

(1959) 04 MAD CK 0038
In the Madras High Court
Case No : Writ Petition No. 214 of 1957

N. Saradambal Ammal

APPELLANT

Vs

The Chief Controlling Revenue Authority, Madras

RESPONDENT

Date of Decision : 24-04-1959

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 40(1), 57(1)

Citation : AIR 1960 Mad 21

Hon'ble Judges : Ramachandra Iyer, J

Bench : Single Bench

Judgement

(1) This is a petition for the issue of a writ of Mandamus under Art. 226 of the Constitution, directing the Revenue Board, Madras, the Chief Controlling Authority, to refer the case to the High Court under S. 57(1) of the Indian Stamp Act, (which will for the sake of convenience be referred to as the Act).

(2) The petitioner, Saradambal Ammal and two others, namely, Nooruddin Sahib and Natesa Gramani, entered into a tripartite arrangement on 16-2-1956 under which the properties which I shall refer A, B and C were exchanged inter se, so that Saradambal got C properties. Nooruddin Sahib A properties and Natesa Gramani B properties. The document, which is styled as exchange, was stamped as two exchanges under Art. 26 of the Indian Stamp Act. It was presented for registration to the Sub Registrar of Saidapet.

That officer received the document, but, as he felt a doubt about the sufficiency of the stamp, he referred the matter to the Registrar of Assurances Madras, who was the Collector within the meaning of the Act. The Registrar of Assurances was of the opinion that the document should be construed as three conveyances, that an additional duty of Rs. 42 together with penalty of Rs. 5 would be leviable, and that in addition a deficit registration fee of Rs. 5-4-0 should also be collected. In this the Collector was presumably acting under S. 40(1)(b) of the Indian Stamp Act.

The Sub Registrar directed the petitioner to pay the deficit stamp duty by his order dated 3-4-1956. The petitioner did not pay the additional stamp duty required of her. She moved the Registrar of Assurances to reconsider the order of the Sub Registrar, or refer the question to the Collector of Madras. The registrar of Assurances saw no reason to revise the order of the Sub Registrar. The petitioner, thereafter, filed a petition before the Chief Controlling Revenue Authority under S. 56 of the Stamp Act, praying that the document may be declared to have been properly stamped, and that it may be regarded as two conveyances.

In the alternative, she prayed that the case might be referred to the High Court under S. 57(1). The Chief Controlling Revenue authority, the first respondent, by his resolution dated 3-11-1956 held that, the document comprised really three conveyances, and that there was no reason to interfere with the orders of the Registrar of Assurances. It also found that there was no necessity to refer the matter to the High Court, as the stamp duty involved was not much, and as the point involved was not intricate. The petitioner has, thereupon, filed this petition under Art. 226 of the Constitution for the relief already mentioned.

(3) Although the Chief Controlling Revenue Authority has stated in its order that the decision as to proper stamp duty payable in respect of the document does not raise any intricate question, it is clear, on a reading of the document, that such a question of law arises in its construction viz, as to whether the document is nothing more than two exchanges, as a result of the tripartite arrangement, or whether it comprises three conveyances. The other reason given by the first respondent, that the amount of stamp duty involved is not much, could hardly be held to be sufficient reason for its refusal to act under S. 57(1).

(4) The ground on which the petition is resisted on behalf of the respondent, is that in the circumstances of the case there would be no jurisdiction in the respondent to refer the matter to the High Court under S. 57(1) of the Act. It is contended that such a reference can only be of a matter which is pending before the revenue authority and which has to be disposed of after obtaining the opinion of the High Court. It is further contended that, as the matter has been decided in the present case both by the Registrar of Assurances and the Chief Controlling Revenue Authority, there would be no case in respect of which a decision of the High Court is necessary.

