
(1990) 10 SHI CK 0039

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 313 and 322 of 1979

Mittal Udyog and Shakti Udyog

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 03-10-1990

Acts Referred:

Stamp Act, 1899 — Section 31, 32, 32(1), 33, 33(1)

Citation : (1990) 2 ILR HP 1482

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; L.S. Panta, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—Both these writ petitions involve identical questions of facts and law, therefore, these are being decided by a common judgment.

2.In Civil Writ Petition No. 313 of 1979, Mittal Udyog, Gagret, are the Petitioners. It is a partnership firm. For establishing its stainless steel melting plant, it took loan from the Himachal Pradesh Financial Corporation and mortgaged its immovable property. Two mortgage deeds were registered on July 15, 1973 and July 28, 1973 by the Sub Registrar, Amb. Thereafter, revised payment schedules to these mortgage-deeds were also got registered on 20-1-1976 and 28-3-1977. No stamp duty and registration charges were paid on these documents. These were documents No. 57 of 20-1-1976 and 226 of 1977. Copies of these documents are Annexure "C and "D" to the writ petition.

3.It seems, the Accountant General, Himachal Pradesh, vide his audit note dated 30-3-1979 pointed out that an amount of Rs. 7,511/- on document No. 57 dated 20-1-1976 and amount of Rs. 7,216/- on document No. 226 of 1977 was chargeable as registration fee. In view of this audit objection, the Sub Registrar, Amb, took up the matter with the Petitioner firm. Copies of two of the notice dated 30-7-1979 issued by the Sub Registrar, Amb, are Annexure "G" and "H" to

the writ petition wherein he had requested the Petitioner firm to deposit the amounts in question failing which these would be recovered as arrears of land revenue. The Petitioner-firm had already explained its position in notice dated 21-7-1979 which was issued through Sh. Karam Chand, Advocate, Una to the Deputy Secretary (Revenue) to the Government of Himachal Pradesh. In reply to this notice, the Inspector General of Registration, Himachal Pradesh intimated vide his letter dated 24-8-1979 that the documents in question were liable to registration fee, as the exemption from payment of registration fee on the documents executed in favour of the Himachal Pradesh Financial Corporation was available only up to the end of fourth five year plan.

4. Thereafter, the Collector Una, exercising the powers of Registrar issued notice on 12-9-1979 to the Petitioner-firm for appearance as well as for payment of the registration fee in view of the clarification received by him from the Inspector General of Registration that the Petitioner-firm was liable to pay the registration fee. The Petitioner-firm filed its reply dated 7-9-1979 before the Collector, Una, inter-alia, submitting that he had no jurisdiction to demand or recover the alleged deficit registration-fee. The Collector, however, proceeded to pass his order dated 3-10-1979 directing the Petitioner-firm to deposit the amount of Rs. 14727/--within one month failing which it would be recovered as arrears of land revenue. Copies of the notice dated 12-9-1979 and order dated 3-10-1979 are Annexures "L" and "M" to the writ petition. The notices Annexures "G", "H" and "L" and the final order Annexure "M" have been impugned by the Petitioner-firm.

5. In Civil Writ petition No. 322 of 1979, Shakti Udyog, Gagret are the Petitioners. This firm had also taken loan from the H.P. Financial Corporation for establishing its stainless steel rolling mill at Gagret by mortgaging its immovable property. A mortgage deed dated 29-3-1974 was registered before the Sub Registrar, Amb. A revised payment schedule dated 28-3-1977 in mortgage-deed dated 29-3-1974 was also registered by Sub Registrar, Amb. Both these documents are Annexure "A" and "B" to the writ petition. The revised payment schedule dated 28-3-1977 is document No. 225 of 1977. Later on, the Sub Registrar, Amb, issued a number of notices to the Petitioner-firm to deposit registration fee amounting to Rs. 8,101/- for document No. 225 of 1977 failing which the amount would be recovered as arrears of land revenue. Copies of two of such notices are Annexures "E" and "G" to the writ petition. In its reply dated 3-10-1979 submitted through its counsel, Sh. Karam Chand, Advocate, Una, the Petitioner-firm inter alia, pointed out that after registration of a document, the registering authority had no jurisdiction to recover the alleged deficit registration fee. But the Collector exercising the powers of Registrar, Una, passed the order dated 3-10-1979 directing the Petitioner firm to deposit an amount of Rs. 8,101/- within fifteen days from the date of the order failing which the amount would be recovered as arrears of land revenue. Copy of the order is placed on the record of the writ petition as Annexure T. The Petitioners have challenged the notices Annexures "E" and "G" and the final order Annexure T in the writ petition.

