

A REGISTRAR OF ASSURANCES & ANR.

v.

ASL VYAPAR PRIVATE LTD. & ANR

(Civil Appeal No.8281 of 2022)

B NOVEMBER 10, 2022

[SANJAY KISHAN KAUL, ABHAY S. OKA AND VIKRAM NATH, JJ.]

Indian stamp Act,1899 – s.47A – Reference – Answered –

- C *Held: s.47A has no application to a public auction carried out through Court process/receiver as it is the most transparent manner of obtaining the correct market value of the property – The independent determination of value of property by a Registering officer would not apply to a Court sale but to a private transaction – Interference by the Registering Authority on the aspect of price of transaction is unjustified – Reference is required to be answered by opining that in case of a public auction monitored by the Court, the discretion would not be available to the Registering Authority u/s.47A of the Act.*

Indian Stamp Act,1899 – Object and purpose – Discussed.

- E **Answering the reference and dismissing the appeals, the Court,**

- F **HELD : 1. This Court does not have slightest hesitation in upholding the view that the provision of Section 47A of the Act cannot be said to have any application to a public auction carried out through court process/receiver as that is the most transparent manner of obtaining the correct market value of the property. [Para 22][1113-A-B]**

- G **2. It is no doubt true that in a court auction, the price obtainable may be slightly less as any bidder has to take care of a scenario where the auction may be challenged which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned. But then that is a price obtainable as a result of the process by which the property has to be disposed of. One cannot lose sight of the very objective of the introduction of the Section whether under the West Bengal**

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Amendment Act or in any other State, i.e., that in case of under valuation of property, an aspect not uncommon in our country, where consideration may be passing through two modes – one the declared price and the other undeclared component, the State should not be deprived of the revenue. Such transactions do not reflect the correct price in the document as something more has been paid through a different method. The objective is to take care of such a scenario so that the State revenue is not affected and the price actually obtainable in a free market should be capable of being stamped. If one may say, it is, in fact, a reflection on the manner in which the transfer of an immovable property takes place as the price obtainable in a transparent manner would be different. An auction of a property is possibly one of the most transparent methods by which the property can be sold. Thus, to say that even in a court monitored auction, the Registering Authority would have a say on what is the market price, would amount to the Registering Authority sitting in appeal over the decision of the Court permitting sale at a particular price. In a court auction following its own procedure, the Registering Officer cannot have any reason to believe that the market value of the property was not duly set forth – a pre-requisite for a Registering Authority to exercise its power under the said Section. [Paras 23, 26][1113-B-F, 1114-D-E]

3. If this court see in the factual context of the two scenarios in respect of the two cases, the telling aspect in a partition case was the existence of 98 tenants on a land at a monthly rent of Rs.8,000 for the entire land and 80 vendors occupying the land for hawking business during day time. It is trite to say that the mere existence of tenancy results in a considerable decline in the market value of the property as they may have their statutory rights and even otherwise, the purchaser would be acquiring the property hardly in an ideal scenario and would be left with the burden to take legal processes for the eviction. In such a scenario, there is actually a great depression in the market value of the property as even if a fair transaction without an auction takes place with full reflection of price, the transacted value would be half or less of a vacant property. The tenancy aspect can hardly be said to be an aspect which could be ignored in the determination of the price. [Para 27][1114-E-G]

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- A 4. In the company matter, repeated auctions were held and it is in the negotiated bid that the higher price was obtained. It was court monitored. There would be no occasion for the court to accept the bid if it was not satisfied with the process and the valuation. A correct value of a property is the one where there is a purchaser and a seller ad idem on the price (the actual price).
- B The market value is, thus, the value which the highest bidder is willing to pay in the facts and prevailing circumstances and not a notional price. [Para 28][1115-A-B]
- C 6. This Court find hardly any rational in adopting the submissions on behalf of the appellant. The provisions are not dissimilar in the different enactments in its fundamentals; the "reason to believe" of a Registering Officer has to be based on ground realities and not some whimsical determination; the Registering Authority cannot be permitted to doubt the liquidation proceedings as having some superior knowledge when it is a
- D court monitored process where the court would take care of aspects such as cartelization; the Registering Authority can hardly be said to be the only authority with knowledge of the subject to the exclusion of the court; the independent determination by a Registering Officer would not apply to a court sale but to a private transaction; the Stamp Act being a fiscal statute, while being interpreted strictly and literally would not imply some kind of absolute power. [Para 29][1115-C-D]

Govt. of Andhra Pradesh & Ors. v. P. Laxmi Devi 2008

(4) SCC 720 : [2008] 3 SCR 330; V.N. Devadoss v.