In support of that contention, the learned Additional Government Pleader relied upon the Reference made under S. 57 of the Indian Stamp Act, ILR 25 Mad 751. In that case, there was an adjudication by the Collector under S. 31 of the Stamp Act as to the duty with which an instrument was chargeable. One of the parties to the document applied to the Board of Revenue for refund of duty, and the question was referred to the High Court. It was held that under S. 31 the Collector had determined the duty with which the instrument was chargeable and as the determination had become final, and there being no case pending to be disposed of by the revenue authority, there was no jurisdiction to make a

reference under S. 57.

In the next case, namely, Reference under Stamp Act, S. 57, ILR 25 Mad 752, this question was more elaborately considered. In that case a Sub Registrar, acting under S. 33, impounded two documents and forwarded the same to the Collector who under S. 40(1)(a) certified that they were exempt from stamp duty. At the instance of the Inspector General of Registration, the Board of Revenue referred the question of proper stamp duty to the High Court under S. 57. It was held by a majority of the Judges that the High Court had no jurisdiction to decide the question. The principle of the decision is that the expression "case" in S. 57 means a case that has not been already finally and conclusively determined by the Collector or other competent authority, and that unless the revenue authority has still resting upon it the duty of disposing of a case, it is not intended by the statute that it should have a right to make a reference to the High Court.

In *Re: Cook and Kelvey*, was a case where the Collector determined the duty under S. 31 without referring the case to the Chief Controlling Revenue Authority. The party to the document applied to the Board of Revenue to interfere with the ruling of the Collector, and the latter authority referred the matter to the High Court under S. 57 of the Act. It was held that unless the Revenue authority had resting upon it the duty of disposing of a case, there would be no right to make a reference to the High Court, as the opinion of the High Court was merely to guide it in disposing of an actual concrete case.

To the same effect is the decision of the Allahabad High Court in *Board of Revenue Vs. Lakshmipat Singhania*, . It is no doubt correct to say that on the terms of S. 57 the Chief Controlling Revenue authority would have jurisdiction to refer only a pending case for the decision by the High Court. But after the constitution the matter might stand on a different footing. As under Art. 226 of the Constitution it would be open to the High Court to issue a writ of certiorari to quash an order of an inferior Tribunal finally deciding the duty payable, the question of pendency of the case has not much importance when the person aggrieved has sought the issue of a writ under Art. 226 of the Constitution.

In *Poosarla China Appalanarasimhalu Vs. Board of Revenue, Chepauk, Madras*, , a document was impounded under S. 33 of the Stamp Act and a levy was made of the deficit stamp duty and penalty. An appeal was preferred to the Collector, which however failed. Thereupon, a revision petition was filed before the Revenue Board, and that too was dismissed. Then the petitioner in the case filed a petition to the Revenue Board to refer the matter to the High Court. The Revenue Board refused to accede to the request of the petitioner. Thereupon, a petition under Art. 226 of the Constitution was filed for the issue of a writ of mandamus or appropriate writ, directing the Revenue Board to refer the matter to the High Court under S. 57 of the Indian Stamp Act. Subba Rao J. as he then was, held that the High Court could issue a writ for directing the Revenue Board to refer the question involved in the case. In *V.S. Shanmugha Mudaliar Vs. Board*

