‘The art of taxation is so plucking the goose as to obtain the largest amount of feathers with the least possible amount hissing.’

J. B. Colbert.

9.1. Instruments under Gujarat Stamp Act, 1958

Schedule I of the Bombay Stamp Act, 1958 comprises of 59 instruments that are chargeable to stamp duty as provided under section 3 of the said Act along with exemptions as contained therein. The 59 instruments are indicated in the form of articles under Schedule I.

Broadly, the 59 articles of Schedule I can be grouped in three categories:

Category I: - Articles whose amount of Stamp duty is fixed irrespective of the value mentioned in the instrument. (for example, administration bond, adoption deed, affidavit, divorce, appointment in execution of power, apprenticeship deed, article of clerkship, award, cancellation deed, partnership deed, copy of extracts, entry of memorandum of marriage, indemnity bond, letter of license, memorandum of association of a company, notarial Act, power of attorney).

Category II: - Articles where depending upon the value mentioned in the document, the amount of stamp duty is varied (such as agreement relating to deposit of title deeds, pawn, pledge or hypothecation, clearance list, article of association, mortgage deed, security bond.)

Category III: - Articles which attract stamp duty on the consideration mentioned in the document or True Market Value, whichever is higher (such as conveyance, agreement for sale, lease, gift, exchange, partition, development agreement, transfer, trust.)
For category (I) and category (II) types of instruments the stamp duty payable can be ascertained by referring to the Schedule I; but to ascertain the Stamp duty on the instruments mentioned in Category III, the expertise in valuation is required. The True Market Value is determined as per the provision of the Bombay Stamp (Determination of True market value of the Property) Rules, 1984.

9.2. Valuation under Bombay Stamp Act, 1958

There was no provision in the Stamp Act empowering the revenue authorities to make an enquiry of the value of the property conveyed for determining the duty chargeable. In order to meet the situation, Section 32A was inserted to empower the revenue authority to determine the market value of the property which is the subject matter of the conveyance, exchange, gift, certificate of sale, partition, partnership, settlement and power of attorney to sell immovable property. The scheme of section for valuation is to deal with those cases where private parties by arrangement clandestinely undervalued the property with a view to deprive the Government of legitimate revenue by way of stamp duty.\(^\text{149}\) Legislation on stamp duty includes a provision to check for evasion thereof and in that process may also include the procedural provision for plugging the loopholes and the manner in which the evasion of duty has to be prohibited, Section for valuation has been enacted to neutralize the effect of under-valuation in an instrument.\(^\text{150}\)

The object underlying for valuation provision in Bombay Stamp Act is to neutralize the effect of under valuation of the immovable property conveyed under registered instrument of sale, or exchange, or gift, or partition or settlement.\(^\text{151}\) For attracting provision of valuation, it is not enough to show that the consideration stated in the instrument of sale etc. is less than the prevailing market value. It must be further shown that it is a case of under-


\(^{150}\) Umesh Thakur v. State of Bihar, 1994 (1) PLJR 727.

\(^{151}\) K. Sivaramaiah v. Special Deputy Collector, Urban Cuddapah, 1989 (1) ALT 546.
The main object of enacting the provision of valuation is to recover stamp duty and if stamp duty on the instrument has already been paid while executing a sale deed, it must be held that stamp duty payable on it in terms of legal fiction created under Section 47A of Indian Stamp Act, 1899. The same principles are applied for similar provisions provided in Section 32A of Bombay Stamp Act, 1958.

9.2.1. Section 32A of Bombay Stamp Act, 1958

32A. Determination of market value of property, which is the subject matter of conveyance, etc.:

(1) Instrument of conveyance, exchange, gift certificate of sale, partition, partnership, settlement or power of attorney or to sell immovable property when given for consideration or transfer of lease by way of assignment presented for registration under the provisions of Registration Act, 1908 shall be accompanied by a true copy thereof; and the statement in such form as may be prescribed by rules] and if an officer registering such instrument under the aforesaid Act or any person referred to in section 33 before whom such instrument is produced or comes in the performance of his functions, has reason to believe that the consideration set forth therein does not approximate to the market value of the property which is the subject matter of such instrument, or as the case may be, the market value of the property which is the subject matter of such instrument has not been truly set forth therein, he [shall before registering the instrument or as the case may be, performing his functions in respect of such instrument refer the Instrument or true copy thereof to the Collector of such

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154 Sections 32A and 32B were inserted by Guj. 21 of 1982, 8.14.
155 Sub-section (1) was substituted by Guj; 13 of 1994, Section 7(1).
156 These words were inserted by Guj. 19 of 2001 Section 3 w.e.f. 1-9-2001.
157 These words were substituted for the words "may either before or after" by Guj. 8 of 2000, s.2.
district in which either the whole or any part of the property is situated for determining the true market value of such property and the proper duty payable on the instrument under this sections].

158[Provided that for the purpose of this sub-section, the consideration set forth in an instrument executed by the State Government, the Central Government, a local authority, Gujarat Housing Board, Gujarat Slum Clearance Board or Gujarat Industrial Development Corporation, shall be deemed to be the true market value of the property which is the subject matter of such instrument;

2) On receipt of the instrument under sub-section (3) of 159[section 31 or instrument or true copy of instrument under] sub-section (1) of this section, the Collector of the district shall, after giving the parties concerned a reasonable opportunity of being heard, and in accordance with the 160[rules made by the State Government in this behalf; determine the true market value of the property which is the subject matter of the instrument and the proper duty payable thereon.

3) Upon such determination, the Collector of the district shall require the party liable to pay the duty, to make payment of such amount as is required to make up the difference between the amount of duty determined under this subsection and the amount of duty already paid by him and shall also require such party to pay a penalty 161[of two hundred and fifty rupees 162[of the amount of the proper duty or of the deficient portion thereof whichever is less] and on such payment, return the instrument to the officer referred in subsection (3) of section 31 or, as the case may be, subsection (1) of this section:

163[Proviso to sub-sec. (3) was deleted by Act No. 18 of 2004.]
The Collector of the district may, *suo motu* or on receipt of information from any source., within [six years] from the date of registration of any instrument referred to in subsection (1), (not being the, instrument upon which an endorsement has been made under section 32 or the instrument in respect 'of which the proper duty has been determined by him under subsection (3) or an instrument executed before the date of the commencement of the Bombay Stamp (Gujarat Amendment) Act, 1982) (Guj. 21 of 1982) call for examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the 'property which is the subject matter of such instrument and the duty payable thereon; and if on such examination, he has reason to believe that the consideration does not approximate to the market value. of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in subsections (2) and(3).

9.2.2. *Obiter Dictum: Section 32A*

Prior to amendment made in subsection (1) by Act. No.8 of 2000 with effect from 1/4/2000 Instrument of conveyance etc., chargeable with stamp duty according to 'market value' of property which is the subject matter of such instrument the registering officer had an option, even when such officer has reason to believe that the amount of consideration set forth therein does not approximate to the market value, to register it in the first instance and then initiate proceedings for determining true market value of such property. As a matter of practice the registering officers were registering such documents and thereafter were initiating appropriate action as provided in the scheme of the Act. However, with effect from 1/4/2000 under the amended provisions of subsection (1) when the Registering officer has reason to believe that the amount of consideration set forth in the instrument does not approximate to the market value of the property which is the subject matter of such instrument, it has now become compulsory for him to first initiate proceedings as provided for in sub-rule (2) of Rule 3 of the Bombay Stamp (Determination

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164 These words were substituted for the words "two years" by Guj.13 of 1994 Section 7(4)
of Market Value of Property) Rules, 1984 (BS Rules) and give the party concern intimation of "his belief" and when such party offers to the Registering officer the amount required to make up the proper duty he "shall accept the same and proceed as provided in section 40 of the Act" Only upon the endorsement of proper certificate by the Collector of the District under sec.41 of the Act on the said instrument and after receiving the same duly certified as aforesaid the registering officer will register the said instrument under the provisions of the Registration Act.

The procedure under Rule 3(2) & (3) and under Sections 40 & 41 of the Act would take its own time and, therefore, even after payment of difference, of stamp duty purchaser will get Index II in regard to registration of his document after long time.

Moreover, registering officer will require to take into consideration "Jantri" supplied to him and has no power to consider any other relevant factors such as (1) genuine agreement to sell entered into by the parties concerned, (2) leasehold right of lessee in the property which is the subject matter of instrument, (3) other encumbrances and numerous facts and factors affecting the market value of the property in question. Accordingly, in such cases inspite of full consideration amount paid by the purchaser to the vendor till the finalisation of "true market value" proceedings by the Collector, in appeal by the Chief Controlling Revenue Authority and, if necessary, Special Civil Application in the High Court; all these proceedings may take indefinite period of time, till then title to the property which is the subject matter of such instrument will not be transferred unto the purchaser and will continue to remain in the revenue and other government records in the name of the Vendor and in absence of public records of such sale transaction of the property in question in the concerned registration office as also in the revenue records purchaser will be at loss and being in potential danger of loss clear title to the property at the hands of unscrupulous vendor or middle man and by the time he tries to get justice in his case from the Collector of the District or at the Appellate level in deciding true market value of the property the said property may have become a disputable property.
Besides, presently when Banking institutions and other financial institutions provide generous housing loans against the security by way of Mortgage by Deposit of Title Deeds of the housing unit to be purchased by the Borrower, such institutions cannot disburse the sanctioned loan till the title to the property which is the subject matter of instrument in question is legally transferred unto the name of purchaser, borrower by registration of the sale deed in his favour and the sale instrument in question duly registered under the Registration Act and/or Index II thereto along with other relevant title documents are deposited with such banking or other financial institutions. In such a situation such purchaser or borrower has no other alternative but to agree to the "belief" of the registering officer as provided in Rule 3 and 4 of the Bombay Stamp Rules and without any arguments "offer" the amount of stamp duty worked out by the registering authority on the basis of Jantri provided to him.

Now that the aforesaid amended scheme of Sec. 32A, sub-section (1) of the Act has already come in force with effect from 1-4-2000, in the interest of genuine tax payers, it has become imperative for the State Government to satisfy in the first instance that

(i) in all cases such Jantri is prepared scientifically based on the "minimum value" and not on *ad hoc* bases; and
(ii) besides the Jantri, registering officers should also be required to consider several factors provided in Rule 8 of the Bombay Stamp Rules before formulating his "belief" in regard to market value of the property which is the subject matter of the instrument in question.

### 9.2.3. Evolution of Valuation Provision

In its judgement in the group of petitions SCA Nos. 2823/84, 3227/84 and 5673/84 the Gujarat High Court while dismissing these petitions have made the following observations;

"It was also contended that, as no time-limit is prescribed for initiating the action by the registering officer, it gives arbitrary powers to the registering
officer to initiate proceedings after lapse of unreasonable time and to harass the concerned person by misusing the provisions contained under Section 32A. In our view, this contention requires to be rejected because it is a settled law that powers under the statutory provisions are to be exercised within the reasonable period. The reasonable period varies in the facts and circumstances of each case and various provisions of the Act. It should be noted that under Section 32A(4) the Legislature has prescribed maximum period of two years from the date of registration of any instrument for initiating *suo-motu* proceedings by the Collector for examining the instrument for the purpose of satisfying himself as to the correctness of the consideration or the market value of the property which is the subject matter of conveyance and duty payable thereon. Therefore, in no set of circumstances the registering officer can exercise his power of referring the instrument to the Collector beyond the reasonable period (under S.32A). Not only this, the learned Advocate General has stated that the Superintendent of Stamps and Inspector General of Registration, Gujarat State, has issued a circular dated 7th December, 1991 to the effect that the registering officer should issue a notice within one month from the date of presentation of document for registration for payment of the amount of difference in stamp duty within one month from the date of receipt of the notice. If the difference in stamp duty is not paid he should immediately refer the case to the concerned Deputy Collector (Stamp duty - Valuation Department). The learned Advocate General further stated that the Deputy Secretary, Revenue Department, had informed that in rules 3(2), 4(2) and (3) appropriate time limit ranging from one month to three months would be prescribed. Considering the aforesaid statements made by the learned Advocate General and the amended provisions of the Act, in our view, even prior to issuance of circular 7th December, 1991 by the Superintendent of Stamps and Inspector General of Registration, Gujarat State, three months period can be considered to be reasonable period for issuance of notice by the registering officer under S.32A (1) read with Rule 3 clause (2) of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984. If the power is exercised beyond that period, then the order can be set aside unless the facts justifying delay are pointed out in light of the above observations of the Gujarat High Court, it seems the
following important amendments in the Scheme 01 Section 32A besides the other amendments have been made by the amendment Act.

