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CHAPTER 6
TRUE DISCLOSURE – A SINA QUÂ NON

A) MEANING AND PURPORT OF SECTION 27:

Section 27 is the powerhouse animating the apparatus of assessment and collection of levy under the Indian Stamp Act. It makes it incumbent on every party to set forth fully and truly the crucial aspects of a transaction. Earlier this Section, which was a carbon copy of the English Act 1891, had mandated disclosure of just the consideration and other factors affecting chargeability. However the Tamil Nadu Amendment Act 24 of 1967 has reinforced this Section with herculean tentacles that it now insists upon setting forth the true market value in the instrument. Similarly several states have amended this Section to include market value as the basis of chargeability.

The enforcing authorities have further expanded its sweep and scope by insisting upon disclosure of the transaction itself in lieu of confining their business to the instrument. From the catena of decisions discussed underneath, it is clear that Section 27 presupposes an “instrument” and “chargeability”.

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1 a) Vide Section 28 as amended by Act 12 of 1975 of Kamataka Stamp Act 1957
b) Vide Section 28 as amended by Act 16 of 1979 of Bombay Stamp Act 1958
c) Vide Section 27 as amended by Act 7 of 1987 of Indian Stamp Act 1899 (Orissa Second Amendment Act)
d) Vide Section 27 as amended by Act 17 of 1989 of Indian Stamp Act 1899 (Rajasthan Amendment Act 17 of 1989)
e) Vide Section 27 as amended by Himachal Pradesh Act 7 of 1989 of Indian Stamp Act 1899 (H.P Act 7 of 1989)
This chapter will examine the legal ambit of this Section and the transgression of its limits by the authorities to meet the exigencies of revenue.

**Facts affecting duty to be set forth in instrument:**
The consideration (if any) (and the market value) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein”.

It is a verbatim reproduction of the English version of this Section. It is different only in so far as the mention of the word “market value” is concerned in the Indian Section. This Section expects the parties concerned to set forth facts including consideration market value and other factors affecting chargeability of duty **fully and truly**. Failure to do so will result in mere prosecution u/s 64 of the Act.

**Duty only for the property conveyed:**
Chargeability arises only on execution of an instrument. Instrument presupposes creation or extinguishment of a right or liability. Consequently disclosure is expected only in relation to what is conveyed and not properties beyond the scope of the deed.

Perhaps no other Section in the Stamp Act has been interpreted more out of context

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1Bhilwara Spinners Ltd vs Collector of Stamps AIR 1998 RAJ 293 (300)
than Section 27. A plain reading of Section 27 would reveal that this Section cannot be read in isolation of the word “instrument” or the word “chargeable”.

Consequently Section 27 can be invoked only if:

a) there is an instrument  
b) which is chargeable with duty

An instrument as envisaged under Section 2(14) should necessarily mean a document by which any right or liability is or purports to be created, transferred, limited, extended, extinguished or recorded. Similarly chargeable would necessarily mean in relation to an executed instrument. Therefore what is expected under Section 27 is full and true disclosure of consideration and market value of property covered by an instrument. The revenue on the other hand is under the mistaken impression that it could draw into the sphere of Section 27 properties not covered by an instrument in the name of discovery of truth.

The revenue authorities are citing Section 27 as affording them a legal locus standi to inspect properties. With the powers of inspection expressly entrusted to the Collector under Section 47A and its concomitant Prevention of Undervaluation Rules 1968 it is anybody’s conjecture whether the revenue is justified in undertaking inspections in the name of Section 27 when there is no express authorisation therefor. Presently our quarrel is not about inspections. Whether the revenue is empowered to inspect PROPERTIES BEYOND THE SCOPE OF AND DE HORS THE INSTRUMENT CONCERNED?
Revenue’s apathy towards land “concealed?”

