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**(2013) 01 AHC CK 0400**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 57850 of 2009, Civil Miscellaneous Writ Petition No''s. 47722 of 2005, 46243 of 2004, 1587 of 2005, 20903 of 2006 and 34305 of 2004

Gaurav Aseem Avtej APPELLANT

Vs

Chief Controlling Revenue Authority, U.P. and Others RESPONDENT

**Date of Decision :** 04-01-2013

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19

Stamp Act, 1899 — Section 26, 31, 40, 41, 47

**Citation :** (2013) 1 ADJ 442 : (2014) 1 ALJ 205 : (2013) 99 ALR 248 : (2013) 119 RD 695 : (2013) 1 UPLBEC 50

**Hon'ble Judges :** S.P. Mehrotra, J;R.K. Agrawal, J;Prakash Krishna, J

**Bench :** Full Bench

**Advocate :** C.K. Parekh, for the Appellant;

**Final Decision :** Allowed

# Judgement

1. Disagreeing with the Division Bench decision of this Court in the case of Syed Mahfooj Hussain Vs. State of U.P. and Others, , a coordinate Bench had referred this matter alongwith five connected matters to be decided by a larger Bench.

Facts of the Case:

Since all these writ petitions relate to the same issue, the same have been heard and are being decided by a common order. Writ Petition No. 57850 of 2009 is being treated as the leading petition and its facts are being given.

2. By means of the present writ petition, the petitioner has sought a writ, order or direction in the nature of certiorari declaring the U.P. Act No. 38 of 2001 by which the proviso to clause 1-A was added to Section 56 of the (Indian) Stamp Act, 1899 as ultra vires to the Constitution of India as the condition to deposit 1/3rd amount is also not applicable in filing the revision. The petitioner further prays for a writ, order or direction in the nature of certiorari quashing the

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recovery certificate for the dues of stamp duty dated 18.8.2009 issued by the Tehsildar, Bijnor filed as Annexure 17 to the writ petition which has been issued in pursuance to the order dated 29.6.2009 passed by the Collector (Stamp) filed as Annexure 15 to the writ petition wherein deficiency of stamp duty of Rs. 63,84,000/- has been determined and a penalty of Rs. 2,55,36,000/- has been imposed. A writ of mandamus directing the respondents not to press the petitioner for depositing deficiency of stamp duty and the penalty in respect of sale-deed dated 29.11.2004 during the pendency of Stamp Revision No. 46/2009-10 filed by the petitioner before the Chief Controlling Revenue Authority, U.P. Allahabad has also been sought.

3. One Rai Bahadur Sri Ayodhya Prasad was the owner of plot No. 892 situ-ate at Village Rasidpur Garahi, Pargana, Tehsil and District Bijnor. He executed a registered Will on 14.2.1963 in favour of Late Smt. Prakashwati Devi, who inherited the same. She executed a registered Will on 8.5.1985 in favour of Vinod Chandra Gupta and others. The plot No. 892 was leased out to M/s. S.B. Sugar Mills through a lease deed. U.P. State Sugar Corporation Limited (hereinafter referred to as the Corporation) took over M/s. S.B. Sugar Mills sometimes in the year 1971. Since then it is in possession of the said Corporation, which is being used as a cane yard. The lease was determined by notice dated 10.12.1079. A Civil Suit No. 212/1981 was filed by Vinod Chandra Gupta and others against the U.P. State Sugar Corporation Limited in the Court of Civil Judge/Munsif, Bijnor for possession, for arrears of rent, damages and eviction from 4 Bigha 3 Biswas of land which approximately comes to 10500 square metres. The Trial Court passed a decree on 14.4.1982 in favour of the plaintiffs Vinod Chandra Gupta and others. The suit for damages was decreed but for ejectment it was dismissed. Two appeals were filed, (1) being Civil Appeal No. 360 of 1982 by the Corporation and (2) Civil Appeal No. 297 of 1982 filed by Vinod Chandra Gupta and others. vide judgment and order dated 1.8.1994, the civil appeal filed by the Corporation was dismissed whereas, the appeal filed by Vinod Chandra Gupta was allowed. The Corporation was directed to handover vacant possession by 1.9.1984. The Corporation filed two Second Appeal bearing Nos. 2436 of 1984 and 2444 of 1984 before this Court. During the pendency of the Second Appeal, Vinod Chandra Gupta and Raghubir Prasad wanted to dispose of the land though it was well in possession of the Corporation. The petitioner purchased the land through a registered sale-deed dated 29.11.2004 on a total consideration of Rs. 25,28,400/- A total sum of Rs. 14,16,050/- was paid by the petitioner and the balance was to be paid within six months. The petitioner paid a sum of Rs. 3,36,000/- calculated according to the prevailing circle rate applicable for the purposes of stamp duty. This Court vide judgment and order dated 20.4.2007 had allowed both the second appeals filed by the Corporation and the decree passed in favour of Vinod Chandra Gupta had been set-aside. Vinod Chandra Gupta had filed a Special Leave to Appeal before the Apex Court being SLP (Civil) Nos. 11106-11107 of 2007-Vinod Chandra Gupta v. U.P. State Sugar Corporation Ltd. After registration of the sale-deed on 29.11.2004, notice