of Revenue, Madras and Another, , there was a levy of stamp duty and penalty by the Revenue Divisional Officer. An appeal against that order proved futile. Thereupon, a petition for the issue of a writ of certiorari was sought. But this court refused to issue a writ. On being moved by the petitioner, this court directed a reference under S. 57 of the Indian Stamp Act. In so doing, this court followed the decision of the Supreme Court in Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd., AIR 1950 S C 218. It may be noticed that in both the cases the High Court directed the Chief Controlling Revenue Authority to make a reference under S. 57 after the decision had been given by the authority on the question of stamp duty leviable. In L. Nanak Chand Mehrotra and Others Vs. Board of Revenue, U.P. at Allahabad and Another, , the learned judges have not accepted the two decisions of this court on the ground that the question, whether a reference under S. 57 could lie when there was no case pending before the Chief Controlling Revenue Authority, was not considered therein. With great respect to the learned Judges of the Allahabad High Court, I am of the view that for the purpose of the issue of an appropriate writ under Art. 226 of the constitution, that question would not arise, If, in the opinion of the High Court, the final decision of the Revenue Authority was without jurisdiction, or was vitiated by an error on the face of the record, the High Court would have ample jurisdiction to issue a writ and thereby quash the final order of the Revenue authority. In such a case the matter would be pending before the Revenue authority and the High Court would have jurisdiction to direct a reference under S. 57(1) of the Act. I am, therefore, of opinion that whatever might have been the position before the Constitution, by virtue of Art. 226 the High Court's power to issue an appropriate writ to direct a reference under S. 57(1) of the Act does not depend up[on the pendency of a case before the Chief Controlling Revenue Authority. The result is that while the Chief Controlling Revenue Authority may not have power to refer the matter under S. 57(1) in a case where there is no matter pending before it that is to say, after the matter had been disposed of by any subordinate authority or by itself, the matter would be different when the High Court is approached under Art. 226 o the Constitution for the issue of a writ of certiorari to quash the final order of the inferior Tribunal, or to issue a writ of mandamus to direct the Chief Controlling Revenue Authority to refer the case. If such a direction is given, the order, which has finally disposed of the matter, is deemed to have been quashed and the matter, set at large. I am therefore of opinion that it would be open to this court to issue an appropriate writ in the circumstances of the case.

(5) The conclusion can, however, be reached in another way. Under S. 57 the Chief Controlling Revenue Authority may state any case referred to it under S. 56(2) or otherwise coming to its notice and refer such case with its opinion to the High Court. In the present case there has been no reference by the Collector under S. 56(2). But it can be said that the matter had otherwise come to its notice, when the petitioner filed a revision petition before the Chief Controlling Revenue Authority. Sec. 56(1) states,

"The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to S. 26 shall in all cases be subject to the control of the Chief Controlling Revenue Authority."

The question, therefore, is whether an appeal or revision lies in a matter like the present one to the Chief Controlling Revenue Authority under S. 56(1). As I indicated already the order of the Collector should be deemed to be one under S. 40(1)(b). The learned Additional Government Pleader has invited my attention to the two references reported at pages 751 and 752 in ILR 25 Madras. In the former case the adjudication by the Collector was under S. 31 which occurs in Ch. III of the Act S. 56(1) would not obviously apply to the adjudication under Ch. III. That chapter contains only two sections. S. 31 applies to a case where 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 with which it is chargeable, and pays a fee of such amount as the Collector may in each case direct S. 32 enables the Collector to certify whether full duty has been paid. It is obvious that under that provision the adjudication is made on the invitation of the party, and, therefore, he could not possibly contest its correctness. Under that section if the Collector feels a doubt he would be entitled to refer the matter under S. 56(2) and ask for the opinion of the Chief Controlling Revenue Authority. There is no right of appeal provided in regard to what is merely the opinion of the Collector. But the matter is entirely different in regard to the provisions of Ch. IV.

There is no such invitation by the party. Whether the party likes it or not, the appropriate authority would have to adjudicate the stamp duty payable, and, if there is deficit, it proceeds to collect the same together with penalty. It is, therefore, necessary to provide for an appeal in regard to such cases. In a reference under the Indian Stamp Act, S. 57 reported in ILR 25 Mad 752, a Sub Registrar impounded two documents under S. 33 and forwarded them under S. 38(2) to the Collector, who, under S. 40(1)(a), certified that they were exempt from stamp duty. It may be noticed that the decision of the Revenue authority was in favour of the party. A certificate was issued by the Collector.

The Inspector General of Registration did not, however, agree with the opinion of the Collector and reported the matter to the Board of Revenue which, in turn, referred the question to the High Court. It was held by a majority of the Judges that in such a case there would be no power of control under S. 56(1) and consequently the Board had no power to refer the matter to the High Court. Bhashyam Aiyangar J. held that the Collector had decided a case and granted a certificate, the Revenue Authority had no power to interfere under S. 56(1).