1. Every instrument covered by the market value provisions of Section 32A, when presented for registration shall require to be accompanied by a true copy thereof. This provision, it was felt, has been incorporated in the statute with a view to eliminate delay in referring such instruments by the registering officer to the Collector under sub-section (1) of section 32A. However, it is understood that the amendment has so far remained in statute book only creating thereby one more formality of presenting such instrument for registration accompanied by a true copy, thereof, it has not served, it seems any useful purpose so far.

2. The amended scheme of section 32A also empowers registering officer to refer such instrument to the Collector before its registration. Prior to this amendment, instrument presented for registration but kept pending for registration owing many reasons such as failure of the concerned person to present along with instrument income-tax clearance certificate required under Section 230A of the Income Tax Act, 1961 or instrument found to be not duly stamped and impounded under Section 33 of the Bombay Stamp Act, 1958 etc., can be referred to the collector only after is due compliance which may take any period of time. Now under the amended provision, registering officer is empowered to refer certified true copy of such instrument pending for registration to the Collector under sub-section (1) and Collector can initiate action thereon under sub-section (2) of Section 32A.

3. Prior to amendment in sub-section (3) made in Act No. 4 of 1991, even where the amount of proper duty or deficit duty was less than Rs.250/-, the Collector was required to order fix amount of penalty of Rs.250/-. This anomaly has been removed.
9.2.4. Survey and Under Valuation

A Sample survey was conducted and questionnaire item no. 13 & 16 covered the question on the issue of under valuation of property. The detail of the questionnaire item no. 13 is as under;

**Question:** The system of determining the market value in case of immovable property –

**Response**

(a) Is very complex, it should be simple and transparent 146
(b) Does not reflect realistic valuation of the property. There should not be such provision in the Act 82
(c) Should be allowed the difference up to 25% between the determined market value and consideration amount 105
(d) Should allow the Government to purchase such property, at the mentioned price 63

- The questionnaires were sent to 601 persons, among those 408 have responded, 12 respondents have not answered this item.

**Figure 9.1:** Survey Response Graph for Item No. 13
**Majority Response:**

The system of determining the market value in case of immovable property is very complex; it should be simple and transparent.

**Observations:**

Majority respondents favour that the procedure for determination of the market value in case of immovable property should be simple and transparent. In fact, the option, “allowing the difference of 25% between the determined market value and consideration amount”, can also be envisaged as a transparent system. So there is no doubt that the system should be simple and transparent.

The questionnaire item no.16 is similarly asking the respondent to choose between scientific and transparent system and penal action as an effective way of maintaining the control over administrative system. The detail of question no.16 is as under;

**Question:** There is significant under-valuation of property for evading full payment of stamp duties, which one or more remedies. Do you suggest to keep control over under-valuation assessment?

| Response |
|-----------------|--------|
| (a) Determination of market value system should be made more scientific, transparent and made available to all | 206 |
| (b) Penal actions should be made more effective to keep control on the administration | 88 |
| (c) Rate of the duty should be reduced and duty should be levied on the value addition only | 73 |
| (d) Valuation method and procedures should be outsourced | 36 |

- The questionnaires were sent to 601 persons, among those 408 have responded, 5 respondents have not answered this item.
Majority Response:

There is significant under-valuation of property for evading full payment of stamp duties, to control over under-valuation assessment, determination of market value system should be made more scientific, transparent and made available to all.

The overwhelming response is for the transparent system. Obviously, it is the best answer for both the items of survey.

9.2.5. Implementation of Valuation Provisions

The Land Revenue Revision and Stamp Duty Review Committee (SDR Committee) constituted to examine the recommendations made by the Gujarat Taxation Enquiry Commission in its Report (1980), to amend the Bombay Stamp Act, 1958 to the effect that the basis of the stamp duty in regard to conveyance should be the market value of the properties involved in the instruments. In para 3.2 the SDR Committee have observed that the concealment of the actual amount of consideration passed from the purchaser to the seller in documents of conveyances is one of the major causes for making the stamp duties an inelastic source of revenue. To deal with this basic limitation the Commission have rightly recommended that the existing scheme of the Bombay Stamp Act, 1958 which provided for the levy of stamp duty on the basis of actual amount consideration should be amended to the
effect that the basis of the stamp duty in regard to conveyances should be the market value of the property involved in the sale document. The SDR Committee have specifically noted the following three points for the successful implementation of the amended provisions of stamp law:

(i) a valuation organization is built up for continuous valuation of properties situated in the State for preparing norms of minimum market values of properties for the use of Registering Officers;
(ii) norms of minimum market values supplied at regular intervals by the valuation organization are properly applied by Registering Officers; and
(iii) reference cases and appeals cases are promptly attended to and disposed of speedily by the competent authority as per the provisions of stamp law.

The SDR Committee have, as stated in para 3.3 of its Report, looked into the basic aspects of creating appropriate administrative machinery in the State to assess scientifically the market value of agricultural and non-agricultural lands and the superstructure standing on the nonagricultural lands for the purpose of preparing norms of minimum market values at regular intervals. To meet with this stupendous task, after a detailed study including studies of different available datas, it was found that more than 80 percent of stamp revenue was realized from the districts having major cities and on the said basis the SDR Committee have come to the conclusion that, to begin with, the administrative machinery may be created for preparing the norms of minimum market values of properties situated in the specified 13 cities and towns having population more than one lakh with their urban agglomeration.

Then the other question confronted by the Committee was how to organize the valuation machinery for preparing norms of minimum market values of the properties situated in the said 13 cities and towns. As specified in para 3.4 of its Report, the Town Planning and Valuation Department, to whom the Committee wanted to assign this work expressed the view that the Valuation Organization should estimate the market value of the individual property involved in the sale documents presented for registration. These views of the Department were based solely on the technical aspect of the proposed
amended provisions. The Committee, however, observed that the Town Planning and Valuation Department overlooked the following two basic aspects:

(i) that the amended provisions of stamp law should not become handle for the unscrupulous officials to harass the members of public presenting their sale documents for registration and open flood gates of corruption for petty officials; and

(ii) that the reference cases the actual estimation of the market value of the property involved in the sale document will be done by the Collector according to procedure prescribed by stamp law.

The Committee, therefore, did not agree with the views expressed by the Town Planning and Valuation Department. In order to achieve smooth and efficient administration of the amended provisions of stamp law, the Committee obtains the views of the Building and Communication Department which has put forward the following views:

On the basis of the classifications of superstructures and by dividing the given areas of a city! town in appropriate different zones for the purpose of arriving at reasonable market value of the land for the specified areas of zone, it will be possible to prepare a ready recknor which can be used by the Registering Officers to work out the minimum market value of the property involved in the instrument presented to him. The Department also proposed to prescribe a standard form, which parties executing the instrument shall be required to produce to enable the Sub-Registrar to work out the minimum market value on the bases of the norms furnished by the valuation cell.

The Committee considered the aforesaid views and decided to assign work to the Building and Communication Department and accordingly, the State Government created a Stamp Duty Valuation Organization Department in 1982 headed by the Superintending Engineer at State level and three Division Offices at Ahmedabad, Vadodara and Rajkot headed by the Executive Engineer, Assistant Engineer drawn from the Building and Communication Department.
9.2.5.1. Observations of Gujarat High Court

It is understood that the minimum values norms prepared accordingly by the Stamp Duty Valuation Organization Department were submitted before the Committee from time to time and which have been after due deliberations and consideration approved by the said Committee. In short these valuation tables prepared by the Stamp Duty Valuation Organization Department and approved by the Committee for most of the important cities and town prior to 1/5/1984, the date of which the amended provisions of Stamp Act have come in force, however, the said Amendment Act No. 21 of 1982 being challenged on various grounds by different Special Civil Applications and interim relief being granted thereon with effect from 14/12/1984 the Valuation Tables prepared in respect to 13 cities and towns for the use of the registering officers cannot be used for the long period of 8 years till the petitioners prayer for continuing the said interim relief rejected by the Full Bench of the Gujarat High Court on 9/5/1992 in the case of Gorva Vibhag Co-operative Societies Association v. the State of Gujarat reported in 33(1) GLR 654 (First Full Bench). Briefly in regard to the issues under reference the First Full Bench of Gujarat High Court have made the following observations:

1. The First Full Bench referred to the report of the Direct Tax Enquiry Committee constituted by the Government of India and observations made by the said Committee in para 2.208 of its Report is reproduced in the judgment which reads as under:

"It is worthwhile to refer in this connection to the institution of valuation office in the United Kingdom. The Valuation Office originally came into being for Revenue purposes, but over the years it has acquired such a reputation for efficiency and independence from both the Government authority and the tax payer, that it has become now the official organization for: ascertaining the value of land and interest in land for all the Government purposes generally. We at first examined the desirability of having a similar set up in India but came to the
conclusion that it would not be practical to have such an omnibus institution at the Centre for various reasons.”

2. Further, the submission made by the State in this matter also referred to in the judgment as mentioned below:

It was submitted that the Gujarat Taxation Inquiry Commission constituted by the State Government in the year 1978 in its Report submitted in the year 1980 suggested that for the levy of stamp duty on the basis of market value of the property involved in the instrument of conveyance Statewide valuation organization be set up for making a continuous valuation of non-agricultural properties particularly in urban areas. The valuation department would work out 'minimum values' for properties of different kinds in different localities in all the cities and towns. These 'minimum values' would in effect be conservatively estimated market values and would become the norms that would be given to registering officers.

The State Government thereafter constituted Stamp Duty Review Committee in 1981 to examine and report to the Government in regard to the major recommendations of the Commission pertaining to stamp duties. On the basis of the recommendations State Government created a Valuation Organization Department in 1982 headed by the Superintending Engineer at State level and three Division Offices at Ahmedabad, Vadodara and Rajkot headed by the Executive Engineer, Assistant Engineer drawn from the Building and Communication Department.

In the affidavit-in-reply, it is further pointed out that for the valuation of real properties the Stamp Duty Valuation Organization Department has resorted to established prevailing methods, that is, -

(i) Comparative method;
(ii) Valuation based on cost known as land and building method;
(iii) Belting method; and
Abstractive method also known as residual theory or rental method or income capitalization method.

In the final analysis the First Full Bench have made the following observations:

The Valuation Organization Department determines the value of the property in different zones and that valuation also would be subject to revision after lapse of certain time. It cannot be said that this exercise by the State Government is in any way illegal or arbitrary.¹⁶⁵

Before the Full Bench of the Gujarat High Court in the case of R.P. Dave v. Sub-Registrar, Rajkot 35(2) GLR 1222 (Second Full Bench) Valuation Tables prepared by the Stamp Duty Valuation Organization under the direct supervision of the Superintending Engineer were presented and in regard to the said Valuation Tables the Second Full Bench of the Gujarat High Court had made the following observations:

The valuation tables are the necessary guides to enable the Registering Officer to form a reasonable belief about the prima facie valuation or under-valuation of the property. It is the State wide valuation organization which has been set up for making continuous valuation which works out minimum values of properties of different kinds in different localities in all the cities and towns. These minimum values are conservatively estimated market values and are the guiding norms for Registering Officers. The Valuation Organization Department was established in 1982 at State level and Divisional level and the valuation of properties in different cities, different zones and localities was worked out by different methods and on consideration of that, the Full Bench, with emphasis, came to the clear conclusion that these minimum values, would in effect be conservatively estimated market values and would become the norms that would be given to the Registering Officers and upheld the validity of such valuation method.

