

SHANTI BHUSHAN (D) THR. LR. & ORS.

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v.

STATE OF U.P. AND ORS.

(Civil Appeal No. 8388 of 2017)

APRIL 25, 2023

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[ABHAY S. OKA AND RAJESH BINDAL, JJ.]

Stamp Act, 1899 – ss.31,32, 47-A and Art. 23 of the Schedule IB – Market Value of property – Determination of – A property was purchased by the appellants under a registered sale deed from the vendor – Appellants were already in possession land as tenants – The appellants calculated Rs.6,67,200/- as the market value of the property and paid the stamp duty quantified at Rs. 46,700/- – The Assistant Stamp Collector, held that the market value of the land will have to be calculated at the rate of Rs. 24,000/per sq. meter – Thus, on the date of the sale deed, the market value of the sale deed property was Rs.19,23,08,305/- on which stamp duty of Rs.1,34,61,630/- was payable – Appellants were directed to pay a deficit stamp duty along with penalty and the interest – The appellants preferred an appeal against the order of Assistant collector, which was dismissed by the Appellate Authority – The above orders were challenged before the High Court – The High Court affirmed the market value fixed by the authorities but set aside the demand for penalty – On appeal, held: Stamp duty on a conveyance will be payable as per the market value prevailing on the date of conveyance unless consideration shown therein is more than the prevailing market value – The market value fixed by appellants was fixed by adopting method used for levy of property tax under the Municipal laws, such a value cannot be taken as basis for determining the market value for the purpose of Art. 23 – Further, a property in possession of a tenant will fetch lesser value in the open market than the market value of a similar property exclusively in possession of the vendor as the buyer will not get actual possession of the portion of the property in possession of the tenant – The market value can be determined by the comparison method even in case of a property in possession of tenants – If no comparable instances are found, the market value can be fixed of the property in possession of tenants by making an appropriate deduction from the market

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- A *value of a comparable property in which there are no tenants – Even if the guidance value of Rs. 24,000/- per sq. meter is to be taken as the market value of the sale deed land, necessary deductions will have to be made from the market value as the appellants were already in possession of the sale deed land as tenants – The extent to which deduction can be made will depend upon the nature of the tenancy and other material factors – Case sent back to the Assistant Stamp Collector for determination of the market value of the sale deed land.*

Stamp Act, 1899 – Interpretation of – In interpreting a taxing statute, equitable considerations cannot be applied – The rule of

- C *literal construction must be applied while interpreting a taxing statute – It must be interpreted in terms of the natural construction of the words used – There is no scope to imply anything which is not expressly provided.*

Allowing the appeal, the Court

- D **HELD:** 1. The Stamp Act is a taxing statute. In interpreting such a statute, equitable considerations cannot be applied. A taxing statute has to be interpreted in accordance with what is clearly expressed therein. While interpreting such a statute and determining the liability to pay tax, the provisions are required to be construed strictly. In other words, the rule of literal construction must be applied while interpreting a taxing statute. It must be interpreted in terms of the natural construction of the words used. There is no scope to imply anything which is not expressly provided. [Para 18][524-D-E]
- F 2. In view of Article 23 of Schedule I of the Stamp Act, the stamp duty payable on a conveyance will be in accordance with the market value of the subject property on the date of the conveyance unless the consideration shown therein is more than the prevailing market value. When a sale deed is presented for registration, the registering authority must ascertain the correct market value of the property subject matter of the document on the date of execution of the document. The stamp duty is payable on the basis of such market value and not on the consideration mentioned in the document. If the consideration mentioned is
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more than the market value, the stamp duty will be payable on the consideration shown. Moreover, the market value mentioned in the agreement for sale or the market value prevailing on the date of the agreement or the market value prevailing on the date on which the bargain was struck is of no relevance for deciding the stamp duty. The relevant market value is the one which prevails on the date of execution of the conveyance. Therefore, this Court had no manner of doubt that the appellants were under an obligation to pay stamp duty calculated on the market value of the sale deed property on the date of execution of the sale deed. [Paras 19, 20][524-F; 525-H; 526-A-C]

