

CASE NO.:
Appeal (civil) 5656-5914 1990

PETITIONER:
THE GOVT. OF TAMIL NADU

Vs.

RESPONDENT:
PV. ENTER. REP. BY SCM JAMULUDEEN & ORS.

DATE OF JUDGMENT: 21/11/2000

BENCH:
U.C.Banerjee, K.G.Balakrishna

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J
J U D G M E N T

BANERJEE, J.

The State Government is in appeal against the judgment of the High Court wherein Article 5(i) of the Indian Stamp Act stands challenged together with a circular being No. 67296/C1/88 dated 9th December, 1988 : whereas the High Court has approved the validity of the statutory provisions but it has expressed its negation to the validity of the circular dated 9th December, 1988 and it is in that regard that the State has come up in appeal before this Court by the grant of special leave.

Since the challenge is restricted to the circular as noticed above the scope of the appeal also thus stands restricted and limited.

Before, however, adverting to the rival contention, two basic canons of statutory interpretation ought to be noted : firstly avoidance of redundancy by the legislature and the second count pertains to the limitation of exercise of jurisdiction so far as the law court is concerned since the law court ought not to embark upon the inquiry of legislative intent.

The learned senior advocate Mr. Mohan appearing for the State Government in support of the appeal very strongly contended that by reason of the provisions of Section 27 read with Section 35, question of their being any embargo in the matter of issuance of circular directing the Inspector General of Registration to have an inspection of building prior to registration does not and cannot arise and there is existing appropriate legislative sanction in that regard. The submission on the first blush seems to be rather attractive and it is on this score that Sections 27 and 35 ought to be noticed for ascertaining the true scope and effect. The Sections read as below:

Section 27

Facts affecting duty to be set forth in instrument:-

The consideration (if any) and the market value and all other facts and circumstances affecting the chargeability of any instrument with which it is chargeable shall be fully and truly set forth therein.

Section 35 Instrument not duly stamped inadmissible
in evidence, etc.-

No instrument chargeable with duty shall be admitted in Evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that :-

Having regard to the language of the Sections the learned senior Advocate contended that the expression used@@ JJJ by the legislature is registered as such it is a step@@ JJJJJJJ before registration and thus empowering the authority to refuse registration. On a close scrutiny of the statute, however, we record our inability to concur with the submissions, more so by reason of the provisions of Section 47 A, read with Rule 4 of the Tamil Nadu Stamp (Prevention of Under-Valuation of Instruments) Rules, 1968 framed under Sections 47A and 75 of the Indian Stamp Act. Section 47A has been engrafted in the statute book for the State of Tamil Nadu only, obviously to meet the exigencies of the situation in the State. Section 47 A reads as below :

Section 47 A : Instrument 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 any 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. (Emphasised)

(2) On receipt of a reference under sub-section (1) , the collector shall, after giving the 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 or otherwise, within five 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 the 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 sub-section (2). The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Madras Amendment) Act, 1967.

(4) Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall, pay such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, interest at two percent per month on such amount for the entire period of default.

A plain reading of this Section (47-A) thus categorically provides the methods to be taken recourse to in the event of instrument of conveyance stands under valued. The heading of the Section is very opposite with the content and indicative of the true intent of the legislature. The heading reads as under :

Section 47-A : Instruments of conveyance etc.,
under-valued how to be dealt with. The body of this@@

[illegible]

section in any event expressly records a situation after registration and not at a stage prior thereto. In the event of acceptance of submission of Mr. Mohan then it cannot but be said to be a duplication of statutory provision which as noticed above de hors one of the methods of interpretation of statutes. The factum of the instrument being referred to the collector for determination of the market value of such property runs totally counter to the submission made in support of the appeal.

The intent of the legislature in the matter of placement of sections also needs to be gone into since a later section will carry its effectiveness in the event of contra intention expressed in an earlier provision of the statute. The law is well settled on this score and we need not dilate thereon any further but the factum of the refusal to register by reason of under valuation in terms of Section 47 A cannot stand scrutiny of acceptance having regard to the language used therein. The legislative intent as expressed in Section 35 stands clear to the fact that refusal to register is not permissible in terms therewith. Section 35 is a provision to cater for the instruments not

being properly stamped and as such being inadmissible in evidence. It is not that the legislature was not aware of the stamp duty but a special power has been conferred on to the registrar in that regard and the collector has been empowered to impose appropriate fees and stamp duty in terms of provision of Section 38 read with Sections 39 and 40 of the Act. The powers of the collector as specified therein stands in an unambiguous situation as the final authority in the matter of assessment of the duty leviable thereon and that is precisely the reason as to why the State legislature engrafted Section 47 A and specifically records in the statute that steps to be taken only after registration of such an instrument. It can thus conclusively be said that there is existing a categorical expression of legislative intent in regard to the registration of the document the registration is effected subject to the condition as provided in the statute itself with proper safeguard being taken note by the legislature and contra expression of opinion would run counter to the legislative intent which is otherwise not permissible in law.

