(1997) 11 MAD CK 0115

In the Madras High Court

Case No : W.P.Nos 15883 to 15886 of 1997, 11952 and 11953 of 1997, 12589 to 12594 of 1997, 13660 of 1997, 15499 to 15510 of 1997, 12495 to 12498 of 1997 and 15640 of 1997 to 15651 of 1997 of and W.M.P.Nos 25183 to 25186 of 1997, 19305 and 19306 of 1997, 20108 to 20

M. Krishnan and 44 others APPELLANT

Vs

The District Collector, Erode District, Erode and two others RESPONDENT

Date of Decision : 06-11-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Registration Act, 1908 — Section 61(2)
Stamp Act, 1899 — Section 27, 47

Citation : (1998) 3 CTC 366

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. D. Krishnakumar, for the Appellant; Mr. D. Murugesan, S.G.P. Mrs. T. Kokilavani G.A. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. This Court ordered notice of motion to the respondents and the respondents have also filed a counter, besides produced the documents.

2. Common arguments were addressed by the learned counsel for petitioners as well as Mr. D. Murugesan, Special Government Pleader and Mrs. T. Kokilavani, Government Advocate for the respondents. It is sufficient to refer to the facts relation to one of the writ petitions.

3. W.P.Nos. 15883, 15884, 11952, 11953, 12495, 12496, 12497,12498, 15499 to 15510 of 1997 relate to deeds of conveyance executed in favour of the writ petitioners and they have been respectively registered as deeds of sale by the third respondent as document 3159, 3166, 3170, 3158, 3161, 3169, 3171, 3162, 3178, 3177, 3175, 3174, 3173, 3172, 3168, 3167, 3160, 3165, 3164 and 3163 of 1995. Admittedly, the registration of these documents has been

completed.

4. W.P.No.13660 of 1997 relates to a deed of compromise in respect of P.No.55 of 1997.

5. W.P.Nos. 15885, 15886, 12589, 12590, 12591, 12592, 12593, 12594, 12640, 12648, 12649, 12650, 12651 of 1997 respectively relate to deeds of release registered as document Nos. 1238, 1250, 1241, 1255, 1253, 1248, 1242, 1240, 1237, 1243, 1244, 1245, 1246, 1247, 1249, 1251, 1252, 1254, 1256, and 1257 of 1997 on the file of the very same third respondent.

6. According to the petitioner, in W.P.No.12589 of 1997, he had purchased a small extent of vacant site comprised in Door No. 406, 407 of Perundhurai Road, Erode from the vendors for valuable consideration. A release deed was also executed by the releasor on 15.3.1996 and it was also presented before the third respondent herein for registration on 27.3.1996.

7. The third respondent herein, after being satisfied with the execution and presentation of the documents, had duly registered the same and assigned a separate document number to each of the deeds of conveyance and registration has been completed by the third respondent.

8. According to the petitioner, he had been approaching the second and third respondents for more than twenty times for return of the original deed of conveyance/release deed so also the other writ petitioners. The second and third respondents have been keeping silent and ignored the petitioners, request and for reasons best known to them, they are intentionally keeping silent and they have not delivered the sale deeds even after completion of registration.

9. No reason has been assigned or disclosed by the respondents for withholding the documents from 27.3.1996 onwards. The petitioner caused a legal notice on 23.6.1997 calling upon the respondents to release the original documents of conveyance and release deeds as well, besides pointing out that non-delivery of original documents is not only causing inconvenience but also prejudice to the petitioner.

10. According to the petitioner, after receipt of legal notice dated 23.6.1997, the third respondent had sent a reply in his office K. Dis. No. 5267/97 dated 23.6.1997 and even the said reply is not specific. However, it is obvious that the respondents are, without any justifiable reason or cause, keeping silent.

11. The petitioner having invested huge amount in the purchase, is being deprived of his valuable rights by the inaction on the part of the respondents and he is unable to raise loan for want of original documents.

12. In the circumstances, the present Writ Petition No.12589 of 1997 has been filed praying for the issue of a Writ of Mandamus directing the third respondent to deliver the original registered release deed document No. 1241 of 1996 dated 27.3.1996 on the file of the third respondent. Other petitioners have also filed

writ petitions with respect to the deeds of conveyance executed in their favour.

13. Learned counsel for the petitioners mainly contended that the non-delivery of the original sale deeds as well as the deeds of conveyance by the third respondent is arbitrary, violative of Article 14 of the Constitution, without authority and the retention of the original documents even after completion of registration of documents is uncalled for, as well as the action of the respondents is arbitrary and not warranted.

14. It is further contended that the documents should have been returned in terms of Section 61(2) of the Registration Act, when the registration has been completed, and there is no reason at all to retain the original documents and such an action is arbitrary and it is a colourable exercise of powers by the respondents.

