
(1956) 01 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Application (O.J.) No. 17 of 1954

Mohammad Amir Ahmad Khan

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 27-01-1956

Acts Referred:

Stamp Act, 1899 — Section 2(12), 31, 32, 33

Citation : AIR 1956 All 453 : (1956) 26 AWR 246

Hon'ble Judges : Mootham, C.J; Kidwai, J; H.S. Chaturvedi, J

Bench : Full Bench

Advocate : Sarvari Niamatullah, Ghulam Imam and Inayatullah, for the Appellant; B.N. Roy, General for Opposite Party (Nos. 1 and 3), for the Respondent

Final Decision : Dismissed

Judgement

Kidwai, J.—Raja Mohammad Amir Ahmad Khan of Mahmudabad in the district of Sitapur executed a deed of waqf. Having duly signed it and got it attested, he presented it on 15-9-1948, u/s 31, Stamp Act, (hereinafter referred to as "the Act") to the Deputy Commissioner (Collector) of Sitapur for his opinion as to the stamp duty with which it was chargeable.

The Deputy Commissioner, being himself in doubt, referred the matter to the Board of Revenue u/s 56(2) of the Act. The matter remained pending before the Board for a considerable length of time but eventually it was held that the document was a deed of settlement as defined in Section 2(24) of the Act and as such liable to duty in accordance with Article 58.

2. On 29-10-1951, the Deputy Commissioner held that Rs. 85,598/7/- were payable as stamp duty in respect of the deed and ordered that the Raja should deposit the said amount within 15 days. A notice to this effect was served on the Raja on 10-11-1951, and he moved a petition in this Court under Article 226 of the Constitution but that was rejected in November 1952 as being premature.

3. On 2-2-1954, a further notice was served upon the Raja directing him to deposit Rs. 85,598/7/- together with a penalty of Rs. 5/- within one month, otherwise proceedings would have to be taken u/s 48 of the Act. The Raja again moved this Court on 1-3-1954, alleging that the imposition of a stamp duty of Rs. 85,598/7/- and of the penalty of Rs. 5/- was against the law and was ultra vires of the Collector acting u/s 31 of the Act.

It was accordingly prayed that a writ of prohibition, or certiorari or other appropriate writ be issued under Article 226 of the Constitution prohibiting the Collector from realising the duty and penalty. It was also prayed that the order assessing the duty and imposing the penalty, be quashed.

4. When the petition came up for hearing before a Division Bench, it was noted that the case of -- " Chunni Lal Burman Vs. Board of Revenue and Others, was directly in point but, in view of certain observations made by Rankin C. J., in -- " In Re: Cook and Kelvey, and by Patanjali Sastri J., in -- " Y.A.A.V.R. Sethuraman Chettiar Vs. K.K.R.M.R.M. Ramanathan Chettiar (died) represented by his Legal Representatives Muthiah Achi and Others, it was considered desirable that the matter be reconsidered. This Full Bench has accordingly been constituted.

5. The sole question which we are called upon to consider in this case is whether, when an instrument, which has already been "executed" within the meaning of that term as defined in Section 2(12) of the Act, is presented before the Collector for his opinion u/s 31 of the Act, the Collector can if he is of opinion that the instrument requires stamp duty, which has not been paid or has only partly been paid impound the instrument u/s 33 of the Act.

6. The relevant portions of Sections 31, 32 and 33 of the Act read as follows :

"31. (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which in his judgment, the instrument is chargeable."

..... "32. (1) When an instrument brought to the Collector u/s 31 is in his opinion, one of a description chargeable with duty and-

(2) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector u/s 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so

chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be: and, if chargeable with duty shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped :

Provided that nothing in this section shall authorise the Collector to endorse-

(a) any instrument executed or first executed in the States and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

.....

"33. (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.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by, the law in force in the States when such instrument was executed or first executed :

Provided that-

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 :

(b) in the case of a judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

.....

7. On the face of it the language used in these sections is clear and provides no exceptions. A duty is cast by Section 31 upon the Collector, a "person in charge of a public office" to give his opinion as to the stamp duty chargeable in respect of an instrument which is brought to him. Prima facie, therefore, he would have power to act u/s 33 and impound the instrument. The learned Advocate-General rightly contended that when words used by the Legislature are plain and unambiguous, effect must be given to them no matter what hardships or anomalies might result.

