
(1987) 06 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 437 of 1983

M.P. Assainar

APPELLANT

Vs

Sub Registrar and Others

RESPONDENT

Date of Decision : 05-06-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Stamp Act, 1959 — Section 34, 39, 44, 55, 55(1)
Stamp Act, 1899 — Section 57, 57(1), 59(2)

Citation : (1987) 06 KL CK 0005

Hon'ble Judges : V.S. Malimath, C.J.; V. Btiaskaran, J

Bench : Division Bench

Advocate : T.R. Govinda Warriar, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.S. Malimath, C.J.—This appeal is against the judgment of the learned Single Judge in O.P. No. 1627 of 1980. The relevant facts may briefly be stated as follows: The Appellant purchased the properties specified in schedule A to Ext. P-1, dated 25th May 1978 for a consideration of Rs. 6,500. The properties were subject-matter of an earlier mortgage in favour of the Fisheries Department and a sum of Rs. 7,000 was outstanding under the said mortgage. The properties specified in schedule A were sold to the Appellant free from the encumbrance of the Fisheries Department, but as the Fisheries Department had a right to proceed against the A schedule properties for recovering the sum of Rs. 7,000 due to them by way of indemnity, the vendor included other properties in schedule B annexed to Ext. P-1. The Appellant paid stamp duty on the consideration of Rs. 6,500 and presented the document for registration on 25th May 1978. The Sub Registrar impounded the document and forwarded the same to the District Registrar. The District Registrar held that the indemnity amount of Rs. 7,000 must also be regarded as part of the consideration and added that amount to the real consideration of Rs. 6,500 and held that the stamp duty is

payable on a total consideration of Rs. 13,500. As the document bears only a stamp duty of Rs. 585 the District Registrar held that a deficit stamp duty of Rs. 630 and a penalty of Rs. 10 should be collected from the Appellant. Accordingly the Sub Registrar by Ext. P-3, dated 26th December 1978 demanded Rs. 640 as additional stamp duty and Rs. 70 as additional registration charges. Under protest the Appellant paid the additional stamp duty and the additional registration charges demanded and then approached the Board of Revenue by way of appeal. The Board of Revenue rejected the appeal by its order, dated 31st January 1979, Ext. P-5, holding that the power to direct refund vests with the Government u/s 44 of the Kerala Stamp Act, 1959. Thereafter the Appellant approached the State Government with a petition for" refund of the excess duty and penalty paid by him in accordance with the order of the District Registrar. He took the stand that the consideration amount for the sale of A schedule properties being only Rs. 6,500, stamp duty is payable only on the said amount and that the District Registrar was not right in including a further sum of Rs. 7,000. The State Government rejected the petition by its order Ext. P-6, dated 3rd March 1980, agreeing with the view taken by the District Registrar.

2. It is in this background that the Appellant presented O.P. No. 1627 of 1980 under Article 226 of the Constitution challenging the orders of the District Registrar, the Sub Registrar and the State Government, Exts. P-2, P-3 and P-6. The learned Single Judge came to the conclusion that duty is payable by the Appellant not only on Rs. 6,500 which he paid to the vendor but also on the mortgage amount of Rs. 7,000 which was outstanding to the Fisheries Department. It is the said decision of the learned Single Judge that is challenged in this appeal by the Appellant.

3. The first question for consideration in this case is as to what is the proper relief which the Appellant could and should seek under the circumstances in the petition under Article 226 of the Constitution. The case of the Appellant is that stamp duty payable is only on a consideration of Rs. 6,500 and that the view taken by the District Registrar and the State Government that stamp duty is payable on a sum of Rs. 13,500 is contrary to law. Section 44 of the Kerala Stamp Act confers power on the Government to direct refund of excess duty and penalty paid under Sections 34 or 39 upon an application being made in writing for that purpose within one year from the date of the payment. When such an application is made it is for the State Government to examine the question and form the opinion as to whether any stamp duty in excess of what is legally chargeable has been charged and paid under Sections 34 or 39 of the Act. The Appellant having invoked the jurisdiction of the State Government u/s 44 of the Act, it was for the State Government to apply its mind and to take a decision in this behalf. If, however, the State Government forms the opinion that it involves a substantial question of law it has to act u/s 55 of the Act and state the case and refer the same for the opinion of the High Court. That is what has been clearly laid down by the Supreme Court in *Banarsi Das Ahluwalia Vs. The Chief Controlling Revenue Authority, Delhi*, . The Supreme Court in the said decision

construed the scope of Section 57(1) of the Indian Stamp Act which is analogous to Section 55 of the Kerala Stamp Act, 1959. Dealing with Section 57 of the Indian Stamp Act this is what the Supreme Court has observed in para 9 of the judgment:

(9) Whatever may have been the view in the past on the scope of Section 57(1), the position, after the decision in Maharashtra Sugar Mill's case. A.I.R 1950 S.C. 218 (supra), is settled that Section 57(1) imposes a duty on the Authority to state a case when it raises a substantial question of law. As the Privy Council stated in 50 Ind App 227, AIR 1923 P.C. 138 (supra at p. 233, (of Ind App) : (at p. 142 of A.I.R.): "To argue that if the legislature says that a public officer, even a revenue officer, shall do a thing and he without cause or justification refuses to do that thing, yet the Specific Relief Act would not be applicable, and there would be no power in the Court to give relief to the subject, is to state a proposition to which their Lordships must refuse assent". It also must now be taken as settled that that duty is not affected by the question whether the case is pending before the Authority or not. The principle underlying the decision is that Section 57 affords a remedy to the citizen to have his case referred to the High Court against an order of a revenue authority imposing stamp duty and/or penalty provided the application involves a substantial question of law and imposes a corresponding obligation on the authority to refer it to the High Court for its opinion. Such a right and obligation cannot be construed to depend upon any subsidiary circumstance such as the tendency of the case before the Authority. If the position is as held in ILR (1902) Mad. 752 the mere fact that the Collector has determined the duty and closed the case would render nugatory not only the controlling jurisdiction of the Authority but the remedy which Section 57(1) gives to the citizen as also the obligation of the Authority to state the case. The difficulty which the learned Judges felt in ILR (1902) 25 Mad. 752 and repeated in subsequent decisions is not, in our view, a real one because as soon as a reference is made and the High Court pronounces its judgment the decision of the Authority at large and the Authority, as required by Section 59(2) would have to dispose of the case in conformity with such judgment. The position therefore is that when a reference has been made to the Authority or the case has otherwise come to his notice, if an application is made u/s 57(1) and it involves a substantial question of law, whether the case is pending or not, the Authority is bound to state the case in compliance with its obligation. The Authority is in a similar position as the Income Tax Tribunal under analogous provisions in the Income Tax Act.

The Supreme Court directed in that case the Chief Controlling Revenue Authority to state the case and refer the same to the High Court u/s 57(1). In view of this authoritative pronouncement of the Supreme Court, it is obvious that the proper course which should have been adopted in this case by the Appellant was to request the Government after presenting the application for refund u/s 44, to refer the substantial question of law regarding the duty payable on the document in question to the High Court for its opinion u/s 55 of the Kerala Stamp Act. The

fact that the District Registrar has already recorded a decision would not come in the way, as held by the Supreme Court, of the State Government in stating the case and making reference u/s 55 of the Act. After the opinion is rendered on the reference by the High Court u/s 57 of the Act and the same is sent under Sub-section (2), the authority would be under an obligation to dispose of the case in conformity with such decision. It is no doubt true that in this case no such express request was made by the Appellant invoking the provisions of Section 55 of the Act. The question for consideration is as to whether at this length of time we should direct the Appellant to move the State Government for making a reference u/s 55 of the Act. The learned High Court Government Pleader having rightly and fairly agreed that the case involves a substantial question of law regarding duty payable on the document in question, it appears to us that it is not in the interest of justice to protract the litigation any further by directing the Appellant to approach the State Government for making a reference u/s 55. It is open to this Court functioning under Article 226 to mould the relief in an appropriate manner. Besides, it is necessary to point out that the matter having come to the notice of the State Government that the case regarding duty payable involves a substantial question of law, it was itself under an obligation to state the case and make reference under Sub-section (1) of Section 55 of the Act. As the State Government has failed to discharge its statutory obligation in this behalf, we consider it appropriate to compel the State Government to perform its duty. In the light of the findings which we have recorded above, we cannot sustain the findings recorded by the learned Single Judge on the merits of the case. The question as to what is the proper duty payable on the document in question has to be answered by a Bench of three Judges of this Court, after appropriate request is made as required by Section 55 of the Act. In cases of this type the proper course to be adopted is to invoke the provisions of Section 55 for seeking a reference in regard to the proper duty payable under the Stamp Act. It would not be proper for the parties to invoke the jurisdiction of this Court to exercise its power under Article 226 of the Constitution to determine the duty payable on the document under the Kerala Stamp Act.

For the reasons stated above this appeal is allowed and the judgment of the learned Single Judge is set aside. We issue a writ in the nature of mandamus directing the State Government to state the case and refer the same to the High Court u/s 55 of the Stamp Act the question as to what is the proper duty payable on the document in question, Ext. P-1 dated 25th May 1978, within a period of two months from the date of receipt of the order.