15. In respect of other writ petitions, it is sufficient to state that identical averments have been set out in the affidavits filed in support of the writ petitions. A common counter has been filed by the second respondent in W.P.Nos.12589 to 12594 as well as 11052 and 11953 of 1997.

16. According to the second respondent, these writ petitions relate to release of property connected with (i).Sellammal; (ii).S.R. Sadasivam, (iii) Sivagami; (iv) P. Karthikeyan; (v) Satishkumar (vi) Nalini; and (vii) Kalvikarasi Rajamanickam who have released the property in favour of twenty four persons and the writ petitioner in W.P.No.12589 of 1997 had purchased 1/21 undivided share in the said property. The documents were executed on 15.3.1996 and valued at Rs. 40,000.

17. The second respondent further states in the counter that the documents were presented for registration before the Joint-I Sub Registrar, Erode and the documents were registered as Doc.Nos. 1238 to 1258 of 1996. Doc.No.1240 of 1996 relates to the petitioner in W.P.No.12589 of 1997.

18. It is also stated in the counter that the petitioner had valued the property at Rs.100 per Sq.Ft. as against the guideline value of Perundhurai Road at Rs. 270.50 per Sq.Ft, that one Annamalai had submitted a petition on 26.8.1995 to the Inspector General of Registration alleging that the properties have been under-valued and that there is huge loss of revenue to the Government.

19. It has been further stated in the counter that the documents have been split up in order to evade Income Tax also, that the Inspector General of Registration in his order dated 4.9.1995, referred the matter to the Assistant Inspector General of Registration, Coimbatore to enquire into the under-valuation and submit a report, that the Assistant Inspector General of Registration conducted an enquiry regarding the alleged under- valuation of the property along with the report of suppression of facts relating to the building found out by the District Registrar (Intelligence), Coimbatore.

20. It is further stated in the counter that the property, which is the subject

matter of the writ petitions lies in Brough Road and not in Perundhurai Road, as furnished by the petitioner in the document and the market value of the property in Brough Road is Rs.712 per Sq.Ft as per the report of the Enquiry Officer, who had estimated the value of the property at Rs.5,87,107, while the parties have under-valued the properties at Rs.4,72,107 and the total loss of stamp duty and registration fees is estimated at Rs. 61,384 per document.

21. The second respondent further stated in the counter that the writ petitioners have suppressed the material information regarding the name of the street and also the building particulars in order to evade the stamp duty and they have committed offence under Sections 27 and 64 of the Indian Stamp Act.

22. It is also stated by the second respondent in the counter that there is no intentional delay on the part of the Registering Officers, as the matters have to be enquired into in detail regarding the valuation of the property by several officers in different places and the petitioners have never given the correct name of the road nor adopted the value of the property as per the guidelines pertaining to the above road, besides they have also suppressed the information relating to the built up area of the building and that this has necessitated inspection by various officers.

23. It is further stated in the counter that when the petitioners approached the second respondent with respect to release of the document, necessary informations were furnished to the petitioners by the second respondent and the petitioners were apprised that they have under-valued the documents and they have to pay the difference of stamp duty to enable them to get the original document.

24. It is further stated in the counter that the petitioners have promised to pay the stamp duty the next day, but they had never turned up and hence the documents have been referred u/s 47(A)(1) of the Stamp Act for determination of the market value of the property to the Special Deputy Collector, Coimbatore on 25.9.1997.

25. Identical counter has been filed in W.P.Nos.11952, 11953 of 1997 and Mr. D. Murugesan, learned Special Government Pleader appearing for the respondents submitted that all the writ petitions are of identical in nature and the counter-affidavit could be treated as common to all the writ petitions.

26. Admittedly, documents dated 23.8.1995 were presented for registration on 23.8.1995. The executants have admitted the execution and presented the same for registration on 23.8.1995. It is also admitted by the Special Government Pleader that the registration of all the documents have been completed on 23.8.1995. The release deeds dated 15.3.1996 were presented on 27.3.1996 for registration and registration has been completed on that day itself. It is admitted that the Registering Authority did not entertain any doubt as to valuation before completing registration.

27. As seen from the counter- affidavit, a reference u/s 47-A(1) of the Indian Stamp Act was made to the Collector by the third respondent, the Registering Authority only on 25.9.1997. Thus it is evident that the reference u/s 47-A(1) of the Indian Stamp Act has been made after two years reckoned from 23.8.1995 with respect to the sale deeds.

28. Learned counsel for the petitioners contended that in terms of Section 47-A of the Indian Stamp Act, there cannot be a reference to the Collector u/s 47-A(2) after a period of two years and there is no warrant or justification for the respondents to retain the deeds of conveyance or release, as the case may be, after completion of registration.

