

From

The Director of Registration.

To

All Deputy Directors of Registration
All District Registrars.

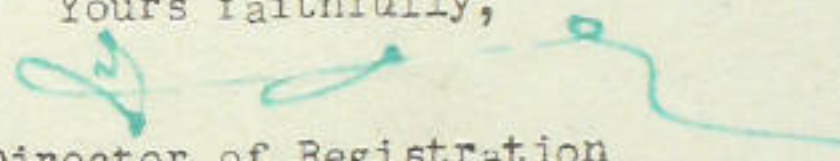
Sir/Madam,

Sub: - Kerala Stamp Act 1959 - Sections 45 A and 28 -
Scope of regarding.

Ref: - Judgment in CRP.No.2495 of 1980 of the Hon.
High Court of Kerala in T.V. Karunakara Menon
V. District Collector, Kozhikode - 1985 KLT
1006.

A copy of the judgment under reference is communicated
herewith for information.

Yours faithfully,


Director of Registration

1985 K L T. 1006

U.L. Bhat J.

T.V. Karunakara Menon V. District Collector, Kozhikode.

Stamp Act, 1959 (Kerala), Art. 31 - Proper duty to be paid
on gift deed.

For the purpose of determining the quantum of the
duty, an instrument of gift is placed on a par with a
conveyance. Obviously, consideration cannot be set forth
in an instrument of gift as it could be set forth in a
conveyance. What is to be set forth in an instrument of
gift is the value of the property and thereupon it will
be deemed (for the purpose of Article 31) that the value
of property is the value of consideration over which stamp
duty is payable under Article 21 and that stamp duty is
payable under Article 31.

(Para 5)

Stamp Act, 1959 (Kerala), Ss.45-A and 28 - Scope of
Collector has power to determine the true value of property
or the consideration and the duty.

S.45-A must be read along with S.28 of the Act. It appears to be corollary to S.28. The Collector has power after following the procedure prescribed, to determine the value the property or the consideration and the duty aforesaid. His decision, of course, is subject to appeal. Where duty payable is dependent on consideration, Collector may decide the true consideration which passed between the parties and levy duty accordingly. Where duty payable is dependent on the value of the property, Collector may determine the true value of the property and if it is more than the value as set forth in the instrument, he may call for payment of deficit duty. Collector has this power under S.45-A of the Act.

(Para 11)

C.R.P.No.2495 of 1980
1975 K L T 486; 1980 Mad 738
1967 Pat, 233; 1981 Bom. 164
M.C.Sen
Govt Pleader.

Decided on 19th July 1985.

Explained
For Petitioner
For Respondent

O R D E R

The subject matter under consideration in this case is an instrument of gift dated 21-12-1971 executed by the deceased first revision petitioner in favour of his wife, the supplemental second revision petitioner and registered as document No.2/1972 in the S.R.O. Kozhikode. The instrument shows value of the property dealt with therein as Rs.6333.34 and accordingly stamp duty of Rs.160/- was paid. The Registering Office entertained doubt regarding the correctness of valuation and referred the matter to the District Collector under S. 45 A (1) of the Kerala Stamp Act, 1959. The District Collector, after enquiry, determined the value of the property as Rs.1,02,906/- and held that the donor was liable to pay stamp duty for consideration equivalent to this value. Deficit stamp duty of Rs.2,415/- was directed to be paid.

2. The donor filed appeal under S.45 A (4) of the Kerala Stamp Act before the District Court. The District Court however dismissed the appeal but without costs. Hence this revision.

3. S.3 of the Kerala Stamp Act states, inter alia, that every instrument mentioned in the Schedule to the Act if executed in the territories of the State of Kerala shall be chargeable with duty of the amount indicated in the schedule as the proper duty thereof. S.17 states that all instruments chargeable with duty and executed by any person in the State of Kerala shall be stamped before or at the time of execution. S.28 states that the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be

ly and truly set forth therein. Article 31 of the schedule to the Kerala Stamp Act states that in regard to an instrument of gift, not being a settlement or will or transfer, duty payable is "the same duty as a conveyance (No. 21 or 22, as the case may) for a consideration equal to the value of the property as set forth in the instrument. The relevant Article is Article 21. It states that the stamp duty payable on conveyance is determined by "the amount or value of the consideration for such conveyance".

