

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

TUESDAY, THE 02ND DAY OF JUNE 2020 / 12TH JYAISHTA, 1942

WA.No.1309 OF 2016

AGAINST THE JUDGMENT IN WPC 2384/2016 DATED 20-01-2016 OF HIGH COURT
OF KERALA

APPELLANTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT, REVENUE
DEPARTMENT, THIRUVANANTHAPURAM-695 001.
- 2 DISTRICT COLLECTOR,
ERNAKULAM-682 030.
- 3 REVENUE DIVISIONAL OFFICER
FORT KOCHI-682 001.
- 4 TAHSILDAR
ALUVA TALUK, ERNAKULAM-683 101.
- 5 SUB REGISTRAR
SUB REGISTRAR'S OFFICE, ANGAMALY-683 572.

BY ADVS.
GOVERNMENT PLEADER
SRI.RANJITH THAMPAN,ADDL.ADVOCATE GENER

RESPONDENTS/PETITIONERS:

- 1 SUNITHA PAUL
W/O. PAUL ABRAHAM, THADIKKARAN HOUSE, MATTUR, (VIA)
KALADY, ERNAKULAM DISTRICT - 683 574.
- 2 LINY LABEES
KOTTAKKAL HOUSE, KIDANGOOR, ANGAMALY,
ERNAKULAM - 683 572.
- 3 JAMES K.MATHEW
S/O. K.K.MATHEW, PARAMBATH KIZHAKKEKARA HOUSE, MANEED
P.O., MUVATTUPUZHA - 686 726.

R1-3 BY ADV. DR.GEORGE ABRAHAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 02.06.2020, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

SHAJI P. CHALY, J

This writ appeal is filed by the respondents in the writ petition, who are State of Kerala and its officials challenging the judgment of the learned single Judge in W.P.(C) No. 2384 of 2016 dated 20.01.2016.

2. The subject issue relates to the fixation of the fair value of land by the Statutory authority under Section 28A of the Kerala Stamp Act, 1959 ('the Act, 1959' for short), the attendant rules, and the consequences arising from the order passed by the Government and the Revenue Divisional Officer.

3. The learned single Judge, after considering the rival contentions has passed the judgment with the following observations and directions:

4. Thereafter, the petitioners approached this Court with W.P. (C).No.30139/2015 and this Court by judgment dated 16/10/2015 directed the District Collector to reconsider the matter and the District Collector took the view that in the light of the fact that the fair value of the petitioners was fixed only on 06/11/2014, the fair

value has to be increased as per the existing rate. The Government Order came into effect only on 14.11.2014. The Government by order dated 14.11.2014, ordered to increase 50% of the fair value on the existing rate taking note of the market fluctuation. The fair value on the petitioners' land was fixed on 06/11/2014. The Government, in fact, in the order dated 14/11/2014 has noted that the fair value of the land had been revised in tune with the increased market value of the land. Herein, in this case, the fair value was fixed on 06/11/2014. The Government in the order dated 14/11/2014 directed that if there is any real grievances, that have to be addressed by the District Collector. In such scenario, the method adopted by the District Collector has to be taking note of the market value that is prevalent in that area. It is unreal to expect that the market value as noted in the notification dated 06/11/2014 would undergo substantial change within one week. Therefore, this Court is of the view that in such circumstances, the order of the District Collector is unsustainable. Accordingly, it is set aside. The registering authority is directed to register the documents based on the fair value fixed as per Ext.P13. The writ petition is disposed of as above. No costs.”

4. According to the appellants, the judgment of the learned single Judge is erroneous, since the learned single Judge has not appreciated the provisions of Section 28A of the Kerala Stamp Act and the Rules framed thereunder in its

correct perspective and therefore, the State Government is put to innumerable financial difficulties. It is also pointed out that the learned single Judge erred in holding that the fixation of the land value on 06.11.2014 was based on the current market value of the land. However, the learned single Judge has not taken into account the subtle distinction between the provisions of Section 28A, and the power enjoyed by the State Government to enhance the land value of the properties as a whole within the State of Kerala. That apart, it is submitted that the learned single Judge was carried away by the land value fixed by the Revenue Divisional Officer to the property of the writ petitioners, and without properly appreciating the law held that the land value fixed by the said authority cannot increase all on a sudden and that too within a week.

