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CHAPTER 13
TAMING OF LEVIES AND ECONOMIC PROGRESS

A) IMPACT OF PROPOSED REFORMS ON ALLIED LEGISLATIONS

Fiscally Progressive Step:

Defying traditional apprehensions of fall in revenue, the Tamil Nadu Government has slashed down the burgeoning rates of Stamp Duty. It scaled down the rates for conveyance on 21-11-2003¹, mortgage and power of attorney (for consideration) on 12-2-2004² and lease, settlement, partition, release and dissolution on 16-12-2004³. The last lap of reduction involved amendment of the relevant Articles and hence required and received the assent of the President. Palpably it is politically guileless and purported solely to fortify the infrastructure and invigorate the economy. Ever since the advent of Stamp Law in 1899, no Government in Tamil Nadu has dared to tame these levies fearing revenue loss. Though Tamil Nadu has emulated Karnataka and Maharashtra in its march to prosperity, its intrepid and unprecedented decision to implement Raja Chelliah Committee’s recommendation is unique and deserves special commendation. The Chief Minister has, with the inputs from the Inspector General of Registration and Secretary acted with zeal in deciding upon this key fiscal issue fraught with pecuniary consequences.

¹ G.O. Ms No:177/CT Department / dt: 20-11-2003 w.e.f. 21-11-2003
² G.O. Ms No:47/CT Department / dt: 12-2-2004 w.e.f. 12-2-2004
³ Gazette extraordinary No:297 of 2004 dt: 25-11-2004 w.e.f.16-2-2004
Boon to Financial Institutions and Bankers:

From a harsh 14%, the Stamp Duty and Fees for conveyance have been reduced to a tender 9%. Release, Settlement and Partition will henceforth suffer only a gentle levy of 1% on the market value subject to a maximum of 10,000/- towards stamp duty and 1% towards fees subject to a maximum of Rs.2000/-. Hitherto the stamp duty for Release and Settlement was 5% (including registration fees) on the value set forth and for Partition it was 5% (including registration fees) on the market value of separated shares. Similarly only 1% on the rental value will be levied for deeds of lease. The summum bonum is the reduction from 5% to 1% proposed for the already money starved mortgagors/ borrowers under a mortgage deed. They will not suffer the wounding lashes of 5% levy any more. Banks and Financial Institutions can henceforth create strong securities.

Increase in Revenue:

Even within a few months after the first phase of these historic reductions, the annual revenue of 1648 crores grew upto 1750 crores\(^1\) with a promise of a bonanza in future. The number of registrations without under valuation increased substantially.

\(^1\) Demand details 2004-2005 Registration Department
Social harmony and elimination of arbitration by criminals:

Socially, a soft stamp levy for instruments executed within the family would sustain harmony among its members and obviate vexatious civil litigations. A substantial number of civil suits relate to partitions because people hesitated to specifically partition properties and have them registered due to the daunting 5% on the market value. They bypassed mandatory registration by unregistered Memoranda/Koorchits. Now that the State Government has reduced stamp duty for registration of documents relating to transactions within the family every property division and settlement will be clearly demarcated documented and registered. Consequently there will be steep fall in court litigations. Besides properties will not stagnate for legal clearance on account of internal family squabbles. Alienation will become free and the number of transfers of property will increase. The most salubrious impact will be the death knell for extra constitutional courts constituted by rowdy elements, which were mediating and adjudicating upon family property disputes. The root cause for all these disputes had been the hesitancy of the elders to settle or partition properties through registered documents for want of funds. Hence they resorted to unregistered documents and Wills. Wills were always assailed by those legal heirs deprived of the bequest or given a raw deal. With the reduction in stamp levies and registrations having become simple and inexpensive there will be:
a) Clarity in title and documentation as per the Transfer of Property Act 1882

b. Increase in registrations under the Indian Registration Act 1908

c. Social harmony due to cessure of family and tenancy disputes

d. Proper identification, demarcation and description of properties

e. Steep fall in civil litigations and consequent relief for civil courts

f. Substantial improvement in law and order situation owing to vanishing of extra constitutional courts

g. Transparency in sale transactions and increase in authorised borrowings

h. Increase in disclosure of Income from House Property and consequent boosting of revenue to the Income Tax Department

**Income Tax Act 1961 and T.N. Buildings Lease and Rent Control Act 1960:**

The enforcement of the Income Tax Act 1961 and The Tamil Nadu Buildings(Lease and Rent Control) Act 1960 will be aided substantially by registration of all transactions particularly those of sale and lease. While sale deeds will make avowed disclosures of market value, registration of lease deeds will testify to the actual terms of demise of the property concerned.
Transfer of Property Act 1882:

Henceforth all the documents could be drafted strictly in accordance with the provisions of the Transfer of Property Act 1882. Hitherto people chose Memorandum relating to deposit of title deeds in preference to regular deeds of mortgage to save on stamp duty. However the Mortgagees could not bring about auction sale of these properties u/s 69 of the Transfer of Property Act. This entailed severe risks to the lenders. Now however lending and borrowing could be done without worrying about stamp duty and registration fees for mortgages.

