

(2005) 07 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2776 of 2005

Navjeevan Builders Pvt. Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
General Clauses Act, 1897 — Section 6
Rajasthan General Clauses Act, 1955 — Section 6
Rajasthan Stamp Act, 1998 — Section 1(3), 29, 65, 65(1), 91
Stamp Act, 1899 — Section 26, 31, 35, 40, 41

Citation : AIR 2005 Raj 327 : (2005) 4 WLC 687

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : Alok Sharma, for the Appellant; Mohd. Rafiq, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

K.S. Rathore, J.—Since both the writ petitions involve common issues and law point, hence, they are being decided by this common order.

2. Brief facts of the case are that the petitioner preferred revision petitions Nos. 456/2004 and 458/2004 before the Board of Revenue against the order dated 17-9-2004 passed u/s 47-B of the Indian Stamp Act by the Addl. Collector, Jaipur whereby the Addl. Collector, Jaipur exercising the power of Collector (Stamp) had levied stamp duty and penalty of Rs. 73,93,520/- on each of the instruments presented by the petitioner-company for registration against sale deed presented for registration.

3. The controversy arised when on the presentation of revision petitions, the Board of Revenue raised the objection that the revision petitions cannot be entertained without deposition of payment of 50% of the recoverable amount in advance in view of provisions of Section 65 of the Act and vide order dated

29-3-2005 rejected the revision petitions, hence both these writ petitions.

4. Section 65(1) of the Rajasthan Stamp Act, 1998 (hereinafter to be referred as the New Act of 1998) is reproduced hereunder :--

65. Revision by the Chief Controlling Revenue Authority :-- (1) Any person aggrieved by an order made by the Collector under Chapters IV and V and under Clause (a) of the first proviso to Section 29 and u/s 35 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order :

Provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment in fifty per cent of the recoverable amount.

5. The main contention of the petitioner is that the revision petitions were presented before the Board of Revenue u/s 56 of the Indian Stamp Act, 1899 (hereinafter to be referred as the Old Act of 1899) and the condition of pre-deposit of 50% of recoverable amount does not exist in the Old Act of 1899. Section 56 of the Old Act of 1899. Section 56 of the Old Act of 1899 reads as under :--

56. Control of, and statement of case to, Chief Controlling Revenue Authority-- (1) The power exercisable by a Collector under Chapter IV and Chapter V and under Clause (a) of the first proviso to Section 26 shall in all cases be subject to the control of the Chief Controlling Revenue Authority.

(2) If any Collector, acting u/s 31, Section 40 or Section 41, feels doubts as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue Authority.

(3) Such authority shall consider the case and send a copy of its decision to the Collector who shall proceed to assess and charge the duty (if any) in conformity with such decision.

6. On bare perusal of Section 56 of the Old Act, 1899 and Section 65 of the New Act of 1998, it appears that in the Old Act of 1899, there was no provision for payment of 50% of the recoverable amount before entertaining the revision petition whereas in the New Act of 1998, there is pre-deposit condition of payment of 50% of the recoverable amount and the revision petition can only be entertained after filing a satisfactory proof of payment of 50% of the recoverable amount.

7. Now the only question remains whether the provisions of New Act of 1998 are applicable on the proceedings which are pending prior to commencement of the New Act of 1998 or not.

8. The New Act of 1998 received the assent of the President of India on 24-3-1999 and as per Section 1, Sub-section (3), it shall come into force on such

date as the State Government may, by notification in the Official Gazette, appoint. The State Government issued a notification on 27-5-2004 and published it in Rajasthan Gazette on the same day and made effective the same from the date of publication i.e. 27-5-2004.

9. As per Section 91 of the New Act of 1998, the Indian Stamp Act, 1899, as adapted in Rajasthan under the Rajasthan Stamp Law (Adaptation) Act, 1952 (Act No. 7 of 1952), except insofar as it relates to documents specified in Entry 91 of List I in the Seventh Schedule to the Constitution of India, is hereby repealed and the provisions of the Rajasthan General Clauses Act, 1955 (Rajasthan Act 8 of 1955), shall apply to such repeal :

Provided that the repeal hereby shall not affect,--

(i) any right, title, obligation or liability already acquired, accrued or Incurred or anything done or suffered;

(ii) any legal proceeding or remedy in respect of any such right, title, obligation or liability;

Under the provisions of the enactment hereby repealed and any such proceeding may be instituted, continued and disposed of and any such remedy may be enforced as if this Act had not been passed.

(2) Any appointment, notification, notice, order, rule or form made or issued under the enactment hereby repealed shall be deemed to have been made or issued under the provisions of this Act, insofar as such appointment, notification, notice, order, rule or form is not inconsistent with the provisions of this Act and shall continue in force, unless and until it is superseded by an appointment, notification, notice, order, rule or form made or issued under this Act.

10. Now the effect of repealment is to be seen. As per Section 6 of Rajasthan General Clauses Act, 1955 : (1) Where any Rajasthan law repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any fine, penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege obligation, liability, fine, penalty, forfeiture or punishment as aforesaid.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such fine, penalty, forfeiture or punishment, may be imposed, as if the repealing law had not been passed.

