

(1960) 05 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 118-D of 1957

Caltex (India) Ltd.

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-1960

Acts Referred:

Stamp Act, 1899 — Article 35, 35, 42, 57

Citation : AIR 1961 P&H 12

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Advocate : Ram Behari Lal and Yogeshwar Dial, for the Appellant; T.P.S. Chawla, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.N. Grover, J.—This order will dispose of Civil Writs Nos. 118-D and 119-D of 1957.

2. In these petitions under Articles 226 and 227 of the Constitution the main prayer is that a mandamus be issued to respondent No. 2 to refer the question of stamp duty leviable on two deeds of lease for opinion u/s 57 of the Indian Stamp Act, 1899.

3. The lease deeds were presented before the Sub-Registrar for registration and one of the terms was that Rs. 25,000/- were to be paid as advance rent and that amount was to be treated as rental for the first 36 months payable on the date of occupancy of the premises, the rate of rent reserved being Rs. 700/- per month. The lease deeds were executed on the stamp paper of the value of Rs. 85/- each which duty was calculated under Article 35(a)(ii) of the Indian Stamp Act. The Registrar impounded the deeds and sent them to the Collector u/s 38(2), On 19th October 1954 the Collector issued a notice to the Manager of the petitioner-Company to show cause why the deficient stamp duty of Rs. 765/- should not be recovered with penalty extending to Rs. 7,650/- with regard to each deed. It was

represented to the Collector that the duty had been correctly paid and that previously too before executing and registering a deed similar in all respects to the deeds in question the petitioner had written a letter dated 17th February 1953 to the Collector and made an enquiry with regard to the proper amount of stamp duty. The Collector had advised that the stamp duty payable was Rs. 90/- which fact was duly certified by the Collector on 25th March 1953 on the deed itself. A notice was sent by the Collector on 25th June 1955 calling upon the petitioner to deposit Rs. 765/- as deficient stamp duty and Rs. 1, 530/- as penalty, in each case.

4. On 20th July 1955 the petitioner filed revision petitions against the order of the Collector before the Chief Controlling Revenue Authority. During the course of arguments it was submitted to that authority that the point involved raised substantial and intricate question of law and it should be referred to the High Court u/s 57. On 12th November 1956 an application was also made to that effect. On 17th December 1956 the Chief Controlling Revenue Authority dismissed the revision petitions reducing the penalty to Rs. 100/- regarding each deed but it declined to refer the matter to this Court with regard to the amount of the stamp duty. These orders are stated to have been communicated to the petitioner by a letter dated 21st/22nd December 1956.

As a demand had been made for payment of the deficient stamp duty and penalty the petitioner deposited the same on 26th February 1957 and informed the Collector of Stamps on 4th March 1957 that the said amount had been deposited under protest. On 23rd March 1957 the present petitions were filed but no prayer was made at the time of preliminary admission for staying the registration of the documents which were duly registered on 3rd May, 1957 after the Collector had issued a certificate u/s 42 on 29th April, 1957.

5. In *Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd.* AIR 1950 SC 218 it was held that the power to make a reference u/s 57 of the Indian Stamp Act was not for the benefit of the Revenue Authority alone. It was coupled with a duty cast on that Authority to do the right thing and when an important and intricate question of law in respect of the construction of a document arose it was the duty of that Authority to make the reference. If it omitted to do so, it was within the power of the Court to direct the Authority to discharge that duty and make a reference to the Court. The objection, however, which has been raised by Mr. T. P. S. Chawla who appears for the respondents is that no reference can be made now u/s 57 for the simple reason that no case is pending before the Chief Controlling Revenue Authority because as soon as certificates were issued u/s 42 by the Collector and the documents were registered there was an end of the matter. In *L. Nanak Chand Mehrotra and Others Vs. Board of Revenue, U.P. at Allahabad* and *Another*, it has been laid down that the language of S, 57 makes it clear that reference has to be made only when a case is pending in which the question about the amount of stamp duty leviable is yet to be decided.

Where the decision had been given, the fact that the proceedings were pending for the realisation of duty in be levied in accordance with the decision would not make the case pending. In that case initially the stamp duty on the document was held in accordance with the desire of the petitioners to be Rs. 2/- only by the Collector. On objection by the Sub-Registrar and the Chief Inspector of Stamps the matter went up u/s 56 to the Board of Revenue. The Board gave its decision holding against the petitioners and directing that stamp duty should be charged on the document as a deed of partition and not as a deed of agreement. After the decision had been given, the petitioners made an application to the Board of Revenue praying that the case be stated for the opinion of the High Court u/s 57.

