
(1979) 09 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3380 of 1972

Ajaypal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 38, 39, 40, 40(1), 56(2)

Citation : (1979) AWC 658

Hon'ble Judges : K.M. Dayal, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : Jagdish Pd, for the Appellant;

Final Decision : Allowed

Judgement

K.C. Agarwal, J.—Through this petition filed under Article 226 of the Constitution, the Petitioner seeks the quashing of an order of the Collector, dated 1-12-1971, holding that the document in question was deficient by Rs. 3,465/-and that the Petitioner was further liable to pay Rs. 7,000/-as penalty.

2. The facts, briefly stated are these. On 14-1-1970, the Petitioners purchased agricultural plots under a sale deed. After the execution of the sale deed, before the Registrar the sale deed was left for necessary formalities. When the Petitioners went to take back the document, they were informed that the same had been forwarded by the sub-Registrar to the Collector for adjudication of the proper stamp duty payable on the same. It appears that on the receipt of the document from the Sub Registrar's office, the Collector directed the Tehsildar concerned to make the necessary enquiries in respect of the correct valuation of the plots mentioned in the document, under which 67-22 acres of land had been sold for a consideration of Rs. 6,000/-. A doubt had arisen about the valuation of the amount. The Tehsildar made enquiries and thereafter submitted a report in accordance with paragraph 341 of the Stamp (Amendment) Rules, 1970. According to the report, the market value of the land was liable to be determined

by multiplying the land revenue by 400 times. The same was worked out at Rs. 206-00 X 400 = 82,576-00. On this basis the Tehsildar reported that the market value of the land came to Rs. 82,576/-and, therefore, the market value described in the sale deed i.e. Rs. 6,000/-was too inadequate. This report of the Tehsildar was placed before the Collector, who agreed with the same and made an order u/s 40(1)(b) of the Stamp Act holding that the instrument was chargeable with stamp duty of Rs. 3,465/-more together with penalty of Rs. 7,000/-. Against the said order, the present writ petition was filed.

3. Sri Jagdish Prasad, counsel appearing for the Petitioners, urged that the order of the Collector was illegal and invalid. He submitted that as the aforesaid order had been passed behind the back of the Petitioners and without affording them any opportunity of being heard, the same was liable to be quashed. We find ourselves in agreement with the contention raised by the Petitioners" Learned Counsel. In the counter-affidavit, the Respondents have admitted that the Petitioners had not been given any opportunity of hearing before the Collector. According to the Respondents, since the Petitioners were not entitled to any such opportunity, not giving of the same would not vitiate the order. The defence raised in the petition is not tenable.

4. The principles of natural justice apply to quasi judicial as well as administrative bodies. From a reading of Sections 38, 39 and 40 of the Stamp Act, it would be found that the power, which is exercised by the Collector in adjudicating upon the stamp duty on a document, is a judicial one. The adjudication involves the determination of rights inasmuch as he determines the liability of the parties to the document to pay the stamp duty. As the rights are involved, it is necessary that before either enhancing the stamp duty or imposing penalty, the person affected must be given an opportunity of being heard. Denial to give opportunity may cause serious prejudice to his interest. It may be true that the principles of natural justice do not apply to a case where the legislature expressly or impliedly excludes the giving of opportunity. But, in the present case, we cannot find any provisions in the Act or the Rules which could justify the exclusion of the opportunity to such a person. In the absence of opportunity having been given to the Petitioners, the order of the Collector was invalid.

5. For the view taken by us, we find considerable support from the decision given in Board of Revenue v. Appalalansarasimhulu AIR 1957 SC 237. In this case by a majority, the Full Bench found that the nature of proceedings taken before the Collector is judicial, and that opportunity is required to be given to the person affected.

6. In Board of Revenue U.P. Allahabad v. Vidyawati 1962 AWR 594, the Supreme Court was called upon to consider the nature of the proceedings before the Board of Revenue u/s 56(2) of the Indian Stamp Act. After having examined the various provisions of the same, the Supreme Court took the view that the chief controlling revenue authority has to decide the matter judicially and would thus be a quasi judicial tribunal. The further view taken in this case was that the

Board had to act judicially when deciding the proceedings u/s 56(2) and must, therefore, comply with the principles of natural justice, and give hearing to the other party, namely, the executant of the instrument.

7. For these reasons, the writ petition succeeds and is allowed. The order of the Collector, Shahjahanpur, dated 2-12-1971 is quashed. It will, however, be open to the Collector to adjudicate upon the question of stamp duty payable by the Petitioners afresh after giving opportunity to them. No order as to costs.