29. Learned counsel for the petitioners also contended that the Registrar, at the time of registration or while registering the instruments of conveyance or release, had no reason to believe that the market value of the property, which is the subject matter of conveyance or release, has not been truly set forth in the instrument and as such, he had not made a reference to the Collector for determination of the market value of such property and proper stamp duty payable thereon under Sub-Section (1) of Section 47-A. This aspect is not disputed by the respondents.

30. It is further contended by the learned counsel for the petitioners that the Registering Officer having kept quiet for two years, now cannot make a reference u/s 47-A(1) of the Indian Stamp Act, as he had accepted "the market value of the property as set out in the deeds of conveyance or release and had completed the registration and any action or refusal to release the original deeds of conveyance or release is without jurisdiction and arbitrary.

31. It is further contended that at any rate, the Registering Officer should have come to a conclusion that the deeds of conveyance or release were under-valued even before registration of the documents, thereafter, he should have registered the documents and referred the same to the Collector for determination of the market value of such property and also the proper stamp duty payable thereon within a reasonable time, and that the Registering Authority has acted in excess of jurisdiction in keeping the documents with him after completion of registration and the entire action of the Registering Authority is arbitrary.

32. It is further contended that the Collector also cannot suo motu take action as more than two years had elapsed since the date of registration of deeds of conveyance or release and as such, the Registering Authority also cannot make a reference under, subsection (1) of Section 47-A of the Indian Stamp Act.

33. On the other hand, Mr.D. Murugesan, Special Government Pleader contended that the limitation prescribed under sub-section (3) of Section 47 of the said Act will apply to the Collector to exercise the powers suo motu from the date of registration of deeds of conveyance or release and the Registering Authority could at any time refer a document, which has been under-valued and insufficiently stamped to the Collector as no limitation has been prescribed under

subsection (1) of Section 47-A of the Indian Stamp Act.

34. Learned counsel appearing for either side referred to Section 47-A of the Indian Stamp Act as introduced by Tamil Nadu Act XXIV of 1967 and subsequently amended by Tamil Nadu Act XLII of 1981, which came into force on 1.9.1981. To consider the respective contentions raised by the counsel for either side, it is essential to set out the very provision, namely Section 47-A.

35. Section 47-A provides for an appeal, if a person is aggrieved by an order of the Collector passed under Subsection (2) or Sub-Section (3) to the forum prescribed under sub-section 5 of Section 47-A. Section 47-A of the Indian Stamp Act reads thus;

"S. 47-A: Instruments of conveyance, etc. under-valued, how to be dealt with:

1. If the registering officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908), while registering an 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 subsection (1), the Collector, shall, after giving 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, within two 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 such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in subsection (2). The difference, if any, in the amount of duty, shall be payable by person liable to pay the duty.

36. Sub-Section (1) of Section 47-A provides that the Registering Officer, while registering an instrument of conveyance, exchange, gift, release of benami rights 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 of

settlement has not been truly set forth in the instrument, after registering the instrument, he has to refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

37. Thus, it is obvious that before registering the document, the Registration Officer has to come to a prime facie conclusion that in the instrument, the market value of the property has not been truly set forth and thereafter, complete registration and refer the same for determination of the market value.

38. In terms of subsection (2) of Section 47, on receipt of reference under subsection (2) of Section 47, after affording reasonable opportunity of being heard and after holding an enquiry, determine the market value of the property, which is the subject- matter of conveyance or release and the difference, if any, with respect to the amount of duty shall be payable by the person liable to pay the duty.

39. Sub-section (3) of section 47-A confers suo motu powers on the Collector to 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, etc., and duty payable thereon and such suo motu powers to be exercised within two years from the date of registration of the instruments in question.

40. The language of Section 47-A of the Indian Stamp Act is very clear. The condition precedent for making a reference is, there must be reason for the Registering Authority to believe that the market value of the property has not been truly set forth in the document presented for registration. Hence, it follows that the reasons must be recorded, however short it may be. It is the duty of the Registering Authority to record reasons for his belief that true market value has not been set out in the document, complete registration and thereafter refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon.

41. In terms of sub-section (2) of Section 47-A of the Indian Stamp Act, on receipt of a reference under sub-section (1) of Section 47-A of the said Act, the Collector shall determine the market value and the stamp duty payable on the instruments. Before making a reference, it is incumbent on the part of the Registering Authority to record reasons, complete registration and thereafter, he has to make a reference to the Collector under Sub-section (1) of Section 47-A of the said Act.

42. It is essential to point out that before registration, the Registering Authority has to record that he has reasons to believe that the value of the property has not been duly set forth in the instrument. Only after recording such reasons, the Registering Authority has to complete registration of the instrument in question and thereafter alone, he could refer the same to the Collector

under sub-section (1) of Section 47-A of the Indian Stamp Act. Such is not the case of the respondents herein.