That prayer was rejected on the ground that there was no longer any pending case. The petitioners approached the High Court for a mandamus but the same was declined on the ground mentioned before. It is true that in the aforesaid case no application for a reference u/s 57 was made before the Board of Revenue which was exercising the powers of the Chief Controlling Revenue Authority while the matter was still pending. It was observed by the learned Allahabad Judges that even without an application from the petitioners the Authority could have made a reference at its discretion but it did not consider it necessary to do so. In Board of Revenue Vs. Lakshmipat Singhanian, a Special Bench consisting of Mootham C. J., Raghubar Dayal and Srivastava JJ. expressed the opinion that Section 57(1) could have no application unless there was 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 could give effect to the advisory opinion of the High Court u/s 59(2).

There, the Collector, to whom the Court sent a document u/s 38(2) acting u/s 42(1), had certified by endorsement on the deed that the proper duty and penalty had been paid. It was held that after such a certificate had been given there was no case pending before the Chief Controlling Revenue Authority within the meaning of Section 57(1) and there was no power to make a reference. After discussing the relevant provisions and authorities the view, as stated before, was expressed.

It is true that in that case the matter came subsequently to the notice of the Board of Revenue but it is contended by the learned counsel for the respondents that on principle the ratio of the decision would apply to the present case. My attention was invited to a number of older decisions to reinforce the argument advanced e. g. In the matter of Khub Chand AIR 1918 All 181 , AIR 1929 272 (Nagpur) In Re: Cook and Kelvey, Usuf Dadabhai Vs. Chand Mahomed, Mubarik Ahmad v. Fakir Ahmad AIR 1934 Lah 666 Nand Lal v. Emperor AIR 1941 Lah 65 and Reference under Stamp Act, Section 57 ILR 25 Mad 752, but it will be of material assistance to refer to the last case only because the view expressed therein by Bhashyam Ayyangar J. appears to be, with respect, based on weighty and cogent reasons.

The Sub-Registrar, acting u/s 33, had impounded two documents which were produced before him for registration and u/s 38(2) had forwarded them to the Deputy Collector, who, u/s 40(1)(a), certified that they were exempt from stamp duty. The Inspector-General of Registration disagreed with the opinion formed by the Deputy Collector and reported the matter to the Board of Revenue for orders. The Board of Revenue referred the question as to the stamp duty, if, any, payable on the documents to the High Court u/s 57. The reference was heard by Sir Arnold White C. J., Bhashyam Ayyangar and Moore JJ.

The learned Chief Justice was of the view that the reference came within the terms of Section 57. Bhashyam Ayyangar J., however, examined the whole scheme of the Stamp Act and held that Section 56 did not empower the Board of Revenue to revise the certificate of a Collector made u/s 40 or 42. He was of the opinion that the Board could control the Collector's power only before it was actually executed and in the very nature of things the action resulting from the exercise by the Collector of such power could not be undone. Although in the reference the question was whether the High Court had any jurisdiction when the Collector had certified u/s 40(1)(a) that the document was exempt from stamp duty and the point which arises in the present case relates to a stage when a certificate has been granted u/s 42 after the Collector has followed the procedure u/s 40(a)(b), the learned Madras Judge while examining the entire scope and ambit of Sections 56 and 57 dealt with the true position in a case of the present kind.

The previous legislative history was also examined and it was pointed out that Section 45(2) which did not exist in the repealed Act I of 1879 showed that when a Collector had exercised his power u/s 40 and levied an amount of penalty and stamp duty in excess of what was legally due, the Board could revise but only in favour of a private party affected. Basing himself on this the suggestion of the learned counsel for the respondents is that once a certificate has been issued u/s 42 after the deficient stamp duty and penalty have been deposited the party affected can move u/s 45 only within the period specified therein for the refund of the excess stamp duty and penalty, but there would be no power in the Chief Controlling Revenue Authority to give any decision u/s 56(1) unless the matter is brought to it specifically u/s 45 and it is said that if the aforesaid Authority cannot exercise powers u/s 56 in the present case no question of seeking the advisory opinion of the High Court can arise.

It may be mentioned that Moore J., the third learned Judge in the Madras case, expressed the view that the Revenue Authority could interfere with an order passed u/s 40(1)(b) even after a certificate had been granted u/s 42 but it could not alter in any way an order passed u/s 40(2) once a certificate had been issued. But as stated before, the view expressed by Bhashyam Ayyangar J. is, even if it was more in the nature of obiter dictum, based on a close and careful examination of the entire scheme of the Stamp Act in the light of previous enactments.