Chief Revenue Control Office-cum-Inspector & Ors.

(2009) 7 SCC 438 : [2009] 8 SCR 1043; Birendra Nath

Manna & Anr. v. State of West Bengal & Ors. 2000 (1)

CHN 173; M/s. Kayjay Industries Pvt. Ltd. V. M/s.

Asnew Drums (P) Ltd. & Ors. (1974) 2 SCC 213 : [1974]

3 SCR 678; Additional Distt. Sub-Registrar, Siliguri v.

Pawan Kumar Verma (2013) 7 SCC 537; The Inspector

General of Registration v. K.P. Kadar Hussain 2014

SCCOnline Mad 3503 – referred to.

Case Law Reference

	[2008] 3 SCR 330	referred to	Para 8(1)
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[2009] 8 SCR 1043 referred to Para 8(2) A
[1974] 3 SCR 678 referred to Para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No.8281
of 2022.

From the Judgment and Order dated 13.05.2010 of the High Court B
at Calcutta in APOT No.196 of 2008 in EOS No.32 of 1987.

With

Civil Appeal No.8282 of 2022.

Anand Grover, Sr. Adv., Ms. Astha Sharma, Nipun Saxena, C
Ravinder Singh, Ms. Raveesha Gupta, Ms. Mantika Haryani, Sanjeev
Kaushik, Shreyas Awasthi, Ms. Deeksha Agrawal, Shantanu Sharma,
Archit Adlakha, Ms. Somya Saxena, Advs. for the Appellants.

Gaurav Kejriwal, Pankaj Singhal, Pawas Agarwal, Arjun Agarwal,
Partha Sil, Sanjiv Saxena, Ruchir Mishra, Ramnik Mishra, Tavish B Prasad,
Sonjoy Kumar Ghosh, Mrs. Rupali Samanta Ghosh, Advs. for the D
Respondents.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

Leave granted. E

Background:

1. The impugned judgment dated 13.05.2010 in W.P. No. 1295/
2009 passed by the High Court of Calcutta decided a reference arising
from the following two matters – F

(i) State of West Bengal & Anr. v. Sati Enclave Pvt. Ltd. & Ors.,
a Letters Patent Appeal being APOT No. 196 of 2008 from a
partition and administration suit (“the Partition matter”) and,

(ii) ASL Vyapar Pvt. Ltd. v. The Registrar of Assurances & Ors.,
a Writ Petition being Writ Petition No. 1295 of 2009 (“the Company G
matter”).

The facts:

2. **In Re the Partition Matter:** In a Partition Suit being
Extraordinary Suit No. 32 of 1987, Ld. Single Judge passed an order H

- A dated 15.09.1987 for the sale of Premises No. 20 to 20/14 (except 20/10) Chetla Flat Road, Kolkata- 700027 (“the land”), measuring 41 cottahs and 21 chittacks, i.e. approximately 2800 square metres. On 08.03.2006, the Joint Receivers appointed by the Court issued an advertisement in The Telegraph, a leading daily newspaper for sale of the land. At the auction, several parties participated, and the offer made by one Priya Dutta at the rate of Rs.1,88,500 per cottah was the highest. However, she did not pay the entire earnest money which was stipulated at the rate of 10% of the bid amount. Sati Pvt. Ltd. (R1 in S.L.P.(C) 22197 of 2010) also offered to match the bid amount Rs.1,88,500 and to pay the entire earnest money within 3 days. The court directed default clauses
 - B in case of failure to pay the earnest money or consideration amount, such as, if Sati Pvt. Ltd. did not pay the earnest money within 3 days, the joint receivers could proceed to convey the property to the next highest bidder whose bid was for Rs.1,88,000 per cottah.