It is, therefore, immaterial that, in - the instant case such a long delay -- a

period of over three years -- occurred before the Collector gave his opinion that, by reason of the enactment of the U. P. Zamindari Abolition and Land Reforms Act in the meanwhile, it had become useless for the executant to proceed with the instrument and he would be paying the large sum of over Rs. 85,000/- with no advantage to himself or to the intended object of his bounty.

8. It is, however, an equally well established rule of construction that all the parts of a statute must be construed together so as to avoid inconsistencies and conflicts between various provisions contained in it.

Accordingly, even when the language used in a particular section is plain, it is sometimes necessary in order to ascertain the true meaning to make a survey of all the parts of the statute. If, on such a survey being made, it is found necessary to give the words used a more extended or a more limited meaning than they, on the face of them, bear such a meaning will be given to them so as to make them harmonise with the other provisions of the same enactment.

It was in accordance with this principle that the learned Judges deciding "Chunni Lal Burman's case (A)" held, after a consideration of the relevant provisions of the Act, that the phrase "is produced or comes in the performance of his functions" used in Section 33 mean the "production of the instrument concerned in evidence or for the purpose of placing reliance upon it by one party or the other" and does not include a case falling within the purview of Section 31.

9. Although the judgment in that case, delivered by our brother Agarwala J. considers the various aspects of the matter, it has become necessary to make a fresh survey of the Act in view of the attack that the learned Advocate-General has made on that judgment, and the conclusion at which we have arrived is in complete accord with the judgment of our learned brother.

10. Section 17 of the Act provides that instruments chargeable with duty executed in India shall be stamped before or at the time of "execution."

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped" -- Section 35.

Another penalty prescribed for failure to pay the proper stamp duty is to make the instrument liable to be impounded -- vide Section 33 -- but this also is only with a view to get the proper stamp duty paid, and thus to make the instrument "receivable in evidence or otherwise", and "to be acted upon and registered as if it had been duly stamped" -- vide Section 32(3). Section 38(1) and Section 42(1) contain similar provisions making instruments admissible if the stamp duty has been made good and, if necessary, the penalty paid.

11. If the instrument is impounded u/s 33, the officer concerned, if he is a person who has "by law or consent of parties authority to receive evidence", may himself levy the deficit duty and penalty -- vide Section 35 proviso (a) and

Section 38(1) or he may send it to the Collector u/s 38(2).

12. When the Collector himself impounds the instrument, or if it is sent to him u/s 38(2) and it is found to be duly stamped or not to be chargeable with duty, he shall endorse a certificate thereon to that effect. If, however,

"he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees: or, if he thinks fit an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees." -- Section 40(1)(b).

13. Apart from the penalty that may be imposed and the use of coercive processes by which the payment of the proper duty and penalty may be enforced (Section 48), a person who infringes the stamp law may be criminally prosecuted -- vide Sections 43, 52, 65 and other sections -- and even in cases in which no fraud was intended he may be fined upto Rs. 500/-.

It is thus clear that the Act contains stringent penalties for the enforcement of the payment of the proper stamp duty, and it would be surprising if the Legislature did not, at the same time, make due provision to save the subject from harassment in case of uncertainty or mistake.

14. This was all the more necessary because the right to ask for a refund of the duty which has already been paid is strictly limited -- vide Sections 49 to 55, none of which makes provision for a refund in case such a delay has occurred in the determination of the proper duty by the Collector as to make the instrument as it stands incapable of being presented for registration -- and, as such, causes it to remain inadmissible in evidence.

Thus we find that, in the case of an instrument executed outside India, as long a period as three months from the date that it is brought into India is allowed for the payment of stamp duty -- vide Section 18. Again, if within a year of the execution of an instrument, the executant himself brings to the notice of the Collector the fact that the instrument is not duly stamped the Collector is authorised, if certain conditions are fulfilled; to receive the deficiency in duty and issue a certificate making the instrument admissible in evidence without imposing any penalty -- vide Sections 41 and 42.

15. Section 37 empowers the Government to make rules providing that where an instrument bears a stamp of sufficient amount but of improper description, the instrument may be certified -as duly stamped on payment of the proper duty without the levy of any penalty,

16. It is with a similar object that Sections 31 and 32 have been enacted. They enable a subject to get an authoritative pronouncement on the amount of stamp duty payable in respect of an instrument and thus to save harassment to himself. Several things have to be noticed about these sections. The first is that the

Collector may be asked his opinion about the proper duty payable even after the instrument has been executed.

Secondly, the Collector shall not make the endorsement mentioned in Section 32 if the instrument is brought to him more than one month after its execution (or, in the case of an instrument executed outside India, more than three months after it is brought into India). Thirdly, the Collector can only determine the requisite duty but he has no authority to order or to enforce its payment.

