**(2008) 09 MAD CK 0122**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 4397 to 4402 of 2005 and 11507 to 11512 of 2005 and M.P. (MD) . No''s. 4660, 4662, 4664, 4666, 4668 and 4670 of 2005

Mrs. Vasantha and Others — APPELLANT

Vs

Special Deputy Collector (Stamps) District Collector Officer Complex, The Sub-Registrar-I and The Thasildhar — RESPONDENT

**Date of Decision :** 17-09-2008

**Acts Referred:**

Stamp Act, 1899 — Section 47A, 47A(1), 47A(2)
Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 — Rule 4, 6, 7

**Citation :** (2008) 09 MAD CK 0122

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** S. Anand Chandrasekaran, for Sarvabhavan Associates, for the Appellant; D. Sasikumar, Government Advocate for R.1 to R.3, for the Respondent

**Final Decision :** Allowed

# Judgement

K. Chandru, J.—Heard both sides and perused the records.

2. The first set of writ petitions, namely, W.P. Nos. 4397 to 4402 of 2005 were admitted on 18.05.2005 and interim-injunctions were granted on

the same day restraining the third respondent Tahsildar, Palani, from taking any further steps pursuant to his final notice, by which the petitioners

were directed to repay the balance stamp duty within 15 days'' and appear before him with the challan for having paid the amount. Failing which

the petitioners were threatened with Revenue Recovery proceedings to recover the amount.

3. Even when these writ petitions were pending, the same petitioners filed W.P. Nos. 11507 to 11512 of 2005. Those writ petitions were

admitted on 21.12.2005 and were directed to be posted along with earlier batch of cases. It is stated in the impugned notice that it was a final

notice and if the petitioners do not obey, action will be taken in accordance with the Revenue Recovery Act.

4. In order to appreciate the facts involved in the writ petition, it is necessary if the facts in W.P. No. 4317 of 2005 are set out.

5. It is stated in that affidavit filed in support of the writ petition that the petitioner purchased the property in the year June, 1997. The sale

consideration was fixed as Rs. 40,000/- for 20 cents of vacant land. The sale deed was registered by the second respondent, (Sub-registrar) as

document No. 700/97. It was stated that there were encroachments in the property sold to the petitioner. Because of that, the vendor had agreed

to receive the sale amount after encroachment were removed. Since the vendor was not able to remove the encroachment and hand over the

vacant possession, the vendor cancelled the sale deed with her consent. The cancellation deed was registered by the vendor during September,

1997, in the second respondent''s office.

6. In the mean while, it was stated that the original sale deed was referred to the first respondent by the second respondent for determination of the

market value under 47-A(1) of the Indian Stamps Act.

7. Notice was sent on the reference both to the petitioner and to her vendor. Since the transaction has been cancelled, the petitioner had told the

vendor to take care of making representation on her behalf. Because of this, the petitioner did not make any representation to the first respondent.

But, to her surprise and shock, after six years, a memo dated 14.08.2003, was received from the first respondent.

8. In that the first respondent had stated that the valuation as per the guideline was Rs. 6,86,264/- and the stamp duty payable was Rs. 82,355/-.

But as per the sale deed, the valuation given for the property was Rs. 40,000/- and she had paid only Rs. 4,800/- as stamp duty. Therefore, she

has to pay the balance of Rs. 77,555/-. If that amount is not paid then the amount will be recovered as arrear of land revenue.

9. She was asked to show cause within 21 days from the date of the notice. It was contended that the first respondent had not followed the

procedure prescribed under Rules (4), (6) and (7) of the Tamil Nadu Stamp

 

(Prevention of Undervaluation of Instruments) Rules, 1968. The

provisional as well as the final order were not communicated to her and she was denied opportunity of making representation. In fact, it was stated

in the impugned notice in both the writ petitions, they were based upon the final orders which was not communicated.