The answer to the aforesaid question is an obvious “NO”. Intriguingly even in their trespasses, the revenue will levy stamp only if they find building in excess of the extent in the document. For reasons best known to them they will not levy stamp duty or bother about any land in excess of the extent conveyed in the instrument. It is found by answers to questionnaires as appended hereto that the revenue would disregard the excess or the “CONCEALED?” land even if properly fenced identified and unmistakably handed over to the buyer. This blatantly arbitrary practice is persisting even till date notwithstanding legendary rulings of the Supreme Court.

Apparently Section 27 would not permit the aforesaid practice of the revenue due to the following reasons:

a) Section 27 does not dictate what should be conveyed or covered by an instrument.

b) Section 27 expects full and true disclosure of the market vale and consideration of property actually conveyed under the instrument. Consequently if a property, be it land or building, is left out of the instrument it cannot be charged any stamp duty because legally no interest is conveyed therein under the instrument.

A thorough study of judicial interpretations of this Section would confirm the aforesaid analysis. While there has been a shift from consideration to market value there has never been a shift from chargeability of an instrument to transaction.
Initially in the case of *Himalaya House Company vs CCRA*\(^1\) the Supreme Court held that the Section does not empower the revenue to make even an independent enquiry of the value of the property conveyed for determining the duty chargeable. However in the course of time the revenue authorities empowered themselves to even inspect the property. While Section 27 has not been amended to empower the revenue for inspection in Tamil Nadu, other states have made amendments to this Section empowering the revenue to inspect properties for arriving at the market value\(^2\). Tamil Nadu is legitimising inspections by the registering officers sporting the logo of Section 27. The lands are however inspected only by the Collectors under Section 47A.

**Revenue injunction from traversing the frontiers of an instrument:**

Notwithstanding the revenue having girded themselves with power to inspect properties, the rulings in *Bhilwara Spinners Ltd vs Collector of Stamps*\(^3\), *Government of Tamil Nadu vs Park View Enterprises (2001)(1)SCC 742*\(^a\), *Duncan Industries Ltd v State of UP , AG vs Brown*, *Bajaj Hindustan Ltd vs State of Rajasthan*\(^6\) and other cases do not in any case countenance charging of duty for properties which are not the subject matter and beyond the scope of instruments. Even in cases where the courts have approved inspections and chargeability of stamp duty according to the market value as arrived at by the

\(^1\)AIR 1976 SC

\(^2\)Vide Section 27 as amended by A.P Act 8 of 1998 ( 1-5-98)

\(^3\)AIR 1998 RAJ 293 (300) AIR 2000 SC 355

\(^6\)AIR 1997 RAJ 262

\(^a\) (2001) (1) SCC 742

\(^*\)AG vs Brown ( 1849) 3 Exch 662: 152 ER 1011
revenue, they have injunctioned the revenue from traversing the frontiers of an instrument. They have ordered the revenue to limit their inspections to properties covered by the instruments.

Illustration:

Land and building are stated as consisting of 1000 sq.ft., each in the instrument. As per the present position of law, the revenue is empowered to inspect the property and arrive at even a higher value if that is the market value of the aforesaid 1000 sq.ft., in their reckoning.

However on inspection if it is found that the land or building or the extent of both is MORE than the extent disclosed in the instrument the revenue cannot charge stamp duty for the excess portion of either the building or the land.

Simply stated, the revenue is not precluded from assessing the true market value of the property conveyed or covered by an instrument. For instance if the market value of the building covered by the instrument is falsely stated as Rs.1,00,000/- in lieu of Rs.2,00,000/- which is the truly transacted value the revenue will be justified in invoking Sections 27 and 64 of the Act. However when no right or liability is, or purported to be created transferred limited, extended, extinguished or recorded in respect of a LAND OR BUILDING in an instrument it will be ultra vires the provisions of stamp law to assess or levy stamp duty therefor.
It is a land mark judgement which has resolved conundrums in interpreting the fundamentals of the statute. It has inter-alia removed the general presumption by the revenue that in a sale of land even the superstructure thereupon is also ipso facto conveyed. The ensuing para of their lordships’ judgement would incisively clarify that land and superstructure can be owned by two different persons.