5. On the other hand, the learned counsel for the writ petitioners submitted that the property was transacted by and between the writ petitioners and the owner of the property somewhere in 2007. But, since the issue with respect to the fixation of the land value was under dispute and pending

consideration before the statutory authority under the Kerala Stamp Act, the document when presented for registration was not accepted by the Sub Registrar and it was accordingly that the document of sale could not be registered. That apart, the learned counsel submitted that, Section 54 of the Transfer of Property Act, 1882 defines the word 'sale' as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised, and therefore the transaction was complete when the consideration has passed on. In that view of the matter it is contended that the learned single Judge was right in directing the Sub Registrar to register the documents submitted by the writ petitioners based on the fair value fixed as per Ext.P13 gazette notification dated 16.11.2014.

6. We have heard Sri. Surin Goerge Ipe, learned Senior Government Pleader and the learned counsel appearing for the respondents/writ petitioners, Dr. George Abraham, and perused the pleadings and documents on record.

7. The learned Government Pleader as well as the

learned counsel appearing for the respondents addressed their arguments in accordance with the facts discussed above.

8. As we have pointed out earlier, the subject issue is guided by Section 28A of the Kerala Stamp Act, 1959 brought into force on and with effect from 01.04.1994, as per the Finance Act, 1994, and the Kerala Stamp (Fixation of Fair Value of Land) Rules, 1995. Section 28A of Act, 1959 reads thus:

“28A. Fixation of fair value of land.- (1) Every Revenue Divisional Officer shall, subject to such rules as may be made by the Government in this behalf, fix the fair value of the lands situate within the area of his jurisdiction, for the purpose of determining the duty chargeable at the time of registration of instruments involving lands.

(1A) Subject to such rules as may be prescribed, the fair value of land fixed under sub-section (1) may be revised by the Revenue Divisional Officer every five years or earlier if so directed by the Government, if in the opinion of the Government any substantial change of the fair value of land has taken place.

(1B) Notwithstanding anything contained in this Act or the Rules made thereunder, the Government may, by notification published in the Official Gazette, make an increase of a fixed percentage in the fair value of land fixed as per sub-Section (1), from time to time, before

revision is made under sub-section (1A) and the value so increased shall be deemed to be the fair value of the land.

(2) The Revenue Divisional Officer shall, in fixing the fair value of a land under subsection (1), have regard inter alia to the following matters, namely:-

(a) development of the area in which the land is situate such as the commercial importance, facilities for water supply, electricity, transport and communication;

(b) proximity of the land to markets, bus stations, railway stations, factories, educational institutions or other institutions;

(c) the geographical lie of the land, the nature of the land such as dry, waste, wet or garden land, fertility, nature of crop, yielding capacity and cost of cultivation; and

(d) such other matters as may be provided in the rules made under this Act.

(3) The fair value of land fixed under sub-section (1) and the revised fair value of land fixed under sub-section (1A) shall be published in such manner as may be provided in the rules made under this Act.

(4) Any person aggrieved by the fixation of fair value under sub-section (1) or the revision of fair value under sub-section (1A) may, within one year of its publication under sub-section (3), appeal to the Collector.

(5) After the publication of the increased fair value of land under sub-Section (1B), any person aggrieved by the fixation of fair value of

land in an appeal under sub-Section (4) may, within a period of one year from the date of publication of the notification under sub-Section (1B), file an application to the Collector to review the order passed in appeal and the Collector shall dispose of the same in such manner and within such period as may be prescribed.

Provided that the Collector may admit an appeal preferred after the said period of one year if he is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.”

9. A reading of sub-Section (1) above makes it clear that the Revenue Divisional Officer concerned, subject to the Rules made by the Government for the fixation of the fair value of lands, fix the fair value of lands situate within the area of his jurisdiction, for the purpose of determining the duty chargeable at the time of registration of instruments involving lands.