¹⁶⁵ Gorva Vibhag Co-operative Societies Association v. the State of Gujarat, 33(1) GLR 654.
9.2.5.2. The Second Full Bench Further Observed:

One has to look at these valuations tables to really understand and appreciate as to what amount of effort is required for making such valuation tables. We have been shown such samples of Ahmedabad and Baroda. One book of such valuation table would run into hundreds of pages. It would deal with each zone, ward and street and indicate minimum values. These values are arrived at by following scientific methods.

The State Government which has constituted State wide Stamp Duty Valuation Organization Department headed by the Superintending Engineer at State level and three Executive Engineers at Divisional level for making continuous valuation of properties and the final outcome in the form of 'Valuation Tables' prepared by the said Stamp Valuation Organization Department were upheld and appreciated as also these values found to be arrived at by following scientific methods by the Second Full Bench. The Stamp Duty Valuation Organization Department headed by the Superintending Engineer was created to assess scientifically the market value of lands and superstructure standing thereon, but somehow, the said original machinery and the underlying concept for building such technically sound valuation department for attending to this work continuously has been, it clearly seems, dismantled by removing not only the technical head of department but technical divisional heads. The prevailing Stamp Duty Valuation Organization offices in the State are instead of attending to the work of continuous valuation of properties for which the department was constituted by the State Government now functioning as the district administrative offices of the Stamps and Registration Department under the revenue officers for attending the cases referred to by the registering officers under sec. 32A of the Act and other cases impounded under Sec. 33 as also enquiry cases under sec. 68 and to deal with such cases as per the provisions of sec. 39 of the Act. As a matter of fact the whole concept for which Stamp Duty Valuation Organization Department created for implementing the recommendations of the Taxation Enquiry Commission as per the proposal made in para 3.10 of the Report of the Stamp Duty Review Committee for preparing norms of
minimum market value of properties continuously for the use of registering officers has been, it is believed, somehow squarely lost in the middle.

It will be clearly seen that owing to dismantle of the Stamp Duty Valuation Organization Department which was constituted for the purpose of making continuous valuation of property 'last ASR' was prepared after SEVEN years in 1999 and thereafter ad-hock increase of 50% flat made to the ASR 1999 and 5% increase every year till any other decision. The Superintendent of Stamps, Government of Gujarat prepared ASR for all seven Municipal Corporations, the respective Urban Development Authorities and the towns during the year 2006. The methodology of preparing ASR during the year 2006 is not available. Thereafter, since last four years, it seems, valuation of properties for the purpose of charging stamp duty according to market value of properties in respect to properties situated in all seven Municipal Corporations, the respective Urban Development Authorities, and the towns of the State of Gujarat for the purpose determining approximate market value of the property by the registering officer remained stand still at the level of ASR 2006. As a matter of fact the value of lands and properties have increased many fold both in the most of the urban areas and even in several rural areas during the period of last two years or so.

For the successful implementation of the market value provisions of Sec. 32A of the Act, it is in the interest of the State as well as for the citizen to have a Statewide valuation organization as was built up in the year 1982 headed either by officer of the rank of Superintending Engineer or equivalent rank of officer from the Town Planning and Valuation Department with divisional offices for making a continuous valuation of agricultural lands and non-agricultural lands and properties. A Committee as was formed in the year 1981-82 by the State Government may be formed for scrutiny of rates prepared by the Stamp Duty Valuation Organization Department and its approval after appropriate deliberations and discussions. These approved rates will be the 'minimum values' for lands and properties in all the cities, towns and villages. These 'minimum values' would in effect be conservatively estimated market values and would become the norms that would be given to registering officers in a prevailing computerized system so as to enable them
to decide whether the amount of consideration set forth in the instrument is approximate to the market value of the property which is the subject matter of the instrument. The CD/DVD prepared by the Department also be made available to the citizens so as to enable them to work out stamp duty in respect to their instrument prior to its execution and registration.

9.2.6. Ready Reckner and Valuation

The State Government have supplied with effect from 1st August, 1998 updated ready reckners to the registering officers with a specific view to achieve decline in reference cases under Sec.32A of the Act. However, it is the general feeling and experience of the people at large that the updated ready reckners in most of the cases are showing highly exaggerated value of the property and does not reflect approximate true market value of the property. It is also felt that the authorities have not taken into consideration the overall recession in economy and considerable fall in land and property prices registered in last two years in most of the urban areas. In view of these factors the updated ready reckners have, as a matter of fact, not only failed to achieve the purpose for which it was introduced but has created much hardships to the people on the following two counts:

1. Because of highly exaggerated value of updated ready reckners, registering officers in most of the cases were required to refer such case to the Collector for deciding true market value of the property under Sec.32A(1) of the Act.

2. Since the updated ready reckners were prepared by the same authorities, that is, Collector of stamps who will now require to determine the true market value of the property as the Collector of Stamps as per the powers vested in them under Sec.32A(2) of the Act and rules made there under, it was the general experience of the people, that the said authorities are, instead of determining the true market value of the property as per the provision of Sec.32A(2) read with relevant rules more particularly Rule 8 of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984, referring
instead the updated ready reckoner for determining the true market value of the property and initiate proceedings accordingly. This situation has put the people at large in a very awkward position and caused great hardships and injustice.

In this regard it would be proper to look to the recommendations made by the Gujarat Taxation Enquiry Commission in this behalf. In para 7.23 of its Report, the Commission have made the following recommendation:

The Stamp Act should be amended to the effect that the basis of the stamp duty in regard to conveyances should be the market value of the properties involved in the instruments. Market value for this purpose would mean the amount of consideration for which the property concerned can be reasonably sold in the market. This would depend upon the location and extent of land and nature of the structure erected on it. On the basis of the study of location, quality of the structure, cost of construction; etc., and keeping track of market trends, the valuation department would work out "minimum values" for properties of different kinds in different localities in all the cities and towns. These "minimum values" would in effect be conservatively estimated market values and would become the norms that would be given to registering officers.

In light of the aforesaid recommendations of the Gujarat Taxation Enquiry Commission, a Valuation Organization under the supervision of the Superintending Engineer was created for preparing norms which were scrutinized in detail by the Committee and upon its approval ready reckners were prepared. These ready reckners, during legal scrutiny of the amended provisions of Sec. 32A of the Act and rules made there under found to be scientific and proper by the Gujarat High Court.

It seems that while updating the ready reckner the important criteria of working out "minimum values" have not been kept in mind. Instead, the ready reckner prepared on the basis of "maximum values".

Secondly, instead of following the approved method for updating of ready reckner this work of updating of the ready reckners is, it seems, given to the
Collector of stamps. The result would be obvious as the registering officers have on the basis of the norms of ready reckner prepared by the Collector of stamps found the consideration set forth in the instrument submitted before him being not approximate to the market value he has to made reference to the Collector of stamps for further action under Section 32A(1) of the Act. This has created a situation wherein if the Collector of stamps rejects the value worked by the Registering officers virtually he is rejecting the value of his own ready reckner. To avoid such a situation, it is found that normally the authority stick to the value of the property shown in the ready reckner though it may not be a true market value in the present circumstances; Ultimate sufferer is the person purchasing the property who has to bear the burden in either case.

The updating of ready reckner for the purpose of achieving decline in reference cases by the registering officers under Sec. 32A (1) can be achieved only when the updating of ready reckner is based on "minimum values" as recommended by the Gujarat Taxation Enquiry Commission in para 7.23 of its Report and which was followed by the State Government while preparing "Ready Reckners" in the beginning, taken up by and under the supervision of technical head of department of the rank of Superintending Engineer or Deputy Town Planner. In any case the Deputy Collector vested with the powers of Collector of Stamps for determining market value of the property under Sec. 32A of the Act should not be made responsible, as has been done presently, for updating the ready reckners.

9.2.7. Procedure of Valuation

Statement in Form I to be submitted along with instrument which is liable to stamp duty on the basis of market value of the property as provided for in Sec. 32A (1) of the Act is already prescribed under Rule 3 (1) of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 and its non submission by a person concerned along with such instrument as required under the said Rule 3(1) is also liable to a fine not exceeding Rs. 500/- under Rule 9(1) of the said Rules.
By the amendment made in sub-section (1) of Sec. 32A by Act No. 19 of 2001 which has come into force, with effect from 1/09/2001 submission of statement in Form I which is a requirement of Rule 3(1) has now also been incorporated in statutory provisions of Sec. 32A(1).

Rule 3(2) of the said Rules provides that the registering officer after taking into consideration the information furnished "in the statement", that is Form No.1 and "any other information available with him" will require to work out approximate market value of the property which is the subject of the instrument presented before him for registration. Now information furnished in Form I is the basis for working out approximate market value by the Sub-Registrar concerned in respect of land and superstructure, which is the subject matter of instrument presented before him for registration, considering the rates specified in the 'Jantri', which is in the other word described in Rule 3(2) as "any other information available with him". In view of this position whereas the information submitted by the party while submitting his instrument for registration has been made a statutory requirement both under the Act and Rules made there under, the 'Jantri' used by the Sub-Registrar concerned for working out approximate value of such instrument which apparently creates a financial liability upon the subject is not, unlike the State of Maharashtra, given a statutory status. In Maharashtra, Rule 4 of such Market Value Rules provides for "Annual statement of rates of immovable property" which is prepared by the Joint Director of Town Planning and Valuation, Maharashtra who is required to submit the same latest by 31st October each year to the Chief Controlling Revenue Authority for approval. The Chief Controlling Revenue Authority is required to supply a copy of the 'Annual Statements of rates of immovable property' annually to the Sub-Registrars who "shall cause a copy of the above statement to be affixed outside Registration Office." It would be proper for the State Government to consider incorporating appropriate rules in the existing Market Value Rules so as to legalise and make the "Jantri", which is used by the officials of the State in each and every case, an official document subject to scrutiny by members of public by causing a copy of such Jantri to be affixed outside the Sub-
Registrars offices. This will also enable the concerned parties to know their liability to pay stamp duty before submitting instrument for registration.

Instruments executed by the State and Central Government, a Local Authority, Gujarat Housing Board, Gujarat Slum Clearance Board or Gujarat Industrial Development Corporation subject to the provisions of stamp duty leviable according to the market value of the property which is the subject matter of such instruments as specified in Sec.32A, sub-section (1) shall not attract the market value provisions as the consideration set forth therein shall be deemed to be the true market value of such property.

The word "Local Authority" is defined in Sec 3(31) of the General Clauses Act, 1897 as reproduced below:

"Local Authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.

Accordingly, instrument executed by such authority will also fall within the ambit of proviso to sub-sec.(1) of Sec.32A.