“(D) Transfer of Property Act (4 of 1882) Ss.8, 63-A, 108 (2) – Rule that whatever affixed to soil belongs to soil – Not applicable in India - Land and superstructure can be owned by two different person.

The maxim “quies quid plantatur solo, solo cedit” meaning that whatever is affixed to the soil belongs to the soil has no application in India. Rather, the Transfer of Property Act proceeds on the basis that in law ownership of a building is different from ownership in the land and that land and building could be owned by different persons in the eye of law. The reliance placed on Sections 8, 63-A and 108 (h) to show that maxim applies in India is misplaced. Section 63-A deals with improvements on mortgaged property by the mortgagee, and in the absence of contract to the contrary, upon redemption, except as to what are provided in sub-
Section (2), other improvements belong to the mortgagor. Section 108 (h) states that the lessee may, even after determination of lease, remove when he is in possession of the property leased to him, but not afterwards, things which he has attached to the earth. This also is subject to the contract or local usage to the contrary. These two Sections are confined to only two kinds of transactions, and clearly state that parties to these transactions, may contract to the contrary. By relying upon these two Sections it cannot be submitted that the concept that the owner of the land becomes the owner of the building as it comes up, is recognised in this country and, therefore, in law, building being an immovable property, ownership of it cannot be with different persons from that of the owner of the land. Even in the case of a mortgage or a lease or any transaction relating to transfer of interest in property it is open to parties to convey only such of those rights or interests which they choose to transfer and that when an owner of land only intends to transfer his rights therein, either as a whole or partly, he cannot be compelled to
part with his rights in the superstructure, if any, if he intends to deal with it separately. Ownership in land and ownership in superstructure could be with different person; provided there is a legal relationship existing between them as parties to a contract. Entry into the property by the owner of the superstructure must be after obtaining the lawful consent of the owner of the land. Whether the superstructure is of a temporary or permanent character, it is material relating to its ownership and merely because it gets erected on the land of another, automatically the owner of the land does not become the owner of the superstructure; if the intention of the parties is otherwise. Section 8 of the Transfer of Property Act only deals with a right which the transferor had and when capable of passing in the property on the date of transfer which would get transferred to the transferee, if no contra intention is expressed or necessarily implied. When the owner of the land is not the owner of the building, this Section cannot be relied upon”.

Their Lordships have finally given a quietus to the issue by concluding thus:

“When a sale deed with a clear intention that only a share in the land is conveyed, and that there is no transfer of interest between the parties in relation to the building,
if any, found thereon; then the chargeability to stamp duty could be confined only to
the market value of the share of the land and no other. Article 23 alone will apply.”

**S.C. Ruling Even Earlier:**

As far as the statement of extent of a building is concerned their lordships of the
Supreme Court have already ruled that building on a land “does not mean the entire
building” but only the building quantified and identified in the instrument⁴. The
concept of dual ownership, however, has been accepted in India even as early as
in 1866².

**C) CHARGEABILITY OF INSTRUMENTS VIS-À-VIS – SECTION 27 OF THE ACT:**

**COMMISIONER OF INLAND REVENUE VS ANGUS (1889) 25 QBD 579 AT P 589:**

“"The first thing to be noticed is, that the thing which is made liable to the duty is an
"instrument" ......... It is not a transaction of purchase and sale which is struck at ; it
is instrument whereby purchase or sale are effected which is struck at”

*It is not open to revenue to say that the instrument should be deemed to be that
which is not on the record and that the object of the transaction was to achieve a
purpose not disclosed in the instrument”.

