(2000) 12 RAJ CK 0056

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3478 of 2000 and 21 ors.

Gaurav Gupta APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 12-12-2000

Acts Referred:

Constitution of India, 1950 — Article 254, 254(2)
Rajasthan Finance Act, 2000 — Section 18, 31
Rajasthan Stamp Law (Adaptation) Act, 1952 — Section 26, 56(1)
Rajasthan Stamp Rules, 2004 — Rule 73

Citation : (2001) 3 RLW 1512 : (2001) 2 WLN 67

Hon'ble Judges : Sunil Kumar Garg, J;B.J. Shethna, J

Bench : Division Bench

Advocate : J.L. Purohit, G.R. Goyal and H.S. Sandhu, for the Appellant; Rajendra Vyas, for the Respondent

Final Decision : Allowed

Judgement

Shethna, J.

(1). All these petitions are disposed of by this common judgment and order as common question of law is involved in all these petitions.

(2). The Rajasthan Finance Act, 2000 (for short "the Act") received the assent of the Governor on 9th May, 2000. Chapter 6 relates to amendments in Rajasthan Stamp Law (Adaptation) Act, 1952.

(3). Section 56(1) of the Stamp Act reads as under;-

"56.(1) The powers exercisable by a Collector under Chapter IV and Chapter V 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.

(2).....

(3)....."

(4). Under Sec. 18 of the Act, Sec. 56(1) of the Stamp Act was substituted by following:-

"56. Revision by, and statement of case to, Chief Controlling Revenue Authority- (1) Any person aggrieved by an order made by the Collector under chapter IV and V and under clause (a) of the first proviso to Sec. 26 and u/S. 31 of the Act, may within ninety days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order:

Provided that no revision application shall be entertained unless it is accompanied by satisfactory proof of the payment of fifty percent of the recoverable amount."

(5). It was sent for assent of his Excellency the President of India, but the same has not been given.

(6). By way of all these petitions, all the petitioners have prayed that amended provisions of Sec. 56(1) of the Stamp Act as amended by Rajasthan Finance Act, 2000 be declared ultra vires and be struck down and accordingly, the orders passed by the Board of Revenue dismissing the revision petitions on the ground of not depositing 50% of the recoverable amount at the time of filing of revision be also quashed and set aside and the matters be remanded to the Board of Revenue with a direction to hear and decide the revision petitions in accordance with law.

(7). It was vehemently submitted by learned counsel Mr. B.L. Purohit, Mr. G.R. Goyal, and Mr. H.S. Sandhu for the petitioners that when the State Government failed in its attempt to curtail the rights of citizens by amending identical Rule, which were held to be ultra vires by this Court, this device has been found out by the State and Sec. 56(1) of the Act is amended under the Rajasthan Finance Act, 2000 but his Excellency the President of India has rightly not given his consent, as provided under Article 254(2) of the Constitution of India. It was also submitted by the learned counsel for the petitioners that when there is concurrent jurisdiction of the Central and State, then the Central enactment cannot be enacted by enacting State Legislation which is repugnant to the Central Legislation unless and until his Excellency the President of India gives his assent to it as provided under Article 254 of the Constitution of India. It was submitted that considering hardships to be faced by the citizens of State of Rajasthan, his Excellency the President of India has not given his consent to the Act of 2000. Therefore, amended Sec. 56(1) of the Act must be declared as ultra vires and accordingly, it may be struck down.

(8). As against this, the learned Addl. Advocate General, Shri Rajendra Vyas has vehemently submitted that merely because assent is not given by his Excellency the President of India it would not be a ground for this Court to declare the amended provisions of Sec. 56(1} of the Act as ultra vires. He submitted that there is no repugnancy in the matter. By amending Sec. 56(1) of the Act, the only provision made by the State Government is that while filing revision petition, one has lo first deposit 50% of the amount as ordered by the Collector (Stamps). He further submitted that right of appeal or revision is a creation of statute and there is no reason why the Legislature while granting right of appeal or revision should not impose such condition of deposit of 50% of the recoverable amount at the time of filing revision.

(9). Earlier under Rule 73 of the Rajasthan Stamps Rules it was required to deposit 50% of the recoverable amount as condition precedent for entertaining the revision petition. The same was challenged before this Court as ultra vires, and it was held to be ultra vires. Accordingly, it was struck down by the learned Single Judge of this Court on the ground that the Government could not make the procedure of entertaining the revision so onerous or burdensome to the citizens of the Slate. The said order of the learned Single Judge was challenged in the special appeal which coincidentally came up before this very Bench and same was dismissed on 10.10.2000. It is stated at the Bar by the learned counsel for the parties that the SLP filed against the said judgment was also dismissed by the Hon''ble Supreme Court.

(10). It appears to us that after Rule 73 of the Rajasthan Stamps Rules requiring deposit of 50% of the recoverable amount as condition precedent for entertaining the revision was struck down by the learned single Judge of this court on 15.2.2000, the State Government introduced Rajasthan Finance Act, 2000 which got the assent of the Governor on 9.5.2000 and under Sec. 18 of the said Act, Section 56(1) of the Stamp Act was amended with the proviso under which no revision application would be maintainable unless and until 50% deposit of recoverable amount is made. It is not in dispute that the said Act requires consent of not only the Governor of State but also requires assent of his Excellency the President of India as provided under Article 254 (2) of the Constitution of India. When assent is not given by his Excellency the President of India, men said amendment to Sec. 56(1) of the Stamp Act must be held to be ultra vires.

(11). It is true that right of appeal or revision is creation of statute and there is no reason why the Legislature while granting such right cannot impose conditions for exercise of such right. But, conditions should be reasonable and not arbitrary and it should not be onerous, burdensome or cumbersome to others. If condition is onerous, burdensome or cumbersome then it amounts to unreasonable restrictions rendering the rights of parties almost nugatory. Perhaps, considering these facts only his Excellency the President of India has not given his consent to the Act of 2000.

(12). After providing right of appeal or revision to the parties and then curtailing it by imposing such a drastic condition of deposit of 50% of recoverable amount at the time of filing of revision would make the right of a party totally meaningless. If both are so contradictory to each other in the sense that one says "do" and other says "don''t", then it is impossible to carry out both of them. This exactly has been done by amending Section 56(1) of the Stamp Act by inserting proviso to it.

(13). In view of the above discussions, there is no option for this Court but to hold that amended provision of Sec. 56(1) of the Rajasthan Stamp Act whereby condition to deposit 50% of recoverable amount at the time of filing revision has been imposed is ultra vires and accordingly the same is struck down from the Statute.

(14). The net result is that all these petitions are allowed. Proviso to Sec. 56(1) of the Stamp Act as amended by Rajasthan Finance Act, 2000 is held to be ultra vires and accordingly it is struck down. Now all the revision petitions will go back to the Board of Revenue and the Board of Revenue shall decide the same as early as possible in accordance with law.

(15). Till the Board of Revenue decides the revision petitions in accordance with law, the respondents are restrained from attaching the property in pursuance of the orders passed by the Collector (Stamp).

