The Board of Revenue U. P. and Others

Vs

Sardarni Vidyawati and Another

Civil Appeal No. 29 of 1958

(S. K. Das, A. K. Sarkar, K. Subha Rao JJ)

06.02.1962

JUDGMENT

WANCHOO, J. –

This is an appeal on a certificate granted by the Allahabad High Court. The brief facts necessary for present purposes are these. Certain decretal moneys were deposited in the then Chief Court of Oudh at Lucknow. The respondents applied to the Chief Court for permission to withdraw the moneys on furnishing security and were permitted to do so. Thereupon a registered security bond was executed and registered in Simla in 1949 by which a house there was given in security for withdrawal of the money. Before, however, the money could be withdrawn, the Inspector of Stamps reported on March 15, 1950, that the so called security bond was in reality a mortgage deed without possession and was insufficiently stamped. He therefore reported that it should be impounded and the deficit stamp duty of Rs. 482/11/- and a penalty amounting to Rs. 4,826/14/- should be levied with respect to that document. Thereupon on April 5, 1950. The Deputy Commissioner, Kheri, acting as Collector passed the following order :-

> "In case the parties have any objection, they put it in writing which will be referred to the Board or Revenue."

It seems that on July 5, 1950, the respondents objected that the document was not a mortgagedeed and that no duty or penalty was payable, and further that as the document had not been till then accepted by the court, it was only a tentative document. On August 3, 1950, the judicial officer before whom the security bond was filed impounded it under s. 33 of the Indian Stamp Act, No. II of 1898, (hereinafter referred to as the Act) and apparently forwarded it to the Deputy Commissioner, Kheri, under s. 38 of the Act. It seems thereafter that in November 1950 the respondents filed further objections before Stamp Officer (Treasury Officer), Kheri, from whom the Deputy Commissioner who acts as a Collector for the purposes of the Act had called for a report. In December 1950, the Treasury Officer made a report to the effect that the view of the Inspector of Stamps was correct and duty and penalty as reported by the latter were due. The respondents' case was that the Treasury Officer did not give them any hearing before making the said report. It seems that on this report the Deputy Commissioner made the order "Realise". He also is said to have given no hearing to the respondents. In January 1951, the respondents filed a revision against the order of the Deputy Commissioner before the Board of Revenue. It appears however that in March 1951 the Deputy Commissioner referred the matter to the Board of Revenue under s. 56(2) of the Act. In July 1951 the Board of Revenue disposed of the matter and upheld the order of the Collector. But the respondents' complaint was that the Board of Revenue also did not give them a hearing. Consequently they filed a writ petition in the High Court in November 1951. That petition was

dismissed by the learned Single Judge on the ground that neither the Act nor the Rules made thereunder provided that any hearing should be given to the person who was liable to pay the deficit stamp duty and the penalty. He further held that in any case the Collector had given an opportunity to the respondents to urge their objections in writing, and that the Board of Revenue had also considered the grounds taken by the respondents in their revision-petition and there was no provision in the law requiring the Board of Revenue to give a personal hearing or a hearing through counsel in a case of this kind.

The respondents then went in appeal. The appeal court seems to have treated the matter before the Board as if it were a reference under s. 56(2) of the Act. As the learned Single Judge has pointed out, though the order of the Collector of December 1950 would usually be final, it appeared that he had chosen to make a reference to the Board of Revenue under s. 56(2). We must therefore proceed on the assumption that this case has been disposed of by the Board under s. 56(2) and not by the Collector under s. 40(1) or by the Board under s. 56(1). The appeal court under ss. 40 and 56 leave the entire matter to the opinion of the person before whom the insufficiently stamped document is produced and do not lay down any procedure for calling upon the party concerned to show cause why the document be not held to be insufficiently stamped and there was no provision under the Act or the Rules which required the authorities concerned to give any hearing to the person executing the document. The appeal court therefore held that the authorities concerned when acting either under s. 40 or s. 56 were not acting judicially or quasi judicially. The appeal court further held that even though the authorities were acting merely administratively under s. 40 and s. 56(2) they were bound to give a hearing according to the principles of natural justice, in accordance with the decision of that court in Special Appeal No. 291 of 1955, Ghanshyamdas Gupta v. The Board of High School and Intermediate Education, U.P. They therefore set aside the order of the Board of Revenue on the ground that no hearing had been given to the respondents. Thereupon on application for leave to appeal to this Court was made to the High Court, which was allowed; and that is how the matter has come before us.

The main contention of the appellant before us is that the High Court having held that the Board was acting merely administratively when proceeding under s. 56(2) of the Act went wrong in holding that it was bound under the principles of natural justice to give a hearing to the respondents. In effect the appellant in this case impugned the correctness of the view taken in Special Appeal No. 291 of 1955 (supra). That case has come up before us in appeal (C.A. 132 of 1959 Board of High School and Intermediate Education v. G. D. Gupta), judgment in which is being delivered today. We have in that case held that the examinations' committee is under a duty to act judicially when proceeding under r. 1(1) of Chap. VI of the Regulations framed under the U.P. Intermediate Education Act, (No. II of 1921), and have not upheld the view taken by the High Court that it acts administratively. A similar question arises in the present appeal, viz., whether the Board of Revenue when dealing with a proceeding under s. 56(2) of the Act acts administratively or quasi-judicially. We must make it clear that we are proceeding in this appeal on the basis that the matter before the Board was under s. 56(2) on a reference by the Collector and not under s. 56(1) on the application filed by the respondents inviting it to exercise its power of control thereunder. The contention on behalf of the respondents is that when the Board is acting under s. 56(2) of the Act it is acting quasi-judicially.

