector for determination of the correct market value. Hence the Collector determined the market value and directed the petitioner to pay the deficit stamp duty.

4. In the counter filed by the second respondent, it is stated as follows:

(i) The market value of the building is determined at Rs. 2,50,000/- and the house site value is determined at Rs. 1,50,000/- and the age of the building is noted as 18 years. The petitioner has purchased the land for a sum of Rs. 4,00,000/- and paid the stamp duty of Rs. 32,000/-; since the house site value of the land in R.S. Nos. 77/4 and 77/6 in Kuladeepamangalam Village has been fixed at Rs. 42/- per sq. feet in the Guideline Value Register maintained by the Sub-Registrar's Office, the Sub-Registrar, Arakandanallur, has worked out the house site value at Rs. 23,43,936/- and promptly referred the matter to the Special Deputy Collector (Stamps), Cuddalore, requesting to fix the value of the building thereon as instructed by the Inspector General of Registration vide his Order No. 40931/B1/2001-1 dated 19.8.2002 and to take action to recover the deficit stamp duty from the purchaser in accordance with the provisions laid down u/s 47-A(1).

(ii) The petitioner was issued a notice in Form I u/s 4 of the Prevention of Undervaluation Rules, 1968 by the Special Deputy Collector (Stamps"), Cuddalore to file his claim and objections if any, in the collection of the deficit stamp duty. The petitioner in his letter dated 20.8.2007 has stated that the market value of the land in question was fixed at Rs. 42/- per sq. feet by the Sub-Registrar concerned and requested to fix the value after field inspection.

Accordingly, the property was inspected on 14.9.2007 and an open enquiry was conducted. The petitioner was also present and objected to fix the value of the land at Rs. 42/- per square feet as the land is cultivable, whereas the village public suggested to fix the value of the land at Rs. 35/- per square feet.

(iii) The land had also been inspected by the Special Deputy Collector Stamps, Cuddalore and it was found that Sarguru Nagar Layout has been formed on the eastern and western side of the property in question and north to Manalurpet Road. Further, in the adjacent area nearby Tiruvannamalai Road, house site layout has also been formed. During the subsequent sale made on 5.2.2007, a site measuring 4360 sq. ft. in R.S. No. 84/5 was sold for Rs. 1,83,120/- at the rate of Rs. 42/- per sq. ft. The land in question was found to be lying waste and the petitioner adduced a copy of the Adangal for fasli 1416. In view of these facts, the rate at Rs. 42/- per sq. ft. as fixed by the Sub-Registrar may be high. However, taking the view of the village public that the value of the land may be fixed at Rs. 35/- per sq. ft., the rate of the land per square feet has been considered and fixed at Rs. 36/-, just Re. 1/- high to the suggestion of the village public.

(iv) As regards the value of structure on the property, the nature of the building, its age, trees and other accessories have been taken into account and after deducting the depreciation value, the net value is fixed at Rs. 10,65,852/- and the, total value of the house site and buiding is fixed at Rs. 30,75,000/-; the stamp duty at 8% is fixed at Rs. 2,46,000/- and since the petitioner has paid a sum of, Rs. 32,000/- towards stamp duty, the deficit stamp duty is Rs. 2,14,000/-. The Special Deputy Collector (Stamps), Cuddalore in his proceedings in M.R. No. 307/07-08 dated 14.9.2007 has passed an order directing the petitioner to pay the deficit stamp duty of Rs. 2,14,000/- and to file an appeal before the Inspector General of Registration, Chennai within a period of 60 days from the date of the order. The order was sent to the petitioner by RPAD and it was duly received by him on 29.9.2007. But, on behalf of the petitioner, one K. Asokan, who is said to be the Power of Attorney Holder of the petitioner has filed the present writ petition.

(v) The averments of the petitioner are not maintainable in law and it is not true that the petitioner has offered the highest bid amount of Rs. 4,00,000/- in the Tender-cum-Public Auction; since the sale of the property has been made under the Tamil Nadu Registration Act, the sale is liable for charging stamp duty under the Indian Stamp Act. TIIC is a Company registered under the Indian Companies Act, 1913 and the document is liable to be assessed under the Prevention of Under Valuation Rules, 1968 and u/s 47-A(1) of the Indian Stamp Act and therefore, the petitioner is liable to pay the differential cost of stamp duty together with interest accrued thereon. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard Mrs. Radha Gopalan, learned Counsel for the petitioner and Mr. N. Senthil Kumar, learned Government Advocate for the respondents.