Fourthly, there is no time limit within which the Collector must give his opinion. Fifthly, the Collector shall certify without charging any penalty, that the full duty has been paid when the deficiency is made good and no time limit is fixed for the payment of the deficiency. Sixthly, there is no provision as to what is to happen if the applicant does not make good the deficiency as determined by the Collector.

17. The procedure, therefore, in cases to which Sections 31 and 32 apply, is that when an instrument is brought before the Collector, he proceeds to give his opinion. After the Collector has given his opinion it is left entirely to the applicant to pay the duty or not and the Collector cannot under either of these sections compel its realisation nor can he levy any penalty though it may be (but we express no opinion) that he can order the prosecution of the applicant. Moreover, even if he decides to pay, the applicant is allowed an unlimited period of time within which to make payment.

18. In cases covered by Section 33 the procedure is entirely different. Not only must a penalty be levied but the Collector "shall require the payment of the proper duty" -- vide Section 40, and he can only certify by endorsement if this has been done -- vide Section 42. Further Section 48 empowers him to resort to coercive processes to recover all duties, penalties and other sums "required to be paid" under Chapter IV of the Act.

This necessarily implies the fixation of time limit for payment. This provision is inapplicable to the duty determined by the Collector under Sections 31 and 32, because there is nothing in these sections "requiring" that sum to be paid and, in any case, these sections occur in Chapter III and not Chapter IV.

19. It will be seen, therefore, that if it is possible to take action u/s 33 in the case of proceedings u/s 31 two very different positions will arise only one of which can have effect given to it, the provision for a penalty u/s 40 is completely irreconcilable with the provision that no penalty is payable u/s 32.

20. In order to avoid this contradiction the learned Advocate General endeavoured to contend that in such a case the Collector should wait and not impound the instrument till the applicant u/s 31 had failed to pay up the duty determined by the Collector.

21. It is true that there is no express provision in Section 33 requiring the Collector to impound an instrument as soon as it appears to be not duly stamped but the section imposes a duty upon --the word used is "shall" -- and does not

merely vest a discretion in a person in charge of a public office to act in a particular manner if certain conditions exist. It is natural to suppose that the law expects the public officer to act with expedition and, even if he fails to impound it immediately, there can be no doubt that he has authority to do so.

In the instant case, therefore, the Collector could, if Section 33 covers cases falling within the purview of Section 31, proceed immediately after he had determined what the proper stamp duty was to impound the instrument since it was obviously not duly stamped, not having been stamped before or at the time of its execution.

In such an eventuality the conflicts which have been noticed earlier will arise. The fact that a public officer, by acting with dilatoriness in the performance of his duties, can avoid inconsistencies has no bearing upon the construction of the statute which is not dependent upon, and cannot be affected by, such extraneous considerations.

22. As to the contention that in cases covered by Section 31 the duty of the Collector to impound the instrument arises only when the applicant -- fails to pay the stamp duty determined --a contention which the learned Advocate General was careful not to urge directly but only to imply -- the only authority for such a contention is to be found in some remarks of Rankin C. J. in *Sailabala Dassi Vs. Kalipada Banerjee and Others*, .

23. In that case an application had been made u/s 31 of the Act and the Collector determined that Rs. 16,983/12/- was the proper duty payable. He did not refer the matter to the Chief Controlling Revenue Authority but the applicant moved that authority to set aside the order of the Collector. The authority thereupon made a reference to the High Court u/s 51 of the Act. The High Court rejected the reference as incompetent but Rankin C. J. made the following remarks :

"Turning, therefore, to the consideration of the case u/s 31, it has to be observed that under that section, the instrument may or may not have been executed and it may be brought to the Collector merely for the purpose of getting a decision. It may be that, after the decision, the parties will come to the conclusion that the instrument should not be entered into at all. It may be that they will still come to the conclusion that the instrument should be entered into and that other steps will have to be taken.

The present instrument is an instrument which was executed and, when it was brought to the Collector for his opinion, the subjects were in this position that either they could go on and pay u/s 32, what the Collector required or they would be liable to have the Collector exercise his powers u/s 33 to impound the instrument and commence proceedings u/s 40 to compel payment of the amount chargeable."

