REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2586 OF 2020
(Arising out of Special Leave Petition (Civil) No.15790 of 2019)

THE INSPECTOR GENERAL OF REGISTRATION,
TAMIL NADU AND ORS. …Appellants

Versus

K. BASKARAN …Respondent

WITH

CIVIL APPEAL NO.2587 OF 2020
(Arising out of Special Leave Petition (Civil) No.2609 of 2019)

WITH

CIVIL APPEAL NO.2588 OF 2020
(Arising out of Special Leave Petition (Civil) No.17103 of 2019)

WITH

CIVIL APPEAL Nos.2589-2592 OF 2020
(Arising out of Special Leave Petition (Civil) Nos.6011-6014 of 2019)

WITH

CIVIL APPEAL Nos.2593-2597 OF 2020
(Arising out of Special Leave Petition (Civil) Nos.31633-31637 of 2018)

WITH

CIVIL APPEAL NO.2598 OF 2020
(Arising out of Special Leave Petition (Civil) No.31632 of 2018)

WITH

CIVIL APPEAL NO.2599 OF 2020
(Arising out of Special Leave Petition (Civil) No.15616 of 2019)

WITH

CIVIL APPEAL NO.2600 OF 2020
(Arising out of Special Leave Petition (Civil) No.7722 of 2020)
(Arising out of Special Leave Petition (Civil) D.No.45876 of 2018)

J U D G M E N T

Uday Umesh Lalit, J.

1. Leave granted.

2. These eight appeals raise common questions touching upon the interpretation of Section 47A[1] of the Indian Stamp Act, 1899 ('the Act', for short) and the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968 ('the Rules', for short) as amended from time to time. Said Section 47-A of the Act now stands:-

1 As inserted by the Tamil Nadu Act 24 of 1967. Later, by the Tamil Nadu Act 1 of 2000, Sub-Sections (4) to (10) in Section 47-A were substituted for Sub-Sections (4) and (5)

"**Section 47-A. Instrument of conveyance etc., undervalued how to be dealt with.-** (1) If the Registering Officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908), while registering any Instrument of conveyance, [exchange, gift, release of benami right or settlement] has reason to believe that the market value of the property of which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector, for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by Rules made under this Act, determine the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may, *suo motu,* or otherwise, within five years from the date of registration of any instrument of conveyance, exchange, gift, release of benami right or settlement, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the persons liable to pay the duty;

Provided that nothing in this sub-section shall apply to any instrument registered before the date of

commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.

(4) Every person liable to pay the difference in the amount of duty under sub-section (2) or sub-section (3) shall, payable such duty within such period as may be prescribed. In default of such payment, such amount of duty outstanding on the date of default shall be a charge on the property affected in such instrument. On any amount remaining unpaid after the date specified for its payment, the person liable to pay the duty shall pay, in addition to the amount due, interest at one per cent per month on such amount for the entire period of default.

… … …

(5) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3), may appeal to such Authority as may be prescribed in this behalf. All such appeals shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed by rules made under this Act.

… … …

(6) The Chief Controlling Revenue Authority may, *suo motu*, call for and examine an order passed under sub-section (2) or sub-section (3) and if such order is prejudicial to the interests of revenue, he may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order and may pass such order thereon as he thinks fit.

(7) The Chief Controlling Revenue Authority shall not initiate proceedings against any order passed under sub-section (2) or sub-section (3) if, -

(a) the time for appeal against that order has not expired; or

(b) more than five years have expired after the passing of such order.

(8) No order under sub-section (6) adversely affecting a person shall be passed unless that person has had a reasonable opportunity of being heard.

> (9) In computing the period referred to in clause (b) of sub-section (7), the time during which the proceedings before the Chief Controlling Revenue Authority remained stayed under the order of Court shall be excluded.
>
> (10) Any person aggrieved by an order of the Authority prescribed under sub-section (5) of the Chief Controlling Revenue Authority under sub-section (6) may, within such time and in such manner, as may be prescribed by rules made under this Act, appeal to the High Court.
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> *Explanation.*- For the purpose of this Act, market value of any property shall be estimated to be price which, in the opinion of the Controller or the Chief Controlling Revenue Authority or the High Court, as the case may be, such property would have fetched or would fetch, if sold in the open market on the date of execution of the instrument of conveyance, exchange, gift, release or benami right or settlement."

3. The appeal arising out of Special Leave Petition (Civil) No.15790 of 2019 is taken as the lead matter and facts pertaining to said appeal are set out in detail for facility. The facts involved in other appeals are almost identical except for details such as the case numbers, dates of orders and the details of properties in question.

4. The appeal from Special Leave Petition (Civil) No.15790 of 2019 arises out of the final judgment and order dated 02.02.2018 passed by the High Court[2] in CMA No. 2666 of 2012 in following circumstances: -

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2 The High Court of Judicature at Madras

A. The Respondent purchased two properties comprised in R.S. No.372/2A – Sidharavuthanpalayam Village, Tiruppur Taluk, Erode District, (i) admeasuring about 46216 sq.ft. through Sale Deed dated 21.02.2000 registered as Doct. No.2647 of 2000 of Book 1 valued at Rs.4,78,000/- and (ii) admeasuring about 47960 sq. ft through Sale Deed dated 18.02.2000 registered as Doct. No.2648 of 2000 of Book 1 valued at Rs.4,96,000/- (i.e. Rs.10.34 per sq.ft.).

B. As the value in said Sale Deeds was less than the Guideline Value of Rs.58.30 per sq.ft., the Sub-Registrar, Dharapuram, Appellant No.5 herein, referred the matter to the Special Deputy Collector (Stamps), Coimbatore i.e. Appellant No.2 herein, under Section 47-A of the Act.

C. On 13.9.2000 Appellant No. 2 issued Form No. 1 notices in Mu.Pa. (S.R.) No.3667 of 2000 D and Mu.Pa. (S.R.) No. 3668/2000 D seeking explanation from the Respondent why the deficit stamp duty of Rs.2,66,088/- and Rs.2,76,132/- respectively should not be collected. Thereafter, Appellant No. 2 issued Form No. II notices on 04.02.2003 to the Respondent, whereby the provisional value of the property was determined at the rate of Rs.58.30/- per sq.ft. as against the value of Rs.10.34/- per sq.ft. set forth in the Sale Deeds in question.

D. Appellant No.2 issued Final Orders on 30.04.2003 in Mu.Pa. (S.R.) Nos. 3667 and 3668 of 2000 D. In Mu.Pa. (S.R.) No.3667 of 2000 D, it was observed: -

> "With reference to the Form I notice no representations received from the registrant and he never turned for hearing in spite of several reminders and notices issued and no objections filed.
>
> Hence, provisional order in Form II was issued. Neither the objections received from the purchaser nor appeared for the hearing. It is learnt that the registrant has no objection regarding the valuation of the document. It is hereby ordered confirming the provisionally determined value as noted in the Form II cited in the reference 3.
>
> It is hereby ordered that the open market value is finally determined at Rs.26,95,400/- purchased through the document as per details noted in the pre page.
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> With reference to the above value the stamp duty leviable at Rs.3,23,448/- excluding the stamp duty already paid Rs.57,360/- the deficit stamp duty to be paid Rs.2,66,088/- (Rupees Two Lakhs Sixty Six Thousand Eighty Eight Only).
>
> The registrant is requested to remit the deficit stamp duty Rs.2,66,088/- under the head of account 0030 stamps Registration 030G Fee deficit stamp duty ABAA0202 in the State Bank of India or in the Sub Treasury office and the original Challan shall be sent to this office within 2 weeks from the date of this order."

In Mu.Pa. (S.R.) No.3668 of 2000 D, the market value was assessed at Rs.27,97,100/- and similar consequential directions were passed.

E. The Respondent filed statutory appeal which was rejected by the Inspector General of Registration i.e. Appellant No. 1 vide order dated 05.08.2005. At the appellate stage, a report was called for from District Registrar, Erode, which was referred to in the order dated 05.08.2005 as under:-

> "…This Appeal was admitted and the Deputy Inspector General Kovai appointed as the enquiry officer and to inspect the document property premises and to recommend determination of the true market value of the document property as per enquiry. The original file was also required from the District Revenue Officer (Stamps). On perusal of the original file of the District Revenue Officer (Stamps) office and it was found that, since the appellant not turned for enquiry and considered that there are no objections, the guideline value was confirmed.
>
> In the report of the District Registrar Erode enclosed with the letter received from the Deputy Inspector General Kovai he has recommended that while conducting the spot Inspection of the Survey field the properties lying in the village on the date of registration on 21.02.2002 were not incorporated with the municipality and it was incorporated with the municipality only on 01.04.2003, since the document properties were incorporated in the Municipality area at present value is fixed at Rs.200/- per sq.ft. and it is apt to determine the value at Rs.58.30/- per sq.ft., on the date of registration."