- 3. Vide order dated 04.12.2006, Ld. Single Judge accepted the offer of Sati Pvt. Ltd. and confirmed the sale in its favour. It was further directed that the aforesaid consideration being the actual consideration for the property would be treated as value of the property for the purpose of registration and stamp duty. The Joint Receivers executed the conveyance in favour of Sati Pvt. Ltd. and presented the same for registration on 16.05.2007 for sale consideration of Rs.78,69,875. Stamp duty of Rs. 5,48,810 and Registration Fee of Rs. 86,650 were also paid.

- 4. However, on 14.12.2007, the Registrar of Assurances issued a notice under section 47A (2) of the Indian Stamp Act, 1899 (“the Act”) intimating that the market value of the land was assessed by the Registering Officer at Rs. 7,76,69,838 on which deficit Stamp Duty of Rs.48,85,888 and deficit Registration Fee of Rs. 7,67,800 were required to be paid. Sati Pvt. Ltd. filed a Contempt Application against the Registrar for allegedly committing breach of the order dated 04.12.2006 of the Ld. Single Judge. The Registrar filed an application seeking recalling of order dated 04.12.2006, but the same was rejected. Aggrieved, the Registrar filed an appeal before the Division Bench who referred the question for decision by a larger bench.

- 5. ***In Re the Company matter:*** By an order dated 21.07.2004 of the Ld. Single Judge, M/s. Kayan Udyog Ltd. was ordered to be wound up and the Official Liquidator was directed to take the necessary steps.
- H The Official Liquidator published an advertisement on 12.05.2006 in daily

newspapers inviting offers for purchase of assets and properties of the company on “as is where is and whatever there is basis” with a Reserve Price of Rs.1.20 crores and the highest offer received was Rs.75,00,000. The Company Court directed revision of the Reserve Price and to issue a fresh advertisement. In the second advertisement dated 15.09.2006, the Reserve Price was fixed at Rs. 1 crore and the highest offer received was Rs.86,00,000 which was subsequently enhanced to Rs. 87,00,000 when the auction was held in the Company Court.

6. Vide order dated 08.09.2006, the Company Court confirmed the sale in favour of ASL Pvt. Ltd. at Rs.87,00,000 subject to certain conditions of payment within stipulated time periods. On payment of the entire consideration, the Official Liquidator executed the Conveyance Deed on 07.05.2008 and presented the same before the Registrar of Assurance, Calcutta for registration. On 06.08.2008, the Additional Registrar of Assurance-II issued a Demand Notice to ASL Pvt. Ltd. informing that the market value of the property was assessed at Rs.1.70 crores and ASL Pvt. Ltd. had to pay the deficit Stamp Duty of Rs.5,86,000 as well as deficit Registration Fee of Rs.92,125. Aggrieved, ASL Pvt. Ltd. filed the writ petition challenging the notice. Ld. Single Judge referred the question to a larger bench.

Proceedings before the Full Bench of the Calcutta High Court:

7. In order to appreciate the controversy, it would be appropriate to first reproduce the relevant provision in exercise of which power the higher stamp duty was sought. Section 47A was inserted by the Indian Stamp (West Bengal Amendment) Act, 1990 (hereinafter referred to as the ‘Act’) reads as under:

“47A. – Instruments of conveyance etc. undervalued how to be dealt with—(1) Where the registering officer appointed under the Registration Act, 1908 (16 of 1908), has while registering any instrument of conveyance, exchange, gift, partition or settlement, reason to believe that the market value of the property which is the subject matter of such instrument has not been truly set forth in the instrument, he may, notwithstanding the contrary provisions in Section 35 insofar as it relates to registration, register such instrument provisionally, subject to determination of the market value under sub-section (2), and, after registering such instrument, refer the matter to such authority as may be prescribed for

- A determination of the market value of such property and the proper duty payable thereon.”

Section 47A was further amended by the Indian Stamp (West Bengal Amendment) Act, 1998 with effect from 15.03.2021, and reads as under:

- B “47A. Instruments of conveyance, etc. undervalued, how to be dealt with (1) Where the registering officer appointed under the Registration Act, 1908 (16 of 1908) has, while registering any instrument of
- C a) agreement or memorandum of an agreement relating to a sale or lease-cum sale of immovable property,
 - b) conveyance, (c) to (h)
- D reason to believe that the market value of the property which is the subject matter of any such instrument has not been truly set forth in the instrument ·presented for registration, he may, after receiving such instrument, ascertain the market value of the property which is the subject matter of such instrument in the manner prescribed and compute the proper stamp duty chargeable· on the market value so ·ascertained and thereafter he shall, notwithstanding anything to the contrary contained in
- E the Registration Act, 1908, in so far as it relates to registration, keep registration of such instrument in abeyance till 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
- F by the person liable to pay the duty.”
8. The successful purchasers (respondents herein) sought to rely upon the two judicial views of this Court in support of their contention that the transacted value alone should be taken into consideration for affixation of stamp duty.
- G 1. *Govt. of Andhra Pradesh & Ors .v. P. Laxmi Devi*¹, which arose under Section 47A as applicable to Andhra Pradesh, wherein the Court opined that there was large scale undervaluation of the real value of property in sale deed so as to defraud the government proper revenue. There was no provision in the original Stamp Act

H ¹ 2008(4) SCC 720

to empower the Revenue Authorities to make an inquiry about the value of the conveyed property. Hence, amendments were made to the Indian Stamp Act from time to time in several states to determine the correct stamp duty.

2. *V.N. Devadoss v. Chief Revenue Control Office-cum-Inspector & Ors.*², which arose under Section 47A as applicable to Tamil Nadu, wherein it was held that 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 bona fide of the parties. Therefore, the basis for the exercise of power under section 47A of the Act is the wilful undervaluation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty. The Registering Officer cannot have any reason to believe that the market value of the property was not truly set forth in an instrument of transfer executed pursuant to the order of a court, when the property was sold at a public auction after the publication of the advertisement in newspapers.

9. The respondents then relied upon the judgment in *Birendra Nath Manna & Anr. v. State of West Bengal & Ors.*³, which upheld the constitutional validity of Section 47A as applicable to West Bengal. The Respondents also submitted that the Statement of Objects and Reasons for enactment of the Indian Stamp Act (West Bengal Amendment) 1990 contained the explanation for insertion of Section 47A. It was stated that West Bengal is no exception to the general phenomenon of under valuation of properties and the revenue from stamp duty has increased sharply for states where the basis of charging duty was changed from the declared price or value of properties to the market value.

10. In the aforesaid context it was pleaded that the best possible prices were obtainable through a transparent method and that is what was the price of the transactions. In the partition matter, there were 98 tenants on the land and the total monthly rent was Rs.8,000 for the entire land and 80 vendors were occupying the land for hawking business during daytime and, thus, the consideration of Rs. 78,69,000 was the best possible price. Similarly, in the company matter, the endeavour was made

² (2009) 7 SCC 438

³ 2000 (1) CHN 173

- A more than once but even the reserve price was not obtainable and, thus, the best possible price was obtained at an auction. The market value of the property would not be a hypothetical figure, which the bidder must match rather it is the value, which is obtainable through the process of the highest bidder willing to pay under the prevailing circumstances.
- B 11. On the other hand, the State (appellant before us) submitted that the provisions brought about by the amendment mentioned aforesaid was different from the one in Tamil Nadu and, thus, the pronouncement in *VN. Devadoss*⁴ case will not apply. In addition, it was urged that the Ld. Single Judge vide order dated 04.12.2006 lacked the jurisdiction to give pre-emptive direction that the consideration being the actual consideration for the property would be treated as value of the property for registration and stamp duty as Section 47 of the Act provides that the order passed by the Chief Controlling Revenue Authority shall be final and shall not be called into question in any civil court or before any authority.
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- D 12. The three Judges Bench held on the conspectus of the aforesaid arguments that Section 47A of the Act as applicable to West Bengal read with Rule 3 of the West Bengal Stamp (Prevention of Undervaluation of Instruments) Rules, 2001 (hereinafter referred to as the ‘Rules’) is not applicable to an instrument executed by a Receiver pursuant to an order of sale passed by a civil court, after publication in newspapers. The sale conducted by the court through its officers qualifies to be an open market sale subject to the following conditions:
 - a) there must be wide publicity of the proposed sale and particularly there shall be publication of advertisement in at least one newspaper having wide circulation in the concerned city/town/ district.
 - b) The purchaser of the property must not be connected with or related to the authority/ officer conducting the sale.
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- G 13. In the discussion over the objective and purport of Section 47A of the Act as applicable to the State of West Bengal, Tamil Nadu and Andhra Pradesh, it was observed that they were in *pari materia* insofar as they confer power on the Registering Officer not to register an instrument when the Registering Officer has reason to believe that the market value of the property has not been truly set forth in the
- H ⁴ (supra)

instrument. The difference in language of the Section was not significant. When a property is sold in a private sale, the registering officer has the power to determine the actual value of the property. As legal fictions are limited for the purpose for which they are created and cannot be widened by Rules made under the Act and no such fiction is required to be provided for determining the price of the property when it is sold in the open market. Thus, the definition of “Market Value” as under Section 2(16B) of the Act would not apply to the property if actually sold in the open market.