Incidentally, the Tamil Nadu Stamp (Prevention of Under- Valuation of Instruments) Rules, 1968 were framed on 22nd April, 1968 in terms of the provision of Section 47A read with Section 75 of the Indian Stamp Act. The Rules prescribe as to the circumstances under which the authority ought to calculate the market value of the property as required under Section 27 of the Act and the functions of the Registering Authority on that count. Specific reference has, however, been made to Rule 3.3 which reads as under:

Rule 3.3: The registering officer may, 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.

The Rule noted above authorises the registering officer for the purpose of the assessment of the market value but the rule by itself does not suggest that the registration of a document is dependent on the recording of satisfaction pertaining to the evidence received in terms therewith. As a matter of fact the rule cannot possibly be read to provide the same, since that would be contra to the statute and it is in this perspective that the circular was stated to be beyond the executive power and for true appreciation of the submissions it would be convenient to note relevant extracts of the circular at this juncture. The circular reads as below:- .Article 5(I) was inserted enabling levy of 13% on the cost of the proposed construction in respect of properties situated in Chennai, Madurai, Coimbatore, Sale and Trichirapalli Municipal towns and 12% in respect of other areas. In view of this amendment levy of 13% stamp duty on the value of undivided share of the land and another 13% stamp duty on the value of construction affected in the agreement will replace the practice of levy of 13% on the value of the undivided share of land and Rs.2.5 for agreement. The large scale registration of such documents in Chennai was brought to the notice of documents in Chennai was brought to the notice of the I.G.R. In order to prevent loss of revenue by way of stamp duty to the Government the following instructions are

issued.

In all cases of documents presented for registration involving undivided share of lands relating to multi storeyed buildings, such documents shall be kept pending and reference made to the D.I.G.s with the copy of the documents. The D.I.G. shall inspect the property and find whether such documents come under the purview of the amended Act 38/87 or the facts relating to the building has been suppressed against Section 27 and instruct the sub-registrar to register the document accordingly. In case of short levy of stamp duty such document shall be registered only after collecting the duty.

This circular comes to effect immediately. The sub-registrars are instructed to function without allowing room for complaint. The receipt of the circular shall be acknowledged immediately.

The circular, thus, in no uncertain terms provides registration only upon collection of duty and it is this circular which stands challenged as in excess of the powers conferred in terms of the provisions of Section 47A read with Section 75. The circular itself records ..such document shall be registered only after collecting the duty. This particular insertion has prompted the parties, the writ petitioner being the appellants herein to move the court as the same is violative of Section 47(A). The High Court while dealing with the matter expressly dealt with the issue rather elaborately and came to the conclusion that the circular cannot be possibly said to be within the powers conferred in terms of the provisions of Section 47A. The High Court also came to the conclusion that Article 5(i) by itself does not authorise issuance of the circular to the effect of having an embargo in the matter of registration.

The learned senior Advocate, however, impressed upon the Court the large scale activities in the matter of avoidance of stamp duty is now being practiced in the State and the circular has been introduced only to avoid such avoidance of stamp duty. While it is true that the Government revenue should be protected and there cannot be any exception provided, however, the same is otherwise in consonance with the principles of law and not de hors the same. The statute itself expressly provides that it is only after registration that the Registrar or an officer authorised in that behalf can take certain steps and on the wake of such a statutory provision question taking steps before the registration does not and cannot arise and it is this conclusion which has prompted the High Court to decry the validity of the circular. We also think it fit to lend our concurrence therewith. The judgment decrying the validity of the circular cannot possibly be faulted in any way whatsoever.

Mr. Mohan next contended that the conclusions as recorded in paragraph 97 of the judgment in M/s. Park View Enterprises & Ors. v. State of Tamilnadu & Ors. [AIR 1990 Madras 251 at 301] however, cannot in any event be sustained since they tantamount to the issuance of a mandamus. While it is true that the direction of the nature as contained in sub paragraphs 1-16 under paragraph 97 may be with a bit of stretch can be termed to be so but they themselves do not pose any difficulty in the matter of their implementation. In any event, however, since, some contentions have been

raised in that regard and to avoid all future confusions we would clarify the same by recording that the concerned authority ought to act in accordance with the provisions of law and the same thus stands substituted for paragraphs noted above. With that clarification, the appeals are dismissed with however no order as to costs. Civil Appeal Nos. 5914 A-E/1990 and 4597/1990

In view of the above judgment, these appeals are also dismissed with no order as to costs.

JUDIS