F. The Respondent, being aggrieved, filed CMA No. 2666 of 2012 in the High Court challenging the said order dated 05.08.2005 which was allowed by the High Court by its judgment and order dated 02.02.2018. The High Court observed that Appellant No.1 had delegated

his duty to the Deputy Inspector General of Registration, which was against the decision of the High Court in the case of *S. Santhi vs. Chief Revenue Controlling Authority* (CMA No. 2820 of 2012) decided on 05.06.2015. It was also observed that Rule 6 was not followed. The High Court thus concluded:-

> "8. Therefore, the first Respondent is not empowered to delegate the powers conferred on him. Similarly, the procedure contemplated under Rule 6 of the Rules is also not followed by the authorities while determining the market value of the property. As such, the entire proceedings are vitiated, in view of violation of Rules 6 and 11-A of the Rules. Accordingly, the impugned order passed by the first Respondent is not sustainable in law and the same is set aside. The authorities are directed to release the document to the Appellant."

It was, however, not stated how the procedure contemplated by Rule 6 was not followed.

G. The decision in *S. Santhi* (supra) which was relied upon, had observed as under:-

> "17. The Authority conferred with certain functions under a statute has to carry out the same on its own such function and cannot delegate the same to another in the absence any contemplation for such delegation under the Act. In the present case, under rule 4(3)(c) and rule 11-A of the rules, 2nd respondent-Collector and the 1st respondent-Inspector General of Registration respectively, have to inspect the property and there is no enabling provision under the rules or under the Act to delegate such power. Therefore, inspections by other officers at the behest of the respondents vitiate the entire proceedings.

> 18. The failure on the part of the 2nd respondent to pass a final order within 3 months from the date of Form-I notice as mandated under rule 7 of the rules vitiates the entire proceedings. Form-I notice was issued on 17.05.2005 and the final order was passed on 05.12.2006, after 11/2 years, i.e., after 3 months and hence the entire proceedings are vitiated.
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> 19. The impugned order has been passed by the 1st respondent purely based on inspection reports of the District registrar /Deputy Thasildar, who are not authorised under the Act and hence the said inspection reports are not materials collected by the authorities, entitled under the Act. Hence the proceedings of the 2nd respondent and 1st respondent are vitiated."

5. Similar orders were passed by the High Court in other matters which orders are presently under appeal in companion matters. Since the matters arise in the backdrop of provisions contained in the Rules, Rules 4 to 7 and 11A of the Rules are quoted hereunder: -

> "**4. Procedure on receipt of reference under Section 47-A.** (1) On receipt of a reference under sub-Section (1) of Section 47-A, from a registering officer, the Collector shall issue a notice in Form I.
>
> (a) to every person by whom, and
>
> (b) to every person in whose favour the instrument has been executed.
>
> Informing him of the receipt of the reference and asking him to submit to him his representations, if any, in writing to show that the market value of the property has been truly set forth in the instrument, and also to produce all evidence that he has in support of his representation, within 21 days from the date of service of the notice.

(2) The Collector may, if he thinks fit, record a statement from any person to whom a notice under sub-rule (1) has been issued.

(3) The Collector may for the purpose of his enquiry –

(a) call for any information or record from any public office, officer or authority under the government or any local authority;

(b) examine and record statements from any member of the public, officer or authority under the Government or the local authority; and

(c) inspect the property after due notice to the parties concerned.

(4) After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order.

5. Principles for determination of market value.- The Collector shall, as far as possible, have also regard to the following points in arriving, at the provisional market value,

(a) In the case of lands –

(i) classification of the land as dry, manavari, wet and the like;

(ii) classification under various tarams in the settlement register and accounts;

(iii) the rate of revenue assessment for each classification;

(iv) other factors which influence the valuation of the land in question;

(v) points if any, mentioned by the parties to the Instrument or any other person which requires special consideration.;

(vi) value of adjacent lands or lands in the vicinity;

(vii) average yield from the land, nearness to road and market, distance from village site, level of land, transport facilities, facilities available for irrigation such as tank, wells and pumpsets.

(viii) The nature of crops raised on the land; and

(ix) The use of land, domestic, commercial, industrial or agricultural purposes and also the appreciation in value when an agricultural land in being converted to a residential, commercial or an industrial land.

(b) In the case of house sites –

(i) the general value of house sites in the locality;

(ii) nearness to roads, railway station, bus route;

(iii) nearness to market, shops and the like;

(iv) amenities available in the place like public offices, hospitals and educational institutions;

(v) development activities, industrial improvements in the vicinity;

(vi) land tax valuation of sites with reference to taxation records of the local authorities concerned;

(vii) any other features having a special bearing on the valuation of the site; and

(viii) any special feature of the case represented by the parties.

(c) In the case of buildings –

(i) type and structure;

(ii) locality in which constructed;

(iii) plinth area;

(iv) year of construction;

(v) kind of materials used;

(vi) rate of depreciation;

(vii) fluctuation in rates;

(viii) any other features that have bearing on the value;

(ix) property tax with reference to taxation records of local authority concerned;

(x) the purpose for which the building is being used and the income if any, by way of rent per annum secured on the building; and

(xi) any special feature of the case represented by the parties.

(d) Properties other than lands, house sites and buildings –

(i) The nature and condition of the property;

(ii) Purpose for which the property is being put to use; and

(iii) Any other special features having a bearing on the valuation of the property.

6. Procedure after arriving at provisional market value.- The Collector shall communicate a copy of his order provisionally determining the

market value of the properties and the duty payable, to all the persons who are liable to pay the duty along with the notice in Form II and call upon the parties to lodge their objections, if any, to such determination of the market value within the time specified in the notice. The Collector shall also hear the parties on the date specified in the notice or on such other day as may be fixed by him.

7. Final Order determining the market value.- (1) The Collector shall, after considering the representations received in writing and those urged at the time of hearing or in the absence of any representation from the parties concerned or their failure to appear in person at the time of hearing in any case after careful consideration of all the relevant factors and evidence available with him pass an order within three months from the date of first notice determining the market value of the properties and the duty payable on the instrument, and communicate the order so passed to the parties and take steps to collect the difference in the amount of stamp duty, if any.

(2) A copy of the order shall be communicated to the registering officer concerned for his record.

(3) The difference in the amount of duty determined by the Collector shall be paid within two months from the date of final order passed under sub-Section (2) or sub-Section(3) of Section 47-A

(4) The Collector shall, after collecting the difference in amount of stamp duty and interest, if any, under Section 47-A, give a certificate in Form III by endorsement on the instrument.

… … …

11-A. Decision of the appellate authority. The appellate authority may, for the purpose of deciding an appeal, -

(a) call for any information or record from any public office, officer or authority under the government or any local authority;

(b) examine and record statements from any member of the public officer of authority under the government or the local authority[3] ; and

(c) inspect the property after due notice to the parties concerned."

6. We heard Mr. Jayanth Muth Raj, learned Additional Advocate General for the Appellants in all the appeals and M/s. T. Sundar Ramanathan, M.A. Venkata Subramanian, K.V. Mohan, Raghav Shankar, P.J. George and Pulkit Tare, learned Advocates for the concerned Respondents. Following questions arise for our consideration: -

1. Whether the directions issued by the appellate authority namely Chief Controlling Revenue Authority (Inspector General of Registration) in asking the Deputy Inspector General of Registration, or any other officer, to conduct the site inspection, amounted to delegation of his functions and violated Rule 11-A of the Rules and thereby vitiated the entire proceedings?

This question arises in all the appeals.

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3 The text is as per the Gazette published on 09.03.2001. The language is, however, not similar to that of Rule 4(3)(b).

2. Whether Rule 7 of the Rules prescribing 3 months' time for the Collector to pass an order determining the market value of the properties and duty payable on the instrument from the first notice, is directory or mandatory?

This issue arises in all the appeals, except the one arising out of Special Leave Petition (Civil)No. 17103 of 2019.

3. Whether the appellate authority has power under Section 47A of the Act to enhance the market value of the property while deciding the appeal filed by the registrants?

The issue arises only in the appeal from Special Leave Petition (Civil) Nos. 31633-31637 of 2018.