6. Learned Counsel for the petitioner has submitted that the action of the 1st respondent in referring the matter to the 2nd respondent and the 2nd respondent directing the petitioner to pay a sum of Rs. 2,14,000/- towards deficit stamp duty is illegal and arbitrary. It is Her further contention that merely because there is an increase in the market value, it cannot be assumed that the statutory authority received more consideration and in fact, the Inspector General of Registration, the 3rd respondent, has directed all the Registrars in the State to release the documents without insisting on further payment Of stamp duty, even if such instruments had already been referred to Special Deputy Collector (Stamp Duty) for the purpose of valuation/verification. The learned Counsel has also submitted that the petitioner has purchased the property in the auction conducted by the public authority-TIIC and the sale deed has also been executed by the statutory authority and, hence, the petitioner cannot be compelled to pay more stamp duty based on the guideline value, especially when the valuation is based on the allotted price from a public authority and when there is no need for valuation. In support of her case, learned Counsel for the petitioner has relied on the following decisions:

(i) S.P. Padmavathi Vs. State of Tamil Nadu and Others, :

10. ... The underlined words contained in Sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the Legislature in inserting the aforesaid Section 47-A of the Act. The basis for exercising the power u/s 47-A is 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 forth 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 on the part 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 the 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.

11. ... Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion. Even in such a case, we trust that disputes will not be raised for petty sums. Unless the difference is considerable or sizable and it appears patent that the amount mentioned in the document is in gross undervalue, no disputation as to value is expected to be started.

The power should be exercised with great caution and care should be taken to ensure that it does not work as an engine of operation. It has also been further observed that normally the consideration stated as the market value in an instrument brought for registration should be taken to be correct, unless the circumstances exist which suggest fraudulent evasion. The Division Bench has also further stated that in such a case, the disputes should not be raised for

petty sums unless the difference is considerable or sizeable and it appears patent that the amount mentioned in the document is gross undervaluation. We are of the firm view that Section 47-A of the Act came to be inserted by the Tamil Nadu Amendment Act 24 of 1967 with a view to check fraudulent evasion of stamp duty payable on the documents while registering any instrument of conveyance, exchange, gift, release of benami right or settlement. The question as to fraudulent evasion of capital gain tax and the purpose of Chapter XX-C of the Income Tax Act, preventing such fraudulent evasion of capital gain tax by making under valuation came up for consideration before the Supreme Court in C.B. Gautam Vs. Union of India and Others, . While considering the purpose of Chapter XX-C of the Income Tax Act, the Supreme Court specifically pointed out that although a presumption of an attempt to evade the tax may be raised by the appropriate authority concerned, but it has to determine that in a given transaction of an agreement to sell there might be several bona fide considerations which might induce a seller to sell his immovable property at less than what might be consideration as a fair market value.

15. We accordingly, answer Point No. 1 as follows:

... Power u/s 47-A of the Act can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance, has not been truly set forth, with view to fraudulently evade payment of proper stamp duty. Mere lapse of time between the date of agreement will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to invoke the power u/s 47-A of the Act, unless there is lack of bona fides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty.

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 47A 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.

30. Learned Government Pleader also relied on the decision of this Court in R. Thiagasundaram Vs. The State of Tamil Nadu and Others, in which it has been held that the value as accepted by the Civil Court is not binding on the Registering Officer. However, this is the circumstance to be taken into consideration. We are not testing our decision on the ground that value mentioned in the agreement is accepted by Civil Court. We are of the view that the transaction in question does not suffer from lack of bona fide and that there are no reasons to believe that the true value of the property is not set forth in the document.

31. For all the above reasons, we answer pursuant to the decree for specific performance passed by the Civil Court, in which there is no allegation of deliberate undervaluation 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 u/s 47A 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.