“2(16B) – ‘Market Value’ means, in relation to any property which is the subject matter of an instrument, the price which such property would have fetched or would fetch if sold in open market on the date of execution of such instrument as determined in such manner and by such authority as may be prescribed by rules made under this Act of the consideration stated in the instrument, whichever is higher.”

14. Insofar as the expression “whichever is higher” in the subsection aforesaid, it would mean the higher of the two prices, i.e., the price which such property would have fetched in the open market on the date of execution of such instrument (i.e., in the immediate past) or the price which such property would fetch if sold in the open market on the date of execution of such instrument (i.e., in the immediate future). If the legislature had intended that Section 2(16B) of the Act was to apply to open market sales also it would have made a separate or specific provision regarding the determination of the price of the property being sold in the open market. The expression “if sold in open market” presupposes that the property was not sold in the open market. The language of Rule 3 also buttresses the same view where none of the four methods of determining the value of the property in question refers to value fetched at an open market sale. A court sale was opined to be an open sale. Advertisements published in the daily newspapers having wide circulation in the city or town where the property is situated is an open market sale. The court may be well advised to get the valuation of the property made by a registered valuer for the purposes of fixing the Reserve Price before issuing the advertisement in newspapers. However, this cannot be a pre-requisite as it is not always possible to get bids above the reserve price or even matching the reserve price, as was seen in the company matter. The whole basis of holding that a Court sale is an open market

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- A sale is the sanctity with which the proceedings of the sale are conducted by the court and its officers. In case the registering authority has any material to doubt such sanctity, it is open for it to move the court with a proper application pointing out such materials for reviewing the order regarding the determination of price.
- B 15. We may note that in order to buttress the entitlement for fixation of stamp duty based on a market value as perceived in the aforesaid sub-section, the State relied upon the judicial pronouncement of this Court in *M/s. Kayjay Industries Pvt. Ltd. V. M/s. Asnew Drums (P) Ltd. & Ors.*⁵ It was submitted that a Court sale is a forced sale and notwithstanding the competitive element of a public auction, the best price is not often forthcoming, thereby creating an apprehension that it will adversely affect the State Exchequer in respect of other properties in the area. However, even if the property at a Court sale does not fetch the highest or best available price and there are other pieces of evidence of market value of similar properties available in the area, the Registering Officer can always consider the other sale instances or any other material reflecting higher value of the property under sections 47A(1)(2) read with Section 2(16B) of the Act and Rule 3 of the Undervaluation Rules of 2001.

The Occasion for Reference:

- E 16. On consideration of the matter on 6.2.2020, it was opined that the impugned judgment had traversed certain areas over which the Court had reservations:
 - a. the interpretation of Section 2(16B) of the Act as set out in para 24 of the impugned judgment (referring to the higher price in the immediate past or immediate future), is contrary to the wordings of the statute;
 - b. para 27.4 of the impugned judgment (giving Registering Officer the liberty to move the court with proper application in case of doubts on sanctity of the open market sale) sought to give the Registering Authority a new channel to open up final transaction having far reaching repercussions; and
 - c. the conclusion contained in paras 29.1 and 29.2 (holding that a court sale cannot be the subject matter of exercise of
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H ⁵(1974) 2 SCC 213

powers by the Registering Authority, along with conditions to be satisfied for a court sale to be an open market sale) were beyond what was observed. A

17. In the conspectus of the aforesaid it was opined that the Bench would have proceeded to enunciate the legal position, but the respondent mentioned a judgment of two Judges Bench of this Court in *Additional Distt. Sub-Registrar, Siliguri v. Pawan Kumar Verma*⁶ which held that a Registering Authority cannot be compelled to follow the value fixed by the court for purposes of suit valuation, which sought to traverse a different path. It was held that a legal principle should be settled in the context of Section 47A in West Bengal, after taking into consideration that similar amendments were made in the states of Tamil Nadu and Andhra Pradesh though they were not identical. Thus, the matter was referred to a three-Judges Bench of this Court. B C

