

(1977) 11 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ No. 1317 of 1969

Sudarshan Talkies (Delhi) Pvt. Ltd.

APPELLANT

Vs

The Chief Controlling Revenue Authority

RESPONDENT

Date of Decision : 16-11-1977

Acts Referred:

Citation : AIR 1978 Delhi 162 : AIR 1978 Delhi 112 : (1978) 48 CompCas 591 : (1978) 14 DLT 28 : (1978) 1 ILR Delhi 597 : (1978) RLR 167

Hon'ble Judges : T.V.R. Tatachari, C.J.; Yogeshwar Dayal, J.; Prithvi Raj, J

Bench : Full Bench

Advocate : T.N. Sethi and Y.K. Sabharwal, for the Appellant; R.K. Anand, for the Respondent

Judgement

Prithvi Raj, J.—By this Civil Writ Petition the petitioner prays that the proceedings before the Registrar of Companies ending with the order dated 30th Sept. 1969, passed (by the Chief Controlling Revenue Authority, Delhi (Annexure "E")) be quashed and that writ of prohibition be issued against the respondents prohibiting them from making recoveries of the amount of stamp duty and penalty imposed against the petitioner by the Collector of Stamps, respondent No. 2, and confirmed by respondent No. 1 Chief Controlling Revenue Authority, Delhi, by his impugned order, Annexure E.

2. Necessary facts for the disposal of the writ petition are as follows. The petitioner took over the business of Sudershan Talkies, including its assets and liabilities, owned by Sarvshri Brij Lal Chawla and Surinder Chawla, in lieu of which 1440 equity shares of Rs. 100/each, fully paid up, of the petitioner were allotted to them. The petitioner in pursuance of the provisions of S. 75(1) of the Companies Act, 1956 (1 of 1956) (herein called "the Companies Act") filed a return (Annexure W) before the Registrar of Companies in respect of the said shares allotted to Brij Lal Chawla and Surinder Chawla for having acquired the business of Sudershan Talkies for a total consideration of Rs. 1,45,354.58 paise. Since no deed had been executed between the parties in respect of this

transaction the particulars of the contract for allotment of the above said shares, required to be furnished under S. 75(2) of the Companies Act, were furnished in Form 3, prescribed under the Companies Act. Stamp duty of Rs. 5/- was paid on Form 3, by affixing the adhesive stamp of the said value on it.

3. The Assistant Registrar of Companies, on examining Form 3, was of the view that the document was not properly stamped. He impounded the document, holding that it was a conveyance deed and sent it for recovery of duty and penalty etc. to the Collector. It is alleged that the Collector, respondent No. 2, issued notice to the petitioner (Annexure A). After perusing the reply submitted by the petitioner, the Collector rejected the same and by his order dated 17th May, 1969, (Annexure C), petitioner is called upon to pay Rs. 11,627.75 paise as duty and an equal amount as penalty. The petitioner challenged the said order of the Collector in revision before the Chief Controlling Revenue Authority who rejected the contentions of the petitioner vide his order dated 30th Sept. 1969 (Annexure "E").

4. The petitioner challenges the aforesaid orders on the ground that the impugned orders are against law and beyond the jurisdiction of the authorities passing the said orders. The case of the petitioner is that in Form 3, it was erroneously mentioned under some misconception in the mind of the person preparing it that the allotment had been made in satisfaction in part of the purchase price of the property and the description of the property was given as building, furniture, machinery, air-conditioner, electric power, cycle, stock and trade, security, neon signs, etc. The petitioner's case is that the particulars filed by them under S. 75 of the Companies Act did not amount to a sale deed and at best could only be deemed to be an agreement to sell in that the property which purported to be conveyed which included immovable property, could not be conveyed otherwise than by a registered sale deed, the particulars in the circumstances could not be a substitute for a conveyance.

5. On behalf of the respondents reply affidavit was filed by Shri S. K. Sharma, Collector of Stamps, Vikas Bhawan, New Delhi. By way of preliminary objection it is urged that the petitioner having availed of his remedy under S. 57 of the Stamp Act on which the Chief Controlling Revenue Authority had referred only one question by his order dated 11th May, 1970 (Stamp Duty Reference No. 1 of 1970), and no case was pending before it the petitioner is not entitled to pursue and maintain the present "Petition. Sustaining the impugned orders, it is contended that they are in accordance with law and are not bad for any reason whatsoever. The petitioner, it is averred is liable to pay stamp duty on the document (Form 3) which constituted a deed of conveyance.

6. The petitioner in its rejoinder controverted the contentions raised by the respondents in their counter affidavit and reiterated the contentions raised in the petition.