Let us therefore first look to the scheme which leads up to the reference under s. 56(2) of the Act. That sub-section provides that if any Collector, acting under s. 31, s. 40, or s.41, feels doubt 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. Section 31 deals with the case when any instrument is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable. It is then the duty of the Collector either to determine the duty (if any) with which, in his judgment the instrument is chargeable or to refer the case to the Chief Controlling Revenue-authority under s. 56(2) if he has any doubt in the matter. Section 40 deals with the case where an instrument is impounded under s. 33 or the Collector receives any instrument sent to him under s. 38(2), (subject to certain exceptions) and gives power to the Collector either to certify that the instrument is duly stamped or that it is not chargeable at all, or if he is of opinion that the instrument is chargeable with duty and is not duly stamped to require the payment of proper duty or to make up the same together with a penalty. But if the Collector is doubtful in the matter he has been given power under s. 56(2) to refer the question to the Chief Controlling Revenue-authority. Lastly under s. 41, if any instrument chargeable with duty and not duly stamped (subject to certain exceptions) is produced by any person of his own motion before the Collector within one year from the date of its execution of first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped and offers to pay to the Collector the amount of the proper duty, or the amount to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under ss. 33 and 40, receive such amount and under s. 42 certify by endorsement thereon that the proper duty has been paid. But even in such a case if the Collector is doubtful in the matter, he has been given the power to make a reference to the Chief Controlling Revenue-authority. It is clear therefore that s. 56(2) deals with cases where there is a doubt in the mind of the Collector in regard to an instrument which comes up before him under the above provisions of the Act as to the construction of the instrument and the provisions of the Act applicable to it. Such doubt itself shows that the point raised for the Collector's decision is a difficult point of law and from the very nature of the duty to be performed in such circumstances it appears clear that the Chief Controlling Revenue-authority has to decide the matter judicially and would thus be a quasi-judicial tribunal.

As pointed out by us in C.A. 132 of 1959, the question whether an authority, like the Board of Revenue, acts judicially is to be gathered from the express provisions of the Act in the first instance. Where however the provisions of the Act are silent, the duty to act judicially may be inferred from the provisions of the statute or may be gathered from the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used and other indicia afforded by the statute. It is true that in the present case the Act and the Rules framed thereunder do not provide for a hearing by the Board of Revenue, when it is dealing with a matter under s. 56(2) of the Act. But the question that is before the Board of Revenue under s. 56(2) is of the construction of an instrument and the application of the Act to it. In many cases the decision of the Board, if it goes against the person executing the instrument, may result in payment of large amounts as deficit stamp duty and even larger amounts as penalty. The question is purely a question of law in the circumstances. It seems to us, considering the nature of the duty cast on the Board of Revenue under s. 56(2) requiring it to construe instruments submitted to it thereunder and the application of the Act to them which may result in payment of heavy amounts of deficit duty and even heavier amounts as penalty, that the legislature intended that the Board of Revenue should hear the person executing the document before saddling him with large pecuniary liability. The question before the Board under s. 56(2) being one of construction of an instrument and the application of the Act to it being a pure question of law which may result in payment of large amounts by the executants of the document, it would not in our opinion be improper to hold that for the determination of such a question the legislature intended that the party affected by the decision of the Board of Revenue should be given a hearing, and that the Board should act judicially

in deciding a pure question of law. The fact that the decision will depend upon the opinion of the Board cannot in any way make any difference for the determination of questions of law must always depend upon the opinion arrived at judicially of the person or authority who has to determine it, and that will not necessarily mean that the person determining it cannot possibly be required to act judicially because he has to act upon his opinion. Further, s. 57 enforces the above conclusion. That section provides that 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 own opinion thereon to the High Court, and every such case shall be decided by not less than three Judges of the High Court to which it is referred. This provision shows that questions referred to the Board under s. 56(2) may be such complicated questions of law that the Board may not be able to make up its mind and may be in doubt and in such a case the Board has the power to refer the matter to the High Court along with its opinion, and the question has to be decided by a Bench of three Judges, where undoubtedly the hearing could not but be judicial. If therefore the hearing under s. 57 is judicial it would in our opinion be proper to infer that the hearing under s. 56(2) which deals with similar questions must also be judicial.

We are therefore of opinion that, considering the totality of circumstances and the nature of the matter to be determined by the Board of Revenue under s. 56(2), the Board has to act judicially when proceeding under s. 56(2) and must therefore on principles of natural justice give a hearing to the other party, namely, the executant of the instrument. The Board of Revenue therefore acts as a quasi-judicial body under. 56(2) and the respondents were entitled to a hearing. We therefore uphold the order of the High Court, though on a different ground.

The appeal is hereby dismissed with costs.

Appeal dismissed.

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