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(1998) 05 AHC CK 0110

In the Allahabad High Court

Case No : C.M.W.P. No. 17063 of 1998

Sushmakar Dubey APPELLANT

Vs

Taxing Officer, High Court and another RESPONDENT

Date of Decision : 22-05-1998

Acts Referred:

- Constitution of India, 1950 — Article 226
- Court Fees Act, 1870 — Section 3, 4, 5
- Land Acquisition Act, 1894 — Section 18, 30, 31
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : AIR 1998 All 396 : (1998) 3 AWC 2041

Hon'ble Judges : R.K. Singh, J;Palok Basu, J

Bench : Division Bench

Advocate : M.A. Qadeer, for the Appellant; Sunil Ambwani, for the Respondent

Final Decision : Allowed

Judgement

Palok Basu, J.—The interesting question in this writ petition is whether an order of the Taxing Officer can be quashed by this Court under Article 226 of the Constitution of India or not ; whether a report of the Stamp Reporter may be amenable to writ jurisdiction, is the allied question.

2. Shri M. A. Qadeer, learned counsel for the petitioner has been heard at substantial length. Shri Sunil Ambwani has espoused the cause of the respondent Taxing Officer of this Court. Both have prayed that the matter may be finally disposed of at the admission stage.

3. A preliminary objection has been raised by Shri Ambwani that this writ petition is not maintainable. The grounds of objections are two-fold. First, the Taxing Officer is appointed in accordance with the provisions of the Court Fees Act and, therefore, exercises the powers on behalf of the Court and, therefore, not amenable to writ jurisdiction. Second, that all that may be permissible on certain facts is a reference by the Taxing Officer to the Taxing Judge nominated by the Hon''ble the Chief Justice.

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4. Shri M. A. Qadeer has, however, vehemently argued that there may be an occasion where the opinion of the Taxing Officer is not correct on facts and, therefore, it may be amenable to the writ Jurisdiction of this Court. He further said that in any case where if and when a question is of general importance, the Taxing Officer is duty bound to refer the matter to the Taxing Judge.

5. On facts, it has to be examined whether the Taxing Officer has correctly made his opinion about the stamp reporter''s report.

6. The petitioner admittedly alleges to have been recorded as a tenure-holder entitled to compensation in Land Acquisition proceedings. Against the award of the S.L.A.O., many objectors including the petitioner filed reference. The Reference Judge disposed of the reference u/s 18 of Land Acquisition Act by a detailed Judgment and directed enhancement of compensation with regard to all the objectors. The question then came up for apportionment u/s 30 of the Act as the issue was raised under the provisions contained in Section 31 of the Act. An order has been passed on 7.10.1988 by the IInd Additional District Judge, Varariasi directing that :

"The entire amount of compensation is payable to Smt. Sheetla Devi, wife of Raghuraj Singh. The reference is accordingly answered."

7. In coming to the aforesaid conclusion, the preceding paragraph recites that the petitioner Sushamakar Dubey had filed suit u/s 229B of the U.P.Z.A. and L.R. Act, 1950 but the same remained abortive and, therefore, the Judge held under the circumstances aforesaid that Sri Sushamakar Dubey is entitled to no share in the plots in question.

8. It is the aforesaid order dated 7.10.1988 which is the subject-matter of First Appeal No. 1047 of 1988.

9. The question arose whether on this appeal, court fee was payable on fixed basis or on ad valorem basis. Petitioner paid the court fee taking it to be a declaratory matter and, therefore, fixed court fee was affixed. The stamp reporter did not object to that at the stage of presentation of the appeal consequently, the appeal was admitted. It transpires that subsequently on 26.6.1996 the stamp reporter informed the Court that court fee was payable at ad valorem rate. The matter went to the Taxing Officer and he agreed that the initial report of the stamp reporter about fixed court fee was incorrect and that ad valorem court fee was payable. The matter has not yet gone to the Court in which the First Appeal is to be heard and it is the report of the Taxing Officer and also that of the stamp reporter demanding ad valorem court fee which are under challenge in this writ petition.

10. Let it be noted at the outset that payment of court fee is a part of the process of filing of the appeal and it is governed by the provisions of the Court Fees Act and Taxing Officer or Stamp Reporter of this Court are appointed in accordance with the provisions of the Court Fees Act. The only deviation

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permissible by law is the reference by Taxing Officer to Tax Judge after the appointment of a Tax Judge under the orders of the Hon''ble the Chief Justice, in the face of the matter being of general importance. Therefore, the opinion of the Taxing Officer is in a way a delegated action of the Court.