7. Before we deal with these questions, an issue regarding alleged violation of Rule 6 may be addressed first. In the petition of appeal in the lead matter, the following grounds are taken: -

> "L. Because the Hon'ble High Court failed to appreciate that Form II provisional notices were issued by the 2nd Petitioner determining the provisional market value of the subject properties in consonance with Rule 6 of the Rules. The Hon'ble High Court erred in passing an order in the favour of the Respondent without appreciating the facts of the instant matter wherein no violation of Rule 6 occurred and the procedure laid down under Rule 6 was duly followed.

> M. Because the Hon'ble High Court failed to appreciate that as no objections were received from the Respondent against the notices issued in Form I or Form II, the 2nd Petitioner accordingly proceeded with passing the final orders. The procedure for arriving at the final market value was suitably followed in accordance to the Rules."

The order of the appellate authority does not disclose any ground of such violation being raised. We, therefore, find that there was no violation of the procedure prescribed under Rule 6. Similar situation obtains in appeals arising of Special Leave Petition (Civil) Nos.17103 of 2019 and 31633-31637 of 2018.

8. With regard to question no.1, it is submitted on behalf of the Appellants that under Rule 11-A the appellate authority can call for any information from any officer or authority, and can direct any officer or authority under the government, or any public authority, to inspect the property, collect information and send the report; and that causing such inspection of the property or collection of evidence and calling for a report, does not amount to delegation of his core function. It is emphasized that causing personal inspection of properties in every appeal would be humanly impossible. In response, it is submitted on behalf of the Respondents: -

a) Powers that can be delegated are specifically provided under Section 76-A of the Act, and the power under Section 47-A is not one such power; and

b) Unless the power to sub-delegate is conferred expressly or impliedly under a statute, the power cannot be sub-delegated (Reliance is placed on the decision of this Court in ***Sahni Silk Mills (P) Ltd. and another vs. Employees' State Insurance Corporation***[4] in support of the proposition).

9. In ***Pradyat Kumar Bose vs. The Hon'ble the Chief Justice of Calcutta High Court***[5]**,** a Judge of the High Court was deputed by the Chief Justice of the High Court to make an enquiry into the charges against the Registrar of the High Court and submit a report. After considering the report and grant of hearing, the Registrar was dismissed from service. While dealing with the submission that the Chief Justice could not have delegated the enquiry into the charges to another Judge, the Constitution Bench of this Court stated the principles as under:-

> "… …It is well-recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated

4 (1994) 5 SCC 346
5 (1955) 2 SCR 1331

except where the law specifically so provides — is the ultimate responsibility for the exercise of such power. As pointed out by the House of Lords in *Board of Education* v. *Rice*[6], a functionary who has to decide an administrative matter, of the nature involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party "has a fair opportunity to correct or contradict any relevant and prejudicial material". The following passage from the speech of Lord Chancellor in *Local Government Board* v. *Arlidge*[7] is apposite and instructive:

> "My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

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6 [1911] A.C. 179, 182
7 [1915] A.C. 120, 133

10. In ***Union of India and anr. vs. P.K. Roy and ors.***[8], another Constitution Bench of this Court ruled as under: -

> "… …In other words, if a statutory authority empowers a delegate to undertake preparatory work and to take an initial decision in matters entrusted to it but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own. In the context of the facts found in the present case we are of opinion that the High Court was in error in holding that there has been an improper delegation of its statutory powers and duties by the Central Government and that the final gradation list dated April 6, 1962 was therefore ultra vires and illegal. Even on the assumption that the task of integration was exclusively entrusted to the Central Government, we are of the opinion that the steps taken by the Central Government in the present case in the matter of integration did not amount to any delegation of its essential statutory functions. There is nothing in Sections 115 or 117 of the said Act which prohibits the Central Government in any way from taking the aid and assistance of the State Government in the matter of effecting the integration of the services. So long as the act of ultimate integration is done with the sanction and approval of the Central Government and so long as the Central Government exercises general control over the activities of the State Government in the matter it cannot be held that there has been any violation of the principle "*delegatus non potest delegare*". For instance, it was observed by this Court in *Pradvat Kumar Bose* v. *Hon'ble the Chief Justice of Calcutta High Court*[5]:"

11. In ***State of Bombay (Maharashtra) vs. Shivbalak Gourishanker Dube and others***[9]**,** the decision of the High Court holding

8 (1968) 2 SCR 186
9 (1965) 1 SCR 211

that the State Government could not have delegated its duty to make an enquiry under Section 65(1) of the Bombay Tenancy and Agricultural Lands Act, 1948, was under challenge. While setting aside said decision of the High Court, it was observed: -

> "Realising the infirmity in the view taken by the High Court, Mr Pathak attempted to support the decision of the High Court on another ground. He argued that since the enquiry was made by the Talathi and the Mamlatdar under Section 65 and not by the Deputy Collector, the declaration made by the Deputy Collector was invalid. In other words, the argument is that the State Government may have validly delegated its powers under Section 65(1) to the Deputy Collector, but the Deputy Collector who is a delegate of the State Government cannot, in turn, delegate a part of his power or authority to a subordinate of his own, and that is what he has done in the present case. This argument proceeds on the basis that in exercising his powers under Section 65(1), the Deputy Collector must himself hold the enquiry and cannot delegate the function of holding such an enquiry to any other subordinate re venue officer. There is no doubt that a delegate who has received the authority from the principal cannot, in turn, delegate his own authority to a delegate of his own, but there is hardly any question of delegation by a delegate in the present case. All that Section 65(1) requires is that the State Government and therefore its delegate may after making such enquiry as it thinks fit, declare that the management of the land shall be resumed. In other words, in what form the enquiry should be held is a matter left entirely in the discretion of the State Government or its delegate. All that the Deputy Collector has done in the present case is to direct his subordinate officers to collect material relevant to the purpose of the enquiry. The Talathi went on the spot and ascertained as to whether the respondent's lands were lying fallow for the requisite period. He submitted his report to the Mamlatdar. The Mamlatdar in turn made his report to the Deputy Collector. In

> other words, all that the Deputy Collector has done is to collect the relevant material, so that he can enquire into the question as to whether the lands are lying fallow or not. This procedure does not, in our opinion, involve the question of any delegation at all. The form of the enquiry and its mode are entirely in the discretion of the Deputy Collector. Section 65(1) does not require that the Deputy Collector must himself go to the agricultural fields and enquire on the spot whether they are lying fallow. He may, if he so desires, record evidence himself, or the recording of the evidence and the actual inspection on the spot can be left to some subordinate officer. The report of such local inspection and the record of the evidence collected in that behalf would be forwarded to the Deputy Collector, and that would be the material on which he would hold the enquiry himself. The enquiry is thus held by the Deputy Collector, though the mechanical work of collecting material has been entrusted to a subordinate revenue officer. In such a case, we do not see how the principle that a delegate cannot delegate comes into operation."

12. In ***Sahni Silk Mills***[4] case, the issue was whether an officer or authority as a delegate of certain powers by the Corporation, could further sub-delegate said powers. It was observed by this Court:-

> **"5.** The courts are normally rigorous in requiring the power to be exercised by the persons or the bodies authorised by the statutes. It is essential that the delegated power should be exercised by the authority upon whom it is conferred and by no one else. At the same time, in the present administrative set-up extreme judicial aversion to delegation cannot be carried to an extreme. A public authority is at liberty to employ agents to exercise its powers. That is why in many statutes, delegation is authorised either expressly or impliedly. Due to the enormous rise in the nature of the activities to be handled by statutory authorities, the maxim *delegatus non potest delegare*

is not being applied specially when there is question of exercise of administrative discretionary power.

6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another person or body to act in its place. In *Barium Chemicals Ltd.* v. *Company Law Board*[10], this Court said in respect of sub-delegation:

> "Bearing in mind that the maxim delegatus non potest delegare sets out what is merely a rule of construction, sub-delegation can be sustained if permitted by express provision or by necessary implication."

7. Again in *Mangulal Chunilal* v. *Manilal Maganlal*[11], while considering the scope of Section 481(1)(*a*) of the Bombay Provincial Municipal Corporation Act (59 of 1949) this Court said that Commissioner of the Ahmedabad Municipal Corporation had delegated his power and function under the aforesaid section to a Municipal Officer to launch proceedings against a person charged with offences under the Act or the rules and that officer to whom such functions were delegated could not further delegate the same to another.