Submissions of the Appellant:

18. The appellant sought to assail the restriction on the power of the Registering Officer in case of court auction sales by contending: D

- Section 47A of the Act as applicable to West Bengal is different from Section 47A of the Act as applicable to Tamil Nadu. Under the Indian Stamp Act (Tamil Nadu Amendment) Act, 1967, the matter would be referred to the Collector for the determination of market value, whereas under the Indian Stamp Act (West Bengal Amendment) Act, 1990, the matter has to be referred to such authority as may be prescribed in the Rules for the same. The “reasonable belief” under Section 47A of the Act is an objective assessment based on the facts and information disclosed, and it is incorrect to read the intention of the parties to the sale. E F
- The impugned judgment incorrectly drew a similarity between Section 2(16B) of the Act as amended in West Bengal and the Explanation appended to Section 47A of the Act applicable in Tamil Nadu. The former contemplates that the market value must be determined in the manner prescribed in the W.B. Stamp Rules and aims to determine G

⁶ (2013) 7 SCC 537 H

- A an amount “whichever is higher”, whereas the latter leaves it to the discretion of the authorities specified therein.
- There could be diverse reasons for the Registering Officer to have ‘reason to believe’ that the market value is incorrect, including in a court sale or liquidation proceedings, the advertisement was not made properly to elicit buyers; the sale of the property was frequently postponed; or cartelization among buyers. As per *Kayjay Industries*⁷ case, it was held that in a court auction sale, there is more likelihood of a distress sale at a lower value. The Registering Officer has the requisite experience in this behalf, namely their knowledge of market values of different areas and circle areas based on sales in the immediately preceding 5 years, and the discrepancy between the market value and value disclosed in the instrument.
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- Rule 3 of the W.B. Stamp Rules enlists the different ways in which the market value of a property can be determined. The term “or” as used in Rule 3 denotes that the ways mentioned therein are disjunctive with the primary objective being to devise a mechanism that brings the “highest price” or “whichever is greater”. Therefore, the Registering Officer is not bound by only what is specified in the deed or determined by the court and can determine a value that is greater amongst the ways stipulated therein. The impugned judgment eliminates the independent “determination” by the Registering Officer for every court sale, which is against the plain reading of the statute and the objective lying underneath, viz. to determine the “highest price” of the property.
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- The expression “shall” makes it obligatory for the Registering Authority to “determine” the market value of the property based on the “highest price”. The impugned judgment has erred in interpreting Section 47A of the Act and Rule 3 of the W.B. Stamp Rules in a manner which is against the very objective of the Act, the purpose of which is to levy the stamp duty itself, i.e. maximize the revenue of the State. The impugned judgment has held that if a sale is
- H ⁷ (supra)

concluded by the court process, or during liquidation proceedings, or open sales, the Registering Authority shall have to take the value of the property as gospel truth, and not carry out its mandatory statutory obligation for the “determination” based on the ways under Rule 3(1) of the W.B. Stamp Rules. A

- It is settled law that an interpretation that limits or curtails the discretion of the authority, when such discretionary powers and limits are laid down in the statute itself, is impermissible. When the legislature has not created a distinction between specific classes (distress sale and other forms of sale), the Court cannot, by a judicial decision, create or carve out a new class which was not contemplated by the statute. B

- The Stamp Act being a fiscal statute, should be interpreted strictly and literally. The impugned judgment inserted a ‘non-obstante clause’ which would make Rule 3 of the W.B. Stamp Rules and Sections 47A, 47B, and 47C of the Act as applicable in West Bengal, inapplicable to any court sale/ auction sale. The impugned judgment cannot create an ‘exemption’ clause in the fiscal statute when none is provided under the statute. Section 47A as amended in West Bengal is similar to Section 47A as amended by the State of Andhra Pradesh, which has been upheld in *P. Laxmi Devi*⁸ case, wherein it was held that where wordings of a taxation statute are so plain and unambiguous that it admits no exceptions, the relying on the object and purpose of the amendment would be committing an error. C

- The decision of *V.N. Devadoss*⁹ case is *per incuriam* in view of paragraph 7 of *Kayjay Industries*¹⁰ case which held that a court sale is a forced sale notwithstanding the competitive element of a public auction, and the best price is often not forthcoming. D
- The impugned judgment relies on the doctrine of deemed fiction to conclude that the object of the Act is to prevent E

⁸ (supra)

⁹ (supra)

¹⁰ (supra)

- A fraudulent undervaluation. Unlike the authorities relied upon in the impugned judgment, the application of the doctrine of deemed fiction is misplaced.