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¹ "Smt Shaharyar Bano and another vs Sanwal Das”
² Thakore Chandar vs Rambhore 1866(6) W.R. 228 quoted in Narain Das vs Jatinder Nath 29 BOM L.R. 1143
COMMISSIONER OF INCOME TAX vs BHURANGYA COAL COMPANY AIR 1959

SC 254:

As early as in 1959, the Supreme Court considered the aspect of passing of title in an immovable property to the transferee.

"It was held that so far as the immovables are concerned, the title to them pass to the transferee only when the sale deed was executed and not when the agreement was concluded. The transaction, therefore, fell directly within the operation of Section 12-B of the Income Tax Act, 1922. So, far as the movable properties were concerned, the title to them pass when they were delivered to the transferee and that was on the date the agreement was concluded. And their sale fell outside the Section. Therefore, on the terms of the agreement and the sale deed the position was that while the assessee would be liable for tax and profits made with reference to immovables covered by the sale deed it would not be liable to tax in respect of profits attributable to the sale of movables of which delivery was given to them on the date of the agreement. On a consideration of two documents it was held by the Supreme Court that what was intended to be sold and what was actually sold under the sale deed were only properties mentioned in Part I of the Schedule as
immovable properties and not of the items included in Part II and the intention was to sell the fixtures of movables. In this view the question whether the movables have been validly sold did not really arise for determination because if the sale was invalid there was no sale so far as they were concerned and Section 12B would be inapplicable. Therefore it was held that it was only the profits in respect of the sale described in part I that were liable to tax u/s 12B.

BHARPET MOHAMMED HUSSAIN SAHIB VS. DISTRICT REGISTRAR, KARNOOL AIR 1964.

“In this case a three judge special bench of the A.P. High Court held that (1) "in revenue cases it is the letter of the law that should be taken into account and not the spirit or substance of it that should decide the classification of a document. It is the form not the substance that is relevant. (2) It is only the instrument that is presented for registration that should be charged with stamp duty. The AUTHORITIES CANNOT LOOK INTO VARIOUS DOCUMENTS THAT ARE CONNECTED WITH IT WITH A VIEW TO JUDGE THE NATURE OF THE TRANSACTION THAT IS COVERED BY THE DOCUMENT READ IN CONJUNCTION WITH SEVERAL OTHERS." (Emphasis supplied).

W.M.CORY & SONS Ltd vs INLAND REVENUE COMMISSIONERS (1965) 1 All ER 917:

In this case it was held that “the stamp duty payable on the instrument depends on the circumstances which exist when the instrument is executed.”
BAJAJ HINDUSTAN vs STATE OF RAJASTHAN AIR 1997 RAJASTHAN 262:

In this case their lordships have held that “valuation is to be made on basis of what was sought to be really conveyed through deeds. No fishing exploration is to be made as to other items without there being any specific mention thereof in the documents”. (Emphasis supplied)

Their lordships have further summed up the items conveyed under the impugned sale deed submitted for adjudication under Section 31 of the Stamp Act as follows:

“in so far as the conveyance deed dated: 1-12-1993 is concerned, the same transfers various hereditaments mentioned in Schedule 2. The properties covered by Schedule 2 have been valued by the Stamp Authorities. The Stamp Authorities have purported to value “List of Hereditaments not included in the list” for a larger sum. We do not think that we can assess what is really permissible or what is not, even though there may be some force in the arguments of the petitioners in this regard that the authorities have described the appurtenances as being “not included in the document” and such valuation may not be permissible in law because of the following reasons:

(i) The said conveyance deed shows what was transferred are the properties described in the Second Schedule, which have been referred to as “the said hereditaments”
(ii) At page 1 of the said conveyance deed it is again mentioned that what was sold were the said hereditaments "along with appurtenances whatsoever to the said hereditaments".

(iii) The habendum clause at page 12 states that the transferor would have and hold "the said hereditaments" which are covered by the said document.