8. In *Halsbury's Laws of England*, 4th Edn., Vol. I, in respect of sub-delegation of powers it has been said:

> "In accordance with the maxim delegatus non potest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, (*H. Lavender &*

10 AIR 1967 SC 295 : 1966 Supp SCR 311
11 AIR 1968 SC 822 : (1968) 2 SCR 401

> *Son Ltd.* v. *Minister of Housing and Local Government*[12]) unless sub-delegation of the power is authorised by express words or necessary implication (*Customs and Excise Comrs.* v. *Cure and Deeley Ltd.*[13] and *Mungoni* v. *Attorney General of Northern Rhodesia*[14]). There is a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind. *Allam & Co.* v. *Europa Poster Services Ltd.*[15] …"

9. In the case of *Harishankar Bagla* v. *State of M.P.*[16], while examining the scope of Section 4 of the Essential Supplies (Temporary Powers) Act, 1946 it was said:

> "Section 4 of the Act was attacked on the ground that it empowers the Central Government to delegate its own power to make orders under Section 3 to any officer or authority subordinate to it or the Provincial Government or to any officer or authority subordinate to the Provincial Government as specified in the direction given by the Central Government. In other words, the delegate has been authorized to further delegate its power in respect of the exercise of the powers of Section 3. Mr Umrigar contended that it was for the Legislature itself to specify the particular authorities or officers who could exercise power under Section 3 and it was not open to the Legislature to empower the Central Government to say what officer or authority could exercise the power.

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12 (1970) 3 All ER 871 : (1970) 1 WLR 1231
13 (1962) 1 QB 340 : (1961) 3 All ER 641 : (1961) 3 WLR 798
14 (1960) 1 All ER 446 : (1960) 2 WLR 389 : 1960 AC 336, PC
15 (1968) 1 All ER 826 : (1968) 1 WLR 638
16 AIR 1954 SC 465, 468 ; (1955) 1 SCR 380

> Reference in this connection was made to two decisions of the Supreme Court of the United States of America — *Panama Refining Co.* v. *Ryan*[17] and *Schechter* v. *United States*[18]. In both these cases it was held that so long as the policy is laid down and a standard established by a statute, no unconstitutional delegation of legislative power is involved in leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. These decisions in our judgment do not help the contention of Mr Umrigar as we think that Section 4 enumerates the classes of persons to whom the power could be delegated or sub-delegated by the Central Government and it is not correct to say that the instrumentalities have not been selected by the Legislature itself."

In the aforesaid case, the sub-delegation was upheld because Section 4 itself enumerated the classes of persons to whom the power could be delegated or sub-delegated by the Central Government.

10. So far as the present Section 94-A is concerned, it says that the Corporation subject to any regulation made by the Corporation in that behalf, may direct that particular or any of the powers and functions which may be exercised or performed by the Corporation, may, in relation to such matters and subject to such conditions, if any, as may be specified "be also exercisable by any officer or authority subordinate to the Corporation". Section 94-A does not specifically provide that any officer or authority subordinate to the Corporation to whom the power has been delegated by the Corporation, may in his turn

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17 (1934) 293 US 388 : 79 L Ed 446
18 (1934) 295 US 495 : 79 L Ed 1570

> authorise any other officer to exercise or perform that power or function. But by the resolution dated 28-2-1976 the Corporation has not only delegated its power under Section 85-B(1) of the Act to the Director General, but has also empowered the Director General to authorise any other officer to exercise the said power. Unless it is held that Section 94-A of the Act, enables the Corporation to delegate any of its powers and functions to any officer or authority subordinate to the Corporation, and he in his turn can sub-delegate the exercise of the said power to any other officer, the last part of the resolution dated 28-2-1976 cannot be held to be within the framework of Section 94-A. According to us, Parliament while introducing Section 94-A in the Act, only conceived direct delegation by the Corporation to different officers or authorities, subordinate to the Corporation, and there is no scope for such delegate to sub-delegate that power, by authorising any other officer to exercise or perform the power so delegated."

13. In ***Sidhartha Sarawgi vs. Board of Trustees for the Port of Kolkata and others***[19], the matter was dealt with by this Court as under:-

> "5. Regarding delegation of non-legislative/ administrative powers on a person or a body to do certain things, whether the delegate himself is to perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorise the implementation of the same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the process, is a matter of procedure. The legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy[20]. So long as the essential

19 (2014) 16 SCC 248
20 Khambhalia Municipality vs. State of Gujarat, AIR 1967 SC 1048 at p. 1051, para 7

> function of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the implementation of the decision already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by authorised officers. The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have made it necessary that the legislature gives wide powers to various authorities when the situation requires it. Today's governmental functions are a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative body performs each and every task himself.
>
> … … …
>
> **7.** Practical necessities or exigencies of administration require that the decision-making authority who has been conferred with statutory power, be able to delegate tasks when the situation so requires. Thus, the maxim *delegatus non potest delegare*, gives way in the performance of administrative or ministerial tasks by subordinate authorities in furtherance of the exercise of the delegated power by an authority."

14. The following principles can thus be culled out from the decisions of this Court: *(i)* A statutory functionary exercising a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report, as that is the ordinary mode of exercise of any administrative power; *(ii)* If a statutory authority empowers a delegate to undertake preparatory work, and to take an initial

decision in matters entrusted to it, but retains in its own hands the power to approve or disapprove the decision after it has been taken, the decision will be held to have been validly made if the degree of control maintained by the authority is close enough for the decision to be regarded as the authority's own; *(iii)* Even in cases of sub-delegation, so long as the essential function of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate and it is not necessary that the primary delegate himself should perform the ministerial acts as well; and *(iv)* Practical necessities or exigencies of administration require that the decision-making authority who has been conferred with statutory power, be able to delegate tasks when the situation so requires.

15. Rule 11A of the Rules empowers the appellate authority to call for any information or record from any public office, officer or authority or to examine and record statements from any member of the public office or authority. In line with the principles laid down by this Court, it can therefore be said that in exercise of such power, if the appellate authority calls for any information or calls for any record or any inputs, that by itself, will not amount to delegation of essential functions. If, in terms of such power, the appellate authority deputes a responsible official to enquire

into certain facets and calls for a report, that would be an ordinary mode of exercise of the power vested in the appellate authority. Practical necessities and exigencies of administration demand that the appellate authority must be able to delegate certain tasks such as collecting information after causing inspection. So long as the essential function, that is to say of considering all the necessary factors and inputs and thereafter arriving at an informed decision is done by the appellate authority, the burden of performing ancillary tasks need not be shouldered by the appellate authority.

16. The submission based on Section 76-A of the Act is completely misplaced and does not deserve acceptance. Section 76-A is quoted hereunder for facility:

> "76-A. **Delegation of certain powers**- The State Government may, by notification in the Official Gazette delegate-
>
> (a) all or any of the powers conferred on it by sections 2(9), 33(3)(b), 70(1), 74 and 78 to the Chief Controlling Revenue Authority; and
>
> (b) all or any of the powers conferred on the Chief Controlling Revenue-Authority by sections 45(1), (2), 56(1) and 70(2) to such subordinate Revenue Authority as may be specified in the notification."

Section 76-A was inserted in the Principal Act vide the Decentralization Act, 1914 (Act No. IV of 1914). The legislative head in Entry 44, namely "Stamp duties other than duties on or fees collected by

means of judicial stamps, but not including rates of stamps" is in the Concurrent List of Schedule VII to the Constitution. Section 47-A was inserted in the Principal Act by the State Legislature by enacting the Tamil Nadu Act No.24 of 1967 which received the assent of the President on 29th March, 1968. The Rules including Rule 11-A were framed to effectuate the letter and spirit of Section 47-A.

Section 76-A of the Principal Act enables the State Government to delegate some of the statutory powers conferred upon it by the Principal Act to the Chief Controlling Revenue Authority. Such empowerment has nothing to do with the legislative power exercised by the State in terms of which Section 47-A was inserted, or with the Rules promulgated to effectuate Section 47-A. For interpreting and considering the context of said Section 47-A or the Rules, the fact that certain other statutory powers in favour of the State Government are delegable, has absolutely no relation. Section 47-A was inserted by the State in its legislative power and the Rules framed thereunder have to be considered on their own and without being influenced by Section 76-A.

17. Therefore, in observing that the inspection ought to have been carried out by the Inspector General of Registration himself, and such function could not have been delegated, the High Court failed to

appreciate the principles laid down by this Court. Any report that was called for was essentially in the nature of rendering assistance to the appellate authority in discharge of its functions. The final order passed by the appellate authority, after considering all the necessary material, must be taken to be one rendered by the appellate authority on its own, and there was no delegation of any essential functions vitiating exercise of power. We do not, therefore, find any impropriety or invalidity touching upon the exercise of power by the appellate authority. We, thus, accept the contentions raised by the learned counsel for the Appellants, and set aside the view taken by the High Court in that behalf.