By Sec. 24 of the Finance Act, 2002 a new Sec. 50C has been inserted with effect from 1st day of April, 2003 in the Income Tax Act, 1961. Sec. 50C, sub-section (1) read as under:

Where the consideration received or accruing as result of the transfer by an assessee of a capital asset being land or building or both, is less than the value adopted or assessed by any authority of a State Government (hereinafter referred to as the ("stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

In respect of valuation of the registered property the assessee can either use the valuation which has been finally decided, including appeal under section 47A of the Stamp Act or the valuation which has been ascertained by the Departmental valuer as per section 50-C of the Income Tax Act. Right of an assessee conferred under section 50-C of the Income Tax is a valuable statutory right available to protect his interest against any arbitrariness which may creep in while fixing the value of the capital again, a safeguard given to the assessee. The right is more effective in cases where the parties with document have not taken any steps to defend or to initiate proceedings under section 47A of the Act.\(^{166}\)

In view of the aforesaid amendment, with effect from 1/04/2003, the Vendor shall also require to pay capital gain tax on the basis of value worked out by the Stamp Valuation Authority unless he succeeds in appeal before the Chief Controlling Revenue Authority or in Apex Court.

Taking into consideration the serious impact the "Jantri" would Cause with effect from 1/04/2003 owing to the provisions of new Sec. 50C to IT Act, it would be proper and just in the public interest for the State Government to;

1. review the existing valuation rates of "Jantri" and to make it reasonable, appropriate and which should be in consonance with the rates actually prevailing in such locality. For example existing valuation rate of Jantri of land falling within Town Planning Scheme No. 3 of Ahmedabad City in some cases is very high; say about Rs. 15000/- per sq.mtr. which is, it is widely felt, not actually prevalent market rate. If such exaggerated rates fixed in Jantri would not be reviewed before 1-4-2003 then, besides the burden of paying additional stamp duty the Vendor shall have to bear the burden of paying capital gain tax at such inflated rates for which the property in question is not actually sold. Such unjust situation should be corrected in the public interest.

2. study forthwith such inflated and unjust rates of Jantri and fix such valuation rates scientifically by technical officers of the Town Planning and Valuation Department and approved by the Chief Controlling Revenue Authority. Such approved rates should be made public by putting up on the notice board of concerned sub-registry office.

3. make the Jantri in regard to construction cost transparent, it should also be made public and the basis of depreciation should also be made available to the public.

9.4. Statement of the Case by the Collector: Section 32B

(1) Any person aggrieved by an order of the Collector determining the market value under section 31 or, as the case may be, under section 32A, may, after depositing with the Collector \[167\] twenty five per cent.] of the amount of duty or, as the case may be, the amount of the difference of duty payable by him by application presented \[168\] within a period of ninety days] from the date of such order and accompanied by a fee of one hundred rupees, require the Collector to draw up a statement of the case and refer it to the Chief Controlling Revenue Authority and the Collector shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it to the Authority:

Provided that where in any particular case the Authority is of the opinion that the deposit of the amount by the applicant will cause undue hardship to him, the Authority may, in its discretion, either unconditionally or subject to such conditions as it may think fit to impose, dispense with a part of the amount deposited so however that the party of the amount so dispensed with shall not exceed fifty per cent, of the amount deposited or required to be deposited.

(2) Such Authority shall consider the case and send a copy of its decision to the Collector who shall proceed to assess and charge the duty (if any) in conformity with such decision.

\[168\] Substituted for "Sixty days" by Guj. 18 of 2004 Sec, 3 w.e.f. 11/6/2004.
(3) The decision given by the Authority under Sub-section (2) shall be final. Sec. 32-B deleted by Bom. Stamp (Guj. Ilnd Amendment) Act. 2007. (Act No. 11 of 2007 w.e.f. 1/4/2007)

Note: Appellate power - Exercise of - non application of mind - Defense of petitioner not considered - Impugned order set aside - Administrative law.

Since the orders are passed without proper application of mind and since they are not a speaking orders, the same cannot be sustained in the eye of law. Therefore, the same deserve to be quashed and set-aside only on the ground that the orders are not speaking orders.169

9.4.1. Important Observations

Sec. 32A of Registration Act, 1908, Sections 60 and 61; Section 32A of Bombay Stamp Act and Sec. 60 of the Registration Act, 1908 cannot stand together, a certified copy of registered document can be produced as proof of conveyance title.170

Sec. 32A (1) and Bombay Stamp (Determination of market value of property) Rules, 1984 Rules 3(2) and 4(2); explain the meaning of the phrase "reasonable time" period vary according to fact of the case.171

Sec. 32A and 2(h) are providing for levy of Stamp duty and Determination of Market Value Fixation of up-set price for the purpose of payment of stamp duty. It is held that the upset price cannot be treated as market value of stamp duty.172

Under Section 32A (2), (3) and (4) in case on evasion of Stamp duty, an order passed by collector without hearing parties. It was held that the order passed

169 P.M. Patel Vs. State of Gujarat & Ors, 2002(3) GCD 2407 (Guj.) 2003(1) GLR 454.
170 Champaklal J. Gadani V. State of Gujarat, (1987) 28 (2) GLR 1141
171 Harshadbhai P. Dave V. Sub-Registrar, Rajkot, (1994) 35 (2) GLR- 1222
172 Vinodchandra Shantilal 2 Anr. V. Chief controlling Revenue Authority, Gandhinagar. (2001) 42 (2) GLR 1807
in violation of principle of natural Justice even revision of void order is not permissible.  

In the case when power of Sub-Registrar of making a reference to Collector is exercised, it is mandatory to give notice before making reference.

Reading all together; Section 32, 32A and 32B along with Schedule I, Articles 20 (a) and (b), it is very clear that determination of Stamp duty on the basis of market value is just and valid and within the constitutional competence; List II, Entry 63 List III Entry 44.

Indian Stamp Act, 1899 Section 3: Mode of valuation of property for purpose of levy of stamp duty, when there is no evidence except sale deed, Jantri Valuation is proper mode.

Sec. 32A(1) of the Bombay Stamp Act, 1958 and Bombay Stamp (Determination of Market value of property) Rules, 1984; Rules 3(2), 4(2) and 4(3); Notice under reasonable period; not to mean fixation of two years as "reasonable period", period may vary according to the facts and circumstances of the case. The judgement was confirmed in full bench.

While Sections 32A and 32B of the Bombay Stamp Act, 1958 and Bombay Stamp (Determination of market Value of property) Rules, 1984 Rules 4 & 8 Valuation of property; It was held that the authority is bound to provide supporting material in the notice.

9.5. General Legal Principles for Determination of Market Value

Market value has to be assessed on the basis of relevant consideration. It should comprise of value of agricultural land plus price ascribable to its...
building potentially. The potential value has to be decided with reference to
the material or record.\textsuperscript{180}

Market value has to be determined according to factors including situation of
the land, the amenities available in and around, and various other factors,
including close proximity of the residential area as well as any transfer made
immediately before the transfer, or after the transfer in close proximity land
bounded on all sides by fields, and potential for urban use.\textsuperscript{181}

Market value has to be arrived at keeping several circumstances in view
including the Basic Value Register, and in case of dispute procedure
prescribed under Section 32A. When the sub-registrar had reason to believe
that the value of the property had not been correctly reflected in the
instrument, he may keep the registration of such instruments pending and
refer the matter to the collector for determination of market value and for
proper stamp duty payable thereon. Where stamp duty was paid under
protest, it cannot be said that the petitioner had waived his objection for
payment of stamp duty as fixed by the Sub-Registrar.\textsuperscript{182} Basic valuation
register prepared and maintained for the purpose of collection stamp duty has
no statutory base or force and cannot form a foundation to determine the
market value mentioned there under in instrument brought for registration.\textsuperscript{183}

One of the important criteria for determining the market value is the rate
prevailing in the locality as recorded by the competent authority in the area.
The value of the property varies from place to place or even from locality to
locality in the same place. No absolute higher or minimum value could be
predetermined.\textsuperscript{184} In determining market value of property, potential use of

\textsuperscript{180} Suresh Kumar v. State of U.P., 1996 (I) AWC314 (BR) (CCRA)
\textsuperscript{181} Aniruddha Kumar Ashwani Kumar v. CCRA (UP), 2000 (3) AWC 2587 (All)
\textsuperscript{182} Bhagya Lakshmi Co.op. Housing Society Ltd. v. Sub-Registrar; 1998(5) ALT 225 at p, 230
\textsuperscript{183} Jawajee Nagnatham v. Revenue Divisional Officer, Adilabad (AP), (1994) 4 SCC 595, 600.
WLN 508 (Raj).
land as on date of sale can be taken into account and not what potential it may have in the distant future. ¹⁸⁵

For the purpose of determination of market value of the property, prior opportunity of hearing to the parties is a must. ¹⁸⁶

Chargeability of stamp duty on the market value of the property on the date of execution of sale deed is not an invariable rule, where the consideration is truly set forth in the instrument, stamp duty can be charged on that amount and not on the value of the property. Section of valuation cannot be invoked where the petitioner had paid stamp duty on the price paid by him and shown in the sale deed. ¹⁸⁷

Valuation of the property for the purpose of stamp duty is the market value at the time of its execution. Sale deed is covered under the definition of conveyance and stamp duty is chargeable as applicable to such instruments. Agreement to sell becomes a sale after both the parties' have signed the sale deed. Where proper stamp duty for conveyance is 7.5 per cent of the market value, the instrument relating to sale would be chargeable on the market value of the property and not on the value set forth there in. ¹⁸⁸

Valuation is an art, not an exact science. For determining the value of the property the question is the price which the property would fetch or would have fetched if sold in open market on the date of execution of the instrument. The Court has to keep in mind the particular purpose of the statute which requires determination of valuation and the nature of the property whose value has to be determined. ¹⁸⁹

¹⁸⁵ Mukesh (Minor) v. Chief Revenue Controlling Authority/Board of Revenue, US. Allahabad, 2005 All LJ 1678
¹⁸⁹ Swastik Projects (Po) Ltd. v. State of West Bengal, 2001 (1) CHN 56.
If the authority proceeds to value the property on the basis of adjudicated value in a comparable area, in that case the other limb of the provision, namely, the direction to accept negotiated or settled value, becomes otiose.  

In assessing the value of the property the essential inquiry must be about the worth of property in the market with reference to its present and future use. Potentiality includes probabilities, possibilities and prospects. The value of the land in the neighborhood or adjoining areas should also to be taken into consideration. An order passed after making detailed enquiry calling upon petitioner to pay additional stamp duty. Petitioner having not filed any appeal was estopped from challenging the order which had become final. Further challenge to fixation of market value could not be raised for the first time in writ petitions and that being a disputed question of fact cannot be decided under Article 226 of the constitution.

9.5.1. Factors for Determining Market Value of Property

1. In a suit for specific performance of agreement of sale the sale deed on the success of the plaintiff Vendee and where the Vendor did not comply, the same is to be executed by the Court in execution of the decree.

2. The Stamp Duty Officer is competent to exercise the powers to assess the Market value of the property for the purpose of charging the stamp duty thereon etc. and the fees of the registration of the document.

3. The sale consideration as mentioned in the document of transfer of the property is not conclusive and binding on the State Government and its Officers.

4. In the case where the sale deed is to be executed by the Court in execution of the decree of specific performance of agreement to sell passed by it and where the market value of the property has been

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192 Ulagammal (Smt) Section v. Inspector General of Registration, Chennai, AIR 2006 Mad 284
determined by the Court for the purpose of stamp duty after hearing the parties and State Government then that decision shall be binding on the Government.

5. For the purpose of charging, the stamp duty etc. the relevant date for assessment of the market value except in the case of categories aforesaid of the property in dispute for the levy of the stamp duty shall be the date on which the suit for specific performance of the agreement to sale has been filed.  

6. The duty of the Registrar is to see whether the stamp duty is paid on the market value prevailing on the date of presentation of document for registration, and if he comes to the conclusion that the stamp duty has not be truly set forth in the instrument, he can refer the same to collector for determination of market value of the property unless and until the reasons are recorded, the Registrar has no jurisdiction to refer the matter to the Collector.

7. The date of execution of sale deed is the relevant date for determining the market value covered under the instrument of conveyance.

