

(1958) 02 AHC CK 0014

In the Allahabad High Court

Case No : Civ. Miscellaneous Ref. No. 310 of 1956 & Civil Miscellaneous Ref. No. 310 of 1956

Board of Revenue

APPELLANT

Vs

Lakshmipat Singhania

RESPONDENT

Date of Decision : 11-02-1958

Acts Referred:

Stamp Act, 1899 — Section 38(2), 42(1), 56(2), 57, 57(1)

Citation : AIR 1958 All 417

Hon'ble Judges : O.H. Mootham, C.J;Raghubar Dayal, J;A.P. Srivastava, J

Bench : Full Bench

Advocate : Brij Lal Gupta, R.S. Pathak and J. Swarup, for the Respondent

Judgement

O.H. Mootham, C.J.—This is a reference made by the Board of Revenue as the Chief Controlling Revenue Authority u/s 57 of the Indian Stamp Act.

2. Certain share transfer deeds were filed in the court of the Additional District Judge, Kanpur. They were impounded by the learned Judge on the ground that they were not duly stamped and were sent by him to the Collector pursuant to Section 38(2) of the Act. The Collector was of opinion that the sum of Rs. 12,778/6/- was payable as stamp duty on the transfer deeds, and by an order dated the 7th December, 1954, he directed the transferee to pay this amount together with a penalty of Rs. 5/-, and that upon payment being made the deeds be certified as duly stamped. It is not in dispute that the duty together with the penalty has been paid, and that the Collector has, u/s 42(1), certified on the deeds that the proper duty has been levied. The matter subsequently came to the notice of the Board of Revenue which doubted whether the Collector had assessed the duty on the transfer deeds on the proper basis, and it has referred to this Court the following question, namely

"Whether the Collector was right in assessing duty on the basis of the quotations of the share market, or it should have been assessed on the market-value determined on the basis of the sale price of the shares paid in the auction; and

further whether the stamp duty as assessed by the Board is leviable on the transfer deeds."

3. The question which immediately arises is whether in these circumstances the Board has the power to make the present reference. Section 57(1) of the Act empowers the Chief Controlling Revenue Authority to "state any case referred to it u/s 56, Sub-section (2), or otherwise coming to its notice, and refer such case with its opinion thereon" to the High Court. Reading this provision with Section 59(2), which requires the Revenue Authority on receipt of the High Court Judgment to "dispose of the case conformably to such judgment", there can in our opinion be no doubt that the purpose of Section 57(1) is an entirely practical one, and that that section can have no application unless there is a case pending before the , Revenue Authority, whether it be a case referred to it u/s 56(2) or otherwise coming to its notice, in respect of which that authority can give effect to the advisory opinion of the Court. That opinion, as was said by Rankin, C. J., in *In re Cook and Kolvey* *In Re: Cook and Kelvey*, is merely to guide the Revenue Authority "in disposing of an actual and concrete case".

4. Now in the present case the Collector, acting u/s 42(1), has certified by endorsement on the deeds that the proper duty and penalty had been paid. The question is whether after such a certificate had been given there is any case now pending before the Chief Controlling Revenue Authority.

5. Somewhat strangely it appears that in only one of the reported cases has this question directly arisen. That is the case of *In re Khub Chand* AIR 1918 All 181 (2) (B), and it was there decided that when once the Collector has certified that the duty and penalty levied u/s 40(1)(b) has been paid a reference to the High Court u/s 57(1) is not competent. The learned Judges in that case relied however on the provisions of Sub-section (2) of Section 40 overlooking (it would appear) that that subsection was not applicable to a case falling within Sub-section (1) (b) of Section 40. In *Re: Cook and Kelvey*, and *Reference under Stamp Act*, Section 57 ILR 25 Mad 751 were cases in which the Collector had determined the duty payable in exercise of his powers u/s 31; in *Usuf Dadabhai Vs. Chand Mahomed*, the Collector had issued a certificate u/s 37 and in *Jaidayal Shanti Kumar and Another Vs. Gajadhar and Others*, he had refused to issue a certificate under that section. In *Reference under Stamp Act*, Section 57 ILR 25 Mad 752 (F) the question before the Court was the effect of a certificate granted by the Collector u/s 40(1)(a). None of these cases is therefore directly in point, but certain observations were made obiter with regard to the effect of a certificate granted by the Collector u/s 42(1) in two of them. In the case last cited *Bhashyam Ayyangar, J.*, expressed the opinion that a certificate u/s 42(1) was as conclusive in its effect as a certificate granted u/s 40(1)(a), while *Moore, J.*, in the same case held the view that a certificate u/s 42(1) would not operate as a bar to interference by the Chief Controlling Revenue Authority with an order made by the Collector u/s 40(1)(b). In *Jaidayal Shanti Kumar's* case (E) the Rajasthan Court expressed a preference for the view taken by *Moore, J.*

6. Now, where the instrument is sent to the Collector u/s 38(2) (it not being an instrument chargeable with the duty of one anna or half an anna, or a bill of exchange or a promissory note) the Collector is required u/s 40(1) to examine the document, and if he is, of opinion that it is duly stamped, or is not chargeable to duty, he must certify thereon that the Instrument is duly stamped or is not chargeable with duty, as the case may be, and under Sub-section (2) of Section 40 that certificate is conclusive evidence of the facts stated in it. If, however, the Collector is of opinion that the document is chargeable with duty and is not duly stamped he must require the payment of the proper duty and of a penalty, and when these amounts have been paid he has to make the endorsement on the document for which provision is made in Section 42(1).