Moore J. who agreed with Bhashyam Aiyangar J. in regard to the incompetency of the reference in a matter of certificate granted under S. 40(1)(a), however, held that the Board could interfere after an order was passed under S. 40(1)(b) through a certificate had been granted. In a stamp reference by the Board of Revenue. In the matter of Khub Chand, ILR 40 All. 128 : AIR 1918 All 181, it was

held that if a Collector had taken action under S. 40(1)(b) of the Indian Stamp Act and issued a certificate, a reference under S. 57 would be competent. The question was considered by a Special Bench of Allahabad High Court in Board of Revenue Vs. Lakshmipat Singhania, .

In that case a Collector, to whom the court sent a document under S. 38(2) acting under S. 42(1), had certified that a proper duty and penalty had been paid. The Bench held that after the issue of the certificate there was no case pending before the Chief Controlling Revenue Authority within the meaning of S. 57(1), and that, therefore, there could be no valid reference. In coming to the conclusion, the learned Judges followed the statement of law enunciated by Bhashyam Aiyangar J. in the reference under the Stamp Act reported at page 752 in ILR 25 Madras.

The distinction between a case where an excess duty and penalty were levied by the Collector and paid by the party which resulted in the issue of a certificate under S. 42, and a case where the duty though levied, was not paid is made on the basis of the terms of S. 56(1) which appears to give right of appeal only in regard to a case where the powers exercisable by the Collector under Chs. IV and V are exercised. It is, no doubt an anomaly that a person who pays stamp duty promptly is in worse position in that he is denied the right of appeal in case where the levy by the Collector is wrong, whereas a person, who has defaulted in the payment of the duty, is able to approach the higher authority under S. 56.

On that question, the view of Moore J, is in conflict with that of Bhashyam Aiyangar J. It is not, however, necessary for the purpose of the present case to resolve that conflict, as the increased duty levied by the Registrar of Assurances had not been paid by the petitioner. In regard to such matter Bhashyam Aiyangar J has observed ILR 25 Mad 760 thus:

"If the party delays payment there will necessarily be an interval between the impounding or the receipt by the Collector of the instrument and his certifying and the Board can interpose its control during such interval and in fact it will be perfectly open to the Board under S. 56(1) to require that in all cases in which the Collector may have to proceed under Ss. 40, 41 and 42 or in regard to particular classes of instruments the Collector should, before certifying under S. 40 or 42, send a return to the Board giving the required particulars which will enable the Board to interpose, if necessary, its control before the Controller makes the certificate.....

And further until the Collector exercises in favour of the party concerned the various powers conferred on the Collector by the Sections above referred in Chs. IV and V, the Board has full scope to interpose its control under S. 57(1) at the instance of the party concerned or otherwise and require the Collector to exercise his power as it directs. I think highly probable that in S. 56(1) the draftsman advisedly qualified the word "powers" by the adjective "exercisable" with a view to denote the intention of the legislature that the Collector's powers

are to be controlled by the Board of Revenue only before they have been actually executed and a right has thereby accrued to a party."

(6) It is therefore clear as the duty had not been paid the matter would be subject to the controlling jurisdiction of the Board of Revenue. It would therefore, be a case which could properly come within its notice and the Board could, under the provisions of S. 57, refer such a matter when so requested by the party concerned. In AIR 1950 S C 218, the Supreme Court held that the Chief Controlling Revenue Authority has a duty to make a reference when it is called upon to do so by the party affected, and that if it declines to do so, it will be within the power of the High Court to direct the Authority to discharge the duty and make a reference.

I therefore direct the respondent to refer the question to this court as to the stamp duty payable, namely, whether the document in question comprises two exchanges or whether it is really made up for three conveyances. There will be no order as to costs.

IC/V.R.B.

(7) Direction issued.