8. Market value of the land has to be determined on the basis of character of the land as well as usage thereof and user of the same having regard to other factors as provided in the Act and the Rules made there under. It would be immaterial whether the land is residential plot or agricultural land for the purpose of determining its market value.

9. Market value of the property has to be seen at the time of execution of sale deed.

10. Determination of market value of an instrument of conveyance is permissible within a period of two years from the date of registration. Where neither the collector had initiated sou motu action nor was

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there any reference made by Inspector General of Registration or Registrar in the District in whose jurisdiction the property was situate, action initiated pursuant to an audit report after a period of two years would be totally unwarranted and without any sanction of law.\textsuperscript{198}

11. Registering Authority is not empowered to enquire into market value of land if only leasehold rights are transferred by way of assignment.\textsuperscript{199}

12. Where the property was sold in open public auction, which was confirmed by the High Court and since there was no fraudulent attempt on part of application to evade payment of stamp duty, revenue authority had no power to initiate action under section 47A of the Act.\textsuperscript{200}

13. Rule 5 of the Andhra Pradesh (Prevention of Under Valuation of Instruments) Rules, 1975, provides guidelines and as per section 6 of the Stamp Act, 1899, as amended by Act VIII of 1998, the market value of the property shall be determined based on the likely sale value of the property in open market at the time of execution of sale deed. Where the petitioners purchased old building along with land, and they themselves valued the land for the purpose of stamp duty, the plea that the property must be valued, as ‘building’ and not as ‘house site’ cannot be sustained.\textsuperscript{201}

14. Market value of the property on the date of its registration should be taken for the purpose of calculation of stamp duty.\textsuperscript{202}

15. Revision in market value in urban areas is determined in certain specified circumstances, namely, setting up of an industry or group of industries or infrastructural projects, development of large scale housing projects, or any other special circumstances having an impact on the values of immovable property in any specified area. Market value revised simply relying on report of Revenue Inspector

\textsuperscript{198} Harbans Singh v. State of Punjab, AIR 2009 P&H 108.


\textsuperscript{202} P. Mahalingam v. Registrar of Documents, Madurai Dist., (2009) 1 MLJ 536 (Mad).
without examining public record, concerned officers and recording statements of purchasers, being contrary to guidelines, set aside.  

16. Order passed by the collector, determining market value of the property, on the basis of rent deed and stamp duty by the petitioner based on circle rates need no modification.  

17. Market value of property determined by Collector on certain material cannot be reduced by appellate court merely on guess work without considering relevant material, particularly matters of revenue to government which cannot be dealt with in a casual manner. The Collector, Bardwan, issued a notice Form VII calling for objections relating to determination of market value of the property purchased by the petitioner. Considering the fact that a tenant was in occupation and property was encumbered and no willing purchaser would willingly offer the same price as would be offered for a free hold land, and considering the location of the land, the appellate authority allowed 10 per cent deduction on the assessment made by the collector.  

18. Irrespective of sale consideration mentioned in the letter of allotment, stamp duty would be payable on market value of the property determined in terms of Rule 3-A of Punjab Stamp (Dealing of Under Valued Instruments) Rules, 1983, payable at the time of the registration of instrument.  

19. Before market value of the shop could be determined, it is imperative upon the collector to conduct a fact finding enquiry and thereafter determine the market value of the shop on the basis of some relevant material indicating towards the escalation on price. In the absence of even slightest difference of the relevant material, market value of the

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206 Sanjay Bansal v. Additional District Magistrate Bardwan, 2005 (1) CHN 490 (Cal)  
207 Sukhjit Singh Cheema, Advocate v. Punjab Urban Planning and Development Authority Chandigarh, 2008 (4) PLR 484 (P&H-DB)
shop could not have been determined on the basis of spot inspection only.  

20. Where non-issuance of notice regarding inspection of property has not caused any prejudice to the party and the market value of the land has been fixed after considering relevant materials, there can be no inference by the High Court that the determination of market value land by Inspector General of Registration was not correct.  

21. Sub-section (2) and (3) of Section 47A of the Indian Stamp Act, implies that it is the Collector who can pass order for determination of the value of the property, as such no other officer than the collector is empowered to issue notice for recovery of deficient amount of stamp duty payable.  


Sale deed is covered under the definition of conveyance and stamp duty is chargeable on the market value of the property. The valuation of the property for the purpose of stamp duty would be the market value of property at the time of execution of sale deed, and not at the time when agreement to sell was entered into.  

Similarly stamp duty on sale of immovable property has to be assessed on the prevailing market value at the time of registration of sale deed and not at the time of agreement to sell or at the time of filing of suit.  

The expression "execution" read with section 17 of the Act leaves no manner of doubt that current valuation is to be seen when the instrument is sought to be registered. The Stamp Act is in the nature of a taxing statute, not dependent on any contingency since the word "execution" read with section 17 provides that the instrument has to be seen at the time when it is sought to  

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211 State of Madhya Pradesh v. Dilip Kumar Sangni, AIR 2008 MP 133.  
be registered and where the instrument had been undervalued, then it would be open for the registering authority to enquire into its correct market value.\textsuperscript{213}

Notice by State Government issued to petitioner within two years from the date of registration of sale deed for correction of market value of the property was sufficient compliance with requirement of section 45-A(3) of Karnataka Stamp Act, 1957 and the same was within jurisdiction and competence of the authority.\textsuperscript{214}

Market value of the land cannot be determined with reference to its use to which the buyer intends to put it, but it is what a general buyer may offer Stamp duty would be payable on property as it stands on the date of execution of deed. Demand for additional stamp duty would not be created on presumption of the future or intending change of use to which the property may be put by the vendee.\textsuperscript{215}

Market value of the property has to be determined with reference to the date on which the document is executed.\textsuperscript{216}

The system of determining the market value in case of immovable property is very complex; it should be simple and transparent.\textsuperscript{217}

\textbf{9.6.1. Auction Sale and other Observations}

When the value of the property is properly assessed and fixed by public authority, it cannot be construed that the petitioner had undervalued the property. Therefore, the value fixed by the public authority in public auction cannot be doubted for reference under section 47A(1) of the Act.\textsuperscript{218} When a property is purchased in court auction sale, if any value other than the value

\textsuperscript{213} State of Madhya Pradesh v. Dilip Kumar Sangni, AIR 2008 MP 133.
\textsuperscript{215} ITC Ltd. v. State of UP., AIR 2009 All 31 : (2008) 6 All LJ 309
\textsuperscript{217} Annexure-I, Survey Report, Majority Responses, Item No. 13 & 16.
fixed by the court is taken into consideration for the purpose of determining
stamp duty, it tantamount to exceeding jurisdiction conferred under law.\textsuperscript{219}

Merely because in a court auction the property has been sold at a particular
price, being the highest bid and that too in the absence of State, such
valuation of the property cannot be treated as the market value for the
purpose of Section 47A of the Act.\textsuperscript{220}

In computing the value of house property for levy of stamp duty and
registration charges, multiple of 18 years rental value adopted by the Sub-
Registrar was quite reasonable.\textsuperscript{221} Deputy Commissioner (Stamp) has the
power to set aside an ex parte order.\textsuperscript{222} If the registering authority is not
satisfied that the market value shown in the document was not correct, he can
make enquiry within a period of three weeks and make a reference to the
collector, but cannot withhold the instrument.\textsuperscript{223}

\textbf{9.7. Guidelines for the Purpose of Valuation}

The guidelines in general are:

(a) The guidelines provided by the State would only serve as prima facie
material available before the Registering Authority to alert him regarding
the value.
(b) Value of property varies from place to place or even locality to locality in
the same place.
(c) No absolute higher or minimum value can be predetermined.
(d) It would depend on prevailing prices in the locality in which the land
covered by the instrument is situated.
(e) It will be only on objective satisfaction that the authority has to reach a
reasonable belief that the instrument relating to the transfer of property

\textsuperscript{219} Devi Narayanan Housing Development (P) Ltd. v. Inspector General of Registration,
\textsuperscript{220} State of West Bengal v. Sati Enclave (P) Ltd., 2008 (4) Cal HN 499 (DB).
\textsuperscript{221} Special Deputy Collector v. Denson (P.) Ltd., 1993 (I) AL T 582 (AP-DB); Hindustan Oil
Mills Ltd. v. Special Deputy Collector (LA), AIR 1990 SC 731 (737)
\textsuperscript{222} Arundeepr Singh v. State of U.P., 2005(1) AWC 847 (All).
\textsuperscript{223} Trust for Education and Rehabilitation of Disabled Orphans and Destado v. Inspector
General of Registration, Chennai, (2002) 1 MLJ 244 (Mad).
has not been truly set forth or valued or consideration mentioned when it is presented for registration.

(f) The ultimate decision would be with the Collector subject to decision on an appeal before the District Court as provided under section 47 A(4). [In West Bengal, this is to the Commissioner of the Presidency or the respective division, and not the District Court].

(g) The aforesaid guidelines would inhibit the Registering Authority to exercise his quasi judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration.

(h) It would be open to the State Government to revise its guidelines and issue proper directions consistent with the law.224

9.7.1. Guidelines for Determination of Market Value

In cases arising out of registration of instruments in Haryana, there is no provision in the Registration Act, 1998; under which collector can issue order or directions, not the Registrar has the power to determine the market value of the property sold in order to assess chargeability of stamp duty. Guidelines which take away jurisdiction of the Sub-Registrar to reach any quasi judicial decision with regard to valuation of transfer of a particular property falling within his jurisdiction could not be issued. Where neither the collector nor the commissioner had taken into consideration any independent evidence to return a finding in respect of market value of the land, the rates fixed by the collector, having no statutory support, could not be given effect to.225

The guidelines value or the valuation of the registration Department fixed under section 47A of the Act can be taken as the market value of the land while approving permission for plan development.226

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Executing court directed the revision petitioner to file non-judicial stamp papers on the basis of value of the property as mentioned in the agreement to sell for execution of decree.\textsuperscript{227}

Stamp duty on property allotted by Government body under low income group to the petitioner, as per guideline value it cannot be insisted upon for registration, but stamp duty is to be paid on actual consideration.\textsuperscript{228}

The authority can adopt any of the guidelines for the purpose of valuation which shows the higher value of the property.\textsuperscript{229} It is well settled that in arriving at the proper market value, the guideline value is not binding on the revenue authorities and the proper method is to fix the stamp duty only on the basis of fair market price.\textsuperscript{230} Guideline value fixed by registering authority cannot be taken as the sole basis for determining the market value for all purposes.\textsuperscript{231}

\textbf{9.7.2. Valuation Guidelines}

For determining stamp duty, guidelines cannot have any higher worth in the context of assessing the market value of properties to ascertain whether the transaction has resulted in any offence so as to give pecuniary advantage to one party or the other.\textsuperscript{232}

Basic valuation register maintained by revenue authorities on the basis of notification issued by the Government under section 47A is meant to be guide for collection of revenue and stamp duty.\textsuperscript{233}

The guideline value is only a guiding factor to ascertain market value of the property if there is doubt that it has not been truly set forth in the instrument; Guideline value is not a final authority on market value of the property. Department would have to go by various parameters set down in the Tamil