6. The learned counsel for the petitioner has placed a great deal of reliance on a decision of a Special Bench of the Rajasthan High Court in *Jaidayal Shanti Kumar and Another Vs. Gajadhar and Others*, In that case two suits were pending before the Civil Judge, Gangapur, on two hundis. In both cases the hundis were said to bear sufficient stamps but of improper description. The plaintiffs applied to the Collector for a certificate u/s 37. The Collector refused to give the certificate on the ground that it could not be done till certain rules had been framed by the State Government. Thereupon the two plaintiffs brought the matter to the notice of the Board of Revenue u/s 56(1) of the Stamp Act and the Board made references u/s 57 as it was of the opinion that the Jaipur Stamp Rules continued in force after the Rajasthan Act came into force.

A preliminary objection was raised that the Board had no jurisdiction to make a reference u/s 57 and the argument was that the Collector having decided the matter there was nothing pending before him and the Board had no power to interfere u/s 56. In support of that argument reliance was placed on a number of cases relating to Section 40, Sub-section (2). *Wanchoo, C. J.* (now on the Bench of the Supreme Court) who delivered the judgment while discussing the various authorities referred to the Madras case ILR 25 Mad 752, and expressed the opinion that the view taken by *Moore, J.* was the correct view, but the following observations show that no decision was given with regard to a case falling under Sections 40(1)(b) and 42 which are relevant for the purposes of the present case.

"We may also remark that what we have said in this case should not be taken to decide a case coming under Sections 40(1)(b) and 42, as this case is not of that type. But so far as other orders of the Collector are concerned which are within the ambit of Section 56(1), the Board has the right to revise them if no provision of the Stamp Act makes them conclusive and to make a reference in that connection if the matter comes to its knowledge otherwise."

The Rajasthan decision can, therefore, be of no assistance to the petitioner. Thus the preponderance of authority is clearly in favour of the contention that has been canvassed by the learned counsel for the respondents. In the Indian Stamp Act by Mulla and Pratt (5th Edition) it is stated at page 151 that the expression "case" in Section 57 means a case that has not been already finally and conclusively determined by the Collector or other competent authority. Unless the Revenue Authority has still resting upon it the duty of disposing of a case it is not intended by the statute that it should have a right to make a reference to the High Court. At page 149 while discussing the scope of Section 56(1) the learned authors state that after the Collector has decided the case and granted a certificate the Revenue Authority has no power to interfere directly - except u/s 45 nor indirectly u/s 57, for that section only refers to pending cases.

Thus it must be held that after the due amount of stamp duty had been paid as also the penalty by the petitioner and a certificate had been issued by the Collector u/s 42, even though that was during the pendency of the writ petitions, there is no case now pending before the Revenue Authority, with the result that

even if it is directed to make a reference to this Court no opinion will be expressed as this Court will decline to do so on the aforesaid ground.

7. The learned counsel for the respondents submits that even on the merits there is hardly any intricate or complicated question of law which is involved for which a reference should have been ordered by the Chief Controlling Revenue Authority. It is pointed out that the only case in favour of the petitioners with regard to the applicability of Article 35 (a) (ii) is the one reported as Reference Under Stamp Act, Section 46 : ILR 7 Mad 203 (FB), but that in more recent decisions it has been uniformly held that cases of this kind fall under Article 35 (c). In *In Re: Chief Controlling Revenue Authority*, a Special Bench consisting of Chagla, C. J., Coyajee, J. and Gajendragadkar, J. (now on the Bench of the Supreme Court) held that "rent reserved" could only mean rent in respect of which there was a liability, rent in respect of which there was a covenant on the part of the lessee to pay the amount mentioned and stated in the document.

Where before the execution of the lease certain amount was paid to the lessor in respect of the lease and there was no covenant to pay the rent, but there was an appropriation of the amount actually paid to rent which was stated to be certain fixed amounts spread over the period of the lease, there was no reservation of rent under the lease and, therefore, the document could not fall under Article 35 (a) (iii) but fell under Article 35 (b). In that case it was the latter provision which was in point but it was definitely held that such a case did not fall under Article 35 (a).

The Chief Controlling Revenue Authority in the present case relied on the Bombay decision and I have not been persuaded to see how any intricate or complicated question of law arises for which a reference became necessary. At any rate, even if such a question existed which would justify a reference the prayer of the petitioner for a mandamus cannot be granted in view of the objection of the learned counsel for the respondents on the first point having been sustained.

8. In the result, both the petitions are dismissed but owing to the nature of the points involved I leave the parties to bear their own costs.