

**(2010) 07 MAD CK 0019**

**In the Madras High Court**

**Case No :** C.M.A. No's. 1551 to 1554 of 2010 and M.P. No's. 1, 1, 1, 1, 2, 2, 2 and 2 of 2010

K.K. Flats (P) Ltd.

APPELLANT

Vs

Inspector General of Registration and Another

RESPONDENT

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**Date of Decision :** 06-07-2010

**Acts Referred:**

Stamp Act, 1899 — Section 47A, 47A(2), 47A(5)

**Citation :** (2011) 256 MLJ 1240

**Hon'ble Judges :** Chitra Venkataraman, J

**Bench :** Single Bench

**Advocate :** A.L. Ganthimathi, for the Appellant; R. Muthaian, Government Advocate, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Chitra Venkataraman, J.—These four Civil Miscellaneous Appeals are against the orders of the Inspector General of Registration dated

18.5.2010. The issue raised in these Appeals are common and hence, a common order is passed.

2. The Appellants herein purchased the lands in question which are situated near the Vaigai river bank. The total extent of land purchased under

individual Sale Deeds in the year 2005 of varying extent in respect of all these Appeals is 4 acres and 75 cents in Sathamangalam, Madurai

District.

3. The admitted fact herein is that the lands in question are on the bank of river Vaigai on the way to Anna Nagar in Madurai. The lands are in a

low lying area, 12 to 15 feet below the normal prevailing conditions of other lands. Inhere is no proper approach road to reach the said lands.

Based on the document value of the year 1995, executed by the very same vendors as arrived at by the Inspector General of Registration, fixing

the value at Rs. 5,00,000/- per acre vide order dated 10.11.1995, adopting the further appreciation of 15%, the Appellant herein contended that

the value of the said lands, at best, as on the date of sale, could be taken at Rs. 11 lakhs, considering the locational and other disadvantages

suffered by the said lands and the fact that the condition of the lands have not improved in any manner to draw a better value. The value had been

correctly stated in the instrument of sale and hence, did not call for any revision to attract Section 47-A proceedings.

4. The Appellant pointed out that even by adopting 15% hike to the value every year for 8 years, the value per acre would work out to Rs. 11

lakhs only. The value of the property purchased was Rs. 1,86,64,750/- for an extent of 4 acres and 75 cents. Consequently, the guideline value

fixed by the Special Deputy Collector at Rs. 7,38,09,980/- was without any basis. The Appellant contends that apart from the value being

abnormal, there are no materials to support this demand. Aggrieved by the order of the Special Deputy Collector, the Appellant herein preferred

Appeals u/s 47-A(5) of the Indian Stamp Act before the first Respondent herein.

5. The first Respondent herein, the Inspector General of Registration, however, confirmed the order fixing the value at Rs. 355/- per sq.ft. as the

market value of the land. The said determination was made based on the consideration that the said lands are close to Anna Nagar Bus Stand and

hence, based on the guideline value of Rs. 477/- per sq.ft. and taking note of  $\frac{1}{2}$  the location and other advantages and disadvantages suffered by

the said lands, the first Respondent reduced the market value from Rs. 477/- per sq.ft. to Rs. 355/- per sq.ft., thereby confirmed the value

adopted by the second Respondent. Aggrieved by the same, the present Appeals have been filed.

6. Learned Counsel appearing for the Appellant pointed out that it is an admitted fact that the lands in question are in a disadvantageous location,

they being well below 10 feet from the normal road level. Quite apart from that, the said lands have no basic amenities even though they are nearer

to the Tamil Nadu Water Supply and Sewerage Board tank. Taking note of all these and that the locational disadvantages had continued even as

on the date of the sale, but nevertheless adopting a further increase based on the guidelines issued by the Government at 15% per annum on the

value declared on on the 1995 document relating to the sale of the nearby property, the Appellant contends that the value adopted by the first

Respondent is excessive and arbitrary.

7. Learned Counsel pointed out that the property in question was originally brought for auction by the Income Tax Department for a total sum of

Rs. 1.13 crores; but the auction, however, was not successful, there being no bidders for this value. In the circumstances, the adoption of the value

at Rs. 355/- per sq.ft., ignoring the potential for improvement of the land in future as well as the advantages and disadvantages suffered by the land,

is unsustainable. The Appellant herein had registered the land for a total sum of Rs. 1,86,64,750/-. That being the case, the demand of a sum of

Rs. 7,38,09,980/- is abnormal and not supported by any material. She further pointed out that the copy of the documents referred to in the order

of the first Respondent were not given to the Appellant herein.