4. Sub-s. (1) of S. 45 A enables the Registering Officer, while registering any instrument to make a reference to the Collector if he has reason to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument. Purpose of the reference is to enable the Collector to determine the value or the consideration, as the case may be, and the proper duty payable thereon. Sub-s. (2) enables the Collector after following the procedure prescribed therein to determine the value of the property or the consideration and the duty aforesaid. Thereupon, deficit amount of the duty, if any, shall be payable by the person liable to pay the duty. Sub-s. (3) enables the Collector to take action suo motu.

5. Stamp duty payable on conveyance is at the rate prescribed on the amount or value of the consideration for such conveyance. Valuation of the property does not enter the picture in the case of a conveyance. That is because stamp duty is not payable on value of the property but on the consideration for the conveyance. Therefore, in such a case, the Collector has no authority to determine the market value and direct stamp duty to be paid on such value. It may be open to him to find out the true consideration for the conveyance and take action accordingly under S. 45 A of the Kerala Stamp Act. This is made clear by a Division Bench of this Court in District Collector, Trivandrum V. Ittiavirah John and another (1975 K.L.T. 486). Stamp duty payable on an instrument of gift under Article 31 of the Kerala Stamp Act stands on a different footing. Stamp duty payable is the same duty as a conveyance for a consideration equal to the value of the property as set forth in the instrument. In other words, for the purpose of determining the quantum of the duty, an instrument of gift is placed on a par with a conveyance. Stamp duty payable on a conveyance is based on the consideration for the conveyance. Therefore, it became necessary to refer to "consideration" in Article 31. However, an instrument of gift cannot have consideration in the same sense in which conveyance has consideration. Therefore, it became necessary to explain the concept of "consideration" for the purpose of Article 31. Article 31 states that consideration must be deemed to be equal to the value of the property as set forth in the instrument. Obviously, consideration cannot be set forth in an instru-

of gift as it could be set forth in a conveyance. What is to be set forth in an instrument of gift is the value of the property and thereupon it will be deemed (for the purpose of Article 31) that the value of property is the value of consideration over which stamp duty is payable under Article 21 and that stamp duty is payable under Article 31.

6. There is no dispute that the parties have the right and the duty to set forth the consideration and all other relevant details in the instrument. But S. 28 of the Act requires that they should set forth the consideration and other facts fully and truly. According to the revision petitioner, for the purpose of stamp duty, the particulars set forth in the instrument must be accepted and the District Collector or any other statutory authority has no right to hold that the particulars are wrong or indicate on what value stamp duty has to be paid. Learned Counsel for the revision petitioner relied on several decided cases and I shall refer to the same.

7. A Full Bench of the Allahabad High Court in The case of Muhammad Muzaffar Ali (AIR 1922 All.82(2)) dealt with an instrument of gift which did not contain any statement as to the value of the property gifted. The statute applicable was the Stamp Act of 1899. Article 33 of that Act prescribed, for an instrument of gift, the same duty as conveyance for a consideration equal to the value of the property as set forth in the instrument. S. 27 of that Act contained a provision similar to the provision in S. 28 of the Kerala Stamp Act requiring the parties to set forth the particulars truly and correctly. The Court held that if facts are not set forth truly and correctly that may provide an opportunity for prosecuting the offenders but there is no authority in the Collector to determine the value of the property and to insist that stamp duty should be paid on the basis of such valuation. Similar is the proposition laid down by a Division Bench of the Madras High Court in the Joint Secretary, Board of Revenue V. K.R. Venkatarama Ayyar (AIR 1950 Madras 738) dealing with a settlement deed under Article 58 of the Stamp Act. The same proposition has been accepted by other courts. See Bibi Khairunissa V. Elahi (AIR 1967 Patna 233) and R.V. Ghaisar V. State of Maharashtra (AIR 1981 Bombay 164).