43. To this extent, the functions of the Registering Authority is quasi judicial in nature and he has to come to a conclusion that the market value of the property dealt under the document had not been truly set forth and after completion of registration, he could make a reference. Atleast some reasons should be recorded and immediately after completion of registration or sooner thereafter, a reference has to be made under Sub-section (1) of Section 47-A of the said Act.

44. In the present case, no reason had been recorded before or at the time of registration of instruments and for more than two years, the Registering Authority had kept silent and only on 25.9.1997, a reference has been made under sub-section (1) of Section 47-A of the Indian Stamp Act as disclosed in the counter- affidavit. No records have been placed before this Court to show that before registration, the Registering Authority had recorded reasons nor he had reasons to believe that the market value of the property, which is the subject matter of conveyance or release, has not been truly set forth in the instruments. As such, as rightly pointed out by the learned counsel for the petitioners, on the date of presentation of the instruments, as well as on the date of completion of registration, the Registering Authority had no reasons to believe that the market value of the property, which is the subject-matter of conveyance or release has not been truly set forth. That being the factual position, such a conclusion cannot be arrived at after two years and a reference could not be made in terms of Section 47-A(1) of the Indian Stamp Act.

45. It is further pointed out that admittedly, the Registering Authority had applied his mind and had accepted the market value and as such, he has not entertained any doubt nor he has any reason to believe that the market value of the property has not been truly set forth in the instruments before completing registration. In fact, the Registering Authority had completed the registration, assigned document numbers and kept ready for release of the original instruments to the petitioners.

46. Thereafter, for reasons best known to him, the documents have not been released to the petitioners. It is contended by the learned counsel for the petitioners that the Registering Authority having not entertained any doubt as to the market value of the property, and having completed registration, cannot now retain the documents or instruments.

47. It is further contended that after a lapse of two years, there could be no reference by the registering Authority under sub-section (1) of Section 47-A of the said Act, as according to him, the Registering Authority should have recorded reasons before completion of registration and immediately after registration or sooner thereafter'' he should have made a reference under sub-section (1) of Section 47-A of the said Act, as the Registering Authority, on the face of the record had no reasons to believe that the instruments had been under-valued or insufficiently stamped, he had completed the registration immediately after

presentation.

48. As such, after a lapse of two years, it is not open to the Registering Authority to make a reference under sub-section (1) of Section 47-A nor the Collector could entertain such a reference

49. It is pointed out that a reference under sub-section (1) of Section 47-A should be made immediately after registration or sooner thereafter or atleast within a reasonable time. The Registering Authority had not only satisfied himself with the market value as well as the payment of stamp duty payable on the instrument, but also completed the registration without recording any reason as he did not entertain any belief or doubt with respect to the market value or that the instrument had been insufficiently stamped prior to the registration or at the time of registration. Hence, the action of the Registering Authority in referring the matter to the Collector after two years is arbitrary and in excess of jurisdiction.

50. It is further pointed out by the learned counsel for petitioners that sub-section (3) of Section 47-A provides that even the Collector could, suo motu exercise powers within two years from the date of registration of any instrument of conveyance or release and as such, after two years, neither the Collector could, suo motu exercise powers nor the Registering Authority could make a reference u/s 47-A(1) of the Indian Stamp Act. These contentions are well-founded.

51. On the other hand, learned Special Government Pleader contended that no limitation has been prescribed under sub-section (1) of Section 45-A of the said Act for the Registering Authority to make a reference, while Section 47-A(3) prescribes two years as the period within which the Collector could, suo motu take action to determine the correct market value of the property and the stamp duty payable thereon in respect of instruments of conveyance or release.

52. In other words, it is pointed out that the Registering Authority could make a reference at any time in respect of any instrument as to find out the market value and Section 47-A(3) of the said Act provides two years limitation for the Collector to take, suo motu action and the said provisions will not control sub-section (1) of Section 47-A, as according to him, at any time and without any limitation, the Registering Authority could make a reference to the Collector. These submissions, made by the learned Special Government Pleader cannot be sustained in law.

53. What is required under sub-section (1) of section 47-A of the Indian Stamp Act is that the Registering Authority had to come to a conclusion before registration that the market value of the property, dealt under the instrument of conveyance or release, has been under-valued and he should -have entertained reasonable belief in this respect and also, he should have recorded such a reason. Immediately after recording such reason, he has to complete the registration and thereafter refer the instruments to the Collector in terms of sub-

section (1) of Section 47-A of the Indian Stamp Act. Only in respect of the instruments, which have not been referred to for adjudication by the Collector under sub-section (1) of Section 47-A of the said Act, the Collector could exercise or invoke suo motu powers conferred on him under sub-section (3) of Section 47-A and had a reference been made u/s 47-A(3) of the said Act it would have been answered eitherway by the Collector then it is obvious that the Collector cannot exercise suo mom powers in terms of sub-section (3) of Section 47-A of the said Act.