10. Sub-Section (1A) empowers the Revenue Divisional Officer to fix the fair value of the land as provided under sub-Section (1) every 5 years or earlier, if and when it is so directed by the Government, if in the opinion of the Government any substantial change of the fair value of land

has taken place. The peculiar feature of sub-Section (1A) shows that the power conferred under Sub-Section (1A) is to fix the land value of the entire properties within the jurisdiction of the Revenue Divisional Officer on completion of every five years or earlier, however, it can only be done as per the directions of the Government, if the Government is of the opinion that any substantial change of the fair value of the land has taken place. Therefore, the power conferred on the Revenue Divisional Officer under sub-Section (1A) is a dependent power, contemplating a general revision of the fair value of the lands on the directions issued by the Government. This would be more clear on a reading of sub-Section (1B). The power conferred on the Government under Sub-Section (1B) is an omnibus power, irrespective of the powers conferred under sub-Sections (1) and (1A). However, such a revision of the fair value of the land shall be made by the Government before any revision is made under sub-Section (1A) by the Revenue Divisional Officer on the directions of the Government. Which thus means if a direction was issued by

the Government to the Revenue Divisional Officer under sub-Section (1A) to revise the fair value of the land within his jurisdiction, then the Government is precluded from exercising the power conferred under sub-Section (1B). It is also clear that when the Government exercised the power under sub-Section (1B), it shall be published in the official gazette. So also, the fair value fixed by the Revenue Divisional Officer under Sub-Section (1) and the revised fair value of land fixed under sub-Section (1A) shall be published in the gazette in such manner as may be provided in the rules made under the Act, which is obviously the Kerala Stamp (Fixation of Fair Value of Land) Rules, 1995.

11. It is quite clear and evident from sub-Section (4) of Section 28A that any person aggrieved by the fixation of fair value under sub-section (1) or the revision of fair value under sub-section (1A) may, within one year of its publication under sub-section (3), appeal to the Collector.

12. So also, it is clear that after the publication of the increased fair value of land under sub-Section (1B), any

person aggrieved by the fixation of fair value of land in an appeal under sub-Section (4) may, within a period of one year from the date of notification under sub-Section (1B), file an application to the Collector to review the order passed in appeal, and the Collector shall dispose of the same in such manner and within such period as may be prescribed

13. Therefore, it is clear and evident that there is a clear distinction between the powers conferred on the Revenue Divisional Officer under sub-Sections (1) and (1A). Both operate in different fields. But fact remains, the fair value under section 28A (1) of the properties in question was fixed by the District Collector instead of the Revenue Divisional Officer. Challenging the said action, petitioners filed W.P.(C) No. 14663 of 2014 before this Court and secured Ext. P5 judgment dated 10-06- 2014 setting aside the said order and further directing the Revenue Divisional Officer to reconsider the entire matter and pass fresh orders within three months. It was accordingly that the Revenue Divisional Officer passed Ext. P12 order and Ext. P13 consequential gazette publication

dated 6-11-2014 and 16-11-14 respectively in respect of the property of the writ petitioners alone. However, it is quite clear and evident that the State Government, as per Ext.P14 gazette publication dated 14.11.2014, in exercise of the powers conferred under sub-Section (1B) of Section 28A of the Act, 1959 increased the existing fair value of the land in Kerala fixed as per sub-Section (1) of Section 28A by 50%, which was declared to have come into force on the 17th day of November, 2014. It is specified thereunder that separate notifications for the purpose by the Revenue Divisional Officers concerned are not necessary. The explanatory note of the said gazette notification makes it clear that by virtue of the power conferred under sub-Section (1) of Section 28A of the Act, 1959, the Revenue Divisional Officers within the area of their jurisdiction have fixed the fair value of lands in the State and necessary notification was published in the Kerala Gazette Extraordinary No. 515 dated 06.03.2010. Therefore, the State Government was of the opinion that the market value of land has increased considerably , however,

the fair value of the land was not revised in tune with the increase in the market value. The gazette notification is extracted hereunder for the proper disposal of the writ appeal:

**“GOVERNMENT OF KERALA
Taxes (E) Department
NOTIFICATION**

G.O.(P) No. 188/2014/TD

Dated Thiruvananthapuram 14th November, 2014
28th Thulam 1190

S.R.O No. 698/2014: In exercise of the powers conferred under sub-Section (1B) of Section 28A of the Kerala Stamp Act, 1959 (Act 17 of 1959), the Government of Kerala hereby increase the existing fair value of land in Kerala fixed as per sub-section (1) of Section 28A by fifty per cent. It shall come into force on the 17th day of November, 2014. Separate notifications for this purpose by the Revenue Divisional Officers concerned are not necessary.