That section provides for the issuance of a certificate by the Collector not only in the case of instruments upon which duty and a penalty have been levied u/s 40, but also in the case of instruments unduly stamped by accident in respect of which duty (but not penalty) has been levied u/s 41. The certificate which must be endorsed on the instrument in each of these cases is that the proper duty or, as the case may be, the proper duty and the penalty have been levied, and the name and residence of the person paying, and Sub-section (2) of that section then provides that every instrument so endorsed "shall thereupon be admissible in evidence and may be registered and acted upon and authenticated as if it had been duly stamped" and shall also be returned to the person from whom it has been impounded.

7. We think it to be clear that the case in which the Collector has under Section 40(2) certified that the proper duty has been paid, or that none is chargeable, is finally determined by that certificate which is conclusive evidence of its contents. What is the effect of a certificate issued by a Collector u/s 42? If that certificate has also not the effect of finally determining the maximum amount of duty and penalty recoverable from the person by whom duty was payable the somewhat anomalous position will result that the decision of a Collector that a document is not liable to duty is final but his decision that the proper duty thereon has been paid is subject to interference by the Chief Controlling Revenue Authority u/s 56.

It has also to be observed that where the instrument has been admitted in evidence u/s 35 the certificate u/s 42(1) must be given by the person admitting the instrument, and in that case the appellate court may, u/s 61, take the order admitting the document into consideration, and if it be of opinion that the instrument should not have been admitted in evidence without the payment of higher duty and penalty than those paid, it may record a declaration to that effect and determine the correct duty with which the instrument is chargeable. The Act contains however no provision for the recovery of such additional amount from the person by whom it ought to have been paid; for all that the Act provides is that such a declaration shall be sent to the Collector who may then prosecute any person for an offence against the Stamp law which the Collector considers to have been committed in respect of such instrument, and the proviso

to Section 61 makes it clear that no declaration under this section shall affect the validity of the certificate granted u/s 42.

8. Now the effect of the certificate granted u/s 42 is that the document in respect of which it is given shall not only be admissible in evidence but may be registered, acted upon and authenticated as if it had been duly stamped. The certificate itself will state (in a case u/s 41 that the proper duty has been paid, or (in case u/s 40(1)(b)) that the proper duty and penalty have been paid. The certificate is not however declared, as is a certificate u/s 40(2), to be conclusive evidence of the matter stated therein, A reason for the omission of such a declaration appears to be obvious, namely that notwithstanding the certificate the Chief Controlling Revenue Authority has power u/s 45, on an application being made to it, to refund the penalty wholly or in part and, if it is of opinion that stamp duty in excess of that which is legally chargeable has been charged and paid u/s 35 or Section 40, to refund the excess.

9. The Chief Controlling Revenue Authority is not an appellate body. Section 50(1) provides that-

"The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to Section 26 shall in all cases be subject to the control of the Chief Controlling Revenue-authority".

It appears to us that there is a distinction between the power to control the exercise of powers by a subordinate authority and the power to revise orders made by that authority, and we think it significant that no such power of revision is expressly conferred on the Chief Controlling Revenue Authority. u/s 40 of the Indian Stamp Act, 1869, (Act No. XVIII of 1869) all certificates and orders of a Collector were open to revision by the Chief Controlling Revenue Authority to which the Collector was subordinate, but a proviso to that section made it clear that no order passed in revision would invalidate any registration or other proceeding with regard to an instrument in respect of which the Collector had granted a certificate u/s 24 or Section 25. Those sections declared the conclusive character of the Collector's certificate subject to the provisions contained in Section 40. Section 40 was however omitted from the Indian Stamp Act of 1879 (Act 1 of 1879), and had it been the intention of the Legislature to restore that power by Section 56(1) of the present Act, we think it would have made its purpose clear by the use of words more appropriate than are to be found in that section.

10. If Section 56 is to be so construed as to enable the Chief Controlling Revenue Authority to interfere with the orders made by the Collector u/s 40(1)(b) then there appears to be no limitation in time within which that authority may do so; and what becomes of the certificate granted by the Collector u/s 42? There seems to be no reason why, on this view of the matter, the Chief Controlling Revenue Authority should not direct the Collector to cancel his certificate -- however long ago it was issued -- with the consequence that the document in

respect of which it was granted will cease to be admissible in evidence, or capable of being registered, or acted upon, or authenticated. Even where the declaration is made u/s 61 the validity of the certificate is, as we have pointed out, left unimpaired. The consequences following upon the adoption of this construction of Section 56(1) are so grave that we cannot think that it reflects the intention of the Legislature.

11. The argument that unless Section 56(1) confers a power of revision upon the Chief Controlling Revenue Authority the words "or otherwise coming to its notice" in Section 57(1) cease to have any practical effect is, in our opinion, for reasons which have been well stated by Bhashyam Ayyangar, J., in Reference under Stamp Act, Section 57(1), with-out foundation.

12. In one instance a case may we think be said to be pending before the Chief Controlling Revenue Authority notwithstanding the grant by the Collector of a certificate u/s 42. That case would arise if the Chief Controlling Revenue Authority, on an application made to it u/s 45, is in doubt whether stamp duty in excess of that which is legally chargeable has been charged and paid. It appears to us, as at present advised, that such a case could be referred to the High Court for its opinion. Section 45 would however be redundant if the ambit of the control possessed by the Chief Controlling Revenue Authority over the powers exercisable by a Collector were as extensive as is contended by the learned Standing Counsel; for if that authority (as has been argued) has the power to interfere with an order made by a Collector u/s 40 for the purpose of requiring additional stamp duty to be paid, surely it would have the power to decide that the duty paid exceeds the amount legally chargeable and to direct a refund.

13. In our opinion there is in the present instance no case pending before the Chief Controlling Revenue Authority within the meaning of Section 57(1), and this reference cannot be entertained. We accordingly direct that the papers be returned to the Board of Revenue with a copy of this judgment.

14. The respondent is entitled to his costs which we assess at Rs. 200/-.