18. The ground with respect to delegation of power under Rule 11-A was taken in all these matters, on the basis of which the High Court set aside the determination made by the appellate authority. The conclusions of the High Court in that behalf being erroneous, we set aside said conclusions in each of the matters, and restore the findings arrived at by the appellate authority on the basis of the report called for in exercise of power under Rule 11-A in all the matters.

19. We now turn to question no. 2, in respect of which the High Court in six of these appeals, had concluded that the stipulation of period of

three months in Rule 7 being mandatory, the orders passed after the expiry of said period would be invalid.

19.1 It is submitted on behalf of the Appellants that sub-sections (1) and (2) of Section 47-A do not prescribe any time limit and the stipulation in Rule 7 ought to be seen in the context and setting of various stages in the proceedings. It is submitted: -

> "…Rules 4-7 of Rules 1968 require the collector/authority to perform various tasks namely issuance of Form I notice by granting 21 days time to the parties to represent his case with evidence, consider the representations sent by the parties, verify the records, call for information or record from the public office, officer or authority, inspect the property after due notice and recording statements of the parties etc. Thereafter, the collector is required to provisionally determine the market value by taking into consideration of various factors mentioned in Rules and the same has to be communicated to the parties with Form II notice calling upon them to lodge their objections if any. Thereafter he has to consider the representations and points urged at the time of hearing and pass an order determining the market value of the properties and the duty payable on the instrument and communicate the said order. The entire exercise is time consuming and the same cannot be completed within 3 months time."

19.2 In response, it is submitted by the Respondents :-

> "Rule 7 of the Rules also mandates that the Collector shall after considering the representations and after careful consideration of all relevant factors and evidence available with him pass an order within 3 months from the date of first notice. Rule 7 also has to be read in the light of Rule 4 (1) of the Rules which provides for a timeline of 21 days from the date of

> service of the notice for parties to provide their representations on whether the market value has been truthfully set forth. Therefore, Rule 7 read in the light of Rules 4 and Section 47-A (2) provides for a mandatory requirement to complete the inquiry and pass an order within the timelines set forth. It would also be pertinent to note that the timeline to pass an order within 3 months was introduced vide an amendment indicating the intention to have a mandatory timeline to pass orders.
>
> … … …
>
> Rule 7 as originally enacted did not prescribe a time period for the Collector to pass an order determining the market value of the properties. Rule 7 was amended *vide* G.O.Ms.No. 69 dated 26.02.1997 on suggestion of the Inspector General of Registration (the "1997 Amendment) to introduce a month time period."

20. Under sub-section (1) of Section 47-A of the Act, if there is reason to believe that the market value has not been truly set forth in the Instrument tendered for registration, a reference can be made to the Collector, who (i) after giving the parties reasonable opportunity of being heard; and (ii) after holding an enquiry in such manner as may be prescribed by Rules, has to determine the correct value of the concerned property. The Section by itself does not lay down any period within which the entire process is to be completed by the Collector. It simply states that the enquiry be held in "such manner" as may be prescribed by Rules. In this backdrop the manner in which the enquiry must be held as set out in the Rules, is required to be considered.

According to the Rules, following steps are required to be undertaken:

A) On receipt of reference as stated above, the Collector must issue notice in Form I to the persons by whom and in whose favour the Instrument is executed, informing such persons to produce all evidence to show that the market value has been truly set forth in said instrument. The notice must give such persons time of twenty one days from the receipt of notice to represent or respond. [Rule 4(1)]

B) The Collector may record statement of any such noticee. [Rule 4(2)].

C) For the purposes of the enquiry, the Collector may call for information from any public office or examine and record statements or inspect the property after due notice as stated in detail in Rule 4(3).

D) After considering the representations, if any, and the record and evidence, a provisional order determining the market value must be passed indicating the basis for such conclusion. [Rule 4(4)]. For arriving at the provisional market value, regard must be had to the principles set out in Rule 5.

E) The provisional order must be communicated in Form II to all the concerned persons who must be given some time to prefer objections, if they so wish; and they must be heard on the day fixed in the notice or on such other day as may be fixed. [Rule 6]

F) After considering the representations in writing and those urged at the time of hearing as well as all the relevant factors and evidence, the Collector must pass an order determining the market value of the concerned property and assess the element of duty payable on the instrument of transfer. Such order is required to be passed "within three months from the date of first notice". [Rule 7]

21. The expression "within three months from the date of first notice" is crucial. Is the description "first notice" referable to notice in Form I issued in terms of Rule 4(1)? The answer would obviously be in the negative. Form I notice itself must give twenty-one days to the concerned persons to respond. Depending upon their response, their statements would be recorded and/or certain information may be required to be called for, whereafter the Order in Form II is to be issued provisionally determining the market value. The concerned persons are entitled to raise objections in writing and must be afforded hearing. After fulfilling these requirements, the order in terms of Rule 7 can be passed. All these stages may not be completed in three months.

Further, the reference in Rule 7 is to the "first notice" and not to "notice in Form I". Considering the context and various stages preceding the stage of passing of the Order under Rule 7, the reference has to be to the first "notice in Form II". There could possibly be more than one notices in Form II, specially when the hearing is to take place on an adjourned date and that is why the period must be reckoned from the first notice in Form II. The expression immediately following "first notice" in Rule 7 is "determining the market value of the properties…." That is also indicative that the reference to the notice is one in Form II in the immediately preceding Rule 6.

22. We now deal with the question whether the stipulation of period of three months in Rule 7 is mandatory or directory.

23. Some of the decisions of this Court dealing with question as to in what circumstances and context a statutory provision can be considered to be mandatory or directory may first be noted.

A) In ***State of Mysore and others v. V.K. Kangan and others***[21] a bench of three Judges of this Court observed: -

> **"10.** In determining the question whether a provision is mandatory or directory, one must look into the subject-matter and consider the importance of the provision

21 (1976) 2 SCC 895

> disregarded and the relation of that provision to the general object intended to be secured. No doubt, all laws are mandatory in the sense they impose the duty to obey on those who come within its purview. But it does not follow that every departure from it shall taint the proceedings with a fatal blemish. The determination of the question whether a provision is mandatory or directory would, in the ultimate analysis, depend upon the intent of the law-maker. And that has to be gathered not only from the phraseology of the provision but also by considering its nature, its design and the consequences which would follow from construing it in one way or the other. … …"

B) In ***T.V. Usman vs. Food Inspector, Tellicherry Municipality, Tellicherry***[22]**,** this Court was called upon to consider whether stipulation of period in Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 within which time the report of the analysis of the sample must be delivered, would be mandatory or directory. This Court quoted the following passage from the decision of the Constitution Bench of this Court:-

> "**10.** In *Dattatraya Moreshwar* v. *State of Bombay*[23] it was held as under:
>
> > "[G]enerally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control

22 (1994) 1 SCC 754
23 AIR 1952 SC 181

> over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

B.1) Thereafter, this Court considered the effect of stipulation in Rule 7(3):

> "**11.** In Rule 7(3) no doubt the expression "shall" is used but it must be borne in mind that the rule deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the court and it is only on the basis of this report of the Public Analyst that the authority concerned has to take a decision whether to institute a prosecution or not. There is no time-limit prescribed within which the prosecution has to be instituted and when there is no such limit prescribed then there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can ignore the time-limit prescribed under the rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution cannot be launched. May be, in a given case, if there is inordinate delay, the court may not attach any value to the report but merely because the time-limit is prescribed, it cannot be said that even a slight delay would render the report void or inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to the court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the

> Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred under Section 13(2) and that depends on the facts of each case and violation of the time-limit given in sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out."

C) In ***P.T. Rajan vs. T.P.M. Sahir and others***[24] the principles were summed up as follows: -

> **"48.** Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See *Shiveshwar Prasad Sinha* v. *District Magistrate of Monghyr*[25], *Nomita Chowdhury* v. *State of W.B.*[26] and *Garbari Union Coop. Agricultural Credit Society Ltd.* v. *Swapan Kumar Jana*[27].)
>
> **49.** Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused. (See *Raza Buland Sugar Co. Ltd.*

24 (2003) 8 SCC 498
25 AIR 1966 Pat 144 : ILR 45 Pat 436 (FB)
26 (1992) 2 Cal LJ 21
27 (1997) 1 CHN 189

> v. *Municipal Board, Rampur*[28], *State Bank of Patiala* v. *S.K. Sharma*[29], *Venkataswamappa* v. *Special Dy. Commr. (Revenue)*[30] and *Rai Vimal Krishna* v. *State of Bihar*[31].)"