6. I have heard the learned Counsel for the panies. Sh. K.D. Sood, appearing on behalf of the Petitioners in both the writ petitions, has prayed for quashing the impugned orders on two grounds. The first ground is that the Petitioner firm was not heard before the decision for making recovery of the alleged deficit registration fee was made by the authorities. The perusal of notices as well as final orders makes it clear that the proceedings for the recovery of the alleged deficit registration fee were started because of audit note dated 30-3-1979. The Collector, Una, exercising the powers of Registrar, who passed the final orders, has not considered the various points raised in the reply(s) of the Petitioners and has founded his order on the clarification received from the Inspector General of Registration, Himachal Pradesh, that the documents in question were not covered under the exemption given for the documents in favor of the H.P. Financial Corporation. In fact, at no stage the Petitioners were given notices to show cause against the recovery of deficit registration-fee but were given only notices to deposit the amount of deficit registration fee. Therefore, the impugned notices as well as final orders are liable to be quashed on this ground.

7.The second point raised by Sh. K.D. Sood is more important as it goes to the root of the matter. According to him, the registering authority, that is, Sub Registrar, Amb, and Registrar, Una, had become functus-officio after the documents in question were registered and they had no jurisdiction to raise the demand of the alleged deficit registration fee as well as to order its recovery as arrears of land revenue.

8.After going through Sections 31, 32 and 33 of the Indian Stamp Act, 1899 (hereinafter referred to as the Act), the scheme of the Act becomes clear. u/s 31, the Collector is approached for his opinion in respect of proper stamp duty in regard to an instrument. If the instrument is not properly stamped and its executants intends to proceed with the use of the document for the purpose of evidence, he makes good the deficiency of the duty, the Collector u/s 32 makes an endorsement on the document and the document is treated as if it was duly stamped from the very beginning. But if the executants does not proceed any further than seeking the determination of the duty payable, he cannot be compelled to make good the deficiency. Only the result follows, that the executed document remains an instrument which is unexecuted and unstamped. This becomes further clear from perusal of Section 33 of the Act.

9.While interpreting Section 33(1) of the Act, the Supreme Court in Government of Uttar Pradesh and Ors. v. Raja Mohammad Amir Ahmad Khan 1961 S.C. 787 observed in para 5:

...Power to impound is given in Section 33 of the Act.

Under that section any person who is a judge, or is in charge of a public office before whom an instrument chargeable with duty is produced or comes in the performance of his functions is required to impound the instrument if it appears to him not to be duly stamped 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 or any fact to" be proved and secondly refer to other officers who have to perform any function in regard to those instruments when they come before them, e.g., registration.

Their lordships of the Supreme Court concluded that after determination of the duty under Sections 31 and 32, the Collector becomes *functus-officio* and the provisions of Section 33 of the Act have no application. under Sections 31 and 32, they Collector has only the power to give his opinion in regard. to the duty with which the document in question is chargeable. He does not have the power to impound the document.

10. Relying upon the observations of the Supreme Court in the above referred case of Government of Uttar Pradesh and Ors. v. Raja Mohammad Amir Ahmad Khan, the Madhya Pradesh High Court in Komal Chand and Another Vs. The State of Madhya Pradesh, held in reference to Section 33(1) that:-

It will be observed that under this provision the power to impound an instrument can be exercised only by a person having by law or consent of parties authority to receive evidence and by every person in charge of a public office, excepting a police officer and only when the instrument is produced before them in the performance of their functions. The authorities mentioned in Section 32(1) have no power to impound an instrument if it is produced before them, or comes up before them, or is with them otherwise than in these performance of their functions." The expression "any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions necessarily implies that the power to impound under " Section 33(1) can be exercised only so long as the function is not performed or completed and not afterwards.

11. The Madhya Pradesh High Court further endorsed its view in its later Full Bench judgment in Jaina Bai v. State of M.P. 1980 M LJ 795 and observed:

The Sub-registrar before whom the document was produced for registration was a person in charge of a public office and had therefore the power to impound the document if in his opinion it was not duly stamped and to send the same in original to the Collector of stamps u/s 38(2) of the Act before registering the same because Section 35 of the Act provides that no document shall be registered by any public officer unless the same is duly stamped. The Act does not empower the Sub-Registrar to impound the document after the same is registered by him even if it is not duly stamped. After registering an instrument, the Sub-Registrar becomes *functus officio* and has no power to impound the same Neither in Registration Act nor in the Stamp Act is there any provision giving to the registering officer any power to examine whether an instrument already registered was or was not duly stamped and to impound it. As soon as the registering officer registers a document, presented to him for registration, the function, in the performance of which the document was produced before

him, is over and thereafter becomes functus officio having no power u/s 33 to impound the instrument.

12. I am in respectful agreement with the view expressed by the Hon"ble Judges of the Madhya Pradesh High Court in these two cases. In view of this interpretation of Section 33 of the Indian Stamp Act, I have no alternative but to hold that the impugned notices and the orders were without jurisdiction. The writ petitions are accordingly allowed and the notices Annexure "G" and "H" and final orders Annexure "U and "M" in writ petition No. 313 of 1979 and notices Annexures "E" and "G" and final orders T in writ petition No. 322 of 1979 are quashed. No order as to costs.