(2) The provisions of this section shall also apply upon the expiry or withdrawal of any Rajasthan law as if such law had not expired or, as the case may be, had not been withdrawn.

Provided that the provision contained in Clause (a) of Sub-section (1) shall not so apply.

11. While reading the Section 65 of New Act of 1998, Section 56 of Old Act of 1899 and Section 6 of Rajasthan General Clauses Act, it is not disputed that by way of Section 65 of New Act, two things are emerged out; (1) limitation has been prescribed for filing the revision petition before the Board of Revenue i.e. Chief Controlling Revenue Authority, (2) such revision petition can only be entertained if it contains satisfactory proof of payment; of 50% of the recoverable amount. Whereas u/s 56 of Old Act, 1899, no limitation has been prescribed and the revision petition is maintainable before the Board of Revenue without any pre deposit. The main thing is that power of revision is as it is. It is also not disputed that by way of New Act of 1998, Old Act, 1899 has been repealed and the effect of repealment is as per Section 6 of the Rajasthan General Clauses Act, 1955.

12. Since the Board of Revenue has heavily relied upon the judgment rendered by Hon''ble Supreme Court in case of Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, . I have also carefully perused the same. In para 33, the Hon''ble Supreme Court has observed as under :--

"Section 6 of the General (Clauses Act has no application because there is no substantive vested right available to a party seeking revision u/s 115 of the Code. In Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, it was observed that if a provision of statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, there is no scope for granting it: afterwards. There is modification of this position by application of Section 6 of the General Clauses Act or by making special provisions. Operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision In the statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings, then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall continue but a fresh proceeding for the same purpose may be initiated under the new provision."

13. Further learned Counsel for the petitioner placed reliance on the judgment rendered in case of N.S. Nayak and Sons, Heera Constructions and Rani Constructions Pvt. Ltd. Vs. State of Goa and Another, wherein the Hon''ble

Supreme Court has held that "where arbitral proceedings had commenced under the old Act, prior to 25-1-1996, the old Act would apply to appeals arising thereunder. Hon"ble Supreme Court further held that "arbitration clause to the effect "Subject as aforesaid, the provisions of the Arbitration Act, 1940, or any statutory modification or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause", could not change the position."

14. Learned Counsel further placed reliance on the judgment rendered in case of M/s. Ambalal Sarabhai Enterprises Ltd. Vs. M/s. Amrit Lal and Co. and Another, wherein the Hon"ble Supreme Court while discussing the provisions of Section 6 has held "Scope and effect where applicable -- contemplates continuance of pending proceedings or investigations as if statute had not been repealed as rights and obligations of the parties get crystallised on the date of commencement of the lis."

15. In case of Transmission Corporation of A.P. Vs. Ch. Prabhakar and Others, , Hon"ble Supreme Court has held "appeal is a vested right which vests in the suitor at the time of institution of original proceeding and confers on him a right of entering a superior Court and invoking its aid and interposition to redress an error of Court below."

16. Learned Additional Advocate General, in reply to the submissions of the petitioner placed reliance on the judgment rendered in ease of Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., wherein Hon"ble Supreme Court while discussing the General Clauses Act and effect of repealment observed that "when there is a repeal and simultaneous re-enactment, Section 6 of the GC Act would apply to such a case unless contrary intention can be gathered from the repeal Act. Section 6 would be applicable in such cases unless the new legislation manifests intention inconsistent with or contrary to the application of the section. Such incompatibility would have to be ascertained from all relevant provisions of the new Act. Therefore, when the appeal is followed by a fresh legislation on the same subject, the Court would undoubtedly have to look to the provisions of the new Act only for the purpose of determining whether the new Act indicates different intention. The object of repeal and re-enactment is to obliterate the Repealed Act and to get rid of certain obsolete matters.

17. In the light of the judgments referred before me, it appears that ratio decided by Hon"ble Supreme Court is that in case, Old Act is repealed completely and repealed Act does not show any intention contrary to application of the New Act. This could only be ascertained from all relevant provisions of repealed act. As discussed hereinabove, the Old Act of 1899 is completely repealed and power of revision kept intact except two conditions. As per Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others, the legislation has given a specific provision u/s 65 of the Rajasthan Stamp Act, 1988 and benefit of which can be taken by the petitioner by depositing 50% of the recoverable amount.

18. Having considered the ratio decided by Hon"ble Supreme Court and relevant provisions of the Old Act of 1899, New Act of 1998 and the Rajasthan General Clauses Act, I am of the considered opinion that since the Old Act: is repealed and as per Section 6 of the General Clauses Act, there is no such provision to revive the provisions of repealed Act as per repeal and saving clause u/s 91, the petitioner has no right to say that revision petition should be treated u/s 56 of the Old Act, 1899.

19. I find no illegality or error in the impugned order dated 29-3-2005 passed by the Board of Revenue. No interference whatsoever is required by this Court while exercising power Under Articles 226 and 227 of the Constitution of India. Consequently, the writ petition fails and herewith dismissed.