54. The suo motu powers under sub-section (3) of section 47 of the said Act could be exercised only in respect of those instruments, with respect to which no reference have been made by the Registering Authority in terms of sub-section (1) of Section 47-A of the said Act and such suo motu powers have to be exercised within two years from the date of registration of the documents.

55. Section 47-A(3) of the Indian Stamp Act is a special provision, which enables the Collector to exercise suo motu powers within two years from the date of registration of instruments of conveyance, etc. and with respect to which no reference has been made under sub-section (1) of Section 47-A of the said Act or omitted to be made. Such suo motu action has to be taken within two years by the Collector, otherwise, his action will be without jurisdiction.

56. It is to be pointed out that the Collector has no powers nor he could exercise suo motu powers beyond two years from the date of registration of instruments of conveyance or release under sub-section (3) of section 47-A of the said Act. That being the statutory provision, it cannot be contended that without any time limit, the Registering Authority could make a reference to the Collector in terms of sub-section (1) of Section 47-A.

57. The Registering Authority, who makes a reference under sub-section (1) of Section 47-A of the said Act should have already come to a conclusion before registration that in the instruments of conveyance, etc., the market value of the property had not been set forth truly, and after completion of registration, he has to make a reference to the Collector.

58. The mere fact that sub-section (3) of Section 47-A of the Indian Stamp Act provides outer limit of two years for exercising suo motu powers under sub-section (3) of Section 47-a of the said Act from the date of registration of the instruments would show that the Registering Authority has to make a reference immediately after registration or sooner thereafter and for making such a reference also before registration, the Registering Authority should have recorded reasons and thereafter, should complete registration and then make a reference.

59. In the absence of reasons recorded by him, or in the absence of entertaining any reasonable belief or doubt that the market value of the property, which is the subject matter of instruments of conveyance, etc., has not been truly set forth and without such conclusion or reasonable belief, which should be recorded prior

to registration of instruments, reference cannot be made. Further, the files placed before this Court do not disclose that the Registering Authority had entertained any such reasonable doubt nor he had recorded any reason to believe that the market value of the property, which is the subject- matter of instruments of conveyance, etc. has not been truly set forth in the instruments.

60. Apart from the statutory provision, the Rules framed by exercise of power conferred u/s 47-A and 75 of the Indian Stamp Act, 1899 (hereinafter called the Tamil Nadu Stamp (Prevention of Under-Valuation of Instruments, (1968) is relevant.

61. Sub-Rule (3) of Rule 3 of the said Rules, which is relevant for the purpose of the present writ petitions, enables the Registering Officer to make such enquiries as he may deem fit to find out whether the market value has not been correctly valued in the instrument and he may also 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.

62. Sub rule (4) of Rule 3 of the said Rules enables the Registering Officer to look into the guidelines register containing the value of the properties supplied for the purpose of verifying the market value. Sub-rule 2 (a) of Rule 3 of the said Rules enables the Registering Officer to refuse registration of the instrument, if the market value of the property, as required by Section 27 is not set forth in the instrument or statement giving market value of property, as required by sub-rule (1) and (1) (a) is not attached to the instrument.

63. Sub-rule (3) and (4) of Rule 3 of the said Rules which are relevant read thus:

"(3) The Registering Officer, for the purpose of finding out whether the market value has been correctly furnished 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.

(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."

64. This statutory rule enables the Registering Officer to hold on enquiry to find out whether the market value has been correctly furnished in the instrument by holding such enquiry. Such enquiry, as prescribed in the rule, has to be completed before registering the documents as is evident from conjoint reading of Section 47-A of the said Act with Rule 3 of the said Rules. Therefore, it is evident that when a document had been registered, the Registering Officer is deemed to have conducted an enquiry and satisfied himself with respect to the market value furnished in the instrument and only after such satisfaction, the instrument had been registered.

65. Sub-Rule (2) (a) of Rule 3 of the said Rules enables the Registering Authority

to refuse registration of the document.when the market value of the property is not properly set forth in the instrument. In the present case, as already found, the Registering Officer had completed registration, which would establish that the Registering Officer had applied his mind with respect to Section 27 and 47-A of the said Act and Rule 3 of the said Rules. That being the factual position, and no record had been placed before this Court to show that the Registering Authority had already recorded reasons before registration, this Court holds that the action of the Registering Authority in making a reference u/s 47-A(1) of the said Act after a period of two years is arbitrary and in excess of jurisdiction.

66. Further in law, when the rules provide that a particular thing shall be done in a particular manner, the same shall be done only in that manner and not in any other manner.

67. Section 47-A of the said Act read with Tamil Nadu Stamp (Prevention of Under-valuation of Instruments) Rules provides for a reference being made under sub-section (1) of Section 47-A of the said Act and in all section 47-A of the said Act is very clear.

