
(1974) 09 GUJ CK 0014
In the Gujarat High Court

Dolatsing Prabhatsing Rana

APPELLANT

Vs

The Chief Controlling Revenue Authority for the State of
Gujarat

RESPONDENT

Date of Decision : 10-09-1974

Acts Referred:

Bombay Stamp Act, 1958 — Section 39(1), 54(1), 54(1)
Stamp Act, 1899 — Section 56(2)

Citation : (1975) 16 GLR 774

Hon'ble Judges : P.D. Desai, J;J.B. Mehta, J

Bench : Division Bench

Judgement

J.B. Mehta, J.—The petitioner has filed this petition to compel the respondent Chief Controlling Revenue Authority, hereinafter referred to as "the Authority," to make a reference to this Court u/s 54(1) of the Bombay Stamp Act, as to the substantial question of law which had arisen in the context of the partition deed of the petitioner. The Collector by the order, dated January 1, 1971, held that entry 46(b) was not applicable and, therefore, on the Mamlatdar's report of valuation of Rs. 2100/- per acre, the proper stamp duty should have been paid and he accordingly imposed penalty along with the said deficit. The petitioner approached the respondent against this order of the Collector u/s 39(1) of the Act, and requested him to make a reference of the substantial question of law to the High Court by the application, dated March 27, 1971. The respondent Authority, however, without making any reference decided this revision application u/s 53(1) of the Act by confirming the Collector's order. On receipt of this order dated August 5, 1971, the petitioner has filed the present application on February 14, 1972.

2. It is true that in Ramji Shamji v. Collector 3 G.L.R. 123 the Full Bench had taken the view following the Calcutta view that even though the words "otherwise coming to its notice" in Section 54(1) were wide enough to envisage a reference when the claimant brought to the notice of the authority this fact that the excess duty had been required to be paid by the Collector and so a reference

should be made on that question, those words had to be given a narrower construction in view of Section 56(2) by holding that this duty of the authority was attracted only when the case was pending before the authority and so it had to dispose of the case in accordance with the judgment of the High Court u/s 56(2). That is why it was also held that where the authority itself felt no doubt as to the amount of duty and did not refer the question, no reference could be compelled. This view has been clearly overruled by the decision of their Lordships in *Banarsi Das Ahluwalia Vs. The Chief Controlling Revenue Authority, Delhi*, . Their Lordships pointed out in the context of Section 57(1) of the Stamp Act, 1899, that in such a case the authority is in similar position as the Income Tax Tribunal under the analogous provision under the Income Tax Act. Such a provision is intended as a remedy to the citizen to have his case referred to the High Court against the order of revenue authority imposing stamp duty and/or penalty, provided the application involved substantial question, of law, and it imposes a corresponding obligation on the authority to refer it to the High Court for its opinion. Such a right and obligation cannot be construed to depend upon any subsidiary circumstances such as the pendency of the case before the authority. As soon as a reference is made and the High Court pronounced its judgment the decision of the authority is at large and the authority, as required by Section 59(2), would have to dispose of the case in conformity with such judgment. Therefore, their Lordships in terms overruled the Calcutta view which was followed by the Full Bench and held that when a reference has been made to the Authority or the case has otherwise come to his notice, if an application is made u/s 57(1) and it involves a substantial question of law, whether the case is pending or not, the Authority is bound to state the case in compliance with its obligation. This Section 57(1) was in identical terms with Section 54(1) of the Bombay Act, because Section 57(1) also provided that "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".... The relevant Section 54(1) of the Bombay Act in question also runs as under:

The Chief Controlling Revenue Authority may state any case referred to it under Sub-section (2) of Section 53, or otherwise coming to its notice and refer such a case, with its own opinion thereon, to the High Court.

Section 53(2) contemplates that if the Collector felt a doubt as to the amount of duty with which any instrument was chargeable, he may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority. That was not the position in the present case and, therefore, the later expression "otherwise coming to its notice" was applicable to the present case. When the controlling authority was asked to make a reference by the petitioner in his application, dated March 57, 1971, without considering that application, the Controlling Authority had no jurisdiction to dispose of this revision application u/s 53(1), while exercising revisional jurisdiction against the order by the Collector u/s 39(1). By hastening to dispose of the revision

application, the Authority could not deprive the petitioner of his right to have a reference in this matter made to this High Court. Therefore, irrespective of the fact whether the question was pending before him or not, a reference can be ordered because this is a statutory duty which has to be performed by the Chief Controlling Authority for the benefit of the citizen.

3. Mr. Jani next argued that, in any event, its obligatory duty would be only it Section 54(1A) which is introduced by the Gujarat Act 19 of 1965 with provides as under:

(1A) Notwithstanding anything contained in Sub-section (1), any person aggrieved by the decision of the Chief Controlling Revenue Authority u/s 53 regarding the amount of duty with which any instrument is chargeable may, if the amount of duty payable as a result of such decision in a case where the instrument is not charged with any duty or the amount required to make up such duty in a case where the instrument is charged with insufficient duty, exceeds rupees two thousand, by application presented within the period of sixty days from the date of such decision and accompanied by a fee of rupees one hundred, require the Chief Controlling Revenue Authority to draw up a statement of the case and refer it to the High Court and the Chief Controlling Revenue Authority shall, within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court....

