
(2001) 09 MAD CK 0037
In the Madras High Court

Mallika Dharmaraj

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-09-2001

Acts Referred:

Stamp Act, 1899 — Section 47A(1)

Citation : (2002) 3 LW 579 : (2001) 3 MLJ 596

Hon'ble Judges : P. K. Misra, J

Bench : Division Bench

Judgement

P. K. Misra, J.—Heard the learned Counsel for the parties. The petitioner has prayed for a writ of mandamus for a direction to the

respondents to return the document which had been submitted for registration. It appears that the sale deed was executed on 19.4.1989 and was

registered as Registration No. 1784 of 1989. However since the registered document was not returned to the petitioner, for a pretty long period of

about more than five years, the petitioner was forced to file the present writ petition seeking for the aforesaid relief.

2. A counter-affidavit has been filed wherein it has been indicated that the registering authority was of the opinion that there has been under

valuation and a reference had been made on 6.5.1997. It is obvious that such reference was made only after the writ petition had been filed

possibly with a view to avoid any adverse order in the writ petition. Be that as it may, even assuming that such reference had been made, such

reference has to be taken as invalid. Section 47A(1) of the Stamp Act empowers the registering authority, 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 or settlement has not been truly set forth in the instrument, after registering the instrument, to refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. It is thus obvious that the registering authority must entertain doubt regarding the property valuation while registering any instrument and in other words, if it discovers any under valuation at the time of valuation, the registering authority has to make a reference and that too only after registering such an instrument. The registering authority cannot retain the document indefinitely for making a reference. Section 47A(3) of the Stamp Act provides that 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 47A(1) of call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty in accordance with the procedure provided for in Sub-section 47A(2). Section 47A(3) of the Stamp Act makes it clear that the Collector has the power to call for and examine any instrument not already referred to u/s 47A(1) to satisfy himself about the correctness of the market value. Section 47A(3) specifically contemplates that such suo motu power can be exercised by the Collector within two years from the date of registration of any instrument. If the period prescribed is two years for the Collector to exercise such suo motu power, it is obvious that the registering authority cannot make any reference after the expiry of the period of two years. Otherwise, the embargo put on the power of the Collector can always be over come by taking resort to a reference made after two years. Adopting such a course would be contrary to the scheme of things as envisaged u/s 47A(3) of the Stamp Act. In fact, it has been laid down by a learned single Judge of this Court in M. Ponnusamy v. The District Collector, Erode District, Erode, (1999)2 L. W. 231, that the registering authority cannot make a reference beyond two years. I am in respectful agreement with the view taken by the learned Judge.

3. In the course of hearing, learned Counsel for the state submitted, on the basis of instructions, that the document in question had already been returned to the petitioner. Learned Counsel for the petitioner, however, expressed his ignorance about the so called subsequent development. Be that as it may, since it is held that the registering authority did not have any authority to make a reference, the writ petition is disposed of with the observation that if the document in question has not been returned to the petitioner, in the mean time, the same should be returned, within a period of one month from the date of communication of the present order. In the circumstances I do not make any order as to costs.