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**(1970) 05 DEL CK 0023**

**In the Delhi High Court**

**Case No : Civil Writ Appeal No. 511D of 1961**

M. Chowdhury

APPELLANT

Vs

The Collector of Stamps, Delhi

RESPONDENT

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**Date of Decision : 13-05-1970**

**Acts Referred:**

**Citation : (1970) ILR Delhi 606**

**Hon'ble Judges : T.V.R. Tatachari, J**

**Bench : Single Bench**

**Advocate : Santosh Chatterjee, B.B. Kishore and J.P. Gupta, for the Appellant;**

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## **Judgement**

T.V.R. Tatachari, J.

(1) This writ petition was filed by M. Chowdhury praying for the issuance of an appropriate writ quashing the order of the Collector of Stamps, Delhi, No. D.58/61, dated 13/15-4-1961, whereby the Collector ordered the realisation of stamp duty of Rs. 150.00 with penalty of Rs. 1,500.00 from the petitioner, and also for the issuance of a direction prohibiting the Collector from Realizing the said amounts.

(2) Suit No. 177 of 1960, Nawabzada Ghalib Husan Khan. v. Chowdhury, on the file of the Court of the Commercial Sub-Judge, Delhi, was decreed on 3-12-1960. The plaintiff, Nawabzada Ghalib Hasan Khan, had filed a document (Annexure B) in the suit. After the suit was decreed on 3rd December, 1960, the Commercial Sub-Judge impounded the document on 25th February, 1961, u/s 33 of the Indian Stamp Act, and forwarded it to the Collector of Stamps, Delhi, on the same day u/s 38(2) of the Act for action u/s 40 of the said Act. As the petitioner was the executant of the aforesaid document, the Collector of Stamps passed an order (Annexure A) on 13/15-4-1961 holding that the document was a bond, imposed a stamp duty of Rs. 150.00 and a penalty of Rs. 1,500.00, and directed the Certificate Officer, 24-Parganas to realise the said amounts from the petitioner.

(3) The petitioner filed an application before the Collector of Stamps, Delhi, on 27-11-1961 praying that the order, dated 13/15-4-1961 may be set aside. But, the Collector rejected the said application on 28-11-1961. Thereupon, the petitioner filed the present writ petition on 11th December, 1961, praying that the order dated 13/15-4-1961 may be quashed, and that the Collector may be directed not to realise the amounts of stamp duty and penalty from the petitioner.

(4) The Respondent to the writ petition is the Collector of Stamps, Delhi. He filed a counter-affidavit in opposition to the writ petition.

(5) Mr. Santosh Chatterjee, learned counsel for the petitioner, contended that the suit in which the document in question was filed was decreed by the Commercial Sub-Judge, Delhi on 3rd December 1960, while the order impounding the document was passed by the Commercial Sub-Judge on 25th February, 1961, that the Commercial Sub-Judge had become functus officio after the adjudication of the suit by passing the decree, and had, Therefore, no jurisdiction to impound the document u/s 33 of the Indian Stamp Act or forward the same to the Collector of Stamps u/s 38(2), and that consequently the Collector of Stamps also had no jurisdiction to pass the impugned order imposing the stamp duty and the penalty and to demand the payment of the same u/s 40 of Act. This contention has to be accepted as correct.

(6) SUB-SECTION (1) of section 33 of the Act provides as under :

"(1)Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same."

(7) The sub-section confers power to impound only incases where an instrument is "produced or comes" before a person such as is mentioned in the sub-section "in the performance of his functions." It cannot be disputed and it has not been disputed that the Commercial Sub-Judge is a person such as is mentioned in the sub-section. But, the question raised by Mr. Chatterjee is as to whether the document in question can be said to have been produced or came before the Commercial Sub-Judge on 25th February, 1961, "in the performance of his functions." His argument is that since the suit was decreed on 3rd December, 1960, the Commercial Sub-Judge became functus-officio, and he had no power to impound the document on 25th February, 1961, as the document cannot be said to have been produced or come before him on that date in the performance of his functions.

(8) The words "is produced or comes in the performance of his functions" in section 33(1) come up for interpretation before the Supreme Court in Government of Uttar Pradesh and Others Vs. Raja Mohammad Amir Ahmad Khan, . In that case, an instrument was presented to the Collector for his opinion u/s 31 as to the duty chargeable. The Collector held that a certain amount was

payable as stamp duty and ordered that it be deposited within a certain time. The amount was not so deposited. Thereafter, he issued a notice to the concerned party to deposit the amount of the stamp duty plus certain penalty. The . concerned party challenged the legality of the imposition of the stamp duty and the penalty by filing a petition under Article 226 of the Constitution in the High Court of Allahabad. The High Court quashed the order of the Collector, and the State of Uttar Pradesh went up in appeal to Supreme Court. The Supreme Court confirmed the decision of the High Court. Kapur, J. observed at page 789 as follows:

"The words "every person. .... before whom any instrument..... is produced or comes in the performance of his functions" refer firstly to production before judicial or other officers performing judicial functions as evidence of any fact to be proved and secondly refer to other officers who had to perform any function in regard to those instruments when they come before them, e. g. registration. They do not extend to the determination of the question as to what the duty payable is. They do not cover the acts which fall within the scope of section 31, because that section is complete by itself and it ends by saying that the Collector shall determine the duty with which, in his judgment, the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector.