"With regard to the other items of the property we would direct the respondents Nos: 5 and 6 to make a proper evaluation on the basis of our directions to the effect that what was really sought to be conveyed through the deeds are to be only looked into and no fishing exploration is to be made as to what other Articles/items were sought to be conveyed without there being any specific mentioning of the same in the documents."

From the aforesaid rulings it is clear that the instruments alone would specify the extent of and the property which is sold. The revenue shall not make a fishing exploration of what is conveyed in the document.

TENDENCY TO EXPLOIT RULING IN DUNCAN INDUSTRIES LTD., VS STATE OF U.P AIR 2000 SC 355

After the judgement in Duncan Industries Ltd vs State of Uttar Pradesh the Registering Officers in Tamil Nadu are exploiting the ruling in this case to short circuit the legendary ruling in "Park View Enterprises". A plain reading of the facts of

1AIR 2000 SC 355
Duncan Industries would show that the conveyance deed itself is clearly intending to convey the entire fertilizer business including Plant and Machinery vide para 10 of the judgement line 44 to 50. Plant and Machinery in this case were held to be immovable properties as they were permanently fixed to the ground\(^1\). The facts of this case should not be confused with cases wherein properties are not even referred to in the recitals.

Thus the sum and substance of this Section is that Section 27 would not permit the revenue to cross the boundaries of an instrument and undertake inspection of properties beyond the purview of the instrument. Even if the revenue detect properties in excess of the extent disclosed they cannot charge stamp duty simply because no title would pass to the claimant in respect of the uncovered portion. The claimant in respect of such properties would be in the same position as that of a person taking a property without any documentary evidence therefor. Section 27 read with Section 47A will come into operation and empower the revenue to inspect and arrive at the value only for properties covered by identified and conveyed under or otherwise dealt with in the instrument.

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\(^1\) Reynolds vs Ashby and son (1904) AC 466, Official Liquidator vs Shri Krishna Deo AIR 1959 ALL 247
Building Inspection / Unleashing the terror of market value under Section 27:

Hitherto the S.R.O was computing stamp duty and fees for the particulars of building disclosed in the annexure to the conveyance deed. Later in the late eighties they realised that if buildings are inspected additional revenue could be generated. Unmindful of the limits of applying Section 27 and 64 they resorted to inspection of buildings in the name of Section 27 and 64. This way they have been collecting about 70 crores annually. However owing to this process after registration the parties are put to acute discomfiture. Countless man hours are spent on building inspections. The public are constrained to wait for at least three weeks for delivery of document not to mention their time spent on attending to inspection of buildings paying the deficit duty and compounding fees. While it is true that there is additional revenue generated, the PWD rates are arbitrary and discriminatory. In the interests of the public, this building inspection may be abandoned without prejudice to the revenue by innocuous instructions to the public on disclosure of buildings.

D) SECTION 27 AND ITS IMPACT ON ASSESSMENT OF DUTY FOR BUILDINGS

The statute as it is applicable to Tamil Nadu does not authorise the Registrars of the Registration Department to undertake inspection of buildings. If the Registrar has reason to believe that the true market value has not been set forth the only course
open to him is to refer the document u/s 47A(!) to the Collector. Even this reference shall in the form of a speaking order make out a prima facie case of undervaluation with an intent to defraud the revenue.¹ Alternatively it would permit the Registrar to initiate prosecution u/s 64 of the Act ². Instead of seeking powers to arm the Sub-Registrars to inspect and arrive at the building value, it would be still better to dispense with building inspections by introducing built in checks against understating the extent of the building. The present situation is such that the parties would be scared to understate the building extent if they are made to understand that serious legal consequences affecting their title would follow. Primarily if they are asked to give a mandatory declaration in relation to the actual extent of building conveyed stating that the remaining extent if any, will continue to vest with the Vendor, it would daunt them from concealing the actual of extent of the building. If this declaration is appended to or included in the 1A statement³, then no party would dare to do this for fear of the Vendor making a posthumous claim. It is also stated by lawyers that in certain rent control cases, the tenants succeeded in holding on to their tenements on