32. Point No. 2 : In the light of the findings recorded on Points 1 and 2 in view of the fact that the order of the learned single Judge has proceeded on the basis that it is the market value of the property on the date of execution will be the determining factor for determining the amount of stamp duty payable on the document and the Registering Officer has also not stated any circumstances which led him to believe that there was deliberate or fraudulent under valuation of the subject of transfer with a view to evade payment of proper stamp duty, the order of the learned single Judge which is also reported in 1993 (1) LW 629 and also that of the Registering Officer require to be interfered with. This point is answered accordingly.

(ii) 2002 (2) CTC 329, R. Sukumaran and seven Ors. v. State of Tamil Nadu and seven Ors.:

21. ... Merely because there has been an increase in the market value due to the passage of time, it cannot be assumed that the Housing Board has received consideration more than what has been recited in the document. The over anxious Registrar, who is also conscious to collect more revenue cannot have any inkling or reason, doubt or to believe that there is undervaluation or evasion of stamp duty. Therefore, it has to be held that absolutely the Registrar cannot have any ground or reason or rhyme or basis or reason whatsoever to doubt about the consideration paid by the transferee to the Housing Board, the transferor. The same is the legal position even in respect of commercial plot/flat as well and there could be no difference in that behalf nor there could be any discrimination.

(iii) State of Rajasthan and Others Vs. Khandaka Jain Jewellers, :

13. ... If any doubt arises in the mind of the Registering Authority that the instrument is undervalued then as per Section 47-A of the Rajasthan (Amendment) Act the instrument can be sent to the Collector for determination of the correct market value. u/s 47-A read with Sections 3, 17 and 27, it becomes clear that the Registering Authority has to ascertain the correct valuation given in the instrument regarding market value of the property at the time of the sale.

14.... A taxing statute has to be construed as it is all these contingencies that the matter was under litigation and the value of the property by that time shot up

cannot be taken into account for interpreting the provisions of a taxing statute. As already mentioned above a taxing statute has to be construed strictly and if it is construed strictly then the plea that the incumbent took a long time to get a decree for execution against the vendor that consideration cannot weigh with the Court for interpreting the provisions of the taxing statutes. Therefore, simply because the matter have been in the litigation for a long time that cannot be a consideration to accept the market value of the instrument when the agreement to sale was entered. As per Section 17, it clearly says at the time when registration is made, the valuation is to be seen on that basis.

(iv) Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, :

28. We may, however, consider a hypothetical case. Supposing the correct value of a property is Rs. 10 lakhs and that is the value stated in the sale deed, but the registering officer erroneously determines it to be, say, Rs. 2 crores. In that case, while making a reference to the Collector u/s 47-A, the registering officer will demand duty on 50% of Rs. 2 crores i.e. duty on Rs. 1 crore instead of demanding duty on Rs. 10 lakhs. A party may not be able to pay this exorbitant duty demanded under the proviso to Section 47-A by the registering officer in such a case. What can be done in this situation?

29. In our opinion in this situation, it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Article 14 of the Constitution vide *Maneka Gandhi v. Union of India*. Hence, the party is not relediless in this situation.

8. Per contra, learned Government Advocate for the respondents has stated that the action of the respondents 1 and 2 in determining the value of the property at Rs. 30,75,000/- and the stamp duty at Rs. 2,46,000/- and directing the petitioner to pay a sum of Rs. 2,14,000/- as deficit stamp duty is correct and well within the rules and regulations of Prevention of Undervaluation of Instrument Rules; though, it is true that the petitioner has offered the highest bid amount of Rs. 4,00,000/- in the Tender-cum-Public Auction, the sale of the property has been made under the Tamil Nadu Registration Act and, therefore, the sale is liable for charging stamp duty under the Indian Stamp Act.

9. The learned Government Advocate has further stated that the property under the sale deed has been inspected by the authorities concerned and proceedings have been taken under the provisions laid down u/s 47-A(I) of the Indian Stamp Act and the order passed by the Special Deputy Collector (Stamps), Cuddalore, directing the petitioner to pay the differential cost of stamp duty with interest thereon is just and proper and, therefore, the writ petition is liable to be

dismissed. In support of his argument, the learned Government Advocate has placed reliance on the decision of the Supreme Court reported in State of Rajasthan and Others Vs. Khandaka Jain Jewellers, , wherein it is held as under:

6. The question is whether the valuation should be assessed on the market rate prevailing at the time of registration of the sale deed or when the parties entered into agreement to sell.