24. Reliance is, however, placed by the learned Counsel for the Respondents on the decision of this Court in ***Mackinnon Mackenzie and Company Ltd. vs. Machinnon Employees Union***[32]**.** One of the issues that arose for consideration in that case was whether the provisions of Section 25FFA of the Industrial Disputes Act, 1947 contemplating issuance of notice of closure are mandatory or directory and the submission advanced on behalf of the Union of Workmen was noted as under:

> **"37.** The contention urged by Mr C.U. Singh, the learned Senior Counsel for the respondent Union is that if the interpretation of the provision under Section 25-FFA of the ID Act as contended by the learned counsel on behalf of the appellant Company is accepted to be directory and not mandatory as it would attract the penal provision against the appellant Company under Section 30-A of the ID Act, then the purpose and intendment of the amendment in the year 1972 made to Section 25-FFA of the ID Act, will be defeated and would nullify the Objects and Reasons for amending the provisions of the ID Act and it would be contrary to the legislative wisdom of Parliament. The statutory protection has been given to the workmen under the provision of Section 25-FFA of the ID Act, with an avowed object to protect workmen being retrenched due to closing down of a

28 AIR 1965 SC 895 : (1965) 1 SCR 970
29 (1996) 3 SCC 364 : 1996 SCC (L&S) 717
30 (1997) 9 SCC 128
31 (2003) 6 SCC 401
32 (2015) 4 SCC 544

> department/unit of the undertaking as the livelihood of such workmen and their family members will be adversely affected on account of their retrenchment from their service. To avert such dastardly situation to be faced by the workmen concerned in the company/establishment, the statutory obligation is cast upon the employer to serve at least 60 days' notice on the State Government before such intended closure of the department/unit to be served upon the State Government informing the reasons as to why it intends to close down its department/unit."

This Court accepted the afore-stated submission. It relied upon the decisions of this Court in ***State of UP*** *v.* ***Babu Ram Upadhyay***[33], ***State of Mysore*** *v.* ***V.K. Kangan***[21] and ***Shrif Uddin*** **v.** ***Abdul Gani Lone***[34] and other decisions and held the concerned provisions to be mandatory. It was observed:

> "**44.** The statutory provisions contained in Section 25-FFA of the ID Act mandate that the Company should have issued the intended closure notice to the appropriate Government should be served notice at least 60 days before the date on which it intended to close down the department/unit concerned of the Company. As could be seen from the pleadings and the findings recorded by the Industrial Court, there is a categorical finding of fact recorded that there is no such mandatory notice served on the State Government by the appellant Company. The object of serving of such notice on the State Government is to see that it can find out whether or not it is feasible for the company to close down a department/unit of the company and whether the workmen concerned ought to be retrenched from their service, made unemployed and to mitigate the hardship of the workmen and their family members. Further, the said provision of the ID

33 AIR 1961 C 751
34 (1980) 1 SCC 403

> Act is the statutory protection given to the workmen concerned which prevents the appellant Company from retrenching the workmen arbitrarily and unreasonably and in an unfair manner.
>
> **45.** The cumulative reading of the Statement of Reasons, the retrenchment notice served on the workmen concerned, the pleadings of the appellant Company and in the absence of evidence on record to justify the action of retrenchment of workmen concerned on the alleged closure of the department/unit of the appellant Company is shown as bona fide. However, the concurrent finding of fact recorded by the High Court on this aspect of the case cannot be held to be bad in law by this Court in exercise of its appellate jurisdiction in this appeal."

While concluding so, this Court also relied upon the Objects and Reasons of the Amending Act 32 of 1972 inserting Section 25FFA in the Industrial Disputes Act, and the fact that the legislation provided penalty for closing down any undertaking without serving requisite notice.

25. As noted above, Section 47-A by itself does not prescribe any timeline. If the stipulation or fixation of period of three months from the first notice in terms of Rule 6 or from notice in Form II is taken to be mandatory it would lead to a situation of incongruity. The fact that Form II notice had been issued, would mean that on a prima facie view of the record and material, the value stated in the instrument was not the correct value; which in turn would mean that prima facie the Government Coffers were being denied the rightful dues. If for any reason the proceedings are not completed within three months and, therefore, must be held to be

vitiated, the public interest would suffer, and the persons who were prime facie responsible for suppressing the real value, would stand to gain. The amendment of Rule 7 incorporating the period of three months was essentially to guide the public officials to complete the process as early as possible but was not intended to create a right in favour of those who had prime facie conducted themselves prejudicing public interest.

In keeping with the principles laid down in ***State of Mysore and others*** v. ***V.K. Kangan and others***[21], if the subject matter of the provision as well as the inter-relation of the period of three months to the general object of the provision are considered, the fixation of period has to be taken to be directory. Otherwise, the very object of sub-serving public interest and securing public revenue would get defeated. Pertinently, the concerned provision has not spelt out any consequence for non-adherence to said period of three months.

26. We, therefore, hold the fixation of timeline of three months in Rule 7 to be purely directory. In the premises, the conclusion by the High Court holding the said provision to be mandatory is set aside, and no benefit on that ground can accrue to the Respondents.

27. We now turn to question No.3, which incidentally arises only in one appeal viz. one arising from SLP(C) Nos.31633-31637 of 2018. At

this stage, the relevant portions from the order of the appellate authority may be extracted hereunder:-

> "District Registrar has recommended a value of Rs.480/- per sq.ft., for the documents registered in 2005 and Rs.544/- per sq.ft., for the documents registered in 2007. He has stated that the lands are located in WIMCO Nagar opposite to WIMCO Nagar Railway Station and lies between Thiruvottriyur High Road and Ennore Express Road. Further he has stated that as per local enquiry, at the time of registration the value of the lands ranged between Rs.11.5 to 12 Lakhs per ground for 2005 documents and Rs.13 to 14 Lakhs per ground for the documents registered in 2007.
>
> Perusal of Sales Statistics reveals registration of documents upto 2006 adopting a value of Rs.204/- per sq.ft., and referred under 46A and are still pending. Again, from 25-09-2006 onwards large number of documents (nearly 40) have been registered adopting a value of Rs.544/- per sq.ft. However, extents involved in all these cases ranges from 1 ground to 2 grounds except in few cases were extend involved in1200 sq.ft. All these are sanctioned layouts. One Doct. No.10084/2007 has been registered in S.No.168/7, 9, 9 adopting a value of Rs.625/- per sq.ft. Further vide Doct. No.10675/07 an extent of 4.957 acres was registered adopting a value of Rs.485/- per sq.ft. and the same was referred under 47A for which District Revenue Offricer (Stamps) fixed a value of Rs.920/- per sq.ft. This property is adjoining the subject property as it shares one of the boundaries with the subject document properties similarly, for another Doct. No.10676/07, involving an extent of 16290/- sq.ft. document value adopted was Rs.841/- per sq.ft. for which District Revenue Officer (Stamps) fixed a value of Rs.920/- per sq.ft. Both the values were accepted by the registrants and they paid the deficit Stamp Duty. The Guideline value of those properties was Rs.1200/- per sq. ft. with effect from 01.08.2000.

> The present Guideline value of the subject properties with effect from 01.04.2012 is Rs.3500/- per sq.ft.
>
> The sale deed in Doc. Nos.10675/2007 and 10676/2007 involve large extent of industrial land and, hence, are similar to the lands involved in subject documents. Therefore, for the 5 documents registered in 2005, it is proposed to adopt the value of Rs.544/- per sq.ft since, there seems no reason to believe that the guideline values are abnormal in light of registration adopting a value of Rs.920/- per sq.ft. in 2007. Similarly, for the three documents registered in 2007, it is proposed to fix a value of Rs.920/- per sq.ft. aking to the value fixed and accepted by the registrants in Doct.Nos.10675/2007 and 10676/2007.
>
> Hence issue shows cause Notice to the Petitioner accordingly for all the 8 cases. Hence a new show cause notice was issued in continuation of the personal enquiry to the Appellant and to his Advocate with reference to the 9 cited why the value at Rs.544/- per sq.ft. for the 5 document properties registered during 2005 and at Rs.920/- per sq.ft in respect of 3 document registered in 2007 and to furnish fresh objections if any within 10 days in continuation of this with reference to the 10th cited the Advocate requested to furnish on which basis the provisional value was determined and the sales statistics of documents and to send the copies of document Nos.10675, 10676/2007 and whether there is any ways and means to give show cause notice under Section 47A5 of the Indian Stamps Act and to give details of the documentary basis in continuation of that with reference to the 11 cited the details requested by the Petitioner the report of spot Inspection of the District Revenue Officer and the copies of Document Nos.10675, 10676/2007 where despatched."