8. Learned Counsel for the revision petitioner relies on S. 62 of the Kerala Stamp Act which states inter alia that any person who, with intent to defraud the Government, executes any instrument in which all the facts and circumstances required by S. 28 to be set forth are not fully and truly set forth shall be punishable with fine which may extend to five thousand rupees. On the basis of the decisions referred to above, it is contended that if the parties to the instrument of gift have under-estimated the value of the property with a view to defraud the Government, it may be open to the authority concerned to prosecute

...8 may lead to penal consequences ~~at~~ as laid down in S.62 of the Kerala Stamp Act. However, S.45 A also appears to be a corollary to S.28. It is intended to render S.28 more effective with a view to safe guard the revenues of the State and effective observance of the provisions of the Act. If there is reason to believe that the value of the property or the consideration, as the case may be, has ~~bee~~ not been truly set forth in the instrument (obviously as required in S.28 of the Kerala Stamp Act) the Registering Officer while registering the instrument may make a reference to the Collector or the Collector, subject to the limitation provided in S. 45 A may take suo motu action. Collector has power, after following the procedure prescribed, to determine the value of the property or the consideration and the duty aforesaid. His decision, of course, is subject to appeal. Where duty payable is dependent on consideration, Collector may decide the true consideration which passed between the parties ~~and~~ levy duty accordingly. Where duty payable is dependent on the value of the property, Collector may determine the true value of the property and if it is more than ~~ue~~ as set forth in the instrument, he may call for payment of deficit duty. Collector has this power under S.45 A of the Act. It is this power which has been exercised in the instant case by the Collector.

12. Determination by the Collector is subject to correction in appeal. Once valid determination has been made and that becomes final, the party is liable to pay stamp duty on the basis of the consideration or the value of the property as determined. Stamp duty payable on an instrument of gift is on the basis of consideration equal to the value of the property as set forth in the instrument. Enquiry by the Collector clearly established that the value of the property has not been truly set forth in the instrument. He has determined the true value of the property. The instrument of gift must bear stamp duty at the same rate as for a conveyance for a consideration equal to the value of the property. Value of the property has not been truly set forth in the instrument. The true value has been assessed by the Collector under S.45 A of the Act. Thus, by virtue of the provisions of S.45 A stamp duty has to be paid on the basis of the true value as determined by the Collector.


13. The decision in District Collector, Trivandrum V. Ittiavirah John and another (1975 K.L.T.486) dealt with a case of conveyance which was chargeable with stamp duty on the basis of consideration for the conveyance. In that case, the Collector determined not the consideration but the value of the property. Since stamp duty for a conveyance is not payable on the value of the property,

This Court held that the Collector cannot insist on payment of stamp duty on the value of the property. Stamp duty is assessable in such a case only on the basis of consideration for the conveyance. That decision will not help the revision petitioner.

Valuation as determined by the Collector is not challenged before me. Therefore I do not find any ground to interfere. Revision petition is dismissed.

Dismissed.

[True Copy]

 for Director of Registration.

...m; but the Collector cannot fix the value of the property and insist on stamp duty being paid on the basis of such valuation. This contention has been rejected by the District Court and it appears to me, rightly too.

9. Decisions referred to above of the High Courts of Allahabad, Madras, Patna and Bombay dealt with the provisions of the Stamp Act of 1899. The Stamp Act of 1899 did not and even now does not contain a provision similar to the provision in S. 45 A of the Kerala Stamp Act. S. 45 A of the Kerala Stamp Act was incorporated by S. 6 of Amending Act, 17/1967. The statement of objects and reasons for the section states:

"There is a growing tendency among the public to undervalue documents with the intention to defraud the Government of stamp duty. The law as it stands at present does not enable any authority to go into the question of undervaluation of documents and collect the real duty that should have been paid for the true consideration that has passed between the parties. In Orissa, a step has been taken to plug the lacuna to extent possible by amending the Indian Stamp Act in its application to the Orissa State, providing for a reference to the Collector for determining the true consideration passed between the parties and for determining the duty payable on the documents, whenever a Registering Officer has reason to believe that the value of the property or the consideration passed has not been truly set forth in the instrument. It is proposed to incorporate a similar provision in the Kerala Stamp Act, 1959".

10. The decisions referred to above pointed out the absence of any provision in the Stamp Act of 1899 empowering the Collector to determine the consideration or value of the property and requiring payment of stamp duty on that basis. That Act provided only for prosecution of persons who contravened S. 27 of that Act (S. 28 of the Kerala Stamp Act). It was in these circumstances that the courts held that the value of the consideration must be taken as on the face of the document and cannot be fixed by the Collector or other statutory authority, though the parties who suppressed real consideration or value may face penal consequences. This situation is sought to be rectified by incorporating S. 45 A in the Kerala Stamp Act. S. 45 A gets over the effect of the decisions relied on by the revision petitioner. Hence the decisions cannot be followed in this State.

11. S. 45 A must be read along with S. 28 of the Act. S. 28 requires that the consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. No doubt, intentional contravention of