7. Learned Counsel for the State has submitted that the Stamp Act is a taxing statute and a taxing statute has to be construed strictly. Whatsoever may have been the consideration for the vendor not to get the sale deed executed is a matter between both the parties, but when the matter is before the Registering Authority, the Registering Authority has to see the valuation of the property at the market value at the time of registration as per Section 17 of the Act. ...

10. I have carefully considered the sub-missions made by the learned Counsel on either side and also gone through the records.

11. An analysis of the case would reveal that the petitioner is the auction purchaser of the property originally belonging to one M/s. Sri Raghavendra Splints Industries, Tirukoilur, a partnership concern, situated at R.S. No. 77/4 Kuladeepamangalam Village, Tirukoilur Taluk, Villupuram District, and the said property Was mortgaged with TIIC. As there was a default of payment, TIIC had brought the property in public auction u/s 29 of the State Financial Corporations Act, 1951, and the said auction was conducted on 29.11.2006. The petitioner being the highest bidder had offered Rs. 4.00 lakhs in the tender-cum-public auction. The said offer has been accepted and thereafter it was agreed to sell the property measuring 1.23 acres with building in R.S. No. 77/4 and also 0.05 cents out of 0.85 cents in R.S. No. 77/6 situate in Kuladeepamangalam village. Accordingly, TIIC has executed a sale deed in favour of the petitioner on 5.4.2007 and pursuant to the same, possession was also handed over to the petitioner.

12. The petitioner has taken steps to get the property registered, for which value of the property was fixed at Rs. 4.00 lakhs by the pubic authority and the petitioner paid a sum of Rs. 32,000/- towards stamp duty. However, the first respondent, without accepting the said amount, referred the document to the second respondent for proper valuation and notification. Pursuant to that, the second respondent fixed the stamp duty at Rs. 2,46,000/-, taking into account the market value of the property and issued the proceedings to the effect that the petitioner has to pay deficit stamp duty of Rs. 2,14,000/- and informed the petitioner that unless the said amount is paid, the document will not be released. Aggrieved over the action of the second respondent, the petitioner preferred an appeal before the third respondent on 23.2.2007, on the ground that the subject property has been purchased in the public auction and the value fixed by the public authority and, therefore, he is not liable to pay more than the value fixed by the public authority in the sale deed.

13. On evaluation of the above facts of the case and the submissions made by the counsel on either side, the points which arise for consideration in this Writ Petition are:

(i) When the public authority has fixed the value of the property in a public auction sale, whether that value can be doubted to refer the matter u/s 47-A(1) of the Indian Stamp Act?

(ii) Whether there is any fraudulent intention on the part of the petitioner in presenting the document for registration ?

14. Coming to the first point, it is seen that there is no dispute that the property in question was put to public auction on 29.11.2006 and the petitioner being the highest bidder has purchased the said property, for which sale deed was executed on 5.4.2007. It is also seen that TIIC, which is not a party to the present Writ Petition and is an authority in the State of Tamil Nadu, is governed by the State Financial Corporations Act, 1951. Under the provisions of the Act, the property in question was brought under public auction as per Section 29 of the Act. While exercising the power by TIIC, they evaluated the property and fixed the value based on the market value of the property at the time of public auction i.e., on 29.11.2006. After handing over of the possession and the sale deed was executed on 5.4.2007, the document was presented for registration immediately. There is no much time gap between the public auction and the execution of sale deed. The auction was confirmed on 6.3.2007. Therefore, there is no reason to believe that the value fixed by the public authority has been changed.

15. Section 47-A of the Act states that if the registering officer appointed under the Indian Registration Act, 1908, while registering any instrument of conveyance, exchange, gift release of benarni right or settlement has reason to believe that the market value of the property of which is the subject matter of conveyance, 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.

16. From the above Section, it is clear that when the registering officer has reason to believe that the market value of the property has not been truly set forth in the instrument with a view to fraudulently evade payment of proper stamp duty, 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.