68. The condition precedent for making a reference is, there must be reasons for the Registering Officer to believe that the market value of the property has not been truly set forth in the document presented for registration. The Registering Officer must record reasons, however brief it may be. It is obligatory and it is the duty of the Registering Officer to record reasons for his belief and thereafter, refer the matter to the Collector for adjudicating the real market value of the property under sub-section (1) of Section 47-A of the said Act. Neither Section 47-A of the said Act nor the said Rule provides for the very instrument being forwarded to the Collector as an enclosure to the order or reference.

69. It is sufficient if the Registering Authority makes a reference with full details as disclosed in the instrument or with a copy of the instrument to the Collector for determination of true market value and the stamp duty payable thereon in respect of such instruments. The order of reference is required to be communicated to the person, who is liable to pay the stamp duty. As such, there is no requirement or necessity for the Registering Officer to retain the original instruments after completion of registration. In terms Section 48 of the Indian Stamp Act, the deficit stamp duty could be received as if it is an arrear of land revenue.

70. Section 48 provides that all duties, penalties and other sums required to be paid under the Chapter may be recovered by the Collector by distress and sale of the movable property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land revenue.

71. That being the statutory provision, there is no warrant or requirement or justification to keep the original instrument either by the Registering officer or by the Collector to whom a reference is made.

72. The retention of the original document after completion of registration of the instrument is not provided for either in the Indian Stamp Act or in the Registration Act or in the Rules framed there under with respect to those instruments, where a reference u/s 47-A of the Indian Stamp Act read with Tamil Nadu Stamp (Prevention of Under-valuation of Instruments) Rules had been made or is being made.

73. As the statutory provision is silent so also the Rules framed thereunder, it would be just and proper, if the Registering Authority at the time of release of original documents makes an endorsement to the effect that a reference u/s 47-A of the Indian Stamp Act has been made, with respect to the instrument is concerned to.the Collector and making appropriate entry in the registers, if any, kept by him.

74. The Registering Authority did not entertain any doubt, nor he had any reason to believe that the market value of the property had not been set out truly. Having completed registration, as an after thought, it is not open to the Registering Authority to refer the matter to the Collector in terms of Section 47-A of the Indian Stamp Act and at any rate after two years.

75. The action of the Registering Authority is arbitrary and he has no jurisdiction or authority to make a reference, as in the present case, he did not entertain any doubt nor he had any reason to believe that the market value of the property, which is the subject matter of instruments of conveyance, has not been truly set forth in the instruments and he had obviously accepted the market value set forth in the instruments and completed the registration without any doubt and without entertaining any reasonable belief as prescribed under sub-section (1) of Section 47-A of the said Act.

76. The action of the first respondent in making a reference under sub-section (1) of Section 47-A of the said Act after a lapse of two years is without authority nor the first respondent could, at this point of time hold that the executants had not truly set forth the market value of the property dealt under the instruments. So also it cannot be decided by him at this point of time that the instruments had been under-valued or insufficiently stamped. These reasons compel this Court to reject the contentions raised by the learned Special Government Pleader appearing for the respondents.

77. Learned Special Government Pleader highlighted the complaints received, investigation made by the Assistant Inspector General of Registration and report received thereof and if they are accepted, it would result in substantial loss of revenue to the State Government. This cannot be the basis to brush aside the rigour of Section 47-A of the Indian Stamp Act.

78. If there is any other provision, which enables any other authority to invoke powers without any limitation, nothing prevents the said authority like the Chief Controlling Revenue Authority or Inspector General of Registration to exercise such powers to initiate action with respect to the instruments in question for

alleged under-valuation.

79. As such, this Court holds that the reference made by the Registering Authority is without jurisdiction and reference entertained by the Collector in respect of a document after a lapse of two years from the date of registration is also without jurisdiction.

80. In this respect, this Court has to consider the contentions as to when the registration is completed and the scope of powers that is being exercised by the Registering Authority as well as by the Collector before disposing of this batch of writ petitions.

81. In M/s Park View Enterprises v. State, AIR 1990 Mad. 251, a Division Bench of this Court had occasion to consider the scope of Section 47-A of the Indian Stamp Act as we''ll as Sections 27 and 67(1)(j) of the Registration Act. The Division Bench has held thus:

"When a sale deed conveying only a share in the land is produced; and if the registering authority has reason to believe that it''s market value furnished is not correct, he has no jurisdiction or authority to hold an enquiry and decide as to what is the stamp duly payable thereon. R-3(3) only enables him to arrive at a ''prima facie'' assessment, whether the market value furnished in the sale deed could be relied upon to proceed with the registration. If he opines that the market value is not correct, the statutory duty cast upon him is to register and send it to Collector to follow the procedure under S. 47-A. Except the Collector, no Authority or the Registration Department in any other capacity, could fix the market value and decide upon the proper stamp duty payable in respect of any instrument covered by S. 47-A."

