

(1994) 12 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8157 of 1994

Chander Bhan

APPELLANT

Vs

The Collector Gurgaon and others

RESPONDENT

Date of Decision : 15-12-1994

Acts Referred:

Stamp Act, 1899 — Section 47A(2)

Citation : AIR 1995 P&H 211 : (1996) 1 CivCC 535 : (1995) 2 ILR (P&H) 387

Hon'ble Judges : Sat Pal, J; R.P. Sethi, J

Bench : Division Bench

Advocate : Hari Pal Verma, for the Appellant; S.K. Kapoor, A.A.G., for the Respondent

Judgement

1. The petitioner is aggrieved of the order of the appellate authority-respondent No. 3 by which his appeal was dismissed as being barred by time. While filing the appeal, the petitioner had filed an application seeking condonation of delay mainly on the ground that as his wife had fallen ill he could not prefer the appeal within the lime specified by the statute. He had also submitted that he was not properly served and the period of limitation should be deemed to have commenced from the date of his knowledge and not from the date of the issuance of the notice. However, the Additional District Judge, Gurgaon did not accept either of the contentions of the petitioner and dismissed the appeal along with the application for condonation of delay. It was held that as no medical certificate regarding the illness of the wife of the petitioner was produced, the allegation regarding her illness could not be accepted. The appellate court further held that the plea of the petitioner regarding knowledge about the passing of the order had been devised to make it compatible with the date of the application for the certified copy of the impugned order. It was further held that the period of limitation would start from the date of the order and not from the date of the knowledge.

2. Heard Section 47-A(4) of the Indian Stamp's Act, 1899 provides:

"Any person aggrieved by an order of the Collector under sub-sec. (2) or sub-sec. (3) may, within thirty days from the date of the order, prefer an appeal before the District Judge and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

3. The learned appellate authority on emphasising the words, "the date of the order" impliedly came to the conclusion that service of the notice for the purposes of applicability of S. 47-A of the Act was not relevant and that the person aggrieved was under a legal obligation to file an appeal within thirty days from the date of order under all circumstances notwithstanding his service or otherwise in the main proceedings.

4. The applicability of S. 47-A of the Act has not been disputed before us. Sub-section (2) of the aforesaid section provides that on receipt of a reference under sub-sec. (1) of the Act, the Collector is required to give the parties an opportunity to make their representations and after holding enquiry, in the manner as may be prescribed by the rules, determine the market value of the property which was subject matter of any instrument. The difference, if any, in the amount of duty shall be payable by the person liable to pay the duty. The Collector can also suo motu determine the value of the property but only after following the procedure laid down under sub-sec. (2) of S. 47-A of the Act. Giving of an opportunity in terms of sub-sec. (2) of S. 47-A of the Act can be achieved only after service of the notice of the proposed enquiry under the aforesaid section. Service of notice of proposed enquiry is sine qua non in exercise of the jurisdiction by the Collector and the mere despatch of notice is not the substitute of the service of the notice. Otherwise also once a decision of the authority is likely to adversely affect the party a duty is cast upon such an authority to issue a notice to rebut the allegations made against such a party and the service of such notice would be in compliance to the minimum requirement of the principles of natural justice.

5. The Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, , examined the question of limitation in the context of the words, "from the date of the order" and held that where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned. In the absence of positive proof of service, the petitioner could not be supposed to be under any legal obligation to file the appeal within thirty days from the date of the order as has been held by the Courts below.

6. Similar views were expressed by a Division Bench of the Orissa High Court in *P. Appa Rao Vs. Additional District Magistrate and Others*, .

7. Neither the Collector nor the appellate authority in the instant case gave any finding regarding actual service of the notice or afforded the petitioner

opportunity to appear before the Collector despite service of the notice. In the absence of proof of proper service the petitioner could not be deprived of his right to file the appeal within the time of appeal commencing from the date of his knowledge. In all such cases where there is no proper proof of service the period of limitation would be deemed to commence from the date of the knowledge of the aggrieved party.

8. Both the Collector and the learned Additional District Judge apparently appear to have assumed wrong presumption of law with the result the petitioner was deprived of his valuable right of being heard in the matter which has adversely affected him as he has been directed to pay stamp duty on the enhanced value of the property purchased by him. The orders impugned in this petition, Annexure P/1 and P/2, are, therefore, liable to be quashed.

9. Accordingly the writ petition is allowed and the orders impugned in this petition are set aside. The case is remanded back to the Collector, Gurgaon for affording the petitioner an opportunity of being heard before passing appropriate orders under S. 47-A of the Act. The petitioner through his counsel is directed to appear before the Collector, Gurgaon on 6-2-95. In case the petitioner does not appear before the Collector on the date fixed, the Collector, Gurgaon shall be at liberty to proceed ex parte against the petitioner and in that event, the petitioner will not raise any objection regarding the non-service upon him.

10. Petition allowed.