10. A written remark was furnished by the first respondent. It was stated that the formalities of making the assessment was complied with. It was

averred as follows:

e. All the orders have been passed observing the procedures prescribed under Rule 4, 6 and 7 of the Tamil Nadu Stamp (prevention of under

valuation of instruments) Rules, 1968.

f. As per Rule 4 of the Tamil Nadu Stamp (Prevention of under valuation of instruments) Rules 1968 the Special Deputy Collector (Stamps)

Madurai has passed provisional order in writing in SR. No. 193/97 Palani I dated 17.04.2003 determining the market value of the property and

the duty payable stating the basis upon which provisional market value was arrived at and the same has been also sent to the writ petitioner along

with form II Notice.

g. The final order was passed by the Special Deputy Collector (Stamps) Madurai in SR.193/97, Palani I dated 05.09.2003 and the same has also

sent to the writ petitioner.

11. Therefore, in the light of the above contentions, it has to be seen whether the impugned notices are liable to be set aside on the grounds raised

in the Writ Petitions.

12. It must be noted that these Rules came to be considered by the two learned Judges of this Court. First is the case relating to Dakshina Mara

Nadar Sangam v. The Special Deputy Collector (Stamps) reported in 2008 1 L.W. 715, made by Chitra Venkataraman, J. In para 62, it was

observed as follows:

62. I hold that the jurisdiction of the Collector u/s 47-A(2) is not nullified by reason of a time limit prescribed under Rule 7 to pass an order for

final determination of the market value and the deficit stamp duty payable on an instrument. The use of the term ""shall"" does not make the time

frame given as one for mandatory compliance and hence, the same has to be read as directory. The ""first notice"" referred to in Rule 7 has

relevance and reference to the notice issued in Form-II indicating the provisional determination of the market value as given under Rule 6 to pass

an order in terms of Section 47-A(2) of the Indian Stamp Act, 1899. In the above circumstances, except for the orders passed on the individual

merits of the writ petitions referred to above, I dismiss the writ petitions. No costs.

13. However, the learned Judge did not have the benefit of the Full Bench judgment in Karmegam v. The Joint Sub Registrar IV, Gowri Plaza,

Bye Pass Road, Madurai reported in 2007 (5) CTC 737. The Full Bench has held that in the absence of any period given u/s 47-A(1) of the

Indian Stamps Act, it is not for the Court to substitute any period which would amount to making legislation, and it is outside the purview of the

Court''s jurisdiction. Therefore, after the above said Full Bench judgment as per paragraph-34 stated supra, it is only the reasonable period, by

applying the principle of conscience by the authority, that has to be arrived at, based on the facts and circumstances of individual cases for the

Court to interfere.

14. However, P. Jyothimani. J, in his recent decision in Tata Coffee Limited v. The State of Tamil Nadu, by the Secretary to Government,

Commercial Taxes & Registration, Government of Tamil Nadu, Fort St. George, Chennai.9 and Ors., had dealt with the scope of Section 47-A

and gave certain directions. For the purpose of the present case, it is enough if the following directions found in para Nos. 23.(j) 25.1 may be

usefully reproduced:

23.(j). In such circumstances, on the facts of the case, in these writ petitions where there has been no communication either from the Registering

Authority or from the Collector for more than eight years after registration, it can never be said that there has been an enquiry conducted and final

orders passed in the manner provided in law. In view of the same, the entire proceedings stated to have been initiated by the respondents u/s 47-A

of the Act in respect of these writ petitions stand lapsed and the writ petitions stand allowed with direction to the Registering Authority to return the

documents forthwith.

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25.1. In the event of the Registering Authority failing to refer any document on the basis that the properties have been undervalued within a

reasonable time as per the observation of the Full Bench in paragraph 34 of G. Karmegam v. The Joint Sub-Registrar, Madurai 2007 5 CTC 737,

or not in any event of non-completion of the entire proceedings culminating to the passing of final order by the Collector within a period of five

years from the date of presentation of document for registration, the same should be deemed to be lapsed and the Registering Authority or the

Collector thereafter has no jurisdiction to either initiate any proceedings afresh or to proceed further and the documents are to be returned

forthwith without any endorsement.

15. Therefore, in the light of the above factual back ground and legal provisions set out above, all these writ petitions are deserved to be allowed.

The impugned notices issued by the third respondent Tahsildar under the Revenue Recovery Act is hereby set aside. Parties are allowed to bear

their own costs. The connected miscellaneous petitions are closed.