By order of the Governor,

A. AJITH KUMAR,
Secretary to Government

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport)

Sub-section (1) of Section 28A of the Kerala Stamp Act, 1959 (17 of 1959) empowers the Revenue Divisional Officers to fix the fair value of lands situated within the area of his jurisdiction for the purpose of determining the duty chargeable at the time of registration of instruments involving lands. Accordingly, 21 Revenue Divisional Officers in the State and necessary notification was published in the Kerala Gazette Extraordinary No. 515 dated 6th March, 2010. Thereafter, the market value of the land has increased considerably. As the fair value of land has not been revised in tune with the increase in market value, the Government have decided to increase the existing fair value fixed as per sub-Section (1) of Section 28A (including decisions in appeals and review petitions) by fifty per cent invoking the provision under sub-Section (1B) of Section 28A of the said Act.

The notification is intended to achieve the above object”

14. The learned single Judge, however has taken into account the fair value fixed by the Revenue Divisional Officer as per Ext.P12 order dated 06.11.2014, and the consequential Ext.P13 gazette publication dated 06.11.2014 in accordance with the stipulation contained under sub-Section (3) of Section 28A of Act, 1959, and evaluated that there cannot be any considerable increase of the land value, within a week thus

enabling the State Government to publish the fair value of the land within the State by enhancing the same by 50%, as per Ext.P14 Gazette notification dated 14-11-14.

15. As we have pointed out earlier, the powers conferred on the Revenue Divisional Officer under sub-Sections (1) and (1A) of Section 28A and the power conferred on the State Government under sub-Section (1B) of Section 28A are entirely different. It is true, sub-Section (1A) was brought to the statute book as per the Kerala Finance Act, 2014 published in the official gazette dated 23.07.2014 on and with effect from 01.04.2014, which thus means prior to the same, the Revenue Divisional Officers were fixing the land value under Section 28A(1) in accordance with the Rules framed by the Government for the said purpose. Be that as it may, in exercise of the powers conferred under Section 69 of the Kerala Stamp Act, 1959 r/w Sections 28A, 45A and 45C, the Government has made the Kerala Stamp (Fixation of Fair Value of Land) Rules, 1995. Rule (3) deals with fixation of fair value of land, which reads thus:

3. Fixation of Fair Value of Land.--(1) The Revenue Divisional Officer, shall for the purpose of fixation of fair value of land as required under Section 28A of the Act, ascertain the fair value of land by classifying the lands as those lying in (1) Municipal Corporation Areas (ii) Municipalities and (iii) Rural areas.

(2) Within each of the above categories, the lands may again be classified as commercial area, residential area, areas adjoining railway station, bus stations, factories, educational institutions etc., agricultural lands (wet and dry) and others as provided in sub-Section (2) of the said section.

(3) Based on the above classification and categorisation to be used for comparative valuation, in the same village/area/survey number, for different types of land and also considering the mitigating circumstances, if any, such as land being rocky/water logged or in close proximity to dumping yards, grave yards or similar other circumstances, the RDO shall fix a draft of the fair value of lands in his jurisdiction.

(4) The draft of the fair value prepared under sub-Rule (3) shall be notified in the Gazette, inviting objections or suggestions, if any, thereon from interested persons.

(5) Copies of the notifications published under sub-rule (4) shall be exhibited in conspicuous places in the office of the RDO, the taluk offices, the village offices, offices of the Grama Panchayats concerned.

(6) The objections and suggestions under sub-rule (4) shall be

filed before the Revenue Divisional Officers concerned within a period of sixty days from the date of notification of the draft fair value in Gazette.

(7) After the expiry of the period fixed under sub-rule (6) the RDO shall consider, on merit, the objections and suggestions received within the time limit and shall fix the final fair value of lands in his jurisdiction within a period of sixty days from the date of expiry of the period specified in sub-rule (6).

(8) Fair value shall be fixed in units of "Are'."

16. On an appreciation of Rule (3), it is evident that the power was conferred on the Revenue Divisional Officers for fixation of fair value of land as required under Section 28A of the Act by taking into account the classification of lands as those lying in (i) Municipal Corporation Areas (ii) Municipalities and (iii) Rural areas. The Revenue Divisional Officer has also to take into account other parameters fixed under the Rules as specified above.