¹S.P.Padmavathi vs State of Tamil Nadu AIR 1997 (MAD D.B) 296
²Bhilwara Spinners Ltd vs Collector of Stamps AIR 1998 RAJ 293 (300)
³Form I A appended to furnish particulars asper T.N Prevention UnderValuation Rules 1968
the ground that they had not attorned their tenancy in favour of the buyer or that the property continued to be with the Vendor and not sold as claimed by the Plaintiff. This they did by citing the 1A statement of the Sale Deed in which certain sellers had deliberately understated the extent of the building of the property.

In the case of "Smt Shaharyar Bano and another vs Sanwal Das" the SC has clearly ruled that house or building does not mean the "entire building".

When the Civil Courts refuse to take cognizance of building not transferred by the Sale Deed, there is no moral or legal justification for levying Stamp Duty for property not conveyed. Strangely enough the department does not levy stamp duty for land if it is in excess of the extent covered by the sale deed. This clearly proves that chargeability is confined to specified extent of the property identified in the deed of conveyance.

**INDIAN EVIDENCE ACT AND THE INDIAN STAMP ACT:**

According to Section 91 of the Indian Evidence Act "When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such
contract, grant or other disposition of property, or of such matter, except the
document itself, or secondary evidence of its contents in cases in which secondary
evidence is admissible under the provisions hereinbefore contained.

**Exception 1:** When a public officer is required by law to be appointed in writing,
and when it is shown that any particular person has acted as such officer, the
writing by which he is appointed need not be proved.

**Exception 2:** Wills admitted to probate in India may be by the probate.

**Explanation 1:** This Section applies equally to cases in which the contracts,
grants or dispositions of property referred to are contained in one document and
to cases in which they are contained in more documents than one.

**Explanation 2:** Where there are more originals than one, one original only need
be proved.

**Explanation 3:** The statement, in any document whatever, of a fact other than the
facts referred to in this Section, shall not preclude the admission of oral evidence
as to the same fact."

Viewed in the context of the aforesaid Section it is clear that when terms of a
contract are reduced to writing no oral or extraneous evidence is possible.
Consequently if the extent of land or building or any other immovable property
agreed to be sold is specified and recorded in writing in an instrument the claimant
there under cannot claim any more than what is conveyed therein. Any such claim de hors the document based on oral evidence or the inspection report of the revenue cannot be sustained in the eyes of law. Section 27 and Section 2 (14) of the Indian Stamp Act 1899 do not make any departure from the principle as contained in Section 91 of the Indian Evidence Act.

A deed of conveyance is a matter required by law to be reduced to the form of a document as envisaged in the aforesaid Section. "Whereby any matter is required by law to be reduced to the form of a document, then the document itself must be put in evidence, e.g., deeds, conveyances of land, mortgages, wills, etc. No other evidence can be substituted so long as the writing exists."  

The principle thus enunciated is that "When a transaction is reduced to writing either by agreement of the parties or by requirement of law, the writing becomes the exclusive memorial thereof, and no evidence shall be given to prove the transaction, except the document itself or secondary evidence of its contents where such evidence is admissible."

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1 Narsi vs Parshottam, (1928) 30 BOM LR 1277: 52 BOM 875
2 Sir Sayaji Rao vs Madhavarao, (1928) 30 BOM LR 1463 : 53 BOM 12
3 The Law of Evidence by Ratanlal and Dhirajlal Page 269 and 270
E) SUGGESTIONS TO RESTORE LEGALITY IN CHARGING INSTRUMENTS UNDER STAMP LAW:

Notwithstanding absence of any land inspection to detect concealment, none of the purchasers understates the land area because of the fear of defect in passing of title. The buyer would make sure that the entire land is conveyed. However in the belief that the building upon a land would automatically be conveyed, the parties engage in the adventurism of understating the building extent and avoid Stamp Duty. Therefore, to avoid building inspection and still safeguard the revenue due to the Government, the following steps may be taken.