Thus, while proposing to enhance the market value higher than what was determined by the Collector, the appellate authority had put the

appellant-registrant to sufficient notice and had called for response with regard to the proposed enhancement. It was only thereafter that the exercise was undertaken to determine the true market value at Rs.544/- per sq.ft. and Rs.920/- per sq.ft for documents registered in the year 2005 and 2007 respectively.

28. In the challenge arising therefrom, the High Court vide its order dated 19.03.2018 in CMA Nos.2449 to 2453 of 2014 observed:-

> "13. It is seen that the first respondent, while deciding the appeal, had enhanced the market value determined by the second respondent and fixed a higher value. As per Section 47-A(5) of the Indian Stamp Act, the first respondent shall only scrutinize the correctness of the order passed by the second respondent, as an appeal has been preferred by the presentant concerned. In the appeal preferred by the presentant, the Inspector General of Registration, has no power to enhance the market value.
>
> 14. This Court, in its judgment in ***Rajendran*** v. ***The Inspector General of Registration and others***[35] has held that while deciding the appeal preferred by the presentant, unlike the *suo motu* revision under Section 47-A(6) of the Indian Stamp Act, the appellate authority is not empowered to enhance the market value of the property and he can only decide on the correctness of the order passed by the District Collector or District Revenue Officer. Therefore, it is clearly seen that the order passed by the first respondent is in total violation of Rules 6, 7 and 11-A of the above said rules and in excess of powers conferred under Section 47-A(5) of the Indian Stamp Act. In such circumstances, I have no hesitation to set aside the impugned order passed by the first respondent."

35 2012(3) CTC 589

29. In ***Rajendran*** v. ***The Inspector General of Registration, Tamil Nadu and others*** (supra) the High Court had observed: -

> **"33.** Perusal of the impugned orders in all these appeals does not indicate that the Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai, has arrived at the subjective satisfaction that the order passed under sub-section 2 of Section 47, by the Collector of Stamps, is prejudicial to the interest of the revenue and that the abovesaid appellate authority has not made any inquiry or cause such inquiry to be conducted, before enhancing the market value of the property in each of these appeals. Reading of the Section 47-A(6) of the Act makes it clear that the primary object behind, engrafting suo-motu exercise of power is that the order passed under sub-Sections (2) and (3) of Section 47 of the Act, should be first examined and found that it is prejudicial to the interests of revenue. There should be a categorical finding to that effect. Therefore, when a provision in the statute, enjoins a duty on the authority, to arrive at a conclusion, form a subjective satisfaction, with a specific objective to protect the revenue, if the orders passed under Section 47-A(2) and/or 47-A(3) is prejudicial to the revenue, then the order of the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, should advert to the said objective on the facts and circumstances of each case and arrive at a satisfaction, before proceeding further, under the provisions of the Act.
>
> **34.** Further, even assuming that the Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai, arrives at a provisional conclusion that an order passed by the Collector (Stamps) is prejudicial to the interest of the revenue, no order under sub-section 6 of section 47-A of the Act can be passed adversely, without a reasonable opportunity of being heard. First of all, in the cases on hand, as stated supra, no such exercise as

contemplated under sub-section 6 of Section 47-A of the Act, has been done by the Chief Controlling Revenue Authority cum Inspector General of Registration, Chennai. Therefore, this Court is of the view that the impugned orders in all these appeals do not fall within the ambit of sub-section (6) of Section 47 of the Act.

35. The jurisdiction of the Chief Controlling Revenue Authority in exercise of his suo motu power has its own limitations, as provided for, in sub-sections (6) and (7) of section 47-A and from the language employed in the section. It could be construed that it is only supervisory, as he has all the authority to call for and examine any order passed under sub-section 2 or sub-section 3 suo motu, if such an order is prejudicial to the interests of the revenue. Before passing an order under Section 47(6) of the Act, after making an inquiry or causing any such enquiry to be made, the materials collected, the report if any, should be provided to the person against whom proceedings are initiated, to satisfy the requirements of the principles of natural justice, otherwise, the parties would be deprived of their right to offer their explanation, if any.

36. Enhancement of market value of the property on the appeals preferred by the land owners under Section 47(5) is not contemplated under the scheme of the Act, without recourse to sub-section 6 of section 47, wherein the statute has contemplated a procedure of conducting an inquiry and reasonable opportunity. No doubt, the statute empowers the Chief Controlling Revenue Authority-cum-Inspector General of Registration, Chennai, to exercise suo-motu powers under Section 47(6) of the Act, within five years, from the date of passing of an order, under Section 47(2) and (3) of the Act, as the case may be, but the Statute mandates, consideration of the records, in terms of the objective, specifically incorporated in the Section and that he should arrive at a subjective satisfaction, as to whether, the order passed under sub-Sections (2) and (3) of Section 47-A of the Act, is

> prejudicial to the interests of Revenue. He must record reasons for arriving at the satisfaction."

30. Sub-section (6) of Section 47-A of the Act empowers the Chief Controlling Revenue Authority, in exercise of *suo motu* power, to call for and examine the correctness of an order passed under sub-section (2) or sub-section (3) of Section 47-A; and if the order is prejudicial to the interest of Revenue, the Chief Controlling Authority may make such enquiry or cause such enquiry to be made and either revise, modify or set aside such order and pass any order that it deems appropriate. There are some limitations on the exercise of said power, since no proceedings can be initiated against an order passed under sub-section (2) or sub-section (3), if the time for preferring an appeal against that order has not expired, or if more than five years have expired after passing of the order. The intent is clear that if there be sufficient time to prefer a regular appeal challenging that order, the remedy of filing an appeal ought to be taken resort to. Further, if the period of five years has expired, no *suo motu* power can be exercised. Another limitation is prescribed by sub-section (8), in terms of which no order in exercise of *suo motu* exercise of power can be passed which may adversely impact a person, unless that person has had reasonable opportunity of being heard. Apart from these limitations, the statutory provisions do not impose any other restriction, and the power

is conferred principally to ensure that no order passed under sub-sections (2) or (3) of Section 47-A is prejudicial to the interest of the revenue.

The limitation in sub-section (8) of Section 47-A, was high-lighted in paragraphs 33 to 36 of the judgment of the High Court in ***Rajendran*** v. ***The Inspector General of Registration, Tamil Nadu and others*** (supra). In the present case, adequate notice was issued to the concerned persons and, therefore, there was no infirmity on that count. It is nobody's case that as on the date when the proceedings were initiated in exercise of the power under sub-section (6) of Section 47-A, the period for preferring the appeal had not expired, or that more than five years had expired after the passing of the order under sub-section (2) or sub-section (3). In the circumstances, none of the limitations which the statute has imposed upon the exercise of power were present.

31. The observations of the High Court in the instant case indicate that while dealing with an appeal preferred by the registrant against an order passed under Section 47-A(2), no *suo motu* exercise of power could be initiated. It is the correctness of that view which is now in issue.

32. While considering the nature of power conferred by Section 20(3) of the Bengal Finance (Sales Tax) Act, 1941 where the Commissioner "upon application or of his own motion" could revise any assessment or

order, this Court in ***M/s Ram Kanai Jamini Ranjan Pal Pvt. Ltd.*** v. ***Member, Board of Revenue, West Bengal***[36] quoted with approval following passage from the judgment of the High Court of Madras:

> **13.** The following observations made by Ramaswami, J. in *East Asiatic Co. (India) Ltd.* v. *State of Madras*[37] are also relevant
>
> "The purposes of this Act are twofold viz. the levy of a general tax on the sale of goods to supplement the lost revenues and for promoting the general public good; and secondly, to see that this is done under the provisions of the Act and not by carrying out in a capricious or arbitrary manner. Therefore, a revisional authority has to be created. What is revision? The essence of revisional jurisdiction lies in the duty of the superior tribunal or officer entrusted with such jurisdiction to see that the subordinate tribunals or officers keep themselves within the bounds prescribed by law and that they do what their duty requires them to do and that they do it in a legal manner. This jurisdiction being one of superintendence and correction in appropriate cases, it is exercisable even suo motu as is clear from the numerous statutory provisions relating to revision found in various Acts and Regulations such as the Civil Procedure Code, Criminal Procedure Code, Income Tax Act, etc. The jurisdiction of suo motu revision is not cribbed and cabined or confined by conditions and qualifications. The purpose of such an amplitude being given suo motu revisions appears to be as much to safeguard the interests of the exchequer as in the interests of the assessee. The State can never be the appellant and if there is an order against the State to its prejudice, and naturally the assessee in whose favour the order is passed does not prefer an appeal, the State would suffer unless its interests are safeguarded by the exercise of such supervisory jurisdiction as the one given to the authorities abovementioned."