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3. Stamp duty was paid by the appellants by taking the market value of the sale deed property at Rs.6,67,200/- . This market value was fixed by adopting method used for levy of property tax under the Municipal laws. Such a value cannot be taken as the basis for determining the market value for the purposes of Article 23. [Para 21][526-D]

4. The test for determination of the market value is very simple. The market value is the one which a *bona fide* and willing buyer will offer. It is apparent that if the property subject matter of the sale is in possession of the vendor himself, the *bona fide* purchaser will offer more price for the property than the price which he may offer for a similar property which is in possession of a tenant. There is no doubt that a property in possession of a tenant or tenants will fetch lesser value in the open market than the market value of a similar property exclusively in possession of the vendor. The reason is that the buyer will not get actual possession of the portion of the property in possession of the tenant. [Para 24][529-G-H; 530-A-B]

5. The market value can be determined by the comparison method even in case of a property in possession of tenants. For example, if there is a sale transaction of a property in possession of a tenant which is comparable to the property sought to be valued and if the said sale transaction is held to be a genuine transaction, market value can be fixed on the basis of the sale transaction. If no comparable instances are found, the market

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- A value can be fixed of the property in possession of tenants by making an appropriate deduction from the market value of a comparable property in which there are no tenants. [Para 25][530-C]
6. The Assistant Collector, the Appellate Authority, and the High Court have not decided the issue in terms of what this Court have held above. Even if the guidance value of Rs. 24,000/- per sq. meter is to be taken as the market value of the sale deed land, necessary deductions will have to be made from the market value as the appellants were already in possession of the sale deed land as tenants. The extent to which deduction can be made will depend upon the nature of the tenancy and other material factors. Some tenancies may be protected under the relevant rent control legislation, whereas some may not be protected. That is all a matter of evidence. [Para 27][530-F-G]
7. The issue regarding the market value of the sale deed land on the date of execution of the sale deed is required to be decided by permitting the parties to adduce oral and documentary evidence. The Assistant Collector will have to ascertain whether a comparable sale instance of a property in possession of tenants is available. If it is not available, the Assistant Collector will have to ascertain the market value of the sale deed property on the relevant date again by comparison method by taking market value of a comparable property which does not have encumbrance of tenancy. Thereafter, he will have to determine the percentage of the deduction which should be made from the market value in the facts of this case. These questions are to be decided by the Assistant Collector on the basis of the evidence on record. Therefore, subject to what this Court have held in the judgment, this Court proposed to send back the case to the Assistant Stamp Collector for determination of the market value of the sale deed land on the date of execution of the sale deed. [Para 28][530-G-H; 531-A-B]

*Special Land Acquisition & Rehabilitation Officer,
Sagar v. M.S. Seshagiri Rao & Another [1968] 2 SCR
892; Mangat Ram and Others v. State of Haryana and
Others (1996) 8 SCC 664 : [1996] 1 Suppl. SCR 634;*

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State of Rajasthan and Others v. Khandaka Jain Jewellers (2007) 14 SCC 339 : [2007] 12 SCR 105 – referred to. A

O. N. Talwar v. The Collector of Stamps (1971) 7 DLT 319; *The Commissioner of Wealth Tax Mysore, Bangalore v. V. C. Ramachandran* (1966) 60 ITR 103 – referred to. B

Case Law Reference

[1968] 2 SCR 892	referred to	para 10	
[1996] 1 Suppl. SCR 634	referred to	para 10	C
[2007] 12 SCR 105	referred to	para 19	

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8388 of 2017.

From the Judgment and Order dated 23.01.2013 of the High Court of Judicature at Allahabad in CMWP No. 55473 of 2012. D

Rohit Kumar Singh, Pavan Bhushan, Amartya Bhushan, Tushar Bhushan, Harsh Jain, Advs. for the Appellants.

R. K. Raizada, Sr. Adv., Bhakti Vardhan Singh, Ankit, Advs. for the Respondents. E

Jayant Bhushan, in Person/Sr. Adv.

The Judgment of the Court was delivered by

ABHAY S. OKA, J.