17. Power u/s 47-A of the Act can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance, has not been truly set forth, with view to fraudulently evade payment of proper stamp duty. Mere lapse of time between the date of agreement will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to invoke the power u/s 47-A of

the Act, unless there is lack of bona fides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty.

18. Therefore, in the present case, when there is no fraudulent attempt on the part of the petitioner to undervalue the subject of transfer, the authority has no power to fix the market value and impose the stamp duty at Rs. 2,46,000/- instead of Rs. 32,000/-, which is already paid by the petitioner, for the value fixed by the public authority. In other words, when the value itself is properly assessed and fixed by the public authority, it cannot be construed that the petitioner has undervalued the property. In the absence of any material to arrive at a conclusion that there is an undervaluation of the property, the direction of the second respondent to the petitioner to pay the enhanced stamp duty cannot be sustained.

19. A perusal of the impugned proceedings does not reflect any substantial reason to arrive at a conclusion to differ from the value already fixed by the authority, thereby increasing the market value and enhancing the stamp duty.

20. The law is well settled and this Court, in a number of decisions, has held that unless there is a fraudulent attempt on the part of the parties to the document to evade payment of proper stamp duty and a determining factor that the document is undervalued for some reasons, the authority cannot exercise his power arbitrarily without any basis. The power should be exercised with great caution and care should be taken to ensure that it does not operate as an engine of operation. It has also been further observed that normally the consideration stated as the market value in an instrument brought for registration should be taken to be correct, unless the circumstances exist to suggest fraudulent evasion. The said principle has been laid down by this Court in *S.P. Padmavathi Vs. State of Tamil Nadu and Others*, . In *R. Sukumaran's* case cited by the learned Counsel for the petitioner, this Court has held that merely because there has been an increase in the market value due to passage of time, it cannot be assumed that the transferor has received consideration more than what has been recited in the document and therefore it has to be held that the Registrar cannot have any ground or reason to doubt about the consideration paid by the transferee to the transferor. In *State of Rajasthan v. Khandaka Jain Jewellers*, cited by the learned Counsel for the petitioner, the Supreme Court has held that u/s 47-A read with Sections 3, 17 and 27, it becomes clear that the Registering Authority has to ascertain the correct valuation given in the instrument regarding the market value of the property at the time of the sale. Also, in *Government of Andhra Pradesh v. P. Laxmi Devi*, referred above, the Apex Court has held that it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and based on extraneous considerations and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand, declaring it as

arbitrary.

21. 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. Therefore, in this case, the value fixed by the public authority in the public auction cannot be doubted for reference u/s 47-A(1).

23. As regards the second point, it is not the case of the respondents that the petitioner has wilfully or fraudulently presented the document with deficit stamp duty. It cannot also be disputed that the property in question was purchased by the petitioner in a public auction conducted by the public authority as per the provisions of the State Financial Corporations Act. The assessment of the value of the property by the public authority at the time of public auction is a material consideration for the assessment of the market Value. It is seen, there is no much time gap either from public auction to confirmation of sale; from confirmation of sale to making of payment or from making of payment to the execution of sale deed. In the absence of any lapses on the part of the petitioner in presenting the document for registration, there cannot be any convincing reasons to disbelieve or doubt the value of the document, assessed by the public authority. Hence, there Is no material before this Court to come to a conclusion that there is a fraudulent intention on the part of the petitioner in presenting the document for registration, by undervaluing the property and not paying the proper stamp duty.

23. The necessary corollary of the above paragraphs would be that based on the market value assessed by the public authority, sale deed has been executed and stamp duty paid. Therefore, the market value stated in the instrument brought for registration should be taken to be correct and that value cannot be doubted or disbelieved.

24. In the light of the elaborate discussion made above and following the legal proposition and various rulings referred to above, I am of the considered opinion that the petitioner has to succeed.

25. Accordingly, this Writ Petition is allowed with a direction to the respondents/ to register the document) No. 1620, dated 4.4.2007, and release the same to the petitioner in accordance with law. No costs. Consequently, the connected M.P. No. 1 of 2008 is closed.