

V.N. DEVEDOSS

v.

CHIEF REVENUE CONTROL OFFICER-CUM-INS. AND  
ORS.

(Civil Appeal No. 3411 of 2009)

MAY 08, 2009

[DR. ARIJIT PASAYAT, D.K. JAIN AND DR.  
MUKUNDAKAM SHARMA, JJ.]

*Stamp Act, 1899: s. 47-A – Basis of exercise of power under s. 47-A is willful undervaluation of subject of transfer with fraudulent intention to evade payment of proper stamp duty – On facts, property belonging to sick company disposed of by orders of BIFR and AIFR on the basis of value fixed by Assets Sales Committee consisting of members such as representatives of IDBI, Debenture holders, Government of West Bengal and Special Director of BIFR – Said property was offered for sale in open market and bids were invited – That being so there was no question of any intention to defraud the revenue or non disclosure of correct price – s. 47 A has no application – Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules – rule 4 – SICA, 1985.*

**A company became sick industry and was declared so under the SICA, 1985. Consequently properties belonging to sick company were sought to be disposed of by statutory authorities such as BIFR, AIFR for forming Assets Sales Committee. Tender was invited for sale of 60.86 acres of land. Appellant submitted his tender offering 24.34 crores @ Rs. 40 lakh per acre which was highest and was accepted. The company granted permission to execute the sale deed in favour of the appellant and received the entire sale consideration and executed a sale deed. The sale was in consonance with the conditions laid down under 1985 Act.**

A The second respondent initiated proceedings under  
Section 47A of Stamp Act, 1899. A show cause notice was  
issued calling upon the appellant to state his objections  
with regard to fixation of the market value of the property  
at Rs. 154.69 crores as against Rs. 24.34 crores for which  
B sum the property was purchased and to show cause as  
to why he should not be called upon to pay the balance  
stamp duty of Rs. 10.42 crores. The appellant apart from  
explaining the circumstances under which he purchased  
the property, also questioned the jurisdiction of  
C authorities to invoke Section 47-A of the Act. It was a  
specific case of the appellant that without affording  
personal hearing, the second respondent confirmed the  
market value of the land as Rs. 465 per sq. ft. and called  
upon him to pay additional stamp duty. Appellant filed  
D appeal before the first respondent, which was rejected.  
Thereafter he filed appeal before the High Court. High  
Court took the view that it was not a case of sale by the  
government or a transaction between the government  
organizations/bodies. It held that statutory authorities like  
BIFR and AIFR acted as facilitators and, therefore, it held  
E that there was no scope for a different view to be taken  
regarding the market value and for this limited purpose  
the matter was remanded to the original authority for  
passing an appropriate order. Hence the appeal.

F Allowing the appeal, the Court

HELD: 1. A bare perusal of the Tamil Nadu Stamp  
(Prevention of Undervaluation of Instruments) Rules  
make the position clear that sub-Rule (4) of Rule 4  
enumerates procedure on receipt of reference under  
G Section 47-A of the Stamp Act, 1899. Rule 5 speaks about  
the principles for determination of market value. Sub-  
clause (a) refers to lands; (b) house sites; (c) buildings  
and (d) properties other than lands, house sites and  
buildings. Sub-Sections (1) and (3) of Section 47-A clearly  
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reveal the intention of the legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show lack of *bone fides* of the parties to the document by attempting fraudulently to under value the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is willful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty. [Para 7] [1052-A-E]

2. Market value is a changing concept. The explanation to sub-Rule (5) makes the position clear that value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there was no question of any intention to defraud the revenue or non disclosure of the correct price. The properties were disposed of by the orders of BIFR and AIFR on the basis of value fixed by ASG. The view expressed by the Assets Sales Committee which consisted of members such as representatives of IDBI, Debenture Holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any under valuation. [Para 10] [1053-A-D]

3. Sale has been defined under Section 54 of the Transfer of Property Act, 1882. Although the Act has not included the definition of sale, Section 2(10) of the Act defines conveyance as including a conveyance on sale,

- A every instrument and every decree or final order of any Civil Court by which property whether immovable or moveable or any estate or interest in any property is transferred to, or vested in or declared to be of any other person, inter vivos, and which is not otherwise specifically provided for by Schedule I or Schedule 1-A, as the case may be. [Para 11] [1053-E-G]**

- C 4. It cannot be said that Section 47-A has application because there is no scope for entertaining a doubt that there was any under valuation. That being so, the High Court's order is clearly unsustainable and is set aside. The registration shall be done at the price disclosed in the document of conveyance. There is no scope for exercising power under Section 47-A of the Act as there is no basis for even entertaining a belief that the market value of the property which is the subject matter of conveyance has not been truly set forth with a view to fraudulently evade payment of proper stamp duty. [Para 12] [1053-G-H; 1054-A-B]**

- E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3411 of 2009.**

From the Judgment & Order dated 27.11.2006 of the High Court of Madras in Civil Miscellaneous Appeal No. 639 of 2006.

