

(2016) 04 GUJ CK 0118

In the Gujarat High Court

Case No : Special Civil Application No. 12147 of 2013

Jayminbhai Navinbhai Doshi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

Bombay Stamp Act, 1958 — Section 53
Constitution of India, 1950 — Article 226

Citation : (2016) AIR(Gujarat) 186 : (2017) 1 GLR 648

Hon'ble Judges : Mr. N.V. Anjaria, J.

Bench : Single Bench

Advocate : Mr. Tirthraj Pandya, A.G.P, for the Respondent No. 1; Mr. Vijay H. Nangesh, Advocate, for the Petitioner No. 1

Final Decision : Dismissed

Judgement

Mr. N.V. Anjaria, J.(Oral) - The captioned petition comes up for consideration before this Court pursuant to judgment and order dated 11th August, 2014 passed by the Full Bench in group of petitions, which included the captioned matter. The issue before the Full Bench was whether the period of limitation for preferring revision before the Chief Controlling Revenue Authority under Section 53 of the Bombay Stamp Act, 1958 (now Gujarat Stamp Act, 1958) could be condoned by the authority, and whether the said period could even be condoned by the High Court in exercise of jurisdiction under Article 226 of the Constitution.

2. In the aforesaid decision the Full Bench held that neither the revisional authority has powers to condone the said statutory prescription of 90 days, nor this Court can condone the delay in exercise of powers under Article 226 of the Constitution. If the appeal/revision before the Chief Controlling Revenue Authority is filed after the said period, the same has to be dismissed on that ground.

2.1 The following observations may be pertinently extracted from the judgment of the Full Bench.

"14. It is now settled law that the Limitation Act has no application to a proceeding under Article 226 of the Constitution and consequently, no period of limitation is prescribed either under the Limitation Act or in the Constitution of India for moving an application under Article 226 and thus, there is no scope of taking aid of Section 29(2) of the Limitation Act in a proceeding under Article 226 of the Constitution.

15. A person is entitled to move High Court under Article 226 of the Constitution when by the illegal action or inaction on the part of a State within the meaning of Article 12 of the Constitution, any of his legal or fundamental rights is infringed. In the Special Civil Applications out of which the present References arise, the petitioners have alleged violation of their legal rights accrued by virtue of the provisions contained in the Act itself. In view of our finding that the Chief Controlling Revenue Authority exercising power under Section 53(1) of the Act has no power of condonation of delay in filing the application beyond the period mentioned therein, for the refusal on the part of the said authority to condone delay for want of jurisdiction, none of the legal rights of the petitioners have been infringed and thus, if the Chief Controlling Authority has no power of condonation, it necessarily follows that the High Court in exercise of power under Article 226 of the Constitution against the order of the Chief Controlling Revenue Authority cannot condone the delay when the Chief Controlling Revenue Authority did not possess such power and rightly refused to condone. Thus, by taking recourse to Section 29(2) of the Limitation Act, the High Court cannot condone such delay in the proceeding under Article 226 of the Constitution."

3. The petitioner has challenged order dated 22nd April, 2013 passed by respondent No.1-Chief Controlling Revenue Authority. The petitioner has also challenged the original order dated 20th July, 2007 passed by deputy Collector, Stamp Valuation Department.

3.1 Stating only the relevant facts, the petitioner purchased property bearing revenue survey No.5778 Paiki Plot Nos.1 to 4 admeasuring 01,794 Sq. Meters by virtue of sale deed dated 24th May, 1999. The sale deed was registered by paying stamp duty of Rs.17,500/-. It appears that after issuing notice dated 27th September, 2012, the competent authority-respondent No.2 herein passed order dated 20th July, 2007 holding that the stamp duty paid on the document in question was insufficient, resultantly authority demanded Rs.49,900/- with penalty as deficit. The petitioner preferred Revision Application under Section 53 of the Bombay Stamp Act before the Chief Controlling Revenue Authority which was not entertained on the ground that the same was filed beyond the prescribed period of 90 days.

3.2 The issue of non-condonability of delay has been concluded by the aforesaid decision of the Full Bench. Therefore, order of the Chief Controlling Revenue Authority in dismissing the revision of the petitioner on the ground of delay retained for itself not capable of being assailed and the challenge thereto has rested finally, no ground whatsoever to be assailed by the petitioner. In the

circumstances, learned advocate for the petitioner fell back upon the original order to question the legality of the original order of the Deputy Collector.

4. Heard learned advocate Mr. Vijay Nagesh for the petitioner in this petition and learned Assistant Government Pleader Mr. Tirthraj Pandya for the respondent authorities.

