

Trideshwar Dayal and Another

Vs

Maheshwar Dayal and Others

Civil Appeal No. 5055 of 1989

(V. R. Krishna Iyer, L. M. Sharma JJ)

19.12.1989

JUDGMENT

SHARMA, J. -

1. This case arises out of a proceeding under the Indian Stamp Act, 1899. Special leave is granted.
2. A dispute between the appellants and respondent 1, who are members of a family, was referred to an arbitrator, who made an award on October 9, 1973, and filed the same within a few days before the civil court for making it a rule of the court. On objection by the present appellants, the prayer was rejected on March 18, 1976 and the order was confirmed by the High Court on 8, 1981 (Maheshwar Dayal v. Kantheshwar Dayal, AIR 1982 All 117) in a regular first appeal. An application for special leave was dismissed by this Court on April 18, 1983 and a prayer for review was also rejected. It is stated on behalf of the appellants that in the meantime respondent 1 applied before the Collector for summoning the award and realising the duty and penalty. A copy of the award was annexed to the application. The respondent's prayer was opposed by the appellants but was allowed by the Collector on July 15, 1983; and, on a request made to the civil court for sending the award, the civil court asked the office to do so. The appellants moved the Chief Controlling Revenue Authority under Section 56 of the Indian Stamp Act (hereinafter referred to as 'the Act') against the Collector's order dated July 15, 1983. The Authority in exercise of its revisional power set aside the impugned order of the Collector, inter alia, on the ground of lack of jurisdiction. The respondent challenged this judgment before the High Court in a writ case which was allowed by the impugned judgment dated February 27, 1989. The matter was remanded to the Collector to decide the case afresh in the light of the observation. The High Court also doubted the power of the Chief Controlling Revenue Authority to entertain the appellant's application under Section 56 of the Act. This judgment is the subject matter of the present appeal.
3. Mr. Satish Chandra, the learned counsel for the appellants, contended that there cannot be any doubt about the power of the Chief Controlling Authority to correct an erroneous order of the Collector. Emphasis was laid on the language of Section 56 suggesting its wide application. The learned counsel was also right in arguing that the Authority is not only vested with jurisdiction but has the duty to quash an order passed by the Collector purporting to be under Chapters IV and V of the Act by exercising power beyond his jurisdiction. To hold otherwise will lead to an absurd situation where a subordinate authority makes an order beyond its jurisdiction, which will have to be suffered on account of its unassailability before a higher authority. This Court in *Janardan Reddy v. State of Hyderabad* ((1951) SCR 344 : AIR 1951 SC 217) after referring to a number of decisions, observed that it is well settled that if a court acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e.,

an appeal would lie to the court to which it would lie if its order was with jurisdiction. We, therefore, agree with the appellants that the Chief Controlling Revenue Authority had full power to interfere with the Collector's order, provided it was found to be erroneous. Their difficulty, however, is that we do not find any defect in the Collector directing to take steps for the realisation of the stamp duty.

4. It was contended on behalf of the appellants that respondent 1 had no locus standi to move the Collector for impounding the award and sub-section (1) of Section 33 of the Act had no application. The learned counsel proceeded to say that in the circumstances it has to be assumed that the Collector acted suo motu under sub-section (4) of the said section and since the proviso to sub-section (5) directs that no action under sub-section (4) shall be taken after a period of four years from the date of execution of the instrument, the Collector had no authority to pass the impugned order after about a decade. In reply, Mr. G. L. Sanghi urged that the order for impounding the award was passed by the civil court itself on March 18, 1976, and the further orders of the Collector dated July 22, 1983 and of the civil court dated August 27, 1983 were passed merely by way of implementing the same. The learned counsel is right in relying upon the concluding portion of the order of the civil court dated March 18, 1976 directing the impounding of the award and sending it to the Collector for necessary action. It is true that further steps in pursuance of this judgment were not taken promptly and it was respondent 1 who drew the attention to this aspect, but it cannot be legitimately suggested that the reminder for implementing the order came from the respondent, who was motivated by a desire to salvage the situation to his advantage, further steps could not be taken. There is no question of limitation arising in this situation and it cannot be said that what had to be done promptly in 1976 could not be done later. The orders of the Collector dated July 15, 1983 and July 22, 1983 must, therefore, in the circumstances, be held to have been passed as the follow-up steps in pursuance of the civil court's direction dated March 18, 1976, and no valid objection can be taken against them. The Collector, therefore, shall have to proceed further for realisation of the escaped duty.

5. It was next contended that it in any event the Collector did not have the power to enquire into the correct valuation of the property which was the subject matter of the award. Reliance was placed on the observations in *Himalaya House Co. Ltd., Bombay v. Chief Controlling Revenue Authority* ((1972) 1 SCC 726 : AIR 1972 SC 899 : (1972) 3 SCR 332). There is no merit in this point either. The case comes from Uttar Pradesh where express provisions have been made by the insertion of Section 47-A, authorising the Collector to examine the correctness of the valuation.

6. Lastly, Mr. Satish Chandra argued that respondent 1 is taking keen interest in the present proceeding in an attempt to illegally reopen the question of making the award a rule of the court, which stood concluded by the impugned judgment of the High Court and the orders of this Court dismissing the special leave petition therefrom and he cannot be allowed to do so. The reply of Mr. Sanghi has been that this aspect is not relevant in the present proceeding for realisation of the duty and need not be decided at this stage. His stand is that an award which is not made rule of the court is not a useless piece of paper and can be of some use, say by way of defence in a suit. He said that this question will have to be considered if and when the occasion arises. Having regard to the limited scope of the present proceeding, we agree with Mr. Sanghi that we may not go into this aspect in the present case, but we would clarify the position that on the strength of the present judgment it will not be open to the respondent to urge that the effect of the High Court decision dated July 8, 1981 (*Maheshwar Dayal v. Kantheshwar Dayal*, AIR 1982 All 117) and the orders of this dismissing the special leave petition therefrom and later the review application has disappeared or has not modified.

7. The appeal is disposed of in the above terms, but the parties are directed to bear their own costs of this Court.

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