7. The preliminary objection urged by the respondents is without any merit. On

the failure of the Chief Controlling Revenue Authority to refer the other questions, it was open to the petitioner to file a petition for the issuance of mandamus calling upon him to refer the said questions. If instead of resorting to that procedure, he filed the present petition, it cannot be said that it may not be entertained. The application made by the petitioner before the Chief Controlling Revenue Authority raised substantial questions of law; the Authority was bound to state the case in compliance with its obligations envisaged under S. 57(1) of the Stamp Act. In the circumstances, no useful purpose will be served in driving the petitioner to file a writ for the issuance of mandamus. We accordingly proceed to dispose of the present petition on merits.

8. In *Banarsi Das Ahluwalia Vs. The Chief Controlling Revenue Authority, Delhi*, it was observed that S. 57(1) of the Stamp Act imposes a duty on the Authority, to state the case when it raises a substantial question of law. That duty is not affected by the question whether a case is pending before the Authority, or not. 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 substantial question of law and imposes corresponding obligation on the authority to refer it to the High Court for its opinion. It was observed that such a right and obligation cannot be construed to depend upon any subsidiary circumstances such as the pendency of the case before the Authority. When an application is made under 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. It may bear mention here that in *Banarsi Dass Ahluwalia's* case their Lordships considered and followed their earlier decision in the *Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd.* Air 1950 Sc 218, wherein it was held that the power contained in S. 57 of the Stamp Act is in the nature of an obligation or is coupled with an obligation and can be demanded to be used also by the Parties affected by the assessment of the stamp duty. It was also held in that case that power to make a reference under S. 57 is not only for the benefit of the authority but it is also coupled with a duty cast on it as a public officer to do the right thing and when an important and intricate question of law in respect of the construction of a document arises as a public servant, it is its duty to make the reference. If it omits to do so, their Lordships observed, It is within the power of the Court to direct it to discharge that duty and make a reference to the Court regardless of the fact that the matter had ceased to be in the stage of assessment but had reached the stage, of collection of stamp duty.

9. Since in the instant case a question of law in respect of the construction of the document (Form 3) arises the preliminary objection urged on behalf of the respondents is without any force. In this view of the matter the contention of the respondents that the case before the Collector having been concluded and there being no pending case, the matter having proceeded beyond the stage of assessment and having reached the stage of recovery and the Chief Controlling Revenue Authority having declined to refer other questions than the one referred

in Stamp Duty Reference No. 1 of 1970 the petitioner be not heard on the question now sought to be urged in the writ petition is without any merit.

10. Coming to the merits of the case, with a view to appreciate the submission of the petitioner it would be appropriate to note the relevant provisions of S. 75 of the Companies Act. The said Provisions read as under:-

"S. 75. Return as to allotments:(1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within "thirty days" thereafter, (a) file with the Registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses and occupations, of the allottees, and the amount, if any, paid or due and payable on each share:

"Provided that the company shall not show in such return any shares as having been allotted for cash if cash, has not actually been received in respect of such allotment."

(b) in the case of shares (not being bonus shares) allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the Registrar a contract in writing Constituting the title of the allottee to the allotment together with any contract of sale, or a contract for service or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the Registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted; and

(c) file with the Registrar-

(i) in the case of bonus shares, a return stating the number and nominal amount of such shares comprised in the allotment and the names, addresses and occupations of the allottees and a copy of the resolution authorising the issue of such shares;

(ii) in the case of issue of shares at a discount a copy of the resolution passed by the Company authorising such issue together with a copy of the order of the Court sanctioning issue and where the maximum rate of discount exceeds ten per cent, a copy of the order of the Central Government, permitting the issue at the higher percentage.

(2) where a contract such as is mentioned in Clause (b) of sub-section (1), is not reduced to writing the Company shall within "thirty days" after the allotment file with the Registrar the prescribed particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and those particulars shall be deemed to be an instrument within the meaning of the Indian Stamp Act, 1899 (II of 1899) and the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under S. 31 of the Act.

(3)

(4)

(5)

11. According to Clause (b) of sub-sec. (1) of S. 75, noted above, in the case of shares (not being bonus shares) allotted as fully Paid up or Partly paid up otherwise than in cash, the Company is required to produce for the inspection and examination of the Registrar a contract in writing Constituting the title of the allottee to the shares allotted to him together with any contract of sale, or a contract for service or other consideration in respect of which the allotment .of shares was made. Such contract is required to be duly stamped. Further, the company has to file copies of such contract verified in the prescribed manner, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. It is, Therefore, evident that the return which is required to be filed in pursuance to the provisions of sub-s. (1), Clause (b), must show the number and the amount of shares allotted indicating the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. The idea implicit in this provision is to ensure that the share capital of the company reflects cash or other valuable assets.