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was issued by the Office of the Collector (Stamp), Bijnor to the petitioner whereupon the petitioner filed an application raising objections that the notice is not in accordance with law. The Collector (Stamp) vide order dated 29.9.2006 valued the land at Rs. 6,72,00,000/- and the deficiency of the stamp duty was determined at Rs. 63,84,000/- Feeling aggrieved by the order dated 29.9.2006, the petitioner preferred a Revision No. 155 of 2006-07 before the Chief Controlling Revenue Authority, U.P. Allahabad respondent No. 1. The revision was allowed on 19.11.2007, the order of the Collector (Stamp) dated 20.9.2006 was set-aside and the matter was remitted for deciding afresh on merit according to law. Pursuant to the order of remand, the Collector (Stamp) passed an order on 29.6.2009 determining the deficiency of the stamp duty of Rs. 63,84,000/ - The said order has been passed ex parte. Aggrieved with the aforesaid order, the petitioner preferred a revision being Stamp Revision No. 46/2009-10 before the Chief Controlling Revenue Authority, U.P. Allahabad. Alongwith the revision, the petitioner also filed an application for grant of interim relief. The Chief Controlling Revenue Authority, U.P. Allahabad vide order dated 29.9.2009 admitted the revision and summoned the record. He did not grant any interim order. As there was no interim order in favour of the petitioner, recovery proceedings have been initiated. Faced with this situation, the petitioner approached this Court on the ground that Section 56(1) of the (Indian) Stamp Act, 1899 (hereinafter referred to as the Act) has not been deleted and, therefore, the power of revision is still in existence and no amount is required to be deposited. The condition of deposit of 1/3rd amount required for filing an appeal can not be insisted upon. Even otherwise, the condition of deposit of 1/3rd amount is arbitrary specially when there is no procedure for waiver.

4. We have heard the learned counsel for the parties.

Statutory Provisions:

56. Control of, and statement of case to, Chief Controlling Revenue-authority.-

(1) The powers exercisable by a Collector under Chapter IV and Chapter V 2[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.

5. Sub-section (1-A) was inserted by he (Indian) Stamp (U.P. Second Amendment) Act, 2001 with effect from 20.5.2002. Sub-section (1-A) of Section 56 reads as follows:

(1-A) Notwithstanding anything contained in any other provisions of this Act any person including the Government aggrieved by an order of the Collector under Chapter IV, Chapter V or under clause (a) of the first proviso to Section 26 may within 60 days from the date of receipt of such order prefer an appeal against such order to the Chief Controlling Revenue Authority, who shall after giving the parties a reasonable opportunity of being heard consider the case and pass such order thereon as he thinks just and proper and the order so passed shall be final. Provided that no application for stay of recovery of any disputed amount of

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stamp duty including interest thereon or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one third of such disputed amount.

Provided further that where the Chief Controlling Revenue Authority passed an order for the recovery of any stamp duty, interest thereon or penalty, or for the stay of the operation of any order appealed against and such order results in the stay of recovery of any stamp duty, interest thereon or penalty, such stay order shall not remain in force for more than thirty days unless the appellant furnishes adequate security to the satisfaction of the Collector concerned for the payment of the outstanding amount.

(2) If any Collector, acting u/s 31, Section 40 or Section 41, feels doubt as to the amount of duty with which any instrument is 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.

(3) Such Authority shall consider the case and send a copy of its decision to the Collector who shall proceed to assess and charge the duty (if any) in conformity with such decision.

6. We may mention here that the Indian Stamp (U.P. Second Amendment) Act, 2001 has been assented by the President of India on November 8, 2001

Rival Submissions

7. Learned counsel for the petitioner submitted that u/s 56(1) of the Act before its amendment by U.P. Act No. 38 of 2001, the Chief Controlling Revenue Authority had full power to interfere with the Collector''s order u/s 47A. It also has a power to make reference to this Court. The Collector has also power to make a reference to the Board of Revenue/Chief Controlling Revenue Authority and the said Authority acts as a quasi judicial authority while dealing matters u/s 56 of the Act and, therefore, there is no restriction on the powers of the Chief Controlling Revenue Authority in granting stay in case of filing revision before him. In the alternative, he submitted that even though sub-section (1-A) was inserted by the Indian Stamp (U.P. Second Amendment) Act, 2001 (U.P. Act No. 38 of 2001), the proviso to sub-section (1) which stipulates that no application for stay of recovery for any disputed amount of stamp duty including interest thereon or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one third of such disputed amount would apply only to appeals filed under sub-section (1-A) and not to revision filed under sub-section (1) of Section 56 of the Act as the proviso has been specifically being made part of sub-section (1-A) of the Act and it has not been inserted after sub-section (3) so as to cover the entire Section 56 of the Act.

8. Learned counsel for the petitioner in the alternative submitted that if it is held that the said proviso is applicable to revision filed under sub-section (1) of Section 56 of the Act, in that event, it will be onerous and arbitrary, violative of

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Article 14 of the Constitution of India.

