

ALLAHABAD HIGH COURT

L. Nanak Chand Mehrotra

Vs

Board of Revenue, U.P

(V Bhargava,CJ. N Beg, J.)

29.08.1957

JUDGMENT

V. Bhargava, J.

1.By this petition, under Article 226 of the Constitution, the petitioners seek issue of a writ of Mandamus directing the Board of Revenue, U. P. to make a reference to the High Court under Section 57 of the Stamp Act. The facts given in the affidavit in support of the petition show that initially the stamp duty on the document was held in accordance with the desire of the petitioners, to be Rs. 2/- only by the Collector. Subsequently there was an objection by the Sub-Registrar and the Chief Inspector of Stamps when the document was presented for registration and as a result the matter went up under Section 56 of the Stamp Act before the Board of Revenue, U. P. The Board of Revenue gave its decision holding against the petitioners and directing that the stamp duty should be charged on the document as a deed of partition and not as a deed of agreement. This decision was communicated to the petitioners under a letter dated February 2, 1957 which means that that decision was given some time before that date pr on that date. Subsequently, on 9th May, 1957, the petitioners made an application to the Board of Revenue praying that the case be stated for opinion of the High Court under Section 57 of the Stamp Act. The Board of Revenue rejected this application on the ground that there was no longer any pending case so that the Board of Revenue was unable to make a reference. It is in

view of this order that the petitioners have come up to this Court seeking the writ of Mandamus mentioned above,

2. The decision of the Board of Revenue refusing to make a reference to the High Court under Section 57 is based on the ground that at the time when the application for making the reference was made to the Board of Revenue by the petitioners, there was no pending case before the Board or before any subordinate revenue authority as required by Section 57 of the Stamp Act. The contention of the learned counsel for the petitioners is that even though the Board of Revenue had given its decision about the stamp duty leviable on or before February 2, 1957 proceedings were still pending for the realisation of duty to be levied in accordance with that order, so that there was a pending case and a reference should have been made by the Board of Revenue. We are unable to accept this contention of the learned counsel. The language of Section 57 of the Stamp Act makes it clear that reference under that section has to be made only when a case is pending in which the question about the amount of stamp duty leviable is yet to be decided. The opening words of Section 57 which are relevant, are as follows :

"The Chief Controlling Revenue Authority, may state any case referred to it under Section 56, Sub-section (2) or otherwise coming to its notice, and refer such case with its own opinion thereon....." This language makes it clear that the reference has to be made at the stage when the case having been referred to the Chief Controlling Revenue Authority or having otherwise come to its notice is still pending before it. The legislature has further laid down that when referring the case to the High Court, the Chief Controlling Revenue Authority has to refer it "with its own opinion". The question of recording its opinion can arise before the Chief Controlling Revenue Authority only in cases where the authority had not, until the time of making a reference to the High Court, already given a decision incorporating its opinion. It seems to be clear that what Section 57 contemplated is not a reference against a decision of the Chief Controlling Revenue Authority after that decision has been given. What is contemplated is that in appropriate, cases, the opinion of the High Court is to be obtained before the Chief Controlling Revenue Authority finally decides the question of the stamp duty leviable.

3. Learned counsel referred us to a decision of the Supreme Court in *The Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd*¹, R. That case does not deal with the point which has arisen in the petition before us. In that case a reference was made under Section 56 of the Stamp Act to the Chief Controlling Revenue Authority and, before that authority could give any decision, an application had been presented by the party liable to pay the stamp duty requesting the Chief Controlling Revenue Authority to either rescind the order passed by the Assistant Superintendent of Stamps against him or, in the alternative, to refer the case under Section 57 of the Stamp Act for the opinion of the High Court. When the Chief Controlling Revenue Authority refused to make a reference, the Supreme Court held that it was the duty of the Chief Controlling Revenue Authority as a public officer to do the right thing and since an important and intricate question of law in respect of the construction of a document had arisen, it was his duty to make the reference. If he omitted to do so, it was within the power, of the Court to direct him to discharge that duty and make a reference to the High Court. In the present case, no application for a reference under Section 57 of the Stamp Act was made before the Board of Revenue U. P., which was exercising the powers of the Chief Controlling Revenue Authority while the reference was still pending before that authority and consequently no duty lay upon that authority to make a reference. Of course, even without an application from the petitioners the authority could have made a reference at its discretion, but that it appears it did not consider

necessary to do. The question of the right of the petitioners to have a reference made to the High Court did not arise while that reference was still pending before that authority. Learned counsel also drew our attention to two decisions of the Madras High Court, one by a learned single Judge in *Appalanarasimhalu v. Board of Revenue*², and the other by a Division Bench reported in *Shanmugha Mudaliar v. Board of Revenue, Madras*³. There is no doubt that in both those cases, the High Court directed the Chief Controlling Revenue Authority to make references under B. 57 after decisions had been given by that authority on the question of the stamp duty leviable, but in neither of those cases did the learned Judges examine the question whether the Chief Controlling Revenue Authority was or was not bound to make a reference as no case was pending before that authority at the time when the request for the reference was made. In both the cases, the learned Judges relied on the decision of the Supreme Court referred to above. They did not take any notice of the fact that in the case before the Supreme Court the application for reference to the High Court under Section 57 of the Stamp Act had been made while the case was still pending before the Chief Controlling Revenue Authority. In the two decisions of the Madras High Court, there is no discussion at all of the question whether it was competent for the Chief Controlling Revenue Authority to make a reference under Section 57 of the Stamp Act to the High Court after that authority had already given its decision on the amount of the stamp duty leviable. In the circumstances neither of these cases is of any assistance. On the view that we have taken above, this is a case where no duty was cast upon the Board of Revenue to make a reference to this Court under Section 57 of the Stamp Act.

4. There is, consequently, no force in this petition and it is rejected.

Cases Referred.

1 AIR 1950 SC 218

21952-1 Mad LJ 641: (AIR 1952 Mad 811) KB)

3AIR 1955 Mad 304 (C)