Article 6(1)(a)¹:-

This article will be very useful for small scale lending institutions and registered chit fund companies. The sumnum bonum of the security of immovable property under this article is the registration of deed appearing in the Encumbrance Certificate and the original title deeds with the Mortgagee. The maximum amount of stamp duty and fees even for a loan of a crore of rupees is only Rs.5000/- (Stamp Duty) + Rs.1000/- (Fees).

Article 40(b) ¹:

Institutions and Lenders intending a vice like grip over the property may opt for regular simple mortgages which will entitle them to sell the city properties without any intervention from the courts. The Securitization Act 2002 coupled with a nominal stamp duty will be a great boon for the banks. Henceforth orthodox transactions of lending and borrowing will multiply and usurious money lending will decline steeply.

¹ G.O Ms No: 47 C.T Department dated: 12-2-2004
Indian Succession Act 1925:

In future there will be very few petitions for probate of a will. Elders will henceforth choose to settle properties directly in lieu of bequeathing them to their relatives. Most of the probate petitions languish in the Courts due to contest by those left out or discriminated in the Will. This has led to testamentary original suits, which have ruined both the persons and properties concerned.

Settlement and partition deeds will pre-empt posthumous quarrels and need for probate. Municipal bodies and other public utilities would take cognisance of the documents sans any further confirmation or certificates from the Courts.

Commentary on short-comings of the amendment made to Article 35, 45 and 46:

Any bold innovation in the interests of the public is bound to suffer criticism owing to minor discrepancies. The aforesaid amendment is no exception to this general rule. Article 35 has simplified the text but not the levy. Article 45(a) and 46(b)(ii) apply only to family members as contemplated under Article 58. Article 55 is vulnerable to ambiguous interpretations and qualified as inapplicable to relinquishments effected between brothers and sisters. This means a partition between brothers and sisters cannot qualify for concession of duty under these Articles. The vices of this amendment have been discussed in detail in Chapter 4 and 11. The corresponding articles of lease, partition, release and dissolution of the Karnataka Stamp Act 1957 and Bombay Stamp Act 1958 which are specimens of logic and reasonableness in
content and levy, may be emulated for eliminating the arbitrariness and confusion in the aforesaid Articles of 35, 45 and 46.

Other Reforms proposed:

The other reforms proposed in the concluding paras of the forgoing chapters are bound to resurrect rule of law and usher in an era of compliance by the public and wholesome revenue for the State under the Stamp Act.

B) COMMENTARY ON MODEL LEGISLATION

Indian Stamp act ~ Draft published in May 1999*:-

The model legislation as proposed by the Central Government is a delight for the revenue and disappointment for the public. It has armed the revenue but harmed the public. It has miserably failed to accommodate judicial rulings on market value and the twenty first century imperatives of Indian economy. The contradictory use of the term “true market” and “correctness of market value” continue to bemuse the understanding of the basis of valuation of immovable properties. Sections 29(1) 34(2), 51(3) are inconsistent in their substance and intent. So are the Articles relating to market value. The same infirmities in Sections 27, 31 and 47A(3) and the Articles concerned of the erstwhile act have recurred in the proposed model legislation. The Act has only projected the rights of the revenue as sacred. It has precious little to offer as appellate remedies; it has girded the revenue with draconian teeth to punish the public with rigorous imprisonment upto three years. Chapter VIII is an arsenal for

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* National Institute of Public Finance and Policy, New Delhi – 110 067
the Collector to pounce upon the public for violation of arbitrary and unconditional provisions.

The model legislation has autographed the concept of market value as envisaged by the existing act and adopted it into its definitions u/s 2 (23). It has short-circuited the legendary judgement in "Adanki Narayanappa's case 1" by defining transfer of personal property to the firm as conveyance u/s 2(12). Even Memoranda of Family Arrangement or other records of partition have been roped in for a charge under the act. There is a hyper enthusiasm writ on the face of the proposal to plug revenue leakage. However there is only utter insouciance to the modern aspirations of the public. There is no provision for time bound disposal of assessment. There are no answers for questions of appeal. Inspite of the vivacity of the levying mechanism, the appellate system endures with the executive.