FACTUAL ASPECTS F

1. The dispute involved in this appeal is about the determination of the market value of a property at Allahabad purchased by the appellants under a registered sale deed dated 29th November 2010 (the sale deed) from Hari Mohan Das Tandon (the vendor). The property has been described in the Schedule to the sale deed which reads thus: G

“SCHEUDLE OF THE PROPERTY”

Part Portion of Free Hold Site No. 49 Civil Station, Allahabad of which Nagar Nigam No. is 19 Old, 77/29 New, and 19-A Old 79/31 New, Lal Bahadur Shastri Marg (Elgin Road), Allahabad H

- A measuring 7818.00 sq.mts. land alongwith construction and super structure standing thereon shown in Red Colour in the annexed map and bounded as under:-

BOUNDARIES

- B East : Part Portion of Freehold Site No. 49 Civil Station, Allahabad, facing Strachey Road which has been released in the favour of the Sellers- 1st Party as per the compromise.
West : Site No. 50 Civil Station, Allahabad
North : Elgin Road (Lal Bahadur Shastri Marg)
C South : Site No. 30 Civil Station, Allahabad”
This property is hereinafter referred to as the sale deed property.
D 2. According to the case of the appellants, Bungalow No.19 and Cottage No.19-A existed on the larger property. According to their case, in the year 1939, Bungalow No.19, together with appurtenant land and outhouse as well as cottage no.19-A, was taken on rent by the first appellant's father. The appellants claimed to be protected tenants under the United Provinces (Temporary) Control of Rent and Eviction Act, 1947 and subsequently under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972. According to the case made out
E by the appellants, by two letters dated 2nd September 1966 and 10th September 1966, the vendor agreed to sell the sale deed property to the first appellant's father for a total sale consideration of Rs. 1 lakh. A sum of Rs. 5000/- was paid to the vendor as earnest money. The land was a leasehold land. It was converted into a freehold land on 8th June 2000 by virtue of a freehold deed executed in favour of the vendor. The first appellant filed a suit for specific performance in the same year.
F 3. On 29th September 2010, a compromise was arrived at between the vendor and the appellants under which the appellants agreed to give up approximately 1/3rd of the land which was a part of the original agreement for sale covered by the aforesaid two letters, and agreed to take land measuring 7818 sq. meters along with existing structures for the same consideration which was fixed in the year 1966. An application to record compromise was made in the pending suit on 5th October 2010. On the basis of the said compromise, on 12th October 2010, an agreement for sale was executed by and between the parties. A compromise decree
G was passed by the Civil Court on 16th November 2010.

4. Prior to the execution of a fresh agreement for sale, on 29th September 2010, the appellants filed an application under Section 31 r/w 32 of the Indian Stamp Act, 1899 (for short ‘the Stamp Act’) for adjudication of the stamp duty payable on the sale deed by forwarding a copy of the proposed sale deed. However, no adjudication was made. On 29th November 2010, the sale deed was executed by the vendor in favour of the appellants.

5. Two notices were issued to the appellants on 8th February 2011 and 15th April 2011 by the Assistant Stamp Commissioner in the exercise of powers under Section 47-A of the Stamp Act, informing the appellants that the Assistant Stamp Collector was considering the question of payment of appropriate stamp duty on the sale deed.

6. We may note here that by using the rent capitalisation method, the appellants calculated Rs.6,67,200/- as the market value of the sale deed property and paid the stamp duty on the said market value quantified at Rs. 46,700/-. In the notice dated 15th April 2011, it was alleged that the deficiency in the stamp duty was to the extent of Rs.1,33,07,900/-. The appellants contested the notices by filing written submissions. The Assistant Stamp Collector, by order dated 6th January 2012, held that the market value of the land having an area of 7818 sq. meters will have to be calculated at the rate of Rs. 24,000/- per sq. meter. The Assistant Collector noted that four sales had taken place in 2010 in respect of a part of the same property showing the market value at Rs.24,000/- per sq. meter. By calculating the market value of the land at Rs.24,000/- per sq. meter, the Assistant Stamp Collector added the value of the structures as well as mango trees. The Collector came to the conclusion that on the date of the sale deed, the market value of the sale deed property was Rs.19,23,08,305/- on which stamp duty of Rs.1,34,61,630/- was payable. Taking into account the stamp duty of Rs. 46,700/- paid by the appellants, they were directed to pay a deficit stamp duty of Rs.1,34,14,930/-. A penalty of Rs. 27,00,000/- was imposed on the appellants. Moreover, they were directed to pay interest at the rate of 1.5% per month on the deficit stamp duty from the date of the sale deed till the realisation of the amount.