82. The Division Bench also held that after introduction of Section 47-A of the Indian Stamp Act, Rule 3(3) being subject to the said section of Prevention of Under-Valuation Rules, it cannot empower the Registering Officer to hold an enquiry and adjudicate the correct stamp duty and it could only enable him to prima facie find out whether to his belief, the market value of the property is not properly set out has any substance or not. In this respect, the Division Bench has further held thus:

"Wherever S.47-A applies, Sec.47 A deals with instruments of conveyance, exchange, gift, release of benami right or settlement. If instrument of any one of these descriptions as found in Schedule I is produced for registration, and if the Registration Authority considers that the property chargeable to stamp duty had not been properly valued, his first duty which is a statutory duty, is to register the instrument and refer it to the Collector for determining the market value of that property, which is sought to be conveyed. If the correct market value of that property, which is sought to be conveyed, is not set forth in the document as required under Sec. 27, apart from the payment of the deficit stamp duty, which will be determined by me Collector under Sec.47-A(2), the parties to the instrument could be prosecuted under Sec; 64 of the Act. It is interesting to note that even a person engaged in the preparation of an instrument is liable to be prosecuted under Sec. 64(f) of the Act. It is only in respect of such of these instruments which do not come within the conspectus of Sec.47-A, if the proper stamp duty is not paid, as held in In Re: Venkataswami Aiya, , the Registering authority can stop the registration and demand payment of proper duty. After the introduction of S. 47-A, R-3(3) being subject to the said section it cannot empower the Registering Officer to hold an enquiry and adjudicate the correct stamp duty, and it could only enable him to prima facie find out whether to his belief the market value of the property is not properly stated has any substance or not. He has no power to adjudicate upon the market value of the property and delay the registration of the instrument. The rule only enables him to satisfy whether the proper value is given, so that he may register the document. But, if particulars are not forthcoming or that he has reason to believe suo motu that the correct market value is not slated, thereafter the only duty is to register the document and follow procedure in S.47-A. He cannot delay the registration of the instrument of the kinds covered by Sec. 47-A. Equally, he has no right to go behind the terms of the document and any other agreement or any other transactions. Equally, he has no jurisdiction to inspect the properly. The role of the Collector is to find out the market value relating to the chargeability of the instrument and he has to go by the terms of the document regarding the nature of the transaction."

83. In the light of the said Division Bench pronouncement, the Registering Authority has no jurisdiction to go into the market value as disclosed in the instrument and if he had reasons to believe that true market value has not been disclosed in the instrument, he has to record reasons and make a reference to the Collector after completing the registration.

84. Section 47-A of the Indian Stamp Act as amended by the Punjab Stamp Act, 1982 was the subject matter of consideration before the Apex Court in State of Punjab and Others Vs. Mohabir Singh etc. etc., . On the scope of Section 47-A the Indian Stamp Act the Apex Court has held thus:

"Sub-section (1) Section 47-A empowers the Registering Officer, while registering any instrument relating to the transfer of any property, if he has reasons to believe that the value of the property of consideration, as the case may be, has not been truly set forth in the instrument, after registering such instrument, to refer the same to the Collector for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon. It would, therefore, be clear that the Registering Authority has to satisfy himself that value of the property of the consideration for it has not been truly set forth in the instrument. He may make a reference to the Collector in accordance with the provisions of sub-section (2) of Section 47-A. Before making reference, he is required to register the document and he is not empowered to withhold the registration. Such a registration, of course, will be subject to the determination of the true market value prevailing in the locality through the value mentioned in the instrument for such registration under sub-section 47-A was not conclusive."

... It would thus be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise this quasi- judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself, before registering the document, whether the true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document, If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under sub- section (1) of Section 47-A, he registers the document. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of Section 47-A."

85. Though the said Division Bench of this Court had taken the view that the powers exercised by the Registering Authority is not quasi judicial, the Apex Court in the above cited judgment held that the Registering Authority had exercised quasi judicial function in this respect and he had to record to his satisfaction with respect to the instrument presented for registration with respect true market value.

86. A reference was made to the decision of this Court in R. Rajalakshmi and Others Vs. The Revenue Divisional Officer and Another, , which decision is of little assistance for either side as the point that has been decided in that case by Srinivasan, J (as he then was) is not with reference to the limitation or the scope of powers to be exercised u/s 47-A(1) or Section 47-A(3) of the Indian Stamp Act so also the decision reported in P. Appa Rao Vs. Additional District Magistrate and Others, where the Division Bench was concerned with the period of thirty days prescribed for preferring an appeal against the order of adjudication, as to market value of the Collector. The question, which has been raised in the present writ petitions had neither been discussed nor been decided.

