(2017) 02 RAJ CK 0085

In the Rajasthan High Court

Case No : 78 of 2017

Arvind S/o Shri Amar Singh Matoria — APPELLANT

Vs

The State of Rajasthan — RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Rajasthan Stamp Act, 1998, Section 51(2)

Citation : (2017) 02 RAJ CK 0085

Hon'ble Judges : Dinesh Mehta

Bench : SINGLE BENCH

Advocate : S.L. Jain, Abhinav Jain

Final Decision : Dismissed

Judgement

1. By way of this Special Appeal, the appellant-petitioner has challenged the order dated 03.01.2016, passed by the learned Single Judge whereby the Writ Petition preferred by appellant-petitioner has been dismissed.

2. Counsel for the appellant contended that in facts of the present case, Section 51 (2) of the Registration & Stamp Act 1998 (hereinafter referred as ''the Act of 1998'') could not be invoked. Section 51 (2) of the Act of 1998 reads as under:-

" Section 51 (2) : When through mistake or otherwise any instrument which is undervalued and not duly stamped is registered under the Registration Act, 1908, the registering officer may call for the original instrument from the party and, after giving the party liable to pay stamp duty an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it and on failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purpose of this section, be deemed to be the original of such instrument and send it to the Collector for taking action under sub-section(3)."

3. Learned counsel submitted that the reference made by the same officer, who is incompetent or functus officio, in view of the fact that he himself assessed and charged the stamp duty on the basis of calculating market value. However, in less than period of one month, he issued another notice (Annex.2) dated 06.09.2016 and raised a demand of new amount from i.e. Rs.8,01,330/- to 17,49,800/-, which is not permissible under Section 51 (2) of the Act of 1998.

4. Learned counsel for the appellant has placed reliance upon the decision of the Supreme Court in the matter of Govt. of UP & Ors. Vs. Raja Mohammad Amir Ahmad Khan 1961 AIR (SC) 787. More particularly Paragraph 7 wherein the Supreme Court while considering the provisions of the Act of 1998 has observed as under:-

"7. Our attention was drawn to the observations of Rankin C.J. in Re Cook and Kelvey, ILR 59 Cal.1171:(AIR 1932 Cal 736)) but those observations are obiter as the High Court held that the reference under S. 57 of the Stamp Act was incompetent. The doctrine of functus officio was applied in several cases: Collector, Ahmednagar v. Rambhau Tukaram AIR 1930 Bom 392. In that case a certificate of

sale had been signed but the certificate was not duly stamped which was pointed out when it was sent to the Sub- Registrar for registration. The Sub-Registrar informed the Judge about it and the Judge got back the certificate from the purchaser and thinking that he had power to impound the document and to impose a penalty asked for the opinion of the high Court and it was held that after he had signed it he was functus officio and could not act any further and could not impound it. The same principle was laid down in Paiku Kashinath v. Gaya Moti Ram ILR (1948) Nag 950 and in Panakala Rao v. Kumaraswami, AIR 1937 Mad 763 and in our opinion as soon as the Collector determined the duty he became functus officio and he, could not impound the instrument under S. 33 and consequential proceedings could not, therefore, be taken."

5. We have heard the learned counsel for the appellant-

petitioner and perused the order passed by the learned Single

Judge.

6. Learned Single Judge while passing the impugned order, has

considered Section 51 (2) of the Act 1998 and observed as

under:-

" Section 51(2) of the Act of 1998 empowers a registering officer to call for the original instrument from a party, which is undervalued and not duly stamped and after giving the opportunity of hearing to the said party, impound it and on failure to produce such original instrument by the party, the registering officer can send it to the Collector for taking action. As per Section 54(1) of the Act of 1998 the registering officer shall, before making reference to the Collector, intimate to the parties concerned about the reference proposed to be made by him to the Collector. Section 54(2) of the Act of 1998 provides that in case the person liable to pay the duty offers to pay the amount of duty chargeable on such

instrument, the registering officer shall, on payment of such duty, certify it on the instrument by endorsement and shall not make the reference. In the present case, the notice dated 06.09.2016 (Annexure-2) issued by the registering officer is an intimation to the petitioner before making reference to the Collector. If the petitioner is not ready to pay the dues of stamp duty, he can very well agitate the matter before the Collector Stamps at the time of hearing of the reference. In view of the above position of law, I don''t find any case for interference in the impugned notice dated 06.09.2016 (Annexure-2) issued by the respondent No.2 - Sub Registrar, Lalgarh Jatan, District Sri Ganganagar. Hence, this writ petition is dismissed. Stay petition also stands dismissed."

7. In our opinion, learned Single Judge has thought it fit to

permit the petitioner to raise all these contentions before the

authority concerned authority namely Collector (Stamps) or

authority under Section 51 (2) of the Act of 1998.

8. In view of the above, learned Single Judge has not

exercised his jurisdiction in deciding the point raised regarding

Section 51 (2) of the Act of 1998. We in our Appellate jurisdiction

do not want to interfere.

9. In our opinion, recovery of stamp duty is not a judicial or

quashi-judicial work and the same was an administrative work, which could have been done by the authority while considering the matter under Section 54 (2).

10. Under the Scheme of the Act of 1998, the determination of the duty is in the domain of the Collector (Stamps). The learned Single Judge has considered all these contentions. We, therefore, have no reason to interfere in the order passed by the learned Single Judge. The judgment relied upon by the counsel for the appellant-petitioner has no application, to the present case. As much as the document is not compounded by the authority, only a reference has been made and final order has been passed, whatever is pursuant to Annex.2, the authority if not supplied, we have before passing the final order.

11. Accordingly the appeal deserves to be dismissed and the same is dismissed.