7. According to the case of the appellants, on 1st February 2012, they paid a stamp duty of Rs.70 lakhs by demand draft as coercive action was likely to be taken against them. The appellants preferred an appeal against the order dated 6th January 2012, which was dismissed

- A by the Appellate Authority. The appellants deposited an additional amount of Rs. 30 lakhs towards the stamp duty on 9th November 2012. The orders of the Assistant Collector and the Appellate Authority were subjected to a challenge by the appellants before the Allahabad High Court by invoking writ jurisdiction under Article 226 of the Constitution.
- B While affirming the market value fixed by the authorities, the High Court granted limited relief to the appellants vide judgment dated 23rd January 2013. The limited relief was of setting aside the demand of the penalty of Rs.27,00,000/- . The present appeal is directed against the judgment and order of the High Court.

SUBMISSIONS

- C 8. Shri Jayant Bhushan, the learned senior counsel who is appellant no.3, appeared in person and made submissions on his behalf as well as on behalf of the other appellants. He has taken us through the facts leading to the filing of the writ petition. Learned senior counsel submitted that though the appellants were entitled to purchase total land measuring 11428 sq. meters as per the agreement for sale, they agreed to give up an area of 3614 sq. meters by agreeing to purchase a lesser area of 7814 sq. meters. However, the agreed monetary consideration was not reduced.
- E 9. The learned senior counsel submitted that the first appellant's father was already inducted in the sale deed property as a tenant. He submitted that when a property is in possession of a tenant, the market value considerably diminishes. He stated that when a willing purchaser acquires a property in possession of a tenant, he is aware that he will have to follow a long process of law to evict the tenant. Therefore, the value fetched by such property is less than the market value of a comparable property which is in possession of the owners. He urged that the sale, in this case, was of an encumbered property which was on "as is where is" basis.
- G 10. The learned senior counsel submitted that the market value of a property is ascertained by applying the test of what a willing buyer would pay. He submitted that while determining the market value of a property in possession of a tenant, when the property is sold to the tenant, the market value has to be apportioned as per the principles laid down in several decisions of this Court in connection with fixation of the market value of the acquired land under the Land Acquisition Act, 1894. He
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relied upon decisions of this Court in the case of *Special Land Acquisition & Rehabilitation Officer, Sagar v. M.S. Seshagiri Rao & Another¹ and Mangat Ram and Others v. State of Haryana and others²*. He submitted that the market value is liable to be reduced if there are encumbrances on the property. The market value will be the real market value minus the value of encumbrances or liabilities. He relied upon a decision of the Delhi High Court in the case of *O.N. Talwar v. The Collector of Stamps³*.

11. He submitted that the market value of the property further diminishes due to the fact that there was already an agreement of sale in favour of the appellants under which the vendor had agreed to sell the property for a price of Rs. 1 lakh.

12. He submitted that though an application for adjudication of the stamp duty payable on the proposed sale deed was submitted, there was no response to the said application, and on that ground, the order of penalty imposed by the Assistant Collector has been set aside by the High Court.

13. He submitted that as per the compromise between the vendor and the appellants, the consideration agreed to be paid by the appellants was of Rs. 1 lakh plus the release of 1/3rd of the property. He submitted that the actual conveyed property to the appellants was 2/3rd of the land in respect of which they were tenants. Therefore, the value of 2/3rd land would be 2/3rd x (1/3rd of the value of the entire land plus Rs. 1 lakh). He submitted that the market value will have to be calculated accordingly.

14. The learned senior counsel also pointed out that even the direction to pay interest @ 1.5% per month under Section 47-A (4A) of the Stamp Act was not justified as even before the execution of the sale deed, the appellants had voluntarily sought adjudication of the amount payable by way of stamp duty on the draft sale deed. Moreover, he pointed out that by interim order dated 23rd September 2013, the High Court had stayed the recovery proceedings. Lastly, he pointed out that a total amount of Rs. 1 crore has already been deposited by the appellants.