9. Learned standing counsel on the other hand submitted that the placement of proviso under sub-section (1-A) of Section 56 of the Act would not make any difference as the said proviso is very specific in its terms and does not limit the power of the Chief Controlling Revenue Authority while acting as an Appellate Authority only. It also applies to him when he acts as a revisional authority. He submitted that there is no vested right of appeal and appeal is the creature of the statute and the Legislature in its wisdom imposed the terms and conditions for grant of interim orders. Therefore, the same is well within the legislative competence of the Legislature and by no stretch of imagination it can be said to be onerous or arbitrary.

Discussion

10. We have given our thoughtful consideration to the various plea raised by the learned counsel for the parties. We find that a Division Bench of this Court in the case of Syed Mahfooj Hussain (supra) has held that the amendment of the Stamp Act is clear and unambiguous. It clearly states that no stay of recovery of any disputed amount of stamp duty including interest or penalty can be entertained unless the appellant has deposited 1/3rd of the disputed amount. The Division Bench has further held that the U.P. Amendment has not deleted Section 56(1) and in a rare and exceptional case, if the Collector has imposed exorbitant stamp duty arbitrarily, the Chief Controlling Revenue Authority, on an application, can modify the same. However, this should be done only in rare and exceptional cases, otherwise the provision for appeal u/s 56(1A) will become redundant. The provisions are not unconstitutional.

11. We have already reproduced above the statutory provisions of Section 56(1) and sub-section (1-A) of Section 56 of the Act. The Division Bench in Syed Mahfooj (supra) has held that sub-section (1) has not been deleted by the State amendment. Thus, both the powers exist i.e. the power of revision as also the power of an appeal to be exercised by the same authority i.e. Chief Controlling Revenue Authority. It may be mentioned that before insertion of sub-section (1-A) in Section 56 of the Act, the aggrieved persons used to approach the Chief Controlling Revenue Authority u/s 56(1) of the Act. Before filing revisions, the applicants were not required to deposit 1/3rd of the disputed amount in case any applicant for grant of stay of the disputed amount of stamp duty, interest or penalty was filed and were being entertained and interim orders were also being passed pending adjudication on the revision. It was left to the discretion of the Chief Controlling Revenue Authority to pass the interim order on such terms and conditions as he deemed fit in the circumstances of the case. Thus, in our considered opinion, it is open for an aggrieved person to either invoke the jurisdiction of the Chief Controlling Revenue Authority under sub-section (1) of Section 56 of the Act i.e. by way of filing a revision or under sub-section (1-A) of Section 56 of the Act by filing an appeal. The proviso which requires deposit of not less than 1/3rd of the disputed amount of tax as a pre-condition for

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entertaining an application for stay of the recovery of any disputed amount of stamp duty including interest thereon or penalty, in our considered opinion would apply only when jurisdiction of the Chief Controlling Revenue Authority is invoked under subsection (1-A) of Section 56 of the Act and not when the jurisdiction under sub-section (1) of Section 56 of the Act is invoked. The two provisos which have been inserted by the U.P. Act No. 38 of 2001 forms part of sub-section (1-A). The President has assented to this amendment. It can not be made applicable to sub-section (1) of Section 56 of the Act.

12. So far as the question regarding validity of the provisions are concerned, we may mention here that the Apex Court in the case of Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, , has considered identical provisions inserted by the State of Andhra Pradesh which required a party to deposit 50% deficit stamp duty as a condition precedent for a reference to the Collector u/s 47A of the Indian Stamp Act has held it to be constitutionally valid and also that the said provisions are neither arbitrary nor violative of Articles 14 and 19 of the Constitution of India.

13. For ready reference, Section 47A(1) of the Indian Stamp Act has applicable in the State of Andhra Pradesh is reproduced below:

47A Instruments of conveyance, etc. how to be dealt with.-(1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon.

14. Relying upon the decision of the Hon''ble Supreme Court in the case of The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc., , wherein a minimum of 75% of the tax had to be deposited before the appeal could be entertained was upheld, the Apex Court in the aforementioned case has held Section 47 of the Indian Stamp Act as amended by the Andhra Pradesh Act 8 of 1998 as constitutionally valid.

Conclusion:

(1) In view of the foregoing discussions, we are of the considered opinion that sub-section (1) of Section 56 of the (Indian) Stamp Act, 1899 does not stand deleted by insertion of subsection (1-A) in Section 56 of the Act by the U.P. Act No. 38 of 2001 and both the provisions of revision and appeal are available to an aggrieved person.

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(2) If a revision is preferred under sub-section (1) of Section 56 of the Act then there is no requirement of deposit of 1/3rd of the disputed amount of deficient stamp duty including interest or penalty, if any while filing an application for grant of interim relief.

(3) The proviso of sub-section (1-A) of Section 56 of the Act will apply only in cases where an appeal is preferred under sub-section (1-A) and its scope is restricted to appeal only.

(4) Sub-section (1-A) of Section 56 of the Act as inserted by the U.P. Act No. 38 of 2001 is constitutionally valid.

Let the matter be placed before the appropriate Bench for further orders.

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