87. In Hema v. State of Tamil Nadu, 1980 (1) MLJ 3 NRC Ramaswami, J (as he then was) held thus:

"In the nature of things the guidelines in Valuation Guidelines Register have no evidentiary value. They are only intended to give information or instruction to the registering authorities so as to enable them to come to a reasonable belief within the meaning of section 47-A(1) of the Stamp Act that the market value of the property which is the subject matter of conveyance had or had not been truly set forth in the document. After a reference is made, the collector has to determine, the market value with reference to the explanation in Section 47-A. The guidelines may constitute sufficient material for the registering authority to entertain a plea that the true value had not been set forth in the document. But it cannot be a substantive evidence against the petitioner. In fact, it may not be even called a public document."

88. This pronouncement of V. Ramaswami, J also is of little assistance to the counsel for respondents, as the learned Judge had laid down that the Registering Authority based upon the guidelines register maintained, though guidelines are inadmissible in evidence, enables him to come to a reasonable belief within the meaning of Section 47-A(1) of the stamp Act that the market value of the property, which is the subject matter of evidence had been or had not been truly set forth in the document.

89. In Collector of Nilgiris at Ootacamund Vs. Mahavir Plantations Pvt. Ltd., , V. Balasubramaniyan, J held that the rationale behind" section 47-A of the Stamp Act is only to neutralise the effect of under-valuation valuation of the property with a view to evade stamp duty. With respect to the point that has been raised in these writ petitions there was no occasion for the learned Judge to discuss or decide it on the facts of the said case.

90. On a construction of Section 47-A of the Stamp Act, the contentions of the Special Government Pleader that subsection (1) is subject to sub-section (3) of Section 47-A of the Stamp Act cannot be accepted, sub-section (1) of Section 47-A operates independently and sub-section (3) of section 47-A of the Indian Stamp Act operates under different contingency and independently and it is not as if sub-section (1) is subject to sub-section (3) nor it could be contended that without any time limit, the Registering Officer could make a reference under sub-section (1) of Section 47-A of the Stamp Act. Such a contention, if accepted, would render the very sub-section (1) of Section 47 as well as sub-section (3) of section 47-A of the Stamp Act otiose.

91. Sub-section (1) of Section 47-A as well as sub-section (3) of Section 47-A of the Stamp Act apply to different contingencies, which cannot be read conjointly nor it could be held that the Registering Authority could make a reference under Sub-section (1) of Section 47-A of the Stamp Act without any time limit nor the contention that the reference under sub-section (1) of Section 47-A of the said Act is not controlled by limitation of two years prescribed under sub-section (3) of section 47-A of the said Act is acceptable.

92. As the instruments have been registered without any reservation by the Registering Authority and as the Registering Authority had not entertained any reasonable belief with respect to the valuation of the property dealt under the instruments in question, as prescribed by sub-section (1) of Section 47-A before completing the registration, there cannot be a subsequent reference, much less after two years from the date of completion of registration. This Court hastens to add that a reference should be made immediately after registration or so sooner the registration is completed arid at any rate within three weeks from the date of completion of registration of document to refer the instrument to the Collector under sub-section (1) of Section 47-A of the said Act, besides sending a communication to the person, who is liable to pay the stamp duty on the instrument in question.

93. No other authority has been cited before this Court and no other contention has been raised by counsel appearing for either side. This Court further holds that there is no reason at all, to withhold original instruments on the facts of the present writ petitions.

94. For all the above reasons, all the above writ petitions have to be allowed and the Registering Authority is directed to release the documents forthwith to the petitioners. Apart from sub- section (1) or sub-section (3) of Section 47-A of the Indian Stamp Act, if any other authority has got the power to exercise suo motu powers, it is well open to them to call for the records and take appropriate action with respect to these instruments of conveyance or release, provided that such Controlling Authority has got the powers to revise or review or interfere without any limitation.

95. In the circumstances, this Court holds that the reference made by the Registering Officer to the Collector u/s 47-A is arbitrary, as found under the statutory provisions and without jurisdiction. Hence it is accordingly quashed.

96. The third respondent herein shall release the original documents as prayed for in the respective writ petitions within four weeks from the date of communication of this order or production of copy of this order, whichever is earlier.

97. Whenever a document is registered and referred to the Collector u/s 47-A of the Indian Stamp Act read with Tamil Nadu Stamp (Prevention of Under-valuation of Instruments) Rules, in the absence of statutory rules, the Registering Authority shall forthwith release the original documents with an endorsement that a reference u/s 47-A is pending in respect of the said instruments.

98. At the time of release of original documents, the Registering Authority shall intimate the parties to the instruments that a reference is being made u/s 47-A of the Indian Stamp Act read with Tamil Nadu Stamp (Prevention of Under-valuation of Instruments) Rules.

99. In the circumstances, all the writ petitions are allowed in the above terms. No costs. In view of the disposal of the main writ petitions, all the above W.M.Ps. are dismissed.