In short the model legislation is only an expression of the aspirations of the revenue. Obviously it has been scripted by a bureaucrat. Whatever little the courts have done to alleviate the sufferings of the public, the proposed act has substituted by amendments. Arbitrariness, unfairness and unreasonableness have acquired a new lease of life in the proposal. There is no scope for rule of law to survive under the new dispensation. This model legislation is equally guilty of all the charges of

1AIR 1966 1300
prejudice typical of the existing law. It will not be incorrect to state that this law will only worsen the state of affairs of the economy of the country. It is the same old legislation lethal in content with a cosmetic cover up of additional Sections.

**The Tamil Nadu Stamp Act:**

This proposal is aimed at eschewing the long period of waiting for the Presidents’ assent to effect amendments passed by the State Legislature. It is a specimen legislation by, for and of the executive. The department officials have compiled the draft. It is an assortment of provisions from the Stamp Acts of other containing only pro-revenue provisions; the truth of market value has been rejected. Instead market value would continue to be based on the opinion of the Collector. There is an earnest attempt to substitute stamp papers by other modes by challan, demand draft and cash. While market value has been defined as the opinion of the Collector Section 31 (the modern version of Section 27) continues to insist upon full and true value. The department has been empowered to inspect the property and check against concealment.

Section 32 (the counterpart of 47A) is paradoxical in its content. It has made guideline value and the market value synonymous with each other. If the party’s value is equal to that of the guideline value the Registering Officer will be constrained to register the document even if it is not the true market value. Presently the guide line value is just intended to ascertain the true market value. Consequently
the revenue will lose duty if the guideline value of a particular property is less than
the actually transacted value. This is a confounding conversion of Section 47A into
Section 32 and a miserable attempt to circumvent the ruling in S.P.Padmavathi’s
case.

Section 32(3) suffers the same contradiction and impaired logic as contained in the
present Section 47A(3) of the Indian Stamp Act. Real appellate provisions have not
been considered. This act is devoid of any appellate relief for the public.

By way of explanation to Article 21 (the counterpart of Article 23) the proposed Act
has short circuited the supreme court judgement in Park View Enterprises¹ and
S.P.Padmavathi vs State of Tamil Nadu². Instead of upholding the rule of law the
state legislature has sought to launder illegality by way of an amendment without
realising that any act be it central or state has to survive the test of constitutional
validity. The explanation to this Article clearly offends the provision of Transfer of
Property Act 1882, chargeability under Section 2(6) of the Stamp Act and Article 14
of the Indian Constitution. This Article is redolent of a bureaucratic yearning for
revenue.

¹ AIR 1990 Mad 251
² AIR 1997 Mad 296
Certainly only those utterly ignorant of the basic tenets of the Indian Constitution and rule of law would have proposed this explanation. The G.O relating to inter corporate transfers has been blindly incorporated sans any elaboration in the class of documents exempted under Article 21. Section 33(1) (the counter part of Section 47B) is contradictory to Section 2(14) of the Indian Stamp Act 1899. It begins with the word “instrument” and elaborates on the legal implications of an instrument. There is a legal presumption raised that an omission of a survey number would ipso facto lead to creation transfer limiting extension extinguishment or recording of a right or a liability.

Instead of simplifying 47B, the proposed Section 33(1) is confusion worst confounded. No statute can be semantically fool proof. It should be worded so directly and austerely that it is least susceptible to ambiguity. Questions of law are sure to be raised. The statute should provide for expeditious appellate remedies in case the law is challenged. Section 37 is grammatically incorrect, anomalous in content and weak in law. It has barred prior adjudication of documents chargeable the market value of the properties conveyed or otherwise dealt with by them.
Section 52 is a welcome proposal. It has eliminated the lacuna in the existing Section 45 of the Act. The Tamil Nadu Stamp Act is an apology to rule of law. With the confectionary of concessions for just transactions within the family it is a disappointment on all accounts. It is estranged from neutrality in appellate remedies and adherence to the rulings of the Supreme Court. This proposed state legislation suffers in contrast to the positive outlook and human face of the Bombay Stamp Act 1958. The proposals for extracting undue revenue reek of revenue bias. The textual jugglery / manipulation to bypass Supreme Court Rulings reveals the gaping ignorance of the fundamental principles of law and legislative drafting of the adventuristic authors of this draft.