
(2007) 09 PAT CK 0057
In the Patna High Court

Manju Tiwary

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Citation : (2009) 5 RCR(Civil) 501

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—As State has appeared and filed counter-affidavit and produced original records relating to the case in question, with the consent of parties, this writ application was heard at length and is being disposed of at the stage of admission itself.

2. The facts, which are not in dispute, are briefly stated as hereunder:

One Smt. Pramila Upadhyia executed a sale deed in favour of the petitioner in respect of a plot of land at Kalyani Colony, Saket Vihar. Anisabad, district-Patna. This was presented for registration before the respondent District Sub Registrar, Patna for registration on or about 2-2-1998. This deed was scribed on a stamp paper of Rs. 5000/-. Apparently, the District. Sub Registrar being of the opinion that the correct stamp duty payable was Rs. 19,530/- and, as, such, there was a deficit stamp duty of Rs. 14,530/-. He, accordingly, impounded the instrument and forwarded the same to the Deputy Collector (Stamp), Incharge Legal Section, Patna Collectorate vide his Memo No. 396 dated 5-2-1998 with a request to order for recovery" of the deficit stamp duty in terms of Section 38(ii) of the said Act. The Deputy Collector (Stamp) then issued a notice to the petitioner and the petitioner appeared and filed his show cause. Accordingly, by order dated 8-7-1998, the Deputy Collector (Stamp) in the case so registered being Compounding Case No. 134 of 1997-1998 ordered for payment of deficit stamp duty of Rs. 14,530/- and imposed a penalty of Rs. 600/-. On 15-7-1998, the petitioner deposited the entire amount as ordered including the penalty of Rs. 600/- as levied. It appears that the matter was then brought to the notice of the Collector of the district who, by his handwritten order dated 20-8-1998 in

one line, held that for having paid less stamp duty, maximum penalty should be imposed and realised. Thereafter, the Collector of the district passed an order noticing that earlier the deficit stamp duty alongwith penalty of Rs. 600/- was imposed and paid but on review of records, it appeared that the maximum impossible penalty was Rs. 1,45,300/- as against which only Rs. 600/- was imposed as penalty. He, accordingly, reviewed the order on 16-9-1998 and imposed a penalty of Rs. 1,45,300/- and asked the petitioner to deposit the same. The petitioner challenged this order of the Collector of the district before this Court on various grounds by filing CWJC No. 4736 of 2002 which was disposed of by order dated 9-5-2002. This Court noticed various submissions made by the petitioner and held that on a short issue of violation of principles of natural justice, the order of the Collector of the district could not be sustained, as before reviewing the order of the Deputy Collector (Stamp), the Collector of the district had not granted opportunity of hearing to the petitioner. The Court also noted that even though Section 40 of the Act provided for a maximum penalty of ten times the deficit stamp duty but it also provided minimum of Rs. 5/- which should be kept in mind also.

3. The matter thus having been remanded, the impugned order was passed in the said Compounding Case on 2-11-2002 by the Collector of the district. By the said order, he has noticed the facts aforesaid and rejecting the plea of the petitioner of a bona fide mistake induced by the deed writer, he held that the petitioner is inflicting revenue loss to the Government and more importantly he held that under the provisions of the Indian Stamp Act, Deputy Collector (Stamp) had no jurisdiction to impose fine. Therefore, the order of Deputy Collector (Stamp) was a nullity. He, thus, imposed a penalty of seven times, the deficit stamp duty which now amounts to Rs. 1,01,110/- which the petitioner has been asked to deposit. This is the order which has brought the petitioner to this Court.

4. It would thus be seen that a penalty of Rs. 600/-, as originally imposed, was enhanced to Rs. 1,45,300/- and then reduced to Rs. 1,01,110/-.

5. The petitioner submits that once the instrument presented for registration was impounded u/s 333 of the Act and forwarded by the District Sub Registrar to the competent authority for recovery of deficit stamp duty alongwith penalty, if any, and a case being Compounding Case No. 134 of 1997-98 was registered and the Deputy Collector (Stamp) exercising the powers of the Collector of the district ordered for recovery of deficit stamp duty alongwith a penalty of Rs. 600/- then the said order could not be held to be bad order or an order which could be revised/reviewed by the Collector of the district. The order must be taken to be the order of the Collector of the district and in absence of any statutory provisions authorising review, the power of revision or review would not be exercised by the delegator in respect of order passed by his delegatee.