17. Rule 4 deals with publication of fair value of land, which reads thus:

"4. Publication of fair value of land.--(1) The Revenue Divisional Officer shall, after having fixed the fair value of the

land as provided in Rule 3, publish a notification in Form 'A' appended to these rules and cause copies of the same exhibited in his office, the Taluk Office, the Village Office, Office of the local body and Offices of the District Registrar and Sub-Registrars concerned.

(2) The Revenue Divisional Officer shall forward copies of the notification to the Superintendent of Government Presses for publication in the Official Gazette and to the District Collector, the Board of Revenue and the Government for information.

(3) The Revenue Divisional Officer shall also forward copies of the Notification to the Inspector General of Registration, the District Registrar and the Sub-Registrars concerned.”

18. Therefore, it can be seen that the Revenue Divisional Officer shall, after fixing the fair value of the land as provided under Rule (3) publish a notification in Form 'A' appended to the Rules and cause copies of the same exhibited in various offices including the Office of the Sub Registrars concerned. Therefore now, harmoniously construing the power conferred under Section 28A (1) and Rule 4 requisiting publication, it is clear that in the year 2010, the power was being exercised by the Revenue Divisional Officers to fix the fair value of the land as such within their jurisdiction collectively, and to deal with any complaints of the individual property owners. It was exercising the said power to deal with individual properties,

the Revenue Divisional Officer had passed Ext.P12 order in favour of the writ petitioners on 06.11.2014 and carried out the consequential publication, Ext.P13 dated 16.11.2014 fixing the fair value of the property of the petitioners alone. But, that by itself will not create any fetter on the powers conferred on the State Government under sub-Section (1B) of Section 28A of Act, 1959 to fix the fair value of the land. It is also an admitted fact that the land value was fixed by the Revenue Divisional Officer during the year 2010 by virtue of the powers conferred under sub-Section (1) of Section 28A of Act, 1959 r/w Rule 3 of Rules, 1995. The Government during the year 2014 felt that the land value has increased considerably within the State of Kerala and that is how the Government has fixed the fair value of the land afresh and published in the gazette extracted above and that too prior to the Ext P13 gazette notification, in the case of the petitioners individually. Anyhow, the District Collector passed Ext.P20 impugned order dated 30.12.2015, on the basis of the directions issued by this Court in a writ petition, taking into

account the fair value fixed by the State Government as per Ext.P14 notification extracted above.

19. The case projected by the writ petitioners is that the writ petitioners have produced the document for registration before the Sub Registrar, Angamaly on 17.04.2014 i.e. , the next day of Ext.P13 gazette publication dated 16.11.2014 consequential to Ext.P12 order passed by the Revenue Divisional Officer in regard to the property of the writ petitioners alone. However, there is no proof or even bare evidence produced by the writ petitioners to show that they have produced the document before the Sub Registrar on the next day after Ext.P13 gazette notification.

20. Therefore, we are of the view that, when a sale deed is to be executed on stamp paper in accordance with the consideration transacted by and between the parties, there would be considerable proof with regard to the purchase of the stamp papers, either physical or online, but the writ petitioners have not cared to produce any evidence to substantiate the case put forth by them that the sale deed was

executed any day prior to Ext P14 gazette notification. It is also explicit and clear that after Ext.P14 gazette notification by the State Government enhancing the fair value of the land within the State, the writ petitioners were before the District Collector for revising the fair value of the property in question which was declined as per Ext.P18 order dated 1-8-2015. Anyhow, Ext.P18 order was set aside by a learned single Judge of this Court as per Ext.P19 judgment in W.P.(C) No. 30139 of 2015 dated 16.10.2015 and directed the District Collector to reconsider the subject issue. It was accordingly, Ext.P20 order was passed stating that there is no requirement for re-fixation of land value fixed by the State Government as per Ext.P14 gazette notification. It is also clear that it was taking in to account factual circumstances that the District Collector had arrived at the conclusions in the order impugned

21. Therefore, on a harmonious reading of sub-Section (5) of Section 28A and the provisions of Rules, 1995, discussed above, it is vivid and clear that a review after the publication

of the notification under sub-Section (1B) is maintainable before the District Collector only to review the order passed in appeal under sub-Section (4). Looking at that angle, in our considered view the District Collector did not have power to review the order of the State Government published as per Ext.P14 gazette notification, because there was no order passed in any appeal against the writ petitioners to be aggrieved as provided under sub-Section (5) of Section 28A of Act, 1959.