\textsuperscript{227} N. Balasubramaniam v. V. Narayan, (2007) 2 MLJ 414 (Mad).
\textsuperscript{228} Nalina Veeraraghavan (Mrs) v. Chennai Metropolitan Development Authority, AIR 2008 NOC 2893: 2008 (6) Mad LJ 913: 2008 (4) CTC 486 (Mad).
\textsuperscript{229} Swastik Projects (P.) Ltd. v. State of West Bengal, 2001 (1) CHN 56.
\textsuperscript{230} D. Palanivel v. Sub-Register, Registration Department, (2005) LW 587 (Mad).
\textsuperscript{231} Archean Granites (P), Ltd. v. RPS Benfit Fund Limited, (2005) 4 LW 558 (Mad).
\textsuperscript{232} R. Sai Bharathi v. J. Jayalalitha, AIR 2004 SC 692.
\textsuperscript{233} (Mis) Sakthi v. Shree Desigachary, (2006) 2 Mad LW 297 (FB).
Nadu Stamps (Prevention of Under Valuation of Instrument) Rules, 1968, for determination of market value if there is reasonable belief that the market value of the property has not been truly set forth in the instrument. The onus is on the department to establish that the market value of the property has not been truly set forth and the market value claimed by the Department is contemporaneous to the document tendered for registration.\(^{234}\)

Where the sub-registering officer proposed market value of land at Rs. 5,000/- as against exorbitant valuation given by Land Records Inspector, followed by the Additional Collector, can be taken as a safe guide for calculation of market value of the land.\(^{235}\)

In the case where the unstamped document, other than bill of exchange, is produced as evidence, within two months of its execution, the stamp duty can be collected without impounding it and without imposing penalty. Whenever the registering authority comes to the conclusion that the instrument is undervalued, he has to complete the registration and forward the same to the collector for adjudication. The collector has to follow the procedure, afford opportunity and there after determine the market value as well as stamp duty payable on the instrument. The guideline value is also not binding on the collector as he has to fix the market value of the property which is the subject matter of conveyance or settlement or any other instrument falling under Section 47A independently and without in any manner being influenced by the guideline register.\(^{236}\)

Authorities cannot regard the guidelines as the last word on the subject of market value.\(^{237}\) In contrast the Supreme Court, in a case of undervaluation, observed that circle rates could have been taken as one of the factors and not the last word on the subject.\(^{238}\)

9.7.3. Ready Reckner

Issuance of directions to registering authority to treat the ready reckner as guidelines and as a declaration of *prima facie* market value of property are subject to powers of the collector.\(^{239}\) Power has been vested with the officer registering the instrument to deal with the under-valued document. Collector is vested with the power to determine the time market value upon following the due procedure. The registering authority would not accept the rate lower than the one prescribed in the guidelines as time and genuine consideration or value of the property as envisaged by section 47A. The ready reckner framed by the Assistant Director of Town Planning and Valuation Department takes away the quasi-judicial functions of the registering authority.\(^{240}\)

9.7.4. Procedure for Assessment of Market Value

Rule 59-B of the Rajasthan Stamp Rules, 1955 provides a complete procedure for assessing the market value of the property by the Registering Officer. Under this Rule, the Registering Authority has to take into consideration, (i) the rates recommended by the District Level Committee, or (ii) the rates approved by the Registration and Stamps Department, or (iii) the highest rate of similar property shown in Index II. Thereafter, the Registering Authority has to assess the market value, whichever is higher.\(^{241}\) Approval by the District court for sale of property does not mean that the sale was not below the market value, as the court did not consider the value, what weighs with the court in granting approval for the sale of property of the minor is whether it protects the interest of the minor or not. Where there is simultaneous acquisition of property which is equally or more advantageous to the minor, the court is always free to approve the sale of the property of the minor. In other words, if there is balanced under-valuation in both sale and


\(^{241}\) *Satyam Properties v. State of Rajasthan*, AIR 1999 Raj 276 (280); 1999 (1) RLR 678; RLW 1999 (2) Raj 823; 2000 (1) WLC (Raj) 598.
purchase, the interest of the minor stands protected, but there will be evasion of stamp duty in both the transactions.²⁴²

Where the agreement to sell was made in 1965 and the registration was effected in 1988, order of the collector directing the petitioner to pay deficit stamp duty by taking prevalent rates was in violation of section 47A, sub-rule (1) and in violation of principles laid down by various High Courts was set aside.²⁴³ Where a property was sold for inadequate consideration, it was for the authorities to consider whether the sale deed was to be stamped as per market value and recover the deficit stamp duty from the parties to transaction, but the third party cannot question the transaction on ground of inadequate sale consideration.²⁴⁴

Under Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, an elaborate procedure has been prescribed for determining provisional market value of the property. Rule 5 prescribes various principles for determination of market value and Rule 6 speaks about procedure to be adopted after arriving at provisional market value enabling the collector to communicate the order provisionally determining the market value of the property and duty payable to the person concerned in Form II and call upon him to lodge his objections within the time specified in the notice. Order determining final market value without following mandatory provision of affording post decisional hearing being illegal was set aside.²⁴⁵

The Report of the District level Committee has to be treated as a material for assistance of collector in determining market value of the property and no exception can be taken to the report of the said committee. Where the Chief Controlling Revenue Authority had himself considered the entire material in determining the value of the property, the contention that committee was

²⁴² Suseela Nair v. Sub-Registrar, 2006(3) KLT 768 (Ker).
²⁴⁵ A.R. Narayanan v. Special Deputy Collector (Stamps), AIR 2003 Mad 266, p. 269.
constituted at the instance of the State Government would not be a ground to reject the report.\textsuperscript{246}

Where the disputed land was partly commercial and partly residential, higher rate of stamp duty was chargeable for commercial land and lower rate for residential, subject to registration.\textsuperscript{247}

Explanation to Rule 6 to Bihar Stamp (Prevention of Under-valuation of Instrument) Rules, 1995, is merely intended to assist the registering authority to ascertain \textit{prima facie} whether the market value had been truly set with the instrument. There is nothing arbitrary in the procedure prescribed for fixation of estimated minimum value of the property sought to be registered.\textsuperscript{248}

The Authority under Section 45A(2) of Karnataka Stamp Act, is statutorily obliged to hold a detailed enquiry taking into consideration several factors like the exact location of the site in question, prevailing market value, its special advantages etc. for assessing proper market value of the property and pass appropriate orders giving reasons therefore.\textsuperscript{249} Stamp duty has to be levied on the basis of nature of land indicated in the sale deed and not on basis of potential value of land.\textsuperscript{250} Property in question was a godown and open land in prime location bought by the petitioner for a consideration of Rs.81,000. Collector in exercise of his \textit{suo motu} power under Section 47A(3) of the Stamp Act assessed the market value of the property on date of its sale at Rs. 6,00,000. The findings arrived at by the collector were pure findings of fact not required to be interfered with in writ jurisdiction.\textsuperscript{251}

\textsuperscript{246} J. V.H Sugar Corporation Ltd. v. Chief Controlling Revenue Authority, AIR 2004 All 60, p. 69.
\textsuperscript{248} Sudama Devi v. State of Bihar, 1997 (1) PLJR 327 at p. 331 (Patna).
\textsuperscript{249} R. Uma Prasad v. Deputy Commissioner of Stamps, Bangalore, AIR 2004 Kant. 287, p. 288: 2004(2) Kar LJ 216.
\textsuperscript{250} Naresh Agarwal v. Commissioner Garhwal (CCRA), Delhradun, AIR 2006 NOC 565 (Utt).
\textsuperscript{251} Hallin Salma Begum v. State of M.P., 2006(2) MPLJ 61 (MP).
9.7.4.1. Instrument of Conveyance

The market value of Instrument conveyance is referable to date of execution of the instrument. Suit for specific performance of contract to sell is required to be valued under the provisions of Suit Valuation Act. On the relief of specific performance, court fee is to be valued in accordance with provisions of Court Fees Act. Stamp duty, on an instrument, is liable to be paid in accordance with provisions of the Indian Stamp Act. All the three statutes have been enacted with distinct and separate 'aims and objects'. The Stamp Act, thus, operates in exclusion of the area not occupied by the Court-Fees Act or Suits Valuation Act. Therefore, stamp duty is chargeable on the basis of market value of the property conveyed by the instrument of conveyance. Instrument executed by civil court is of no relevance for the purpose of invoking power under section 47A of the Act.

9.7.5. Under Valuation and Stamp Act

Valuation sections have been incorporated by the legislature only to discourage under-valuation of the properties, when they are purchased or sold so that the State does not lose its revenue. The words "truly" and "not correctly" clarify the position. The Registering Officer had the jurisdiction to refer the matter to the Collector for determination of market value if he had reason to believe that the consideration amount in the instrument was not truly set forth.

The scheme of Section 47A is to deal with those cases where private parties by arrangement deliberately under-value the property, subject matter of transfer, with a view to defraud the Government of legitimate revenue by way of stamp duty.

For attracting section 47A it is not enough to show that the consideration stated in the instrument of sale was less than the prevailing market value. It

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must be further shown that it was a case of under-valuation. Even though the expression "under-valuation", or "undervalued" are not used in the body of section 47A, but only in marginal note, still relevance of marginal note cannot be ignored.

Charge against the petitioner, Special Deputy Collector, a quasi-judicial authority, exercising jurisdiction under section 47A of the Act, for alleged misconduct in fixing market value of property at Rs. 22/- per sq. ft. as against adjacent lands acquired by Government at the rate of Rs. 58/- per sq. ft in the absence of proof of any motive or bad intention, could not be sustained.256

Ordinarily the registering officer shall accept in consideration amount stated in the document as representing the true market value, unless there was clear material before him to hold that the parties to the document had deliberately under stated the consideration with a view to avoid stamp duty.257 Where by reason of the provisions of the statute, the entire stamp duty has been paid; the deficit stamp duty may not be payable for the purpose of Section 35 or Section 36 of the Act.258

Where the value of the land shown in the sale deed as obtained on the date of execution of agreement to sell was less than the market value which was prevailing at the time of execution of decree by the Court, therefore, reference to the collector was rightly made by the Court for re-determination of present market value and payment of stamp duty.259

An order assessing the rental value of land higher than what was shown in the transfer deed without any observation of costs of land and building in the vicinity was without any basis and unsustainable.260

There can be no question of concealment of consideration of value of the plot allotted by the government agency as such there is no justification to refuse to

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259 Har Pyari v. District Registrar, 1999 (4) A WC 2804 (All).
register the document by the Sub-Registrar on the ground that stamp duty should be paid on the guideline value of the property.\(^{261}\)

Under similar circumstances, where a suit for specific performance of the agreement of sale which was decreed and the registering officer refused to register the said document, the Court directed registration of the document relying on the value mentioned in the judgement and decree of the Court.\(^{262}\)

Section 47A introduced by the M.P. Act 8 of 1975 is only prospective in operation and the Registrar has no power to refer to the Collector about under valuation of sale deeds registered by him prior to the Act. The decision of the Collector on such invalid reference is also bad.\(^{263}\) The Sub-Registrar can make no reference apart from the new section after registration of sale deeds as he became \textit{functus officio}.\(^{264}\) Section 47A applies only where the question involved is about the correctness of market value.\(^{265}\)

Rule 3-A of the M.P. Prevention of Under-valuation of Instruments Rules, 1975 is \textit{ultra vires} the power granted by section 75 of the Stamp Act and cannot stand together with sec. 47A thereof. The Registering officer is a statutory functionary under the Act and his function cannot be taken away, abrogated or curtailed by a subordinate legislation.\(^{266}\)

Where the revisionist accepting State Government's offer for getting leasehold right converted into free hold and paid the amount towards registration and stamp duty, was allowed refund of additional amount demanded by the collector.\(^{267}\)

Registration of two plots situated in two different villages by one instrument is permissible in law. The Authority cannot demand additional stamp duty


\(^{262}\) Amaraswamy Venkataswamy v. Sub-Registrar, Registration and Stamps, 1998 (3) An WR 259 (AP).


\(^{265}\) Vimalchand v. State of M.P., 1979 MPLJ 734. (Question whether a document registered as settlement deed is a gift deed.)