6. As noticed above, in the now impugned order, one important aspect was noted by the Collector of the district, He noted that the Deputy Collector (Stamp) had no authority to deal with the matter. This Court questioned the finding of the

Collector of the district in this regard. A supplementary counter-affidavit was filed by the State wherein an order of the Collector of the district dated 20-8-1998 has been annexed as Annexure-C. This order of the Collector of the district clearly states and shows that the Collector of the district by order dated 13-12-1997, had delegated his powers to the Deputy Collector, Incharge, Legal Cell, Patna Collectorate in relation to his powers under the Stamp Act which by the said order dated 20-8-1998 was being withdrawn. This clearly shows that power had been delegated by the district Collector himself to the Deputy Collector on 13-12-1997 and which was withdrawn on 20-8-1998. The original order of the Collector of the district also clearly shows that he had reviewed the order of Deputy Collector (Stamp) not because that order was allegedly without jurisdiction but because in his opinion, instead of penalty of Rs. 1,45,300/-, a penalty of Rs. 600/- was only imposed. It is in the subsequent order of the Collector of the district passed on remand by this Court that he notes that the order was without jurisdiction and that too as now apparent because by then he had withdrawn the delegation but the withdrawal was long after the original order passed by the Deputy Collector (Stamp).

7. It is now submitted by the State that the Deputy Collector (Stamp) was wrongly delegated the power by the Collector of the district but the fact remains that the Deputy Collector (Stamp) did not act on his own but purported to act pursuant to the appointment by delegation made by the Collector of the district and, as such, his (Deputy Collector (Stamp)) was an action bona fide done/taken. It is the legal effect of this that has to be determined, for if the order of the Deputy Collector was valid in law then the Collector of the district had no authority to revise and/or review the same and, as such, the penalty of Rs. 600/- imposed ought to be final. If it is to be held that the order of the Deputy Collector had no legal sanctity then it is to be judged whether the penalty of seven times as imposed by the Collector of the district, by the impugned order, is sustainable or not.

8. As noticed above, when the petitioner came to this Court the first time on the earlier occasion, this Court thought it to be its duty to bring to the notice of the Collector the ambit of power to impose penalty. It noted that though the maximum penalty imposable was ten times, the deficit stamp duty, the law also provided that the minimum had to be Rs. 5/-. In my view, such an observation by this Court was called for because this Court felt its duty to inform the authority that merely because there was default maximum penalty as a matter of course should not be imposed.

9. In my view, though not noticed in the said judgment, one may usefully refer to two judgments in this regard. In the case of Prem Chand Ram Lal Vs. The State of Punjab and Another, their Lordships held:

It is clear that the proceedings for imposition of penalty and quasi-criminal proceedings.... A penalty cannot be imposed merely on the ground that it is lawful to do so.

10. In substance, their Lordships held that there could not be a case of automatic penalty on default being established.

11. The Apex Court considered a similar situation in the case of Hindustan Steel Ltd. Vs. State of Orissa, . The discussion is in paragraph-7 of the reports. Their Lordships held:

But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed or failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, where there is a technical or venial breach of the provisions of the Act....

12. Thus, it would be seen that penalty should not be imposed as a matter of course. It should not take the shape of being oppressive. Even if there has been an error or a default, it does not follow that penalty must be imposed even where a minimum penalty is prescribed. This is law as laid down by the Apex Court.

13. Now coming to the main question as to the effect of the order of the Deputy Collector (Stamp)). From the fact stated above, it is clear that the Deputy Collector (Stamp) did not assume jurisdiction which he lacked on his own" volition. As a matter of fact, he was delegated the authority by an officer who was the statutory authority to pass orders of penalty. Thus, the Deputy Collector (Stamp) acted bona fide and in exercise of his parent authority as delegatee of the Collector of the district. State does not deny that during the period when the delegation was in force, all such matters were taken up, and decided by the Deputy Collector (Stamp) "and even when the Collector of the district first reviewed the order, it was not because he felt that the Deputy Collector (Stamp) usurped the jurisdiction but he interfered and reviewed because in his opinion, maximum penalty ought to have been imposed as against Rs. 600/- that was imposed. It may also be mentioned that it was the same Collector of the district who delegated the authority, who withdrew the authority and who passed the first and the second impugned orders. In my opinion, such a situation has arisen earlier. In the case of Gokaraju Rangaraju Vs. State of Andhra Pradesh, . The Apex Court held as follows:

The de facto doctrine is now well established that the acts of the officers de facto performed by them within the scope of their assumed official authority, in the interest of public or third person and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure.

A Judge, de facto is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defective of his title to the office, judgments pronounced by him and acts done by him when he was clothed with the powers and the functions of the office, albeit unlawful, have the same efficacy as judgments pronounced and acts done by a Judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent endless confusion and endless mischief. The de facto doctrine saves such acts. The defective appointment of a de facto Judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the Judge except as a Judge.