22. The learned counsel for the writ petitioners also contended that if that is the situation the District Collector did not have power to entertain any review. First of all, it is a contraplex contention because, it was on the basis of the application filed by the petitioners the District Collector had passed Ext P18 Order which was interfered with by this Court as per Ext.P19 judgment and directed the District Collector to re-consider the review application. Therefore, in our view, when this Court exercising the power conferred under Article 226 of the Constitution of India, directed the District Collector

to take a decision, then the District Collector was duty bound to consider the same. Moreover, the said judgment has become final and binding on the writ petitioners.

23. Anyhow, it is by now trite and settled that the power conferred on the High Courts in India under Article 226 of the Constitution is unlimited and therefore, once a direction is issued to any appropriate statutory authority to do a particular act, then the order passed by the authority shall be referable to the power conferred by this Court under Article 226 of the Constitution of India, irrespective of power conferred under a statute to do so. It is done so with the laudable object of protecting the fundamental rights guaranteed to the citizens under the constitution of India and also to sustain the salutary principle, "there shall not be a wrong without remedy". Said so, it was with the power so conferred the District Collector had passed the impugned order. In this regard, the judgment of the Apex Court in ***Benedict Denis Kinny and others Vs Tulip Brian Miranda and others***, Manu/SC/0329/2020 is relevant,

paragraphs 20 and 21 of which read thus:

“20. We need to first notice the nature and extent of the jurisdiction of the High Court Under Article 226 of the Constitution of India. The power of judicial review vested in the High Courts Under Article 226 and this Court Under Article 32 of the Constitution is an integral and essential feature of the Constitution and is basic structure of our Constitution. The jurisdiction Under Article 226 is original, extraordinary and discretionary. The look out of the High Court is to see whether injustice has resulted on account of any decision of a constitutional authority, a statutory authority, a tribunal or an authority within meaning of Article 12 of the Constitution. The judicial review is designed to prevent cases of abuse of power or neglect of a duty by the public authority. The jurisdiction Under Article 226 is used for enforcement of various rights of the public or to compel public/statutory authorities to discharge the public functions entrusted on them. The Courts are guardians of the rights and liberties of the citizen and they shall fail in their responsibility if they abdicate their solemn duty towards the citizens. The scope of Article 226 is very wide and can be used to remedy injustice wherever it is found. The High Court and Supreme Court are the Constitutional Courts, which have been

conferred right of judicial review to protect the fundamental and other rights of the citizens. Halsbury's Laws of England, Fifth Edition, Volume 24 dealing with the nature of the jurisdiction of superior and inferior courts stated that no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so. In paragraph 619, Halsbury's Laws of England States:

The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendency in certain classes of claims, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular claim.

21. The nature of jurisdiction exercised by the High Courts Under Article 226 came for consideration by this Court in large number of cases. In Sangram Singh v. Election Tribunal Kotah and Anr., MANU/SC/0044/1955 : AIR 1955 S.C. 425, Article 226

of the Constitution of India in reference to Section 105 of the Representation of the People Act, 1951 came for consideration. Section 105 of the Representation of People Act provided that "every order of the Tribunal made under this Act (Representation of People Act) shall be final and conclusive". Argument was raised in the above case that neither the High Court nor the Supreme Court can itself transgress the law in trying to set right what it considers is an error of law on the part of the Court or Tribunal whose records are under consideration. It was held that jurisdiction of the High Court remains to its fullest extent despite Section 105. This Court also held that jurisdiction of the High Court in Article 226 and Under Article 136 conferred on this Court cannot be taken away by a legislative device. In paragraph 13, following has been laid down:

13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal.

It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis-a-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and

what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review Under Articles 226 and 136. Therefore, the jurisdiction of the High Courts Under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105.”