1. **The executant shall declare that the extent conveyed is only the extent specified:**

In the annexure IA furnished as required under Tamil Nadu Stamps (Prevention of Under Valuation Rules 1968) there shall be a provision for declaration in relation to the exact extent of building covered or conveyed by the deed concerned. The declaration shall be such that it shall clearly state that the building extent as disclosed in the deed alone is transferred to the buyer and the remaining if any will continue to vest with the Vendor. If this is done, it would pre-empt the possibility of any under statement / concealment of the extent of the building in the document.

2. **Patta / Khata (Karnataka) should provide for entry of building extent conveyed:**

While effecting transfers in the Revenue Registry, the Revenue Registry should be directed to make an endorsement of the extent of the building as contained in the
Sale Deed in the Patta/ Khata/ Assessment Card and the accompanying papers so that the buyer will gradually be discouraged if not totally precluded from understating the extent of the building in the Sale Deed. The fear of posthumous claim by the predecessor-in-title will continue to haunt him.

3) Random checking to be confined to assessing only the value of the extent of the building or land conveyed by the instrument:

In spite of these measures, if the understatement persists, the authorities may resort to random checking. This checking shall be confined merely to assessing the real value of the extent of building/land covered by or conveyed under the instrument. In response to questionnaires as appended hereto 80% of those interviewed opined that the aforesaid measures would check 100% under statement of buildings.

Legal Consequences ~ No Loss to Revenue – Immediate return of documents will become a reality:

The aforesaid mandatory declarations would ensure that there is a complete disclosure of the building actually sought to be conveyed in the document. Since, the Registration Department cannot collect Stamp Duty for the property which is not covered by the Sale Deed (vide Park View Enterprises vs. State of Tamil Nadu), no loss of revenue will result therefrom. The building can be valued on the table of the Sub Registrar based on the disclosures of the parties concerned and released immediately after registration. For buildings exceeding the value of 20 lakhs, there
could be a random check by the Registering Officers just to ascertain whether the market value of the property covered by the instrument has been TRULY stated or not.

**Criteria for valuation of buildings disclosed in the instrument:**

The present PWD rates are unjust yardsticks/criteria devices to assess buildings. These days those buying a building more than 20 years old tend to demolish the building and reconstruct one in its place. The attitudinal change and the low defacto value of buildings warrant a fresh look at the criteria for building value. Excepting RCC buildings and buildings constructed within a period of 40 years, all the other buildings can be accepted at the value as estimated by the parties concerned. As for the buildings constructed within the immediately preceding 40 years, the depreciation rate should be a minimum of atleast 3% for all types of buildings and this depreciation should be allowed for even compound walls and amenities of the building. Staircase should not be valued separately. Sun shades and temporary structures like light roofs, etc should not be valued. Glazed tiles affixed on walls should not be taken into account. In utter disregard for the full bench ruling in the case of *CCRA vs H.B.Devaraj*, Coonoor that the expression “land” carries with it all the fixtures there to like trees, plants crops and the like, the

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*AIR 1970 MAD 290 (FB)*
Department estimates the value of a coconut tree as Rs.1000/- per tree regardless of its potential to yield nuts. This is illegal. Trees should be ignored for purposes of valuation. There shall not be any value for thatched huts and tents. If these reforms are implemented building valuation can be done on the table of the registering officer in accordance with the principles of equity. Consequently chargeability could be restored to its original purview of instruments.