It should be noted that this amendment gives a right to the claimant, notwithstanding anything contained in Section 54(1), to claim this reference if he is aggrieved by the order, where the amount of duty payable exceeds Rs. 2000/-, in which event by making an application within the specified period and accompanied by the prescribed fee of Rs. 100/-, the reference can be sought from the Authority. This amendment had been introduced by the Legislature because of the Full Bench decision to modify the rigour of the Full Bench decision. In *Hariprasad v. A.D. Divelkar* AIR 1957 S.C. 121 at page 131, their Lordships approved the classic passage of Lord Atkinson in his speech in 1928 A.C. 143 at p. 164:

An Act of Parliament does not alter the law by merely betraying an erroneous opinion of it.

4. Their Lordships pointed out that legislation founded on a mistaken or erroneous assumption has not the effect of making that the law which the legislature had erroneously assumed to be so. This view was taken by their Lordships in the context of new Section 25FF of the Industrial Disputes Act, where the legislature enacted this provision of Section 25FF, proceeding on the basis of certain judicial decisions which were then available to it. Therefore, on the doctrine of Parliamentary exposition, their Lordships refused to give a narrower interpretation to the original definition clause on the basis of the ordinary accepted connotation of the term "retrenchment" in Section 25-F of the Act by reference to this subsequent amendment in Section 25FF made by the

Parliament. At page 182, their Lordships in terms held that the general parliamentary exposition or subsequent legislation as an aid to construction of prior Acts could not be called as an aid for construing the original definition clause and Section 25F of the Act. In the present case also, once their Lordships have overruled these judicial decisions including the Calcutta view which had been approved by our Full Bench, and had refused to give such a narrower construction by taking into account this subsidiary circumstance of pendency of the case before the Authority, it is obvious that this subsequent 1965-amendment could not be called in aid to narrowly interpret the wide language of Section 54(1), which in their Lordships' words puts the Authority in a similar position as Income Tax Tribunal under the analogous provision in the Income Tax Act, and thus affords a salutary remedy to the citizen to have the question referred to the High Court, irrespective fact whether the case was pending or not.

5. Mr. Jani next argued that, in any event, even the Full Bench was of the view that it is only when there is a doubt of the Authority that the Authority would have to make a reference. That view also stands completely overruled by the aforesaid decision of their Lordships, where the earlier view on the Chief Controlling Revenue Authority v. The Maharashtra Sugar Mills Ltd. AIR 1950 S.C. 218 was in terms approved. In the earlier decision, while interpreting Section 57 their Lordships held that the power to make a reference u/s 57 of the Stamp Act, 1899, was not only for the benefit of the Chief Controlling Revenue Authority but also enured for the benefit of the party affected by the assessment and could be demanded to be used also by such a party. It was coupled with a duty cast on him, as a public officer to do the right thing and when an important and intricate question of law in respect of the construction of a document arose, as a public servant, it was his duty to make the reference. If he omitted to do so, it was within the power of the Court to direct him to discharge that duty and make a reference to this Court. Their Lordships farther pointed that in such cases the Court was only asking the Revenue authority to perform its statutory duty. The fact that the proceedings in the case had passed beyond the stage of assessment and had reached the stage of enforcing payment was again irrelevant, because by the relief when granted by the High Court no attempt would be made to obstruct the Revenue Authority in the discharge of his duties. Therefore, it is the settled legal position, which was unfortunately not pointed out to their Lordships at the time of the Full Bench decision that the power to make reference u/s 57 of the Stamp Act, 1899, which corresponds our present Section 54(1), was not only for the benefit of the Chief Controlling Revenue Authority for resolving his doubt, but enured also for the benefit of the party affected by the assessment and could be demanded to be used also by such a party. Therefore, in view of this settled legal position, the respondent Authority was not entitled to file this application and completely ignore it and to proceed to dispose of the revision application pending before it. Mr. Jani could, therefore, hardly urge that this was a discretionary power for resolving a doubt of the Authority or that the power could

not be exercised because now the proceeding was no longer pending before the Authority. It being a power coupled with duty, it has to be exercised for the benefit of a citizen, and the Authority could be compelled to make a reference by a proper mandamus if a substantial question of law was raised before him, on the same lines as in the case of Income Tax Tribunal.

6. Mr. Jani, therefore, finally urged that this was merely a question of fact as to whether the settlement had expired in 1959. We cannot agree with Mr. Jani that the question involved was a mere question of fact. Entry 46 proviso (b) provides for stamp duty, on an instrument of partition of land, where land is held on Revenue Settlement for a period not exceeding 30 years and paying full assessment. In such a case the value for the purpose of duty should be calculated at not more than five times the annual revenue. The claimant had paid out at five times the assessment, the duty on this partition instrument and the question had arisen as to whether this entry 46 proviso (b) was attracted or whether the market value was to be considered for this land. This was surely a question of law and also substantial question of law where statutory language would have to be construed in entry 46 proviso (b) as to what was the connotation of the term "land held for revenue for a period not exceeding 30 years and paying full assessment". Therefore, the substantial question of law having arisen in this matter the respondent was bound to refer this question raised before him as to whether the Collector was right in law in the circumstances of the case to levy stamp duty on market value basis, along with penalty, if the entry 46 proviso (b) was duly taken into account. In the circumstances, this petition is allowed by quashing the decision of the respondent Authority, dated August 5, 1971, and a mandamus is issued to him to make a reference u/s 54(1) of the aforesaid question of law which arises in this proceeding to this Court. Rule is accordingly made absolute with an order as to costs in the circumstances of the case.