12. Now according to sub-section (2), if a contract contemplated in Clause (b) of sub-section (1), is not reduced to writing a duty is cast on the Company to file with the Registrar of Companies the prescribed particulars of the contract. These particulars are required to be filed within "thirty days" after the allotment of shares. The form in which these particulars are to be filed is to bear the same stamp duty as would have been payable if the contract had been reduced to writing. The particulars so furnished shall be deemed to be an instrument within the meaning of the Stamp Act. Further this sub-section envisages that the Registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under S. 31 of the Stamp Act.

13. In the instant case 1440 shares of Rs.100 each fully paid up were allotted in consideration of the assets and liabilities of the business of Sudarshan Talkies. The transfer of the assets and liabilities of the business was effected by delivery of possession. No agreement was reduced to writing between the parties. That being so, the particulars of the agreement were required to be furnished to the Registrar of Companies and indeed were furnished by the petitioner in Form 3. These particulars are to be treated as an instrument within the meaning of the Stamp Act. Form 3 On which the particulars have been furnished was required to be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing. The question accordingly is not whether the document Form 3 furnished by the petitioner is an agreement but whether the prior oral contract between the parties, the particulars of which have been specified in Form 3. would have been chargeable with duty as an agreement or

as a conveyance had it been reduced to writing. Where the shares are allotted otherwise than in cash, as in instant case, the Registrar of Companies has to satisfy himself in respect of the title of the allottee to the allotment of the shares. For so satisfying himself the Registrar must have before him the evidence of the title of the allottee to the allotment.

14. In the case before us the evidence in this respect was the particulars furnished in Form 3 giving the prescribed particulars of the contract between the parties. It cannot be denied that the title of the allottees to the allotment of shares could be constituted by a contract, and in no other way. Since the contract between the parties was not reduced to writing, the information that was required to be filed with the Registrar in terms of S. 75(2) was in respect of the oral contract Constituting the title of the allottees to the allotment of the shares, It is, Therefore, evident that the form furnishing the particulars of the oral agreement, in law has to be determined for the purposes of the stamp duty "to be the contract in writing" by which the title to the allotment was constituted. Stamp duty accordingly on the form furnishing the requisite particulars has to be determined as if it was a contract made in writing. it is beyond the pale of controversy that the particulars which are required to be furnished are in respect of the particulars of the contract Constituting the, title of the allotment of the shares and of the consideration of the contract. No title to allotment would accrue in the absence of a contract. In the instant case the particulars that were furnished in Form 3 had to be and in fact were in respect of the oral contract between the parties in respect of the title of the allottees to the allotment of shares; in the absence of such a contract they would not derive any title to the allotment of shares. We are fortified in our view from the judgment of the Allahabad High Court in Sri Raj Sachdeva Vs. Board of Revenue, .

15. We now proceed to examine Form 3 in the light of our above observation, Red by the petitioner giving the information required to be furnished under S. 75(2) of the Companies Act. So read, it has to be held that the Form gives particulars of the conveyance deed pertaining to the immovable property rather than particulars of "an agreement to sell" as was sought to be made out by the learned counsel for the petitioner. Information supplied by the petitioner against column 6 of the Form is a clincher of the matter. Column 6 required the petitioner to give full particulars of the property, which is the subject-matter of the sale, showing in detail how the total purchase price was apportioned between the respective heads. The said column also required particulars of the immovable property held in absolute ownership of the Company and fixed plants and machinery and other fixtures thereon, to be given. It is pertinent to note that in answer to column 6 in the Form the petitioner gave the particulars of the property (subject-matter of the sale) and immovable property held in absolute ownership of the Company as "building, furniture, machinery, air-conditioning plant, electric fans etc., cooler, neon sign, cycle" mentioning the approximate value of the said items. Column 5 of the Form required the petitioner to give a brief description of the property if the allotment of shares was made in

satisfaction or part satisfaction of the purchase price of the property, besides giving the full particulars of the manner in which the purchase price was satisfied. In answer to that the petitioner gave the brief description of the property as "building, furniture, machinery, air-conditioners, electric power. cycle, stock-in-trade, security and neon sign. "The purchase price of these shares was mentioned as Rs. 1,45,354.58 which was not paid in cash but by conveying the property mentioned in Form 3 by giving possession in the premises the Chief Controlling Revenue Authority rightly held that "the purchase price of the property including the immovable assets of the partnership was a consideration for the allotted shares" and that "the particulars filed under sub-see. (2) of S. 75.in Form 3 would attract stamp duty as prescribed for a conveyance of immovable property."

16. The question of the payment of transfer duty as surcharge payable under S. 147 of the Corporation Act has already been answered by us in Stamp Duty Reference No. 1 of 1970. This aspect, Therefore, is not required to be gone into over again.

17. In view of our above discussion the writ petition fails and is hereby dismissed, leaving the parties, in the circumstances of the case, to bear their respective costs.

18. Petition dismissed.