33. The essence of revisional jurisdiction is thus accepted to be in the duty of the superior tribunal or officer to ensure that the subordinate

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36 (1976) 3 SCC 369
37 (1956) 7 STC 299 (Mad)

tribunal or officers remain within the bounds prescribed by law and discharge their functions in accordance with law. The nature of such power to be exercised "*suo motu*", or "on its own motion", has also been dealt with in following decisions:

A) While considering Section 38-B of the Orissa Estates Abolition Act, 1951, which did not impose any restriction akin to those found in sub-section (7) of Section 47-A of the Act, this Court in ***State of Orissa and others*** v. ***Brundaban Sharma and another***[38] *observed:-*

> "**12**. ..... When and under what circumstances the suo motu inquiry would be initiated and orders passed is left to the discretion of the Board of Revenue depending on the facts and circumstances of each case."

After considering some of the decisions of this Court, it was observed:-

> "**16.** It is, therefore, settled law that when the revisional power was conferred to effectuate a purpose, it is to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time. Absence of limitation is an assurance to exercise the power with caution or circumspection to effectuate the purpose of the Act, or to prevent miscarriage of justice or violation of the provisions of the Act or misuse or abuse of the power by the lower authorities or fraud or suppression. Length of time depends on the factual scenario in a given case. Take a case that patta was obtained fraudulently in collusion with the officers and it comes to the notice of the authorities after a long lapse of time. Does it lie

38 (1995) Supp. 3 SCC 249

> in the mouth of the party to the fraud to plead limitation to get away with the order? Does lapse of time an excuse to refrain from exercising the revisional power to unravel fraud and to set it right? The answers would be no."

B) In ***Vijayabai and others*** V. ***Shriram Tukaram and others***[39] this Court expressed caution as under: -

> **"9.** The Tahsildar while exercising his suo motu power under Section 49-B has to initiate on the basis of the materials before him not arbitrarily. Every exercise of suo motu power explicitly or implicitly reveals to correct an error crept in under a statute, what ought to have been done was not done or which escaped the attention of any statutory authority, or error or deliberate omission or commission by the subject concerned requires correction, of course, within the limitation of any such statute. This has to be based on some relevant material on record, it is not an omnipower to be exercised on the likes and dislikes of such an authority. Though such a power is a wide power but it has to be exercised with circumspection within the limitations of such statute. Wider the power, the greater circumspection has to be exercised."

34. In ***Sree Balaji Rice Mill, Bellary*** v. ***State of Karnataka***[40] the basic facts were stated in the decision rendered by a Bench of three Judges of this Court as under:-

> **"3.** The Additional Commissioner of Commercial Taxes, Devangere Zone, Devangere issued notices dated 16-2-1994 and 21-3-1994 under Section 22-A of the Act proposing to revise the order of assessment dated 12-7-1990 passed by the assessing authority on the ground that the assessment order was erroneous

39 (1999) 1 SCC 693
40 (2005) 4 SCC 21

> and prejudicial to the interest of the Revenue. In the notices, the revisional authority had made observations to the effect that the books of accounts have not been properly maintained. In response to the notices, the appellant filed reply on 4-4-1994 denying the observations made by the revisional authority and had requested the said authority to drop the proceedings initiated under Section 22-A of the Act. The revisional authority on 8-4-1994 issued a further notice under Section 22-A(1) of the Act making the same proposal as made in the earlier notices and further proposed to levy penalty under Section 18-A of the Act. The revisional authority confirmed the proposals made in the notices issued under Section 22-A of the Act vide order dated 2-6-1994 and modified the set-off granted by the assessing authority."

One of the questions that came up for consideration was set out in paragraph 11 as under:-

> **"11.** The following questions of law arise for consideration by this Court:
> (*a*) ……
> (*b*) ……
> (*c*) While purporting to revise an order under Section 12-A which neither expressly nor impliedly refers to any proceeding under Section 18-A and was thus not within the contemplation of the assessing authority while passing the order under Section 12(3), is it open for the Commissioner, while purporting to act under Section 22-A in respect of the order under Section 12(3) to pass an order under Section 18-A either as a part of the order under Section 22-A or separately as such under Section 18-A?
> (*d*) ……"

The question was considered as under:

> **"14.** Section 18-A of the Act prohibits excess collection of tax by an assessee. If any person

> contravenes Section 18, penalty is provided under Section 18-A of the Act. The question is when at the time of assessment, if no penalty is imposed by the assessing authority, can the revisional authority, by invoking his suo motu powers under Section 22-A of the Act impose penalty for the first time on the ground that the order of assessment is prejudicial to the interests of the Revenue?
>
> **17.** It must be noted that there is a difference between exercise of revisional powers over orders passed by lower authority and exercise of revisional powers in the assessment proceeding itself. A revision of an order may be confined to what the order contains or dealt with. But when the assessment proceedings themselves are before the revisional authority it can go beyond the order of the assessing authority and pass such orders as the assessing authority could or should have passed.
>
> **22.** The argument of the learned counsel for the appellant that the revising authority or the appellate authority higher than the assessing authority is not competent to levy a penalty for the first time when no penalty has been levied by the assessing authority is wholly untenable, without statutory basis and unreasonable from any point of view. The said plea is liable to be rejected. The necessity for there to be an order under Section 18-A for the exercise of revisionary jurisdiction under Section 22-A is once again fallacious. The non-levy of penalty is itself an illegality caused by a failure to exercise the jurisdiction by the assessing authority and therefore, prejudicial to the interests of the Revenue."

35. For exercising revisional power "*suo motu*" or "on its motion", the concerned authority must be satisfied that an order has been passed by the authority or officer subordinate to it. which may be prejudicial to the interest of the revenue. As indicated in some of the hypothetical instances noted in the decisions quoted hereinabove, the error may have crept in

unknowingly, or there may be a genuine mistake, or in some cases there could be a deliberate attempt to prejudice the interest of revenue. If an infirmity or illegality is brought to the notice or knowledge of the revisional authority, through normal and regular process of reporting by the subordinate officer or authority, the power of revision can certainly be exercised. The requisite knowledge enabling the revisional authority to exercise the power vested in it, can also be gathered from the appeal preferred by the registrant himself. That may only be an occasion or a source which enables the authority to gather information about the possible infirmity or illegality in the process. Upon being so aware, the revisional authority would thereafter be exercising power vested in it. Qualitatively, it makes no difference as to what was the source of the information or knowledge, so long as the power is exercised within the confines of the limitations or restrictions imposed by the statute, and is in accordance with law. Apart from the restrictions imposed by the statute, none can be read into the exercise of power on the ground as to the nature or source of information.

While entertaining an appeal, if an obvious illegality is noticed by the revisional authority, it can certainly exercise *suo motu* power to undo the mistake, or rectify an error committed by the subordinate officer or

authority, subject to such restrictions as are imposed on the exercise of the power by the statute.

36. There is nothing in the scheme of the Act which purports to restrict the exercise of *suo motu* power under Section 47-A, and confines it to cases where knowledge of any illegality or infirmity in the proceedings undertaken by the subordinate officers must be gathered from sources other than through a pending appeal. Unless the statute expressly or even by necessary implication restricts the exercise of power, there would be no occasion to read into the power, any other limitations. The High Court has not found the exercise of power to be invalid on any count, nor was any such submission advanced before the High Court. The High Court had simply gone on the existence of power rather than on the exercise of power. It is not as if the assessment made by the appellate authority was either opposed to principles of natural justice, or was so palpably incorrect, that it could never be sustained. In our view, the High Court completely erred in setting aside the exercise of power undertaken by the concerned authority. The exercise of power was definitely designed to obviate an obvious illegality and prejudice to the interest of the revenue. The exercise was, thus, absolutely correct, and there was no occasion to set aside the orders passed in pursuance thereof. We, therefore, answer question No.3 accordingly.

37. Having thus considered and answered all the questions which have arisen for our consideration, all these appeals deserve to be allowed. We order accordingly, and set aside the decisions of the High Court under appeal and restore the orders passed by the appellate authority. No costs.

……..J
(Uday Umesh Lalit)

…….J
(Indu Malhotra)

New Delhi;
June 15, 2020.