5. There are more than one reason as to why the petitioner cannot be allowed now to challenge the said order which was passed on 20th July, 2007.

5.1 The order of the Deputy Collector dated 20th July, 2007 was subjected to revision and the revision having been dismissed as above by the Chief Controlling Revenue Authority, the order of the Deputy Collector, stood merged with the order of the revisional authority. By virtue of operation of doctrine of merger, the petitioner cannot claim for the order of the Deputy Collector a separate existence to continue to challenge the same.

5.2 Secondly, if the order of the Deputy Collector is permitted to be challenged notwithstanding that the revision against it has already been rejected on the aforesaid count, it would amount to permitting the petitioner to circumvent not only the order of the Chief Controlling Revenue Authority but also to by-pass and ignore the law laid down by the Full Bench of this Court. The petitioner cannot be permitted to get the delay condoned from back-door by re-adverting to the challenge to the original order when his appeal was already dismissed for the reason of delay non-condonable. The challenge before the Controlling Authority was conceitedly barred in view of passage of limitation period.

6. Learned advocate for the petitioner however submitted that the Full Bench itself has required the matters to be considered by Single Judge and that it has permitted to raise challenge against the original order. This submission is meritless in view of what is recorded in paragraph 16.2 of the order of the Full Bench, which reads as under.

"16.2 We may clarify here that apart from the questions referred to us, we have otherwise not gone into the merit of the original order passed by the competent authority. In some of the Special Civil Applications, we are informed, the original orders of the competent authority without taking recourse to Section 53 of the Act are the subject matters of challenge. It is needless to mention that those matters should be disposed of by the learned Single Judge in accordance with the law."

6.1 It is clear from the above that only those original orders which may have been challenged in some of the petitions as "without taking recourse to Section 53 of the Act" and "which are" subject matter of the challenge, are ordered to be considered for its merit.

6.2 The aforesaid order and paragraph in the judgment of the Full Bench clearly implies that in those cases where the order of the Chief Controlling Authority was under challenge and the revision application came to be dismissed on the ground

of limitation of 90 days, such delay being not condonable either by the revisional authority or in the writ jurisdiction, such matters cannot be re-opened. The remedy for the person extinguish once he did not invoke the revisional jurisdiction within the prescribed time to be mandatorily observed. Learned advocate for the petitioner attempted to submit that after the judgment of the Full Bench, this Court has entertained the petitions and allowed the same even though therein the order of the revisional authority as well as the first order of the Deputy Collector was under challenge, however learned advocate could not point out any such instance where despite the delay on part of the petitioner concerned whose revision was not entertained on that ground, challenge to the original order of the Deputy Collector was entertained. The petitions which came to be allowed subsequent to the judgment of the Full Bench were on the ground that reckoned from the date of communication or knowledge of the order of the Deputy Collector, the revision application was within time; it has been held that period of 90 days for the purpose of invoking the revisional powers under Section 53(1) of the Act would commence from the date of communication and/or knowledge of the order of the Deputy Collector. This is not the case here, therefore no avenue is available for the petitioner to get any relief.

6.3 Same position would obtain and use of powers under Article 226 of the Constitution would not be justified also in a case where the petitioner has challenged the original order of Deputy Collector directly by filing the writ petition without taking recourse to the revisional avenue before the Chief Controlling Authority, but such petition is filed after passage of 90 days which is the period of limitation to file revision before the Chief Controlling Revenue Authority. The Court may permit the petitioner to invoke writ jurisdiction directly against the order of Deputy Collector, as it is a matter of discretion for the High Court; the original order may be allowed to be challenged straightway if the order falls within the parameters where under powers under Article 226 can be exercised without insisting the party to avail the alternative remedy.

However, the limitation period to file revision under Section 53(1) of the Act being 90 days, for challenging the order even straightway invoking the writ jurisdiction, the said time limit has to be observed.

6.4 A petition under Article 226 against the first order of the Deputy Collector entertained after the period of 90 days, would amount to indirectly circumventing the limitation period provided. It would also mean disregard of the law laid down by the Full Bench indirectly. It is trite that even while exercising the plenary jurisdiction, period of limitation statutorily prescribed in relation to the subject matter dealt with in the writ jurisdiction, has to be kept in view and the High Court would not grant relief to a party by passing such statutory limitation period to grant relief straightway merely because it had power under Article 226.

7. In the aforesaid view and the reasons recorded, this petition cannot be entertained. Hence the same is summarily dismissed.

8. This order will not preclude the petitioner from taking benefit of concessional and/or amnesty scheme, if available on merits and if it applies to the facts of the case of the petitioner.

9. Relief, if any granted, stands vacated.