8. In support of the contention that the authorities exercising powers u/s 47-A of the Indian Stamp Act have failed to apply the various, parameters

for determining the market value, learned Counsel placed reliance on the decision in *Ezhilarasi v. Inspector General of Registration* (2009) 5 MLJ

1501 : 2009 (1) CTC 698. She also referred to the decision in *The Special Deputy Collector (Stamp) Vs. Chemicals and Plastics Ltd.,* , that the

intending use of the land in future cannot be the basis for adopting the value. Referring to the Full Bench decision in *Sakthi and Co. Vs. Shree*

*Desigachary,* , she pointed out that the market value for a particular property is the result of a bargain between the parties. Hence, the guideline

value cannot be the basis for determination of the market value, particularly when the Respondents had not pointed out any material to substantiate

that the value given in the instrument of sale was untrue and that the assumption of jurisdiction is warranted under the provisions of Section 47-A of

the Indian Stamp Act. In the light of the above-said decision, learned Counsel submits that the impugned orders have to be set aside.

9. Per contra, supporting the order of the Respondents, learned Government Pleader produced the files before this Court and submitted that the

land in question is very near to Anna Nagar. Taking note of the locational problem

and that there are no approach roads and no basic amenities

available, the value had rightly been fixed by the first Respondent, taking it at Rs. 355/- per sq.ft. as against Rs. 477/- per sq.ft. as the market value

for the purpose of demanding the stamp duty on registration. He referred to the reasoning of the first Respondent that the value of the property in

question had gone up several times since 1995. Hence, taking note of the same, the demand was made and no exception could be made to the

reasoning of the first Respondent.

10. I have perused the file and heard the learned Counsel appearing for both sides.

11. A reading of the order of the Second Respondent dated 9.10.2006 and the files produced show that on 6.9.2006, the Tahsildar made a spot

inspection and noted the physical features of the property that they are located at a distance of 2 kms. from Anna Nagar Bus Stand and located on

the northern bank of Vaigai river subjected to frequent soil erosion. The property is located 10 feet below the road level and located on the very

banks of Vaigai. Nearer to the said property is a multi-storeyed building. As to the physical features, it is pointed out that there is no street light or

sanitary water supply scheme. However, as the lands near Vaigai river are valuable lands and the Appellant herein is in the business of real estate

promotion, the second Respondent confirmed the market value of the property at Rs. 3,66,82,900/-and that the Appellant was called upon to

remit the differential amount within a period of sixty days from the date of the order i.e., 9.10.2006. Aggrieved by the same, the Appellant herein

filed appeals before the first Respondent. Placing reliance on the document of the year 1995 relating to the said property in the same survey

number which was sold for a value of Rs. 5,00,000/- per acre, the Appellant contended that no improvement had taken place even after 1995 as

far as the very property is concerned. Considering the fact that there was no Revision allowed after the last revision on 1.4.2003, the Appellant

herein adopted the same rationale of 15% increase in the market value that the property should be taken at Rs. 11 lakhs per acre and considering

the extent of land purchased, the value would have been Rs. 60,39,000/-. However, the Appellant had registered the document at Rs.

1,86,64,750/-and the guideline value fixed by the second Respondent at Rs.

7,38,09,980/- is abnormal and without any basis.

12. By order dated 18.5.2010, the first Respondent confirmed the value fixed by the second Respondent, rejecting the plea of the Appellant

herein. A reading of the order of the first Respondent herein shows that except for a reference to the location of the property as very near to the

developed area of Anna Nagar Bus stand, there is hardly any material indicated in the order under Appeal as to the arriving at of the valuation at

Rs. 355/- per sq.ft. as the market value. Even though the guideline value, as such, had not been, adopted in this case, yet, in arriving at the market

value at Rs. 355/- per sq.ft., it is but necessary that the first Respondent should have indicated the basis for arriving at the value at Rs. 355/- per

sq.ft., more so, when except for the document relied on by the Appellant relating to the year 1995, there are no documents on either side on this

specific issue. It is true that ever since 1995, the value of the property had gone up many fold. But then, a matter of general impression, by itself,

cannot be a ground for assumption of jurisdiction u/s 47-A of the Indian Stamp Act to hold that the value decreed in the document is untrue.

13. It is seen that a provisional assessment order was passed on 15.9.2006 by the second Respondent valuing the said lands at Rs. 2,49,19,600/-

and the Appellant was called upon to pay the deficit duty. Thereafter, the second Respondent conducted the spot enquiry on 6.1.1996 and noted

that the lands in question are situated on the northern banks of river Vaigai to the east of Kurvikara Bridge. It is worthwhile to note the impression

recorded in the order of the second Respondent as follows:

14. Thus, noting the above locational advantages and disadvantages, the first Respondent arrived at the value at Rs. 355/- per sq.ft., but the basis

for fixing the above value as market value had not been indicated anywhere in the order of the first Respondent. The reference to the Income Tax

Attachment proceedings, by itself, does not justify the value, either of the Appellant or that of the first Respondent. Further, as pointed out by the

learned Counsel appearing for the Appellant, placing reliance on the Full Bench decision of this Court in Sakthi & Co. v. Shree Desigachary

(supra), the market value is not determined by the guideline value. Detailing about the concept of market value, the Full Bench of this Court

considered the catena of decisions to hold as follows:

15. This Court pointed out in paragraph 18 therein as follows:

(1) The guideline value, contained in the Basic Valuation Register, maintained by the Revenue Department or the Municipality for the purpose of

collecting stamp duty, has no statutory base or force. It cannot form a foundation to determine the market value mentioned there under in

instrument brought for registration.