15. Shri R. K. Raizada, learned senior counsel, submitted on behalf of the State that stamp duty payable by the appellants is to be calculated

¹(1968) 2 SCR 892

²(1996) 8 SCC 664

³(1971) 7 DLT 319

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- A as per the prevailing market value of the sale deed land on the date of the execution of the sale deed. He submitted that the value of the property fixed by the parties under the agreement for sale has no relevance to the determination of the market value. The learned senior counsel submitted that even the consideration amount shown in the compromise decree
- B has no relevance. He submitted that when a tenant purchases an immovable property, he becomes full owner of the property, and he takes the property without any encumbrances. The learned senior counsel submitted that the determination of rateable value for the purposes of determination of property taxes is always made on the basis of hypothetical rent which the property may fetch. He submitted that the
- C rateable value fixed under municipal laws is not the market value for the purposes of the Stamp Act. He would submit that the Assistant Collector, the Appellate Authority, and the High Court have concurrently held that the appellants are liable to pay deficit stamp duty. The said orders call for no interference.
- D 16. As far as the determination of market value is concerned, learned senior counsel appearing for the appellants relied upon the decision of Karnataka High Court in the case of *The Commissioner of Wealth Tax Mysore, Bangalore v. V.C. Ramachandran*⁴.

CONSIDERATION OF SUBMISSIONS AND OUR VIEWS

- E 17. It is not in dispute that stamp duty on a conveyance will be payable as per the market value prevailing on the date of conveyance. In fact, the appellants themselves have relied upon Article 23 of Schedule IB of the Stamp Act as applicable to the State of Uttar Pradesh. They have placed reliance on the said provision in their written submissions
- F filed before the Assistant Collector. Paragraphs 2 to 4 of their written submissions read thus:

“**2.** The stamp duty payable on a sale deed is governed by Article 23 of Schedule I of the Indian Stamp Act. In the Central Act, Article 23 a stamp duty is payable on the value of the consideration of such conveyance as set forth in the sale deed. The consideration as contained in the sale deed is Rs.1 lakh and therefore, if the sale deed was governed by the Central Act only, without the UP Amendment the Stamp Duty would have been payable on the amount of Rs.1 lakh.
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H ⁴(1966) 60 ITR 103.

3. However, the Indian Stamp Act in its application to UP has been amended by the UP (Stamp Amendment Act 1952) and Article 23 of Schedule IB as applicable to UP provides as below:- A

“Article 23 conveyance (as defined by Section 2(10) not being a transfer charge or exempt under No.62. **Where the amount or value of the consideration of such conveyance as set forth therein or market value of the property which is the subject of such conveyance, whichever is greater.....”** B

4. So this provision which is applicable to the case in hand provides that if the market value of the immovable property is higher than the value of the consideration as set forth in the deed of conveyance, the stamp duty will be payable on the market value of the immovable property which is the subject matter of the conveyance deed.” C

(emphasis added) D

Article 23 of Schedule IB applicable to the State of Uttar Pradesh, reads thus: -

“Description of Instrument Proper Stamp-duty

23. Conveyance [as defined Sixty rupees. E

by section 2(10)] not being a

Transfer charged or

exempted under No.62 –

(a) if relating to immovable property where the amount or value of the consideration of such conveyance as set forth therein or the market value of the immovable property which is the subject of such conveyance, whichever is greater does not exceed Rs.500.

Where it exceeds Rs.500 One hundred and twenty-five rupees. F G H

but does not exceed

A	Rs.1,000. and for every Rs.1,000 or part thereof in excess of Rs.1,000.	One hundred and twenty- five rupees. Provided that the duty payable shall be rounded off to the next multiple of ten rupees.
B	(b) if relating to movable property where the amount or value of the consideration of such conveyance	Twenty rupees
C	as set forth therein does not exceed Rs.1,000. and for every Rs.1,000 or part Twenty rupees” thereof in excess of Rs.1,000.	