11. Sri Qadeer wanted to draw a distinction between the High Court and the lower courts in the sense that while the lower courts are entitled to determine the pay-ability of court fees themselves, no such powers exist in this Court, i.e., the High Court. It must be stated that the Taxing Officer has been appointed under the authority of this Court. He is having expertise. He is governed by the Sections and writes his opinion on the report of the stamp reporter who also has to act in accordance with the provisions of the Court Fee Act and report accordingly. Therefore, the High Court has to take note of whatever is contained in the report of the stamp reporter at the first instance and the Taxing Officer at the second. In some rare cases, it may have to go for the opinion of the Taxing Judge. This is the simple process of and powers of the officers and the Judge empowered to determine the payment of court fee. Any other interpretation is likely to burden the High Court Judges with the court fee matter in every case and that is the obvious reason that the law has permitted the appointment of the Taxing Officer in the High Court. Consequently, the opinion of the Taxing Officer is presumed to be correct unless of course the exigency of making reference to the Taxing Judge can be found out in a given case.

12. Whether or not a case is fit enough for being referred to the Taxing Judge being of general importance and to what extent the jurisdiction of Article 226 of the Constitution of India can be exercised by this Court, become the subject-matter of discussion in the Pull Bench case of this Court in Smt. Gindori Bibi Vs. The Taxing Officer and Others, After referring to several decisions, it has been stated as of law that :

"Para 20. As a result of the discussion above, our answer to the first question referred is that the Taxing Officer while exercising his jurisdiction u/s 5 of the Court Fees Act was under a mandatory duty to form an opinion as to the importance of the question when invited to do so within a reasonable time even after he had rendered his own decision on the merits of the question and then refer the same for final decision of the Taxing Judge, if the question is found to be one of general importance.

Para 21. Our answer to the second question is that it is for the Taxing Officer to decide judicially "whether the question was one of general importance and this Court can quash the decision by a writ of certiorari in the exercise of its Jurisdiction under Article 226 of the Constitution if it were found that the duty cast on him to form an opinion was not performed Judicially.

Para 22. Our answer to the third question referred is that a mandamus can be issued to the Taxing Officer under Article 226 of the Constitution compelling him to examine the case and form an opinion as to the importance of the question

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and then refer it to the Taxing Judge in the event of his finding that the question was one of general importance even though the Taxing Officer himself had decided the question on merits.

Answered accordingly."

13. In view of the aforesaid dictum of the Full Bench, the question of the matter being of general importance alone can be examined by the writ court in the event of a contrary finding having been recorded by the Taxing Officer or in the event of his having not deciding the said issue.

14. Referring back to the instant case, the argument of Sri Qadeer may now be noted. It was vehemently argued that in this case, the Judge deciding the reference u/s 18 formulated his opinion about the pay-ability of compensation to all the objectors, the petitioner''s right to get the compensation could not have been thwarted by Reference Court u/s 30 while deciding objections u/s 31 of Land Acquisition Act.

15. It may be added that there may be two opinions on the aforesaid arguments as on facts. A reading of the judgment/award of the Reference Court u/s 18 may or may not be interpretable as deciding the objections of all the objectors. But that will be the matter on merits. For the purposes of pay-ability of court fee, the argument can be examined that the language used by the Reference Court is clear that the objection of all the objectors stood allowed. The Court deciding objections u/s 30 of the Act has subsequently denied any compensation to the petitioner. The argument of Sri Qadeer that on these facts, only declaratory right was being claimed may have become a matter of general importance and, therefore, the opinion of the Taxing Judge and, in the fitness of the things, keeping facts of this case in mind, should have been obtained.

16. In view of the aforesaid discussion, this is a fit case where the Taxing Officer may have gone into the issue and requested the Taxing Judge to opine finally on this issue whether the court fee is payable ad valorem or fixed rate because of the general importance of the question involved.

17. The writ petition is, therefore, allowed. The Taxing Officer will refer the matter to the Taxing Judge for opinion and he will do so within a month from today. The Taxing Judge is already appointed shall be informed of this order within a month. If no Taxing Judge is appointed, the Taxing Officer himself will take up the matter at the earliest convenience of the Hon''ble the Chief Justice. It may be mentioned that payment of huge court fee is involved inasmuch as the hearing of the First Appeal will have to await the decision of the Taxing Judge, therefore, an early decision by the Hon''ble Taxing Judge, preferably within three months, may be welcomed.

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