Submission of the Respondents:

- B 19. Learned counsel for the respondents sought to support the view of the High Court by relying upon the judgment of this Court in *The Inspector General of Registration v. K.P. Kadar Hussain*¹¹ to the effect that sale deeds executed by the court auctioned sales are allowed to be questioned by a party on some pretext, the sanctity, finality, and credibility of such court auctioned sales and execution of the sale deeds C will come under cloud and the same should not be permitted.

- D 20. In the Company matter, emphasis was placed on the intention of the State Legislature, i.e., to accept ‘market value’ as set forth in an instrument by which the immovable property was transferred or acquired by the Central or the State Government or any other authority under the D Central or State Government, etc. without any reference of Section 2(16B) and 47A of the Act, as can be seen from Rule 3C(9) of the West Bengal Stamp Rules. It was contended that there was, thus, no question of intention of any defraud or not disclose the correct price in a court sale and as per the observations in *V.N. Devadoss*¹² case the Registering Authority cannot be permitted to sit over appeal over the decision of the E court, especially a Constitutional Court and doubt the consideration determined in a court authorised sale.

- F 21. It was pleaded that the reliance placed on *Kayjay Industries*¹³ case was improper as it had been observed in para 9 that “court sales and market prices are distant neighbours.” The ratio of *Pawan Kumar Verma*¹⁴ case would have no application as it is not an issue of suit valuation. Moreover, the observations of the Supreme Court that the Registering Authority will have an opportunity to make back reference to the concerned court, and such court will freshly determine the suit valuation, is not proper procedure as the court stands on a higher footing, G has the sanctity of law and cannot be altered by the Registering Authority on the pretext of generating higher revenues.

¹¹ 2014 SCC Online Mad 3503

¹² (supra)

¹³ (supra)

¹⁴ (supra)

Conclusion:

22. On the conspectus of the matter, we have not the slightest hesitation in upholding the view that the provision of Section 47A of the Act cannot be said to have any application to a public auction carried out through court process/receiver as that is the most transparent manner of obtaining the correct market value of the property.

23. It is no doubt true that in a court auction, the price obtainable may be slightly less as any bidder has to take care of a scenario where the auction may be challenged which could result in passage of time in obtaining perfection of title, with also the possibility of it being overturned. But then that is a price obtainable as a result of the process by which the property has to be disposed of. We cannot lose sight of the very objective of the introduction of the Section whether under the West Bengal Amendment Act or in any other State, i.e., that in case of under valuation of property, an aspect not uncommon in our country, where consideration may be passing through two modes – one the declared price and the other undeclared component, the State should not be deprived of the revenue. Such transactions do not reflect the correct price in the document as something more has been paid through a different method. The objective is to take care of such a scenario so that the State revenue is not affected and the price actually obtainable in a free market should be capable of being stamped. If one may say, it is, in fact, a reflection on the manner in which the transfer of an immovable property takes place as the price obtainable in a transparent manner would be different. An auction of a property is possibly one of the most transparent methods by which the property can be sold. Thus, to say that even in a court monitored auction, the Registering Authority would have a say on what is the market price, would amount to the Registering Authority sitting in appeal over the decision of the Court permitting sale at a particular price.

24. It is not as if a public auction is carried out just like that. The necessary pre-requisites require fixation of a minimum price and other aspects to be taken care of so that the bidding process is transparent. Even after the bidding process is completed the court has a right to cancel the bid and such bids are subject to confirmation by the court. Once the court is satisfied that the bid price is the appropriate price on the basis of the material before it and gives its imprimatur to it, any interference by the Registering Authority on the aspect of price of transaction would be wholly unjustified.