24. It is to be noticed firstly, that the question now raised was not before the

Court, secondly, that the observations of the learned Chief Justice are obiter dicta and, thirdly, that, even those remarks imply an exception to the general words of Section 33 inasmuch as they indicate that, in cases falling under Sections 31 and 32, the instrument can only be impounded if the duty assessed is not paid (for which the applicant is allowed an indeterminate period of time). Thus according to this decision also a restricted meaning must be given to the general words used by the legislature.

There is no difference in principle between these remarks and the decision in "Chunni Lal Burman's case (A)", that having regard to the special provisions of Sections 31 and 32, the words of Section 33 cannot have their prima facie meaning given to them in respect of cases coming within the purview of those sections. The remarks in this case, therefore, do not affect the instant case, except in so far as it might be said that Chief Justice Rankin himself realised that there existed a certain inconsistency between Sections 31 and 33.

25. There appears to be greater conflict between the decision in 1946 Mad 437 (AIR V 33) (C) and "Chunni Lal Burman's case (A)" though on the facts the former case is clearly distinguishable and its authority has been greatly diminished by a very recent Pull Bench decision of the same Court which will shortly be considered.

In "Sethuraman's case (C)" the instrument was brought before the Collector u/s 31 of the Act six years after its execution. He could, therefore, not proceed u/s 32. The Collector could in such a case only give the certificate prayed for by impounding the instrument, assessing the stamp duty chargeable, and levying that duty and a penalty u/s 40 of the Act which he accordingly did without objection from the applicant. It was held that the proceedings were proper and his certificate u/s 42 was binding. The point which we are called upon to consider was not considered in that case.

26. The remarks made by the learned Judges of the same Court in a recent Pull Bench case -- In the matter of validation of a document dated 14-6-1947 executed by In the matter of validation of a document dated 14-6-1947 executed by Kuppusami Chettiar, in favour of Arunachala Chettiar, -- are more relevant and we think support the decision of this Court in "Chunni Lal Burman's case (A)". In this case, when the attention of the learned Judges was drawn to "Burman's case (A)", the learned Judges say:

"There the learned Judges held that when an instrument is presented to the Collector under Sections 31 and 32 for his opinion as to the duty chargeable upon it, he is not authorised to impound the document forthwith, if he comes to the decision that the instrument is not sufficiently stamped. He has to act in accordance with the provisions of. Section 32. The application made u/s 31 of the Act was within the prescribed time and was a valid application under that Section.

As Section 32 clearly lays down what is incumbent on the Collector when an application u/s 31 is presented to him, it is obvious that the Collector cannot

omit to carry out the duties therein specified and proceed to act u/s 33. We do not understand this decision to be an authority for the position that when an obviously belated and unsustainable application u/s 31, Stamp Act, is made to the Collector, he has no jurisdiction to impound the document u/s 33 of the Act."

This decision affirms rather than weakens the ratio of the decision in "Chunni Lal Burman"s case (A)".

27. It was also contended that in view of the decision in -- "King Emperor v. Balu Kuppayyan" AIR 25 Mad 525 the instrument can be summoned and got produced if a criminal prosecution is launched under the Stamp Act and it can then be impounded.

Whatever the position in such a case might be and it may be noticed that the decisions are not uniform, compare, for example, -- "In In Re: Payanda Khan, and -- "In AIR 1943 97 (Nagpur) we are not called upon to give a decision as to what will happen in such an eventuality, particularly as a prosecution under the Act does not automatically follow and it can only be commenced if the Collector gives his sanction -- vide Section 70.

Further even if such a document is produced in connection with a criminal prosecution, the criminal Court, not acting in such a case under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, is not bound to impound the instrument -- vide Proviso (a) to Sub-section (2) of Section 33.

28. With all respect, therefore, we agree that the learned Judges deciding "Chunni Lal Burman"s case (A)" took a correct view of the words "is produced or comes in the performance of his functions" used in Section 33 of the Act mean (sic) "the production of the instrument concerned in evidence or for the purpose of placing reliance upon it by one party or the other."

29. This conclusion is further supported by the fact that the whole object of the executant of a document paying the stamp duty is to get the instrument admitted into evidence, or for the purpose of being acted upon, or registered or authenticated -- vide Sections 35, 32(3), 38(1) and 48(1) of the Act.

30. In this view it is not necessary for us to consider the second aspect of the matter, namely whether the Collector had become functu officio and could not impound the instrument produced before him.

31. The result, therefore, is that we quash, the order of the Collector directing the petitioner to pay a duty of Rs. 85,598/7/- and a penalty of Rs. 5/- and direct that the opposite party shall not realise the said duty and penalty. The petitioner is entitled to his costs which we assess at Rs. 300/-.