\(^{266}\) Bala Prasad v. State of M.P., AIR 1997 MP 218 (222).

without affording opportunity of hearing to the owner of the plot. Stamp duty payable under the deed of partition executed between joint purchasers and not between members of the family was on the value of the separated share as a bottomary bond. Notice issued without following procedure under Tamil Nadu Registration manual affording opportunity of hearing, for taking penal action on ground of under valuation and payment of deficit Stamp duty under the Stamp Act, liable to be set aside. Where sale deed had been undervalued and the sale price therein was shown less by Rs. 1,76,000/-, order for recovery of deficient stamp duty was maintained and order qua imposition of penalty of Rs.22,000/- set aside. A sale deed of property situate in Tamil Nadu was registered in Kerala. The collector, Tamil Nadu, exercising powers under sections 19-B and 47A required the petitioner to pay deficit stamp duty payable on the instrument; high court would not exercise extra ordinary powers under Article 226 of the Constitution, If alternative remedy was available.

If the Registrar suspects that it was a case of under-valuation to cheat the revenue, he can ask for particulars from the concerned party and on being satisfied that it was a case of undervaluation, he can refuse to register a document. Where information was received after registration of the document that the state was defrauded of legitimate duty, it would be open to him to initiate prosecution under section 27 read with Section 64 of the Act.

Where the sale deed was executed by a government undertaking, and there was no material to disbelieve the market value of the property set forth in the sale deed, provisions of section 47A(1) of the Act or Rules 3(3) and (4) of the Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 were not attracted.

In absence of any control by the public authorities in respect of sale effected by mortgagee under section 69 of the Transfer of Property Act, it cannot be

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269 Govindan v. District Registrar, Tankasi, 2006 (3) MLJ 834 (Mad).
271 Ramaswamy v. District Revenue Officer (Stamps), Coimbatore, 2006 (3) MLJ 507 (Mad).
272 In re Venkataswamy, AIR 1933 Mad 941.
said that the registering authority cannot entertain a doubt about under valuation of property under the Act.  

The procedure prescribed under Section 47A is that the value of the property is to be fixed by determining the price which the property would have fetched if sold in the open market on the date of execution of sale deed and not appearance of parties and fixing the price on the spot instead of allowing the parties to lead evidence.

The District Registrar, Prevention of Undervaluation of Properties being a quasi judicial authority cannot describe itself as a court. Directions asking the, affected party to pay difference in stamp duty without affording opportunity of hearing following principles of natural justice is arbitrary and unfair. Allowing a Writ of Certiorari, the Karnataka High Court observed that the procedure to be adopted by the authority should be fair and transparent.

The *sine qua non* for invoking provisions of section 47A(3) of the Act is that the collector had reason to believe that the stamp duty had not been properly set forth in the instrument as per market value of the property. Once the instrument is registered and the prescribed stamp duty as prescribed by the collector had been paid, the burden to prove that the market value was more than the minimum prescribed by the collector under the rules was upon the Collector. The report of the sub-Registrar or Tehsildar was not sufficient to discharge that burden.

Where no material was placed on record to show that the value of building or land was undervalued or that the value of any of the machinery embedded to earth was not shown in the conveyance deed. The fact that stamp duty was correctly paid by petitioner in respect of properties that were covered by

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274 Vasundra (Smt) v. Government of Tamil Nadu, represented by Secretary, Revenue Department, Chennai, (2010) 4 MLJ 907 (Mad).


conveyance deed, registering authorities was bound to register the conveyance deed and release it in favour of the petitioner.\textsuperscript{278}

Where agreement for sale, presented for registration, was under-valued, registering authority could hold enquiry to find out if the stamp duty was chargeable on market value of the property. It was not enough for the authority for the purpose of invoking section 47A of the Act that the consideration amount shown in the agreement for sale was less than the prevailing market value, but the authority must be satisfied as to attempt on the part of the party to under value the property.\textsuperscript{279}

Where a plot was purchased in the year 1998 for a consideration of Rs. 300/- per square yard and the present sale took place five years thereafter and the value shown in the sale deed was at Rs. 1,000/- per square yard, which was almost three and half time over and above the value that prevailed in the year 1998. It could not be said that the value of the property shown in the sale deed was not correct.\textsuperscript{280}

\textbf{9.7.6. Valuation of Property}

Once the collector has determined value of the property and stamp duty under section 31 of the Act, he or any other authority acting on his behalf would have no jurisdiction to reopen the case. Collector \textit{becomes functus officio} and the provisions of section 33 or 47A of the Act would have no application.\textsuperscript{281}

For assessing value of the property, the collector has to consider all relevant factors maintained under Rule 3(1)(a)(i) of Uttar Pradesh Stamp (Valuation of Property) Rules, 1997, as far as agricultural land was concerned. In the instant case, the total area purchased by the petitioner was 24 acres, which was fully cultivable and could be used for agricultural purposes. The

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presumption drawn by the collector and fixation of valuation presuming the land to be non-agricultural was wholly unwarranted in law.\textsuperscript{282}

Where the land was an agricultural land and was being used for agricultural purposes, it could not be treated to be a residential or commercial plot. Valuation of the land could not be determined straightaway on an assumption it that was situated in close proximity of 'abadi' area and on the presumption that the land was to be used for a purpose other than agriculture.\textsuperscript{283}

9.7.7. Encumber of Affixation of Photograph

Where the document relate to transfer of ownership of immovable property Finger prints and Passport size photographs of each buyer and seller of such property mentioned in the document should be affixed thereon, under section 32-A of the Registration Act, 1908.\textsuperscript{284}

9.7.8. Valuation of Land

Market value of the property is to be determined with reference to the date on which the document is executed. It could not be determined on the basis that the property in question would be used for a different purpose nor on the basis of its potential value in future. Circular issued by District magistrate providing that in case the land was purchased for industrial purposes, stamp duty would be payable thrice the rates prescribed for agricultural land was held to be without jurisdiction.\textsuperscript{285}

9.7.9. Fair Procedure

The requirement of recording reasons and communication thererof has been read as an integral part of fair proceeding, which is an important safeguard to


\textsuperscript{284} P. Rajagurusamy v. Sub-Registrar, AIR 2008 Mad 71.

assure observance of the rule of law. It introduces clarity, checks the introduction of extraneous or irrelevant consideration and minimizes arbitrariness in the decision making process.286

Rule 5 of the Andhra Pradesh (Prevention of Under-Valuation of Instruments) Rules, 1975, provides guidelines, and as per section 6 of the Stamp Act, 1899, as amended by Act VIII of 1998, the market value of the property shall be determined based on the likely sale value of the property in open market at the time of execution of sale deed. The petitioners purchased old building along with land and they valued the land for the purpose of stamp duty. The property demised under sale deed was building with land. The plea that the property must be valued as 'building' and not as 'house site' cannot be sustained.287

However, value of the land cannot be determined without notice to the concerned parties, or in the absence of parties.288

Provisional order passed by collector determining market value of immovable property purchased by petitioner without following procedure can templated under Rule 3(4) of Bombay Stamp (Determination of True Market Value of Property) Rules, 1981, for granting opportunity of hearing was held unsustainable, and show-cause notice quashed.289

The collector on his own motions within a period of three years from the date of registration of an instrument is competent to call for and examine any instrument for the purposes of satisfying himself with regard to the correctness of the value of the property or for the consideration disclosed. Where the sale deed was registered for a lesser amount; order of the collector, after giving proper opportunity of hearing to the party, directing to deposit deficient stamp duty and registration fee along with interest upheld.290

286 Lalita Devi v. Commissioner, Gurgaon Division, 2001 (1) PLJ 568: 2001 (3) RCR (Civil) 634 (P&H)
9.7.10. **Opportunity of Hearing When Denied**

The collector satisfying about the correctness of the consideration or the market value of the property under clause (4) of section 32 of the Bombay Stamp Act, performing administrative functions, is not bound to afford an opportunity of hearing to the parties to the instrument, much less to the third party.²⁹¹

Service of notice under Section 47A of the Stamp Act and Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968, is mandatory before directing appellant to pay additional stamp duty, non-service of notice amounts to violation of principles of natural justice. Matter remitted back for fresh consideration after providing sufficient opportunity to appellant.²⁹²

Where rules specifically mandate that notice to the person concerned should be served by registered post with acknowledgment due, notice sent on IGS does not satisfy the requirement.²⁹³

9.7.11. **Jurisdiction**

Collector can exercise his jurisdiction in two contingencies, *i.e.* on receipt of reference from Inspector General of Registration or the Registrar of the District. The Collector can also *suo motu* take action in case of under-valuation of the property.²⁹⁴

In another case under the A.P. Stamp (Prevention of Under-Valuation of Instruments) Rules, 1975, the Registering Authority observed before forming an opinion that the document was undervalued, opportunity of hearing to the party presenting document was not necessary.²⁹⁵ Valuation of property done prior to production of concerned document is not proper. Fresh hearing has to

be given to concerned parties after receipt of all documents and decision made with proper reasons.\textsuperscript{296}

Section 47A of the Act does not confer any jurisdiction on the registering authority to refuse registration of any particular instrument on ground of undervaluation nor does it authorize the registering authority to call upon the person concerned to pay additional stamp duty. It is only the collector who has the jurisdiction while dealing with a matter under section 47A (2) or (3). The only jurisdiction of the registering authority is to refer the question of undervaluation after registering the instrument.\textsuperscript{297}

The jurisdiction of the collector under section 47A(2) of the Stamp Act is not nullified by reason of time limit under Rule 7 of Tamil Nadu (Prevention of Undervaluation of Instruments) Rules, 1968, to pass an order for final determination of market value and the deficit stamp duty payable on the instrument.\textsuperscript{298}

Where the registering authority has no jurisdiction to refer the document to collector it cannot be alleged that the document in question was undervalued and chargeable to stamp duty on market value of the property.\textsuperscript{299}

Collector has no jurisdictions to determine the stamp duty or registration fee after registration of the documents.\textsuperscript{300}

\textbf{9.7.12. Application of Mind}

Report of the Sub-Registrar that the land in question was situated near residential area was not agricultural land could not by itself form basis of proceedings under section 47A of the Act, when there was no material available to show that at the relevant time of its purchase by the petitioner, land was not agricultural. Facts show that the plot with same khasra, some

\textsuperscript{296} Sudhadevi Ramakant Loiya v. State of Maharashtra, 2002(4) Bom CR 466 (Bom).
\textsuperscript{298} Dakshina Mara Nadar Sangam v. Special Deputy Collector (Stamps), Kokarakula, Tirunelveli, 2008(1) Mad LW 715 (Mad).
\textsuperscript{300} M/s AFRIK Farms (P.) Ltd., New Delhi v. State of Haryana, 2010 (4) PLR 211 (P&H).
part of the land was treated as agricultural land and the other part as non-
agricultural by the collector (stamps) and was resold by the petitioner
subsequently; no objection was raised by the authority which accepted the
stamp duty on subsequent sale deed treating the land as agricultural land.
There was thus no question that the instrument of sale was deficiently
stamped or undervalued in any manner for initiating proceedings under
section 47A of the Act.301

Where the Registering officer formed personal opinion about undervaluation
of a document without considering relevant material, such an order would not
only indicate non application of mind and omission could not be substituted
without any authentic documentary proof of market value of the property.302

9.8. Imposition of Penalty

It basically forms part of the rules made for determining the market value of
certain instrument and it was not concerned with the action which was to be
taken regarding payment of deficiency in stamp duty or penalty. Even
otherwise when the expression "relevant provisions of the Act" was used, it
could only mean Section 47A which along deals with such a situation and not
other sections of the Act. That apart, Section 75 gives power to the State
Government to make rules to carry out generally the purposes of the Act and
in a matter relating to revenue the aid of the rules could not be taken to
empower an authority to levy penalty specially when they also do not contain
any provision for imposing penalty under such circumstances.