18. At this stage, we may note that the Stamp Act is a taxing statute. In interpreting such a statute, equitable considerations cannot be applied. A taxing statute has to be interpreted in accordance with what is clearly expressed therein. While interpreting such a statute and determining the liability to pay tax, the provisions are required to be construed strictly. In other words, the rule of literal construction must be applied while interpreting a taxing statute. It must be interpreted in terms of the natural construction of the words used. There is no scope to imply anything which is not expressly provided.

19. In view of Article 23 of Schedule I of the Stamp Act, the stamp duty payable on a conveyance will be in accordance with the market value of the subject property on the date of the conveyance unless the consideration shown therein is more than the prevailing market value. A useful reference can be made to a decision of this Court in the case of the *State of Rajasthan and others v. Khandaka Jain Jewellers*⁵. Paragraphs 18 and 19 of the said decision read thus:

- G “18. The contention of the learned counsel for the State that as per Section 17 of the Act, the market value has to be taken into consideration because Section 17 stipulates that all the instruments chargeable with duty and executed by person of India shall be stamped before or “at the time of execution”. The word

“execution” has been defined in Section 2(12) of the Act which says that “execution” used with reference to the instruments, mean “signed” and “signature”. Therefore, it shows that the document which is sought to be registered has to be signed by both the parties. Till that time the document does not become an instrument for registration. A reading of Section 2(12) with Section 17 clearly contemplates that the document should be complete in all respects when both the parties should have signed it with regard to the transfer of the immovable property. It is irrelevant whether the matter had gone in for litigation.

19. It may be mentioned that there is a difference between an agreement to sell and a sale. Stamp duty on a sale has to be assessed on the market value of the property at the time of the sale, and not at the time of the prior agreement to sell, nor at the time of filing of the suit. This is evident from Section 17 of the Act. It is true that as per Section 3, the instrument is to be registered on the basis of the valuation disclosed therein. But Section 47-A of the Rajasthan (Amendment) Stamp Duty Act contemplates that in case it is found that properties are undervalued then it is open for the Collector (Stamps) to assess the correct market value. Therefore, in the present case when the registering authority found that valuation of the property was not correct as mentioned in the instrument, it sent the document to the Collector for ascertaining the correct market value of the property.”

(emphasis added)

Ultimately in paragraph 22, this Court held thus:

“22. In this background, if we construe Section 17 read with Section 2(12) then there is no manner of doubt that at the time of registration, the registering authority is under an obligation to ascertain the correct market value at that time, and should not go by the value mentioned in the instrument.”

(emphasis added)

20. Hence, when a sale deed is presented for registration, the registering authority must ascertain the correct market value of the

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- A property subject matter of the document on the date of execution of the document. The stamp duty is payable on the basis of such market value and not on the consideration mentioned in the document. If the consideration mentioned is more than the market value, the stamp duty will be payable on the consideration shown. Moreover, the market value mentioned in the agreement for sale or the market value prevailing on the date of the agreement or the market value prevailing on the date on which the bargain was struck is of no relevance for deciding the stamp duty. The relevant market value is the one which prevails on the date of execution of the conveyance. Therefore, we have no manner of doubt that the appellants were under an obligation to pay stamp duty calculated on the market value of the sale deed property on the date of execution of the sale deed.

21. As stated earlier, stamp duty was paid by the appellants by taking the market value of the sale deed property at Rs.6,67,200/- This market value was fixed by adopting method used for levy of property tax under the Municipal laws. Such a value cannot be taken as the basis for determining the market value for the purposes of Article 23.

22. Now we turn to the provisions of Section 47-A of the Stamp Act as applicable to the State of Uttar Pradesh at the relevant time. Section 47-A reads thus:

- E “**47A.** Instruments of conveyance etc., if undervalued, how to be dealt with: – (1)(a) If the market value of any property which is the subject of any instrument on which duty is chargeable on the market value of the property as set forth in such instrument is less than even the minimum value determined in accordance with the rules made under the Act, the registering officer appointed under the Registration Act, 1908 shall, notwithstanding anything contained in the said Act, immediately after presentation of such instrument and before accepting it for registration and taking any action under section 52 of the said Act, require the person liable to pay stamp duty under section 29, to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with section 23 of the Registration Act, 1908.
- G (b) When the deficit stamp duty required to be paid under clause (a), is paid in respect of any instrument and the instrument is
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presented again for registration, the registering officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereof and the name and the residence of the person paying them and register the same. A