24. So also, in ***M.V. Elisabeth and others v. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-de-Gama, Goa*** [1993 supp. (2) SCC 433, considering the admiralty jurisdiction of the High Court, it was held by the Apex Court in paragraphs 66 and 90, as follows:

“66. The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of this Court, the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers. (See Naresh Shridhar Mirajkar v. State of Maharashtra and Anr. [1966] 3 SCR 744. As stated in Halsbury's Laws of England, 4th edition, Vol.10, para 713:

“Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is

expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court.

90. The British statute assimilating Indian High Courts to the position of the English High Court in respect of admiralty jurisdiction is an enabling legislation and it is but one of the strands of jurisdiction vested in the High Court by virtue of the constitutional provisions. The jurisdiction of the High Court is governed by the Constitution and the laws, and the continuance in force of the existing laws is not a fetter but an additional source of power. Access to court for redressal of grievance being an important right of every person, it is essential that the jurisdiction of the courts is construed harmoniously and consistently with its vital function in that respect, so that absence of legislation will not jeopardise that right.”

25. Thinking so, we are also of the considered opinion that the distinction by and between the powers conferred on the Revenue Divisional Officer under the provisions of Sections 28A (i) and 28(1A), the powers conferred on the Government under Section 28A (1B), and the powers enjoyed by the District Collector to entertain an appeal and review were not properly brought to the notice of the learned single

Judge, which persuaded the learned single Judge to arrive at a finding that the fair value fixed by the Revenue Divisional Officer as per Ext.P12 order dated 06.11.2014 and published in the gazette dated 16.11.2014 has only a difference of a week with the fair value fixed by the Government as per Ext. P14, and therefore the fair value so fixed by the Government cannot be sustained. However, as we have pointed out earlier, the fair value of the land was fixed in the year 2010 and the second revision was done by the Government as per Ext.P14 gazette notification dated 16.11.2014. Therefore, in effect, the value of the land had to be compared with the value of the year 2010. Moreover, the learned single Judge has not found fault with the manner in which the decision was taken by the District Collector in the impugned order though contentions were raised against the same in the writ petition.

26. So also, we do not find any force in the contention advanced by the learned counsel for the writ petitioners that, as the transfer took place when the price was allegedly paid by and between the owner of the property and the purchaser

as provided under Section 54 of the Transfer of Property Act, 1882, because on a reading of the provisions of Section 54, it is clear that transfer in the case of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument and the delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. It is further clear that a contract for sale of immovable property is a contract that the sale of such property shall take place on terms settled between the parties. However, that by itself does not create any interest in or charge on such property. Therefore, the contention made by the learned counsel for the writ petitioners that there is clear evidence that the purchase price was paid by the vendee to the vendor much before the fair value of the property so re-fixed by the Government as per Ext.P14 gazette notification, has no foundation at all. Moreover, a transaction by and between private persons with respect to a property will not stand in the way of the State Government fixing the fair

value of the land, and merely because the financial transaction has taken place earlier, by and between the parties, that will not disable the registering authority from insisting for payment of stamp duty in accordance with law, for registration of documents. It is true, as provided under section 47 of 'The Indian Registration Act, 1908', if the document was executed by the parties prior to the revision of the fair value, the valuation need only be done in accordance with the fair value existing as on the date of execution of the document and the stamp duty for the purpose of registration need be calculated accordingly. [See the judgment in ***All Kerala Document Writers and Scribes Association v. State of Kerala*** [2005 (3) KLT 234] and ***K. J. Nathan v. S.V. Maruthi Rao & others*** [AIR 1965 SC 430]. However, as discussed above, there is no proof for the execution of a document in accordance with law, to sustain such a contention. Therefore, we are of the view, interference is required in the judgment of the learned single Judge. However, we find that the sale deed was executed

provisionally as per the interim order passed by this Court in instant appeal on 18.07.2016 in accordance with the directions in the judgment impugned, subject to the direction in this appeal. In view of the judgment, appellants are entitled to take appropriate action in accordance with law to realise the extra stamp duty in accordance with law.

The upshot of the above discussion is, the appellants are entitled to succeed in the appeal. Accordingly the appeal is allowed, the judgment of the learned single Judge is set aside and the writ petition is dismissed.

sd/-
S. MANIKUMAR,
CHIEF JUSTICE.

sd/-
SHAJI P. CHALY,
JUDGE.

Rv

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