The law regarding fiscal matters being well settled, power to impose penalty
must be conferred by the Statute itself. The language of sec. 47A alone had to
be seen and such a power could not be inferred by implication or by reference
to some general words contained in the Rules. In absence of a specific
provision to the effect, the Collector was not empowered to impose penalty.303

302 Mulakh Raj v. State of Haryana, 2001 (1) RCR (Civil) 581 (P&H-DB): AIR 2001 P&H 61:
(1) AWC 403: 1998 (4) Rec CR 193 (All-SB)
Therefore, penalty cannot be levied in a proceeding for determining the market value under section 47A of the Stamp Act.\textsuperscript{304} The ADM (Finance) also has no power to impose penalty.\textsuperscript{305}

The Chief Controlling Revenue Authority allowing a revision observed that it was highly inappropriate for the trial Court to reproduce the contents of a reference and call it a judgement and dismissing the objections without examining its validity. The penalty was in accordance with law and ought not have been imposed.\textsuperscript{306}

The Collector is empowered to recover all dues, penalties and other sums required to be paid under the Act as arrears of land revenue for implementing the order issued by the Assistant Commissioner pursuant to recovery certificate issued under section 48 of the Stamp Act.\textsuperscript{307}

Sub-section (4) of section 47A is applicable to cases where on examination of the document, the Collector finds that the property had been under-valued and thereafter he determined the value of such property conveyed by such document and duty payable thereon in accordance with the procedure provided under sub-section (3), Sub-section (4) simply provides that difference, if any, shall be payable by the person liable to pay the duty and does not provide for levy of any penalty. Where the order was under section 40(1)(b) of the Act, it authorizes the Collector to require the concerned to make payment of proper duty and he may further impose penalty ranging between rupees five to ten times of the amount of the proper duty.\textsuperscript{308}

The Collector is required to assess what should be proper amount of penalty to be imposed.\textsuperscript{309}


\textsuperscript{307} Anil Kumar Jain v. Collector Stamps, 1998 (2) AWC 929 (All).

\textsuperscript{308} Rajiv Tandon v. Addl. Commissioner (Adm), Kanpur, 1999 (2) AWC 1529 (All).

The Chief Controlling Revenue Authority affirmed the order of the collector on the ground that the property was located in the heart of commercial complex and was a double storey building comprising of shops and was in agreement with the order passed by Additional District Magistrate (Finance) for the estimation of rent which was just and proper and granted same relief by deleting penalty imposed.310

The District Registrar has got the power to levy lesser amount of penalty than the maximum provided under the provisions of the Act. The order of the Collector holding that he need not adjudicate upon the issue in view of decision taken by the court cannot be sustained.311

Where the Chief Controlling Revenue Authority had recorded a finding that true value of the property was not given in the instrument, the imposition of equal amount of penalty together with deficiency in stamp duty was fully justified as against penalty of four times the amount of proper duty or deficient portion thereof as provided in Section 47A of the Act.312

Section 32A of the Bombay Stamp Act, 1958, has been amended by Maharashtra Tax Laws (Levy, Amendment and Validation) Act (13 of 2004), to levy monthly penalty in respect of instruments undervalued at the rate of 2 per cent of the deficient part of stamp duty, compared to 15 per cent per annum or part thereof from the date of execution of the instrument.

Section 47A does not postulate any concept of imposition of penalty even by implication, it confers jurisdiction on the authority exercising power to impose a penalty.313 Power to impose penalty must be conferred by the statute itself. Where the document in question was only an agreement in the nature of a bond, penalty could not be imposed on such a document.314

312 J.V.H. Sugar Corporation Ltd. v. Chief Controlling Revenue Authority, AIR 2004 All 60, p. 70.
313 Ramgovind Mishra v. Chief Controlling Revenue Authority, Allahabad, 2000 All LJ 2550, p. 2565 (All).
314 Sunil Kumar v. Chief Controlling Revenue Authority, Pauri Garhwal, AIR 2006 NOC 567 (Utttr).
was allotted to petitioner in public auction and there was only one agreement in respect of premium shop for which petitioner was the highest bidder, order passed by the commissioner requiring petitioner to pay stamp duty and penalty in respect of lease agreement, without notice to petitioner, and was liable to be set aside. Document was registered on payment of additional stamp duty and registration charges. Where the plot of land was purchased for residential purposes and was for commercial purposes, and the condition of original lease deed and transfer memorandum clearly provided that transfer was liable to be cancelled in case the plot was used for commercial purpose, order imposing penalty on owner for imposing penalty for paying deficient stamp duty was liable to be set aside. Show cause notice demanding deficient stamp duty and levy of penalty issued after lapse of four years from the date of registration of sale deed without the permission of state Government, was in clear violation of Section 47A of the Act. Impugned order in pursuance of notice as well as notice was quashed. Collector does not have the power to impose penalty. Order imposing penalty was quashed.

In Sub-section (4-A) of Section 47 inserted by U.P. Amendment Act, 38 of 2001, provision for payment of 'simple interest' has been made only in a case where market value of property is not truly set forth in the instrument. Sub-section (4) inserted to Section 47A by the same amendment refers to a case where market value of the property is not truly set forth and the instrument is not duly stamped, the collector would require payment of proper duty or amount required to make up deficiency together with penalty of an amount not exceeding four times the amount of proper duty. A conjoint reading of subsection (4) and (4-A) clearly indicates that section 47A has differently treated a case "where market value has been truly set forth" and a case "where

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317 Surabhi Hospital (P) Ltd. v. State of U.P., 2005 All LJ 1194; 2005(2) All WC 2715 (All).
market value is not truly set forth." Imposition of penalty by the Assistant Commissioner (Stamps) was wholly uncalled for and without jurisdiction.\textsuperscript{321}

Penalty can be imposed, if there is an attempt to evade stamp duty. Penalty presupposes culpability and an intention to conceal or to play fraud with authorities. Before imposing penalty, authorities must record finding based on relevant material that the purchaser or the person liable to pay stamp duty had concealed relevant facts in execution of sale deed and had intention to evade payment of stamp duty.\textsuperscript{322}

While exercising powers under sub-section (4) of Section 47A of the Act, Collector can determine market value of the property and the stamp duty payable on the instrument as a result of such determination, but has no power to impose penalty.\textsuperscript{323}

\textbf{9.9. Evasion of Stamp Duty}

When there was nothing on record to show that the consideration shown in the documents were deliberately undervalued resulting in fraudulent evasion of stamp duty. The market value of the property is always changing factor depending on various circumstances. Normally the consideration shown as market value in a given instrument brought for registration should be taken to be correct unless circumstances exist suggesting fraudulent evasion of stamp duty.\textsuperscript{324}

The Collector, Deputy Commissioner and any officer authorized by the State Government have been empowered to conduct inquiry into short payment of registration charges.\textsuperscript{325}

Where copy of agreement to sell between petitioner and the vendor, admitted in evidence indicated that price of land was fixed at a higher rate, but there

\textsuperscript{322} Asha Kapoor (Smt.) v. Additional Collector (Finance & Revenue), Ghaziabad, AIR 2008 NOC 2428: 2008 All HC 2807: (2008) 4 All LJ 363: (2008) 72 All LR 125 (All).
\textsuperscript{324} Sub-Registrar, Adyar, Chennai v. Canara Bank, (2006) 4 Mad LW 695 (Mad).
\textsuperscript{325} N. Dhanakoti v. Special Deputy Tehsildar, Tiruchengode, AIR 2003 Mad 96, p. 97.
were no comparative instances of sale to establish plea of petitioner that the land was purchased at a rate mentioned in the sale deed, petitioner was liable to pay enhanced stamp duty.\textsuperscript{326}

Where the sale deed in respect of land situate in Fatehpur (U.P.), was registered in Delhi, copy of the sale deed was forwarded to Registrar at Fatehpur in terms of section 67 of the Registration Act, who had the jurisdiction for realization of deficit stamp duty.\textsuperscript{327}

Where the market value of the property was truly set forth in the sale deed executed by government undertaking, the respondents had no jurisdiction to invoke provisions of Section 47(1) and demand additional stamp duty.\textsuperscript{328}

Sub-clause (3) of section 47A of the Act contemplates initiation of proceedings by the collector within a period of three years from the date of registration of the instrument. Initiation of proceedings after one and a half year of the registration of the instrument cannot be said to be illegal or contravening provisions of the Act.\textsuperscript{329}

Where the document was returned to the party after its registration the Sub Registrar had no jurisdiction to initiate proceedings and take back the document on the basis of audit report.\textsuperscript{330}

\subsection*{9.9.1. Avoidance of Stamp Duty and Registration Fee}

Where the petitioner resorted to evasion of Stamp duty and registration fee by showing less price of the property in the sale deed, and there was no evidence that he had signed on blank paper under pressure. Court could not assume the reason of pressure, resulting from the statement.\textsuperscript{331}

Where the fraudulent intention for evading stamp duty could not be ascertained from the material on record, registering authority under the Act

\begin{footnotesize}\begin{itemize}
\item \textsuperscript{326} Jagdish Singh v. State of Punjab, AIR 2009 NOC 554 (P&H).
\item \textsuperscript{327} Maya Foods and Vanaspati Ltd. v. Chief Controlling Revenue Authority (BR), Allahabad, 1998 (4) AWC 636 (All).
\item \textsuperscript{328} Section Jayalakshmi v. Government of Tamil Nadu, AIR 2003 Mad 142, p. 144.
\item \textsuperscript{329} Sandeep Nakara v. State of Punjab, AIR 2009 NOC 858 (P&H).
\item \textsuperscript{330} Kundenmal Tela v. State of Rajasthan, 2002 (1) RRT 533 (Raj).
\item \textsuperscript{331} S.B, Agro Foods Nihal Singh Wola v. State of Punjab, 2008(3) PLR 240 (P&H).
\end{itemize}\end{footnotesize
could not proceed against the petitioner on the premise that the property was undervalued and did not assign any reason for reference to the collector. Value of the property mentioned in the sale deed has to be taken as market value of the property.\textsuperscript{332}

\subsection*{9.9.2. Nomenclature of Document}

Nomenclature of a document alone is not a determining factor to decide whether a particular deed or document is a lease or deed of assignment and for that purpose substance of the deed is to be looked into. The registering authority has to consider the document as lease deed if it is meant for partial transfer, and if the deed involve an outright sale, then it would be considered as deed of conveyance, for calculating stamp duty.\textsuperscript{333}

\subsection*{9.9.3. Sale Deed}

Stamp duty is leviable only for the value of the portion of the property for which sale deed was executed and could not be charged on property unauthorized or illegally occupied.\textsuperscript{334}

Stamp duty on sale deed is payable as per market value of property at the time of submission of sale deed for registration. Date of agreement to sell is not relevant for payment of stamp duty.\textsuperscript{335}

Nature of land on date of sale has to be seen for registration of sale deed.\textsuperscript{336}

Petitioner purchased a plot through sale deed which was on road side; it could not be bifurcated or divided into two. Property being one, same rate would be applicable for the entire area.\textsuperscript{337}

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\textsuperscript{335} Iqbal Kaur v. State of Punjab, AIR 2010 P&H 130.
\textsuperscript{337} Amar Pal Singh v. Chief Controlling Authority/Commissioner, Agra, 2010(4) All U 296 (All).
\end{flushleft}
Market value of the property has to be seen irrespective of the fact whether it is residential, commercial or agricultural. Nature of the land and its current use may not be relevant, if around the plot in question, properties were being sold and bought at commercial rates, and then for determination of stamp duty, market value of the property would be the same as that of property bought for commercial use.\textsuperscript{338}

\textsuperscript{338} D.P.R. Foods (P) Ltd v. State of Uttar Pradesh, 2010 (4) All LJ 95 (All).