(c) Notwithstanding anything contained in any other provisions of this Act, the deficit stamp duty may be paid under clause (a) in the form of impressed stamp containing such declaration as may be prescribed. B

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in clause (a) and presents the instrument again for registration, the registering officer shall, before registering the instrument, refer the same to the Collector for determination of the market value of the property and the proper duty payable thereon. C

(2) Without prejudice to the provisions of sub-section (1), if such Registering Officer, while registering any instrument on which duty is chargeable on the market-value of the property, has reason to believe that the market-value of the property, which is the subject of such instrument, 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- D E

(3) On receipt of a reference under sub-section (1) or sub-section (2), 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 of the instrument and the duty as aforesaid. The difference, any, in the amount of duty shall be payable by the person liable to pay the duty. F

Explanation. - The payment of deficit stamp duty by any person under any order of registering officer under sub-section (1) shall not prevent the Collector from initiating proceedings on any instrument under sub-section (3). G

(4) The Collector may, suo motu, or on a reference from any court or from the Commissioner of Stamps or an Additional Commissioner of Stamps, or a Deputy Commissioner of Stamps H

- A or an Assistant Commissioner of Stamps or any Officer authorized by the Board of Revenue in that behalf, within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property, not already referred to him under sub-section (1) or sub-section (2), 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 of such instrument and the duty payable thereon and if after such examination, he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty payable thereon in accordance with the procedure provided for in sub-section (3). The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty.
- B Provided that, with the prior permission of the State Government, an action under this sub-section may be taken after the period of four years but before the period of eight years from the date of the registration of the instrument on which the duty is chargeable on the market value of the property.
- C Explanation - The payment of deficit stamp duty by any person by any order of the registering officer under sub-section (1) shall not prevent the Collector from initiating proceedings on any instrument under sub-section (3).
- (4) If on enquiry under sub-section (2) and examination under sub-section (3) the Collector finds the market value of the property
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- F (i) truly set forth and the document duly stamped, he shall certify by endorsement that it is duly stamped and return it to the person who made the reference;
- G ii) not truly set forth and not truly stamped, he shall require the payment of the proper duty or the amount required to make up the deficiency in the same together with a penalty of an amount not exceeding four times the amount of proper duty or the deficit portion thereof.
- H (4A) The Collector shall also require along with the deficit stamp duty or penalty required to be paid under clause (ii) of sub-section (4), the payment of a simple interest at the rate of one and half

per cent per mensem on the amount of deficit stamp duty calculated from the date of the execution of the instrument till the date of actual payment: A

Provided that the amount of interest under this sub-section shall be recalculated if the amount of deficit stamp duty is varied on appeal or revision or by any order of a competent Court or authority. B

(4B) The amount of interest payable under sub-section (4A) shall be added to the amount due and be also deemed for all purposes to be part of the amount required to be paid. C

(4C) Where realisation of the deficit stamp duty remained stayed by any order of any Court or authority and such order of stay is subsequently vacated, the interest referred to in sub-section (4A) shall be payable also for any period during which such order of stay remained in operation. C

(4D) Any amount paid or deposited by, or recovered from, or refundable to, a person under the provision of this Act, shall first be adjusted towards the deficit stamp duty or penalty outstanding against him and the excess, if any, shall then be adjusted towards the interest, if any, due from him." D

23. Accordingly, in this case, an adjudication was made by the Assistant Stamp Collector. After inspection of the sale deed property, the Assistant Stamp Collector came to the conclusion that the description of the property in the sale deed was incorrect. The Assistant Collector observed that in the sale deed, the covered area of the land is shown as 970 meters, but actually, it was found to be 995 sq. meters. The Assistant Collector referred to four sale transactions of the year 2010 which were in relation to the properties which were a part of the same larger property wherein the market value shown was Rs. 24,000/- per sq. meter. The determination of market value by taking the market value at Rs. 24,000/- per sq. meters has been approved by the Assistant Collector, Appellate Authority and the High Court. E F G