The learned Judge further observed at page 789 as follows :

"THE scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him u/s 31. If it is not properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and u/s 32, the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But, if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed document is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes functus-officio and the provisions of section 33 have no application. The provisions of that section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done."

(9) The Supreme Court pointed out that the doctrine of functus- officio was applied in Collector, Ahmednagar v. Rambhan Tukaram Air 1930 Bom. 392, AIR 1949 214 (Nagpur) , and Chunduri Panakala Rao Vs. Penugonda Kumaraswami, , and approved the said decisions.

(10) In Collector, Ahmednagar v. Rambhan Tukaram (Supra), a Certificate of sale was signed by the Judge, but it was not duly stamped. The said fact was pointed out when it was sent to the Sub-Registrar for registration. The Sub-Registrar informed the Judge about it. The Judge got back the Certificate from the

purchaser, and thinking that he had power to impound the document and to impose a penalty asked for the opinion of the High Court. The High Court held that after he had signed the certificate he was functus-officio and could not act any further and could not impound the certificate.

(11) In *Paiku Kashinath v. Gaya Motiram* (Supra), two documents were produced during the trial of a suit. The court did not impound the said documents and proceeded to judgment which was delivered on 13th February, 1943. After that, an appeal was filed and disposed of on 12th February, 1944. Then, on 27th July, 1945, the Court reopened the case to impound the documents, and after notice to the parties passed an order on 22nd January, 1946, impounding the documents and ordered the parties to pay the stamp duty and the penalty imposed. Against that order, a revision was preferred to the High Court of Nagpur. Hidayatullah, J. (as his Lordship then was) held that the lower Court had no jurisdiction to re-open the case to impound the documents after the decree was signed, and that action u/s 61 of the Indian Stamp Act alone was possible after that stage.

(12) In *Panakalarao v. Kumaraswamy* (Supra), Venkataramanarao, J. held that when a document has been admitted in evidence and judgment has been delivered, the Court becomes functus officio, and cannot impound the document subsequently on the ground that the document was not properly stamped.

(13) A few more decisions may also be noticed. In *L. Puranchand v. Emperor A. I. R. 1942 Lah 257*, the dependent in a suit filed two receipts A and B into the Court. Receipt A was not tendered in evidence. On 10th June, 1938, the Court wrote on the receipt A "returned not proved." On 30th August, 1938, the Court pronounced the judgment and orally directed receipt A to be impounded. But, through mistake, the order was written on receipt B, and was signed by the Judge. Subsequently, the mistake was brought to the notice of the Court on 3rd April, 1939, when the Court made an endorsement on receipt A that it was impounded. A Special Bench (Skemp, Bhide and Din Mohammad, JJ.) held that when the trial finished and judgment was pronounced on 30th August, 1938, the endorsement on receipt A made on 3rd April, 1939, did not rectify the original error as the Court was clearly functus officio, and, Therefore had no power to impound the document.

(14) Similarly, in *Medni Proshad and Others Vs. Suresh Chandra Tewari and Others*, , a Tehsildar summoned certain persons in order to obtain some information, and it was held that he could not impound documents produced by them before him, as they were not produced in the performance of his functions. Again, in *Thakar Das v. The Crown Air 1932 Lah 495*, it was held that a Sub-Registrar became functus-officio when he had registered a document, and, Therefore, could not recall and impound the document on the ground that it was not properly stamped.

(15) In the light of the above decisions, it is clear that in the sent case the

Commercial Subordinate Judge became functus- officio when the suit was Screed on 3rd December, 1960, and had Therefore, no power u/s 33 of the Indian Stamp Act- to impound the document on 25th February, 1961, as the document was not produced or did not come before him "in the performance of his functions" in regard to the said document on that date.

(16) It follows that since the Commercial Subordinate Judge had no power, to impound the document on 25th February, 1961, his order impounding the document was illegal, and, Therefore, he had no power or jurisdiction to send the document to the Collector of Stamps u/s 38(2), and that consequently, the Collector of Stamps also had no jurisdiction to pass the impugned order imposing the Stamp Duty and penalty and to demand payment of the same u/s 40 of the Act, and the said order is, Therefore, liable to be quashed.

(17) For the above reasons, the writ petition is allowed, and the impugned order of the Collector of Stamps, No.D/58/61, dated 13/15-4-1961 (Annexure A), imposing the Stamp Duty and the penalty, and ordering the realisation of the same, is quashed. The petitioner is entitled to his costs in this writ petition, which are fixed at Rs. 250.00.