In this busy world of twenty first century, withholding documents for weeks together for building inspection at the cost of several man hours being spent therefor will be an economically regressive measure. Hence it is time these formalities are given up without prejudice to interests of the revenue. Only then the modern aspirations of the people could be fulfilled.
APPENDIX - 1

QUESTIONNAIRE

TO BE ANSWERED BY CIVIL ENGINEERS / LAWYERS / CHARTERED ACCOUNTANTS AND REGISTERING PUBLIC

1. Are you aware of the inspection of

   buildings by the stamp authorities

   posthumous to registration of

   documents in Tamil Nadu?  Yes ☐  No ☐

2. Have you ever attended to been witness

   of or otherwise involved or participated

   in a building inspection conducted by the

   Registration Department?  Yes ☐  No ☐

3. In the light of the Supreme Court ruling

   that only properties covered by or conveyed

   under documents be reckoned for stamp duty,

   if there is a provision in Form I A to the effect

   that “save the aforesaid building or the extent

   thereof as furnished herein no other portion is

   conveyed hereunder - do you think any purchaser

   will dare to conceal the extent of building conveyed?  Yes ☐  No ☐
4. Will any purchaser risk possession of a portion of or the entire building remaining with the Vendor for the sake of stamp duty? Yes ☐ No ☐

5. Will the Courts take cognisance of property not conveyed under the sale deed concerned particularly in rent control cases? Yes ☐ No ☐

6. Will the aforesaid provision in Form IA or similar endorsement elsewhere compel complete disclosure? Yes ☐ No ☐

7a) Will there any be need for building inspection after such an endorsement or provision in Form IA? Yes ☐ No ☐

b) Have the officials ever charged stamp duty for the excess land not covered by the instrument but apparently conveyed to and occupied by the Purchaser? Yes ☐ No ☐
8. Will there be any loss of revenue to the State if building inspection is abandoned after the aforesaid provision?  
Yes ☐  No ☐

9. Will a corresponding entry of the building extent in the Municipal registers at the time of effecting mutations discourage concealment of actual building conveyed?  
Yes ☐  No ☐

10. The present PWD Rates are considered very high by the public. Do you think the rates as suggested in the appendix hereto would be a compromise between the demands of revenue and public convenience?  
Yes ☐  No ☐
APPENDIX -2

SUGGESTED PWD RATES FOR BUILDING INSPECTION IN TAMIL NADU

1. Structure with only 3 floors
   including Ground floor (G+3)

I. RCC
   i) Ground floor, First, Second and Third floors
      330  310  265
   ii) Mezzanine Floor, Cellar, Parking Place
       250  230  210

II. Structure (Ten - storied and above).
   3 floors (including ground floor)
   i) Ground floor, 1st, 2nd, 3rd and 4th floors.
       360  330  310
   ii) 5th Floors and above
       410  380  350
   iii) Cellar, Mezzanine floor, Parking Place.
       260  240  220

III. Open terraces :- Adopt the rate of 7% of the site value (Market value of the land) for the area of open terrace.

2. Higher rise structures with
   250  230  210

ACC/ Tin / Zinc sheets such as Cinema Halls, Mills, Factories etc.
with walls exceeding 10 sheet height.

3. ACC sheet, pantile, Shabad stones

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TIN sheet, Zinc sheets, Tiles,
Mangalore tiles Cuddapah slab,
Jack Arch, Madras terrace roof and
such other non RCC roofed structures.

4. Mud roof

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5. Thatched houses (Roof with Plam) Coconut tree leaves / Grass)

1. With walls

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2. Without walls

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The above rates are inclusive of cost of amenities and exclusive of site value.

6. Rates for unfinished Structures:

   i) Upto foundation level 25%
   ii) Upto lintel level 40%
   iii) Upto slab level 60%
   iv) Upto finishing level 80%

7. Rates of depreciation allowed are as follows:
FOR ALL STRUCTURES

age of the Structure

1) 1 TO 20 YEARS

Nil

2) 21 YEARS AND ABOVE

1% per year over & above 20

years subject to a maximum of

40% Claims of depreciation for

buildings quoting the age As above

50 years shall be allowed only

subject to the production of evidence

to the satisfaction of Registering

Officer.

Old rates fixed in August, 2000.

REMARKS