24. It appears to be an accepted position that the appellants were tenants of the vendor in respect of the sale deed property. The test for determination of the market value is very simple. The market value is the one which a *bona fide* and willing buyer will offer. It is apparent that if the property subject matter of the sale is in possession of the H

- A vendor himself, the *bona fide* purchaser will offer more price for the property than the price which he may offer for a similar property which is in possession of a tenant. There is no doubt that a property in possession of a tenant or tenants will fetch lesser value in the open market than the market value of a similar property exclusively in possession of the vendor.
- B The reason is that the buyer will not get actual possession of the portion of the property in possession of the tenant.
 - 25. The market value can be determined by the comparison method even in case of a property in possession of tenants. For example, if there is a sale transaction of a property in possession of a tenant which is comparable to the property sought to be valued and if the said sale transaction is held to be a genuine transaction, market value can be fixed on the basis of the sale transaction. If no comparable instances are found, the market value can be fixed of the property in possession of tenants by making an appropriate deduction from the market value of a comparable property in which there are no tenants.
 - D 26. In the written submissions, the learned counsel appearing in person has suggested a formula for calculating the market value by taking into consideration the market value on the date of agreement for sale (1966) and the market value of the 1/3rd of the land given up by the appellants by way of compromise. However, this contention is obviously not acceptable as the market value of the property sold will have to be determined on the date of execution of the sale deed.
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- F 27. The Assistant Collector, the Appellate Authority, and the High Court have not decided the issue in terms of what we have held above. Even if the guidance value of Rs. 24,000/- per sq. meter is to be taken as the market value of the sale deed land, necessary deductions will have to be made from the market value as the appellants were already in possession of the sale deed land as tenants. The extent to which deduction can be made will depend upon the nature of the tenancy and other material factors. Some tenancies may be protected under the relevant rent control legislation, whereas some may not be protected. That is all a matter of evidence.
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- H 28. The issue regarding the market value of the sale deed land on the date of execution of the sale deed is required to be decided by permitting the parties to adduce oral and documentary evidence. The Assistant Collector will have to ascertain whether a comparable sale instance of a property in possession of tenants is available. If it is not available, the

Assistant Collector will have to ascertain the market value of the sale deed property on the relevant date again by comparison method by taking market value of a comparable property which does not have encumbrance of tenancy. Thereafter, he will have to determine the percentage of the deduction which should be made from the market value in the facts of this case. These questions are to be decided by the Assistant Collector on the basis of the evidence on record. Therefore, subject to what we have held in the judgment, we propose to send back the case to the Assistant Stamp Collector for determination of the market value of the sale deed land on the date of execution of the sale deed.

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29. The appellants have already deposited a sum of Rs.1 crore towards the amount made payable by them. The sum amount will be subject to the final adjudication by the Assistant Stamp Collector. If the Assistant Stamp Collector comes to the conclusion that the market value of the land and structures is lesser than what was determined earlier by the Assistant Stamp Collector, the appellants will be entitled to a refund of the excess amount paid with interest at the rate of 8% per annum from the date on which the amount was paid till the date on which the refund is made. If it is found that the deficit stamp duty exceeds Rs.1 crore, the appellants will have to make good the said amount. Sub-section 4A of Section 47A is in mandatory terms. The use of the word 'shall' make it clear that the Collector has no choice but to impose interest at the rate of 1.5% per month on the deficit amount. We are not disturbing the judgment of the High Court insofar as it relates to penalty as the State Government has not challenged that part.

30. Hence, we set aside the impugned judgment of the High Court as well as the judgment of the Assistant Stamp Collector and the Appellate Authority and remand the case for fresh consideration to the Assistant Stamp Collector. However, we confirm that part of the impugned judgment of the High Court, by which it was held that the appellants are not liable to pay penalty. The Assistant Stamp Collector shall permit the appellants to lead evidence on the issue of valuation. The Assistant Stamp Collector is directed to conclude the proceedings as early as possible and preferably within a period of six months from today.

31. The appeal is, accordingly, allowed on the above terms with no order as to costs.