- F P.R. Kovilan, Geetu Kovilam, V. Ayyapparaja and Naresh Kumar for the Appellants.**

**A. Mariarputham, Vimal Dubey and R. Nedumaran, for the Respondents.**

- G The Judgment of the Court was delivered by**

**DR. ARIJIT PASAYAT, J. 1. Leave granted.**

- H 2. Challenge in this appeal is to the order passed by a Division Bench of the Madras High Court in appeal filed under**

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Section 47-A of the Indian Stamp Act, 1899 (in short the 'Act'). A  
The appeal was filed against the order passed by Chief  
Revenue Control Officer-cum-Inspector General of Registration,  
Chennai in proceedings Pa.Mu.No.22947/NI/2005 dated  
8.2.2006 confirming the order of the District Revenue Officer  
(Stamps), Office of the District Collector, Chennai in B  
proceedings Na. K.C. Pa.244/2004/A4 dated 11.4.2005.

3. The controversy lies within a very narrow compass.

According to the appellant, an extent of 60.86 acres of C  
land comprised in S. Nos. 330, 338, 473, 552 etc. situate at  
Ambattur Taluk, Tiruvallur District, which was previously owned  
by Dunlop India Limited, a Public Limited Company. The said  
Company became a sick industry and was declared so under  
the Provisions of Sick Industrial Companies (Special D  
Provisions) Act, 1985 (in short '1985 Act') Consequent to such  
declaration, for the purpose of rehabilitation, surplus properties  
and assets belonging to the said company were sought to be  
disposed of by the statutory authorities under the said Act such  
as Board For Industrial and Financial Reconstruction (BIFR)  
and Appellate Authority for industrial and Financial E  
Reconstruction (AIFR) by forming an Asset Sales Committee  
(ASC) consisting of members such as representatives of IDBI,  
Debenture Holders, Government of West Bengal and Special  
Director of BIFR. In compliance with the guidelines issued by  
the statutory authorities (BIFR & AIFR), the ASC made F  
publications in Newspapers about its proposal to sell the above  
mentioned 60.86 acres of lands and invited tenders in sealed  
covers from interested persons. The appellant submitted his  
tender along with others and his offer of Rs.24,34,40,000/-, at  
the rate of Rs.40 lakh per acre, was the highest. Accordingly, G  
his tender was accepted by the ASC as well as by the statutory  
authorities. The company was granted permission to execute  
the sale deed in favour of the appellant.

It is the further case of the appellant that on receipt of the  
entire sale consideration of Rs.24,34,40,000/- from him, the H

A said company executed a sale deed dated 17.06.2004, registered as Document. No.6939/2004 on the file of the Sub Registrar, Ambattur. The sale is not in between two private individuals, on the other hand, it is a sale in consonance with the conditions laid down under the 1985 Act. In such circumstances, one could visualize that there could be no question of any possibility of under valuation of the property warranting the proceedings under Section 47-A of the Act. Further, the sale was found to be valid in WP No.25962 of 2004 filed by the Dunlop Factory Employee's Union.

C A reference was made by the Sub Registrar, Ambattur, to the second respondent District Revenue Officer (DRO) in respect of the sale transaction, based on which, the second respondent initiated proceedings under Section 47-A of the Act resulting in issuance of notice dated 18.08.2004 in Form No.1 of Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 (in short 'Rules'), calling upon the appellant to state his objections with regard to fixation of the market value of the property at Rs.154,69,88,168/- as against the sum of Rs.24,34,40 000/- for which sum, the property was purchased; and to show cause as to why he should not be called upon to pay the balance stamp duty of a sum of Rs.10,42,83,856/-.

F Apart from explaining and setting out the circumstances under which he purchased the property, the appellant also questioned the jurisdiction of the authorities to invoke Section 47-A of the Act. It is the specific case of the appellant that without affording personal hearing, the second respondent by order dated 11.04.2005, confirmed the market value of the land as Rs.465/- per sq. ft. and called upon him to pay the additional stamp duty. Aggrieved by the order of the second respondent, the appellant preferred an appeal before the first respondent on 13.04.2005. On 08.02.2006, the first respondent rejected his appeal, confirming the market value of the property as Rs.465/per sq, ft. The first respondent also directed the

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appellant to pay interest at the rate of 2% per month towards the demand made by the authorities. Aggrieved over the same, the appellant filed the appeal before the High Court under Section 47-A (10) of the Act.

The High Court took the view that it was not a case of sale by the government or a transaction between the government organizations/bodies. It was held that statutory authorities like BIFR and AIFR acted as facilitators and, therefore, it was held that there was no scope for a different view to be taken regarding the market value and for this limited purpose the matter was remanded to the original authority for passing an appropriate order.

4. Learned counsel for the appellant submitted that the aforesaid view of the High Court is clearly erroneous. It was a case where the sale was conducted under the orders of the statutory authority i.e. BIFR. There are several instances, it is submitted, where the official liquidator is involved to take a decision in the matter of acceptance of the bid made.

