(1985) 10 MP CK 0010

In the Madhya Pradesh High Court

Case No : M.P. No. 154 of 1983

Chandrahasji Maharaj — APPELLANT

Vs

Chief Controlling Revenue Authority i.e. Board of Revenue, Gwalior and Another — RESPONDENT

Date of Decision : 16-10-1985

Acts Referred:

General Clauses Act, 1897 — Section 3(10)
Madhya Pradesh Land Revenue Code, 1959 — Section 7
Stamp Act, 1899 — Section 33, 56, 57, 57(1), 9(1)

Citation : AIR 1986 MP 132

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Advocate : S.S. Samvatsar, for the Appellant; S.M. Jain, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.L. Srivastava, J.—This petition dt. 13-1-1983 under Articles. 226 and 227 of the Constitution of India is directed against the order passed by a Member of the Board of Revenue directing the application to be presented before the competent Court,

2. The facts giving rise to the present petition are these. The petitioner is a member of a Housing Society known as ''Bhartiya Grih Nirrnan Sahakari Sanstha Maryadit, Indore (respondent No. 5) registered under the M.P. Co-operative Societies Act, 1960. He sold 10.16 acres of his land to the said Sanstha by a registered sale deed dt. 23-11-1971. The sale deed was unstamped and was registered by respondent No. 4, the Sub-Registrar Indore. Later after impounding the document and a report being made by the respondent No. 4 to the respondent No. 3 the Collector of Stamps, Indore to the effect that the sale deed was not exempt from stamp duty and further that the sale deed was undervalued the latter after inquiry ordered (vide order dt. 18-7-78 Ann. A) that a sum of Rs.

8442.50 as reported, be recovered from the petitioner.

3. Aggrieved by the said order, the petitioner filed an application (Ann. B) u/s 57 of the Stamp Act, before the Revenue Commissioner, Indore (respondent No. 2) for making a reference to the High Court. The respondent No. 2 by his order dt. 9-1-1981 holding that the Chief Controlling Revenue Authority referred to in Section 57(1) of the Act is the Board of Revenue (the respondent No. 1) returned the application for presentation to the said authority. The petitioner then presented the application to the Board of Revenue along with an application u/s 14 of the Limitation Act, 1963.

4. The respondent No. 1 without hearing the petitioner, by its order dt. 29-10-1982 returned the said application u/s 57 of the Act for presentation to the competent Court.

5. Petitioner''s contention is that the transaction in question in terms of the notification by the State is exempt from stamp duty and the valuation of the sale deed was also proper. It is urged that in the circumstances either the respondent No. 1 or the respondent No. 2 was bound by law to make a reference as contemplated u/s 57 of the Act and direction to that effect may be issued by the Court.

6. In their return the respondents Nos. 1 to 4 have stated that the transaction of the sort was not exempt from stamp duty and it was through oversight that this could not be detected at the time the document was registered.

7. For a proper appreciation of the controversy it is pertinent to reproudce the relevant portion of Section 57 of the Act. It runs thus: --

"57(1) The Chief Controlling Revenue Authority may state any case referred to it u/s 56, Sub-section (2) or otherwise coming to its notice, and refer such case, with its own opinion thereon--

(a) If it arises in a State to the High Court for that State."

The reference referred to is one by the Collector in case he feels doubt as to the duty with which an instrument is chargeable and under Sub-section (2) the case has to be decided by not less than three Judges of the High Court..

8. Section 3(10) of the General Clauses Act, 1897 embodies the definition of Chief Controlling Revenue Authority. According to it, the Chief Controlling Revenue Authority or Chief Revenue Authority shall mean in a State where there is Board of Revenue, that Board and in a State where there is a Revenue Commissioner, that Commissioner. ''

9. Section 7 of the M.P. Land Revenue Code 1959 dealing with the jurisdiction of the Board provides that the Board shall exercise powers and discharge functions as have been conferred or may be conferred by or under any Central or State Act on the Chief Controlling Revenue Authority. From the foregoing discussion it is clear that the Board of Revenue is the Chief Controlling Revenue Authority having

jurisdiction over an application u/s 57 of the Stamp Act.

10. At this stage reference to the notification relied upon by the petitioner is necessary. The number of the notification is 1210-203-VSR dt. 27-4-1961. According to it, in exercise of the powers conferred u/s 9(1) of the Stamp Act, 1899 the State Government has exempted, from payment of stamp duty all instruments executed by the registered Co-operative Societies or any of its office bearers or members which relate to business of such society. The learned counsel for the respondents contends that a plain perusal of the notification shows that it does not exempt a transaction of the sort from payment of stamp duty. The question could have been different if the petitioner had executed the document for and on behalf of the ''Sanstha'' for the benefit of which the exemption has been provided,

11. Now as to the question of reference to the High Court. The discretionary power u/s 57 of the Stamp Act is no doubt wide and clearly enough a reference u/s 56 ibid by the Collector is not always necessary. However, reference is to be made to the High Court when a case is pending and there is doubt as to the amount of stamp duty with which an instrument is chargeable. It is not that merely because a controversy is raised, an obligation is cast on the Board to make a reference to the High Court. In the decision in Chaturbhudas v. State of M.P., 1975 Jab LJ 833 : (AIR 1975 Madh Pra 209) it has been held that the power of control u/s 56 of the Stamp Act does not clothe the Board of Revenue to decide. In a case referred to it u/s 56(1) of the Act or otherwise brought to its notice, it has to refer a case with its own opinion to the High Court.

12. In the decision in State of M.P. v. Martandsingh, 1984 Jab LJ 328 : (AIR 1984 Madh Pra 92) (FB) it has been held that where a question has already been decided by the High Court, the Board of Revenue need not refer such question again to the advisory jurisdiction of the High Court u/s 59 of the Act.

13. Relying on the decision in Komal Chand and Another Vs. The State of Madhya Pradesh, in the aforesaid decision in Martand Singh''s case (eupra) it has been pointed out with reference to Section 47A of the Stamp Act, 1899 that a reference could be made by the registering authority only when an objection was taken at the time of registration and not thereafter. Towards the end of paragraph 3 of the decision in Komal Chand''s case (supra) it has been pointed out that neither in the Registration Act nor in the Stamp Act is there any provision giving to the registering officer any power to examine whether an instrument already registered was or was not duly stamped and to impound it. As soon as the document is registered the registering officer becomes functus officio having no power u/s 33 of the Stamp Act to impound the instrument. Towards the end of paragraph 4 it has been observed that paragraphs 231 and 232 of the Registration Manual do not say that after a document is admitted to registration, the registering officer can make a report to the Collector that it was not sufficiently stamped.

The following excerpt from the paragraph may usefully be reproduced: --

"On the other hand, taking any further action, that is to say, in the manner of Registration, the registering officer must see that the document is duly stamped. The words "after registering the document" occurring in paragraph 232 obviously refer to the entry of the document in the Register maintained of documents presented for registration. They do not mean that the registering officer can make a report about insufficiency of stamp after the document has been admitted to registration."

14. Ultimately in the aforesaid decision in State of Madhya Pradesh and Others Vs. Martand Singh Joodeo, answering the first question referred to by the Board of Revenue, the majority of the three Judges deciding the reference held that after registration of the document, the registering authority has no power to hold an inquiry regarding the value

15. In the result, the order passed by the Board of Revenue that it has no jurisdiction in the matter of the petitioner''s application u/s 57 of the Stamp Act is quashed and it is directed to consider the application according to law in the light of the observations made above.

16. The petition is accordingly disposed of as indicated above.