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- A 25. We may only note that this Court in *P. Laxmi Devi*¹⁵ case has opined the purpose behind bringing into force Section 47A in the Andhra Pradesh State, i.e., in case of large scale under-valuation of the real value of property in the sale deed, the Government is defrauded of a proper revenue. It was to take care of the absence of any provision in the original Stamp Act empowering revenue authority to make an inquiry about the value of the conveyed property, that the Amendment was brought forth so that the revenue did not suffer. The judgment in *V.N. Devadoss*¹⁶ case albeit in respect of Amendment in Tamil Nadu, opined that it was not a routine procedure to be followed in respect of each and every document of conveyance presented for registration without any evidence to show a lack of *bona fides* of the parties. There has to be a willful under-valuation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty.

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- D 26. We do not accept the contention that the mere wordings of these different provisions in any way take away the fundamental intent with which the provision was brought into force and specifies so in the same manner though albeit in a different language. In a court auction following its own procedure, the Registering Officer cannot have any reason to believe that the market value of the property was not duly set forth – a pre-requisite for a Registering Authority to exercise its power under the said Section.
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- F 27. If we see in the factual context of the two scenarios before us in respect of the two cases, the telling aspect in a partition case was the existence of 98 tenants on a land at a monthly rent of Rs.8,000 for the entire land and 80 vendors occupying the land for hawking business during day time. It is trite to say that the mere existence of tenancy results in a considerable decline in the market value of the property as they may have their statutory rights and even otherwise, the purchaser would be acquiring the property hardly in an ideal scenario and would be left with the burden to take legal processes for the eviction. In such a scenario, there is actually a great depression in the market value of the property as even if a fair transaction without an auction takes place with full reflection of price, the transacted value would be half or less of a vacant property. The tenancy aspect can hardly be said to be an aspect which could be ignored in the determination of the price.
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¹⁵ (supra)

¹⁶ (supra)

28. In the company matter, repeated auctions were held and it is in the negotiated bid that the higher price was obtained. It was court monitored. There would be no occasion for the court to accept the bid if it was not satisfied with the process and the valuation. A correct value of a property is the one where there is a purchaser and a seller ad idem on the price (the actual price). The market value is, thus, the value which the highest bidder is willing to pay in the facts and prevailing circumstances and not a notional price.

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29. We find hardly any rational in adopting the submissions on behalf of the appellant. The provisions are not dissimilar in the different enactments in its fundamentals; the “reason to believe” of a Registering Officer has to be based on ground realities and not some whimsical determination; the Registering Authority cannot be permitted to doubt the liquidation proceedings as having some superior knowledge when it is a court monitored process where the court would take care of aspects such as cartelization; the Registering Authority can hardly be said to be the only authority with knowledge of the subject to the exclusion of the court; the independent determination by a Registering Officer would not apply to a court sale but to a private transaction; the Stamp Act being a fiscal statute, while being interpreted strictly and literally would not imply some kind of absolute power.

30. The decision of this Court in *V.N. Devadoss*¹⁷ case can hardly be said to be *per incuriam*. No doubt a court monitored auction is a forced sale, but then it has a competitive element of a public auction to realize the best possible price. In many court cases, this is the process followed by the court to get the best obtainable price taking due precaution.

31. We are, thus, of the view that this reference is required to be answered by opining that in case of a public auction monitored by the court, the discretion would not be available to the Registering Authority under Section 47A of the Act.

32. We may further add that while making the reference, the Bench itself had noted some aspects of the impugned judgment which could not find favour with it. Thus, we are not giving our imprimatur to some of the rational adopted in the impugned judgment as already mentioned in the order of reference. These have been set out, once again, aforesaid as small paras (a), (b) & (c) while dealing with the

¹⁷ (supra)

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- A aspect of reference and on these aspects, the impugned judgment cannot be said to be laying down the correct principles of law.
 - 33. However, no further inquiry in that aspect is necessary in view of what we have opined herein and, thus, the appeals can stand disposed of without the requirement of further reference to a two Judges Bench to deal with the facts and circumstances of the case as those aspects have also been dealt with by us.
 - 34. The reference is answered accordingly and the appeals stand dismissed albeit for the reasons set out herein.
- B Bench to deal with the facts and circumstances of the case as those aspects have also been dealt with by us.

Ankit Gyan
(Assisted by : Aarsh Choudhary, LCRA)

Appeals dismissed.