5. Learned counsel for the respondents on the other hand submitted that the High Court is correct in holding that it was essentially not a matter between State or a party and the role of the BIFR is that of mediator.

6. To appreciate the rival stands Section 47-A and Rules 3 and 4 of Rules need to be noted. The said rules have been framed in exercise of powers conferred under Sections 47-A and 75 of the Act. Rule 4 and Section 47-A so far as relevant read as follows:

*"47-A. Instruments of conveyance etc. undervalued 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,

A release of benami right or settlement has reasons to  
believe that the market value of the property of 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,  
B 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  
C 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,  
D 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  
E 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 the 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,  
F 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  
G 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 persons liable to pay the  
duty:

H Provided that nothing in this subsection shall apply to any

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instrument registered before the date of commencement  
of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.

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(4) .....

(5) Any person aggrieved by an order of the Collector  
under sub-section (2) or sub section (3), may appeal to  
such authority as may be prescribed in this behalf. All such  
appeals shall be preferred within such time, and shall be  
heard and disposed of in such manner, as may be  
prescribed by rules made under this Act.

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(6) .....

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(7) .....

(8) .....

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(9) .....

(10) Any person aggrieved by an order of the authority  
prescribed under subsection (5) or the Chief Controlling  
Revenue Authority under sub-section (6) may, within such  
time and in such manner, as may be prescribed by rules  
made under this Act, appeal to the High Court."

E

"Rule 4: Procedure on receipt of reference under Section  
47A:

(1) .....

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(2) .....

(3) .....

(4) After considering the representations, if any, received  
from the person to whom notice under sub-rule (1) has been  
issued, and after examining the records and evidence  
before him, the Collector shall pass an order in writing  
provisionally determining the market value of the properties

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A and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order."

B 7. A bare perusal of the rules make the position clear that sub-Rule (4) enumerates procedure on receipt of reference under Section 47-A. Rule 5 speaks about the principles for determination of market value. Sub-clause (a) refers to lands; (b) house sites; (c) buildings and (d) properties other than lands, house sites and buildings. Sub-Sections (1) and (3) of Section C 47-A clearly reveal the intention of the Legislature that there must be a reason to believe that the market value of the property which is the subject matter of the conveyance has not been truly set out in the instrument. It is not a routine procedure to be followed in respect of each and every document of D conveyance presented for registration without any evidence to show lack of *bona fides* of the parties to the document by attempting fraudulently to under value the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the revenue. Therefore, the basis for exercise of power under Section 47-A of the Act is willful under valuation E of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

F 8. In the instant case the factual scenario shows that the vendors of the appellant i.e. M/s Dunlop India Limited became a sick industry and was declared so under the provisions of 1985 Act. Consequent upon such declaration, surplus properties and assets belonging to the said company were disposed of on the basis of orders passed by BIFR and AIFR by forming an Assets Sales Committee. The appellant G submitted that his tender alongwith others and his offer of Rs.24.34 crores approximately was the highest, and the same was accepted by the Assets Sales Committee and also by the statutory authorities. The company was granted permission to execute the sale deed in favour of the appellant.

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9. Stand of the State is that what has been disclosed is clearly a sale value and the same cannot be termed as market value. There is fallacy in this argument.

10. Market value is a changing concept. The explanation to sub-Rule (5) makes the position clear that value would be such as would have fetched or would fetch if sold in the open market on the date of execution of the instrument of conveyance. Here, the property was offered for sale in the open market and bids were invited. That being so, there is no question of any intention to defraud the revenue or non disclosure of the correct price. The factual scenario as indicated above goes to show that the properties were disposed of by the orders of BIFR and AIFR and that too on the basis of value fixed by ASG. The view expressed by the Assets Sales Committee which consisted of members such as representatives of IDBI, Debenture Holders, Government of West Bengal and Special Director of BIFR. That being so, there is no possibility of any under valuation and, therefore, Section 47-A of the Act has no application. It is not correct as observed by the High Court that BIFR was only a mediator.

11. Sale has been defined under Section 54 of the Transfer of Property Act, 1882 (in short the 'TP Act'). Although the Act has not included the definition of sale, Section 2(10) of the Act defines conveyance as including a conveyance on sale, every instrument and every decree or final order of any Civil Court by which property whether immovable or moveable or any estate or interest in any property is transferred to, or vested in or declared to be of any other person, inter vivos, and which is not otherwise specifically provided for by Schedule I or Schedule 1-A, as the case may be.

12. On the facts of the case it cannot be said that Section 47-A has any application because there is no scope for entertaining a doubt that there was any under valuation. That being so, the High Court's order is clearly unsustainable and is set aside. The registration shall be done at the price

- A disclosed in the document of conveyance. There is no scope for exercising power under Section 47-A of the Act as there is no basis for even entertaining a belief that the market value of the property which is the subject matter of conveyance has not been truly set forth with a view to fraudulently evade payment
- B of proper stamp duty.

13. The appeal is allowed. There will be no order as to costs.

D.G.

Appeal allowed.