14. In the said case, a person was convicted by Sessions Judge in Criminal Appeal against the order of conviction and sentence, the validity of appointment of the Sessions Judge was questioned. In a separate proceedings, his appointment was challenged and found to be invalid but such finding was recorded long after he had delivered the judgment in question. In the Criminal Appeal, it was then urged that as the Judge was wrongly appointed, the judgment delivered by such an incompetent Judge, was vitiated. This was not accepted either by the High Court or the Apex Court and it was held that though the Judge was wrongly appointed, the judgments delivered by him upto the time when his appointment was held to be invalid, were valid and binding in law.

15. In my view, this de facto doctrine has direct application in the present case. The Deputy Collector (Stamp) did not usurp the office. He was delegated the authority by the Collector of the district. The orders passed by him were during the currency of the delegation, though later on, after having passed the order in question, his authority was withdrawn and now it is said that the Collector of the district wrongly delegated him the authority. This matters little as the Deputy Collector (Stamp) acted within apparent authority delegated to him as the delegatee of the Collector of the district. In my view, the order passed by the Deputy Collector (Stamp), at the first instance, is, thus, a valid and binding order.

16. There is no dispute that there is no statutory power vested in the Collector of the district to revise orders much less review orders and much less his own order. Now the question is that once it is held that the Deputy Collector (Stamp) acted as a delegatee of the Collector of the district then the Collector of the district is the delegator. The question is whether the delegator has any power to review or revise the order passed by the delegatee. To my mind, the answer is simple and straightway. The order passed by the delegatee in law is deemed to be the order of the delegator. If it be the order of the delegator then unless there is statutory provisions authorising the delegator to review the order, which in law is deemed to be his order, he cannot review the same. This position has been accepted and laid down as law in the case of *Roop Chand v. The State of Punjab and Anr.* by the Constitution Bench in the Apex Court in the case since reported

in *Roop Chand Vs. State of Punjab*, The majority held that where the power to hear appeal by the State Government was delegated to an officer and the said officer passed an order, the State Government was not entitled to call for and examine the records of the case disposed of by the officer acting as a delegatee. Such an order of the State Government was a nullity. This proposition was reiterated a number of times and one of such decisions is *State of Orissa and Ors. v. Commissioner of Land Records and Settlement, Cuttack and Ors.* since reported in AIR 1998 SC 307. In that case, the revisional jurisdiction of the Board of Revenue were delegated to the Commissioner who acted as a delegatee. The Apex Court held that the Commissioner when exercised those powers of the Board and passes orders, those orders will be treated as orders of the Board of Revenue and will not be revisable or re-viewable by the Board of Revenue. In other words, when the delegate personifies his principal and his orders are to be treated as orders of his principal, all other powers attributable to the personality which he personifies, will be exercisable by him. It was thus held that when the Commissioner passed orders as a delegatee of the Board of Revenue, the Board of Revenue had to treat those orders as passed by itself and in absence of power to review and/or revise such orders, it could not do so.

17. In my view, once the Deputy Collector (Stamp) passed an order that order was deemed to be the order of Collector of the district. Once on the aforesaid principles which is so held then in absence of power of review, the Collector of the district could not have passed orders reviewing the said order of the Deputy Collector (Stamp). Such an order was a nullity and has to be set aside. I may also mention that mere change of opinion as to the quantum of penalty to be imposed cannot ever be made a subject matter of review. If an authority comes to the conclusion then merely because another opinion is possible will not clothe him with authority to change his opinion because there must be finality of adjudication.

18. Thus, in view of the aforesaid, I hold "That the order of the Deputy Collector (Stamp), as originally passed, was valid and binding and its efficacy cannot be taken away by subsequent orders of the Collector of the district which are nullity and are set aside.

19. Before parting, I would once again like to recommend to the State Government to consider providing for provisions for seeking advance rulings as to the quantum of stamp duty payable on an instrument so that citizens are not forced into situations which they cannot meet or they are not forced into time wasting litigations over the matter. The State would also save a lot of time and energy if the liability to pay duty can be ascertained in an advance ruling sought by a person without attracting penal provisions. The option for seeking such a relief should be left to the person concerned. This would save time, energy and money of all concerned and I may note this is the latest trend in several taxation statutes being adopted world over.

20. For the reasons aforesaid, this writ application is allowed and the impugned

orders of the Collector of the district are set aside and the order of the Deputy Collector (Stamp) is restored.