(2) Evidence of bona fide sales between willing prudent vendor and prudent vendee of the lands acquired or situated near about that land

possessing same or similar advantageous features would furnish basis to determine the market value.

16. Dealing with the similar subject as to the determination of market value, in the decision in *Ezhilarasi v. Inspector General of Registration*

(supra), this Court held that the onus is on the Department to establish that the market value of the property has not been truly set forth and that the

market value as claimed by the Department is contemporaneous to the document tendered for registration. Referring to the decisions of the Apex

Court as well as to the decisions of this Court, this Court held that where there is a doubt that the market value has not been truly set forth in the

instrument, the guideline value is only a prima facie guide for ascertaining the market value. The Department will have to go by the various

parameters set down in the rules for determination of the market value if they have a reasonable belief that the market value of the property has not

been truly set forth in the document. In the context of the said decisions, when there are no material to suggest that the property had been

undervalued and that the value of the property fixed not being based on any acceptable material, I have no hesitation in accepting the case of the

Appellant herein that the order of the first Respondent did not have any basis to arrive at the value of Rs. 355/- per sq.ft. The mere fact that the

Appellant is in the field of real estate and that the potential of the property for further development or that it is adjacent to the multi-storeyed

building, by itself, does not decide on the issue that the value of the property has been understated in the instrument. Hence, having thus noted the

physical features of the property, there being no basis indicated either in the order of the Second Respondent, or for that matter, even in the First

Respondent's order for arriving at a satisfaction that the value stated in the

document is untrue, the assumption of jurisdiction u/s 47-A of the Indian Stamp Act is totally without any basis. Consequently, the adoption of Rs. 355/- per sq.ft. as the market value is without any basis. It must be noted that a mere fact of difference in value stated in the instrument and the market value, per se, does not justify the invoking of the provisions u/s 47-A of the Indian Stamp Act, that only if and when the authorities have a reasonable belief that the market value of the property has not been truly set forth in the document that the Registering Officer, after registration of the document, may refer the same to the Collector for determination of the market value of the property. Thereupon, as per Section 47-A(2) of the Indian Stamp Act, the Collector holds an enquiry as prescribed under the rules and determine the market value of the property. Thus, in all cases of Section 47-A proceedings, law requires that there are prima facie materials at the hands of the Registering Authority to form an opinion as to the market value not truly set forth in the instrument and this leads to an enquiry and a final order passed depending on the outcome of the enquiry. The invoking of the jurisdiction on a sheer difference in price stated in the instrument with the market price, would only make the exercise an automatic and ritualistic exercise opposed to the very scheme of the provisions of Section 47-A of the Indian Stamp Act.

17. In the decision in the Special Deputy Collector (Stamp) v. Chemicals and Plastics Ltd. (supra), this Court observed as follows at p. 182 of

MLJ:

72. What is the market value of the land is what a willing buyer is ready to pay to a willing vendor at the price agreed to. It may be that the lands may be used for the purpose of letting industrial effluent and for treatment and it may incidentally be part of an industrial activity. But that cannot constitute a ground to value the land as industrial site.

On the facts of the case before us, having noted the physical features of the property and that the Appellants have taken note of the same and paid

ting duty thereon as the market price fixed by them, the view of the Respondents that the Appellants are in real estate business and the nearby

property is a multi-storeyed building does not justify as affording good grounds to fix the market value, as had been done by the Respondents. The

future possibility of the usage for commercial purpose, by itself, cannot lead one

to an inference that the present value declared in the instrument is not a true value.

18. In the circumstances. I have no hesitation in accepting the case of the Appellant herein that the order of the first Respondent did not have any basis to arrive at the value of Rs. 355/- per sq.ft. The entries which had been considered for the purpose of arriving at the market price between the parties is not denied by the Respondents. The onus of proving the allegation that the value had not been truly disclosed and that the instrument had been undervalued rests on the Respondents. When the same had not been discharged, the appeal has to be allowed and the order set aside. In the circumstances, I have no hesitation in allowing the appeals thereby setting aside the orders of the first Respondent. No costs. Connected miscellaneous petitions are closed.