

ALLAHABAD HIGH COURT

Ghunni Lal Burman

Vs.

Board of Revenue

Civil Misc. Case No. 210 of 1950

(Sapru and Agarwala, JJ.)

19.07.1951

JUDGMENT

Agarwala, J.

1. This is an application under Article 226 of the Constitution for the issue of a writ of certiorari of prohibition to quash an order made by the Collector of Aligarh impounding a document which was sent to him under Section 31 of the Stamp Act for his opinion as to the stamp duty payable thereon.

2. There was a partnership firm known as the New Ram Chand Cotton Mills Co. at Hathras, in the district of Aligarh. There were several partners in this firm. There were differences and disputes between them. A suit was filed by the applicant in the Court of the Civil Judge at Aligarh for establishing his rights of joint management and ether reliefs. During the pendency of the suit the matters in dispute were referred by the parties to the arbitration of L. Gauri Shanker and B. Daulat Ram. The arbitrators wanted to give an interim award on the 15th Sept. 1944 they sent a draft of the interim award with an application under Section 31 of the Stamp Act to the Collector of Aligarh for his opinion as to the duty payable on the document. The Collector asked them to deposit a fee of Rs. 5. On the 13th December 1944 the arbitrators deposited the fee of Rs. 5 and also sent the completed interim award duly executed by them on the 11th December 1944 on a stamp-paper of Rs. 9/6/0 In the application accompanying this completed award the arbitrators asked the Collector to determine the amount of stamp duty payable so that if the amount already paid on the instrument was insufficient they might make good the deficiency. After reference to the Board of Revenue, the Collector informed the arbitrators on the 12th July 1948 that a sum of Rs. 24,778/2/0 was payable on the instrument, the instrument being treated as an award directing a partition of joint property. The arbitrators and the parties concerned had treated the instrument as merely a conveyance of certain shares of property to certain parties. As a conveyance, the instrument required a lesser amount of stamp duty. Upon receipt of the

Collector's opinion, the arbitrators applied to him for the return of the document because the parties did not intend that it be acted upon. They also mentioned that the document could not be registered because a period of more than three months had elapsed after the execution of the document and, as such, the document had become useless.

3. The Collector referred the matter to the Board of Revenue suggesting that the document should be impounded under Section 33, Stamp Act, and that an action be taken for recovery of duty and penalty under Section 48 of the Act. The Board of Revenue agreed with this suggestion and informed that the document might be impounded and the duty and the penalty recovered as proposed by him. On the 20th August 1949, the Stamp Officer Aligarh, instructed the Tahsildar of Hathras to recover the deficit stamp duty of Rs. 24,768/10/0 and penalty of Rs. 5 from the various partners of the firm. The petitioner moved the Board of Revenue for reconsideration of its opinion but the application was rejected. The petitioner alleged that he was not given an opportunity of being heard before the penalty was imposed upon him.

4. In this application the petitioner contends that the document having come in the possession of the Collector for opinion under Section 31 of the Act, he had no jurisdiction to impound it under Section 33 of the Act. In our opinion, this contention is well founded. Section 33 runs as follows:

"(1) Every persona having by law or consent of parties authority to receive evidence, and every person in charge of a public office except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same"

5. The question is whether the document in question was "produced or came before the Collector in the performance of his functions" At first sight it would appear that a Collector receiving a document to determine the amount of stamp duty payable upon it is a person in charge of a public office and performs the function cast upon him under the Stamp Act. Looking closely, however, we think that the phrase "produced or comes in the performance of his functions" as used in Section 33, could not have been intended by the Legislature to include the performance of functions by a Collector under Section 31. Under Section 33 the officer concerned is under a duty-the word used is 'shall' - to impound the document as soon as the document is produced or comes before him and it appears to him that it is not duly stamped.

6. Sections 35, 38 and 40 then prescribe the procedure which is to be followed in cases in which a document has been impounded under Section 33 Except in the case of documents written in contravention of Section 13 or 14, there is no provision under which a penalty, which is payable under the provisions of Section 40 may not be imposed in respect of the impounded instrument. The provisions of Section 31, however, are entirely different. An instrument, whether executed or not and whether previously stamped or not, may be presented to the Collector to have his opinion

as to the duty with which it is chargeable. The petitioner has to pay a fee as may be required not exceeding Rs. 5 before the amount of duty payable is determined. The Collector is then enjoined to determine the duty.

7. Under Section 32, the Collector is bound to certify by endorsement on such instrument.

(a) if he determines that the document is fully stamped or

(b) if the duty determined by the Collector under Section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, that the full duty with which it is chargeable has been paid.

8. There are certain provisos to Section 32 under which no endorsement may be made in certain contingencies e. g. when the document is presented to the Collector after the expiration of one month from the date of its execution in a case of a document executed in British India, and after the expiration of three months in a case of a document executed out of British India. The section does not provide for the contingency which has arisen in the present case, namely, when the Collector determines that the document is not sufficiently stamped and the applicant does not make good the deficiency.

9. It is clear, however, after reading Sections 31 and 32 that when an instrument is presented to the Collector for his opinion as to the duty chargeable upon it, he is not authorized to impound the document forthwith if he comes to the conclusion that the instrument is not sufficiently stamped. It would appear that it is his duty to determine the stamp duty payable upon the instrument. If the applicant pays the deficiency, if any, and if the conditions mentioned in Section 32 are fulfilled, the Collector is then bound to make an endorsement on the document that it is sufficiently stamped. He cannot impound the document and cannot impose a penalty, as he is bound to do under Section 33 read with the subsequent sections already mentioned. The procedure provided in Section 31, therefore, is inconsistent with the procedure provided in Section 33 and subsequent sections. It appears to us, therefore, that when the Legislature used the phrase "is produced or comes in the performance of his functions" in Section 33, it was not intended that the production, or coming before an officer, of an instrument under Section 31 was to be included. In our opinion, the phrase means production of the instrument concerned in evidence or for the purpose of placing reliance upon it by one party or the other. In any case, the expression used in Section 33 does not, in our opinion, cover a case falling within the purview of Section 31.

10. There is another aspect of the question under Section 33, as the officer concerned is under a duty to impound an instrument if it appears to him that it is not duly stamped, he must do so when the document is produced before him or comes before him in the performance of his functions. As soon as the performance of his functions during which the document was produced before him or came before him is over, he will have no jurisdiction to act under Section 33. In other words, after an officer has become *functus officio*, he cannot impound a document which

was produced at a time when he was performing his functions, vide *Collector, Ahmednagar, v. Rambhau Tukaram*¹, and *Paiku Kashinath v. Gaya*², Even if we were to hold that the instrument in question was produced or came before the Collector "in the performance of his functions", the Collector became functus officio after he had determined the duty under Section 31 and the applicant had intimated to him that he was not prepared to make good the deficiency. After the intimation by the applicant, the Collector had no function to perform under Sections 31 and 32 and, as such, he was not entitled to impound the document purporting to act under Section 33. For both these reasons, in our opinion, the Collector acted in excess of his jurisdiction in impounding the document. It is obvious that the applicant has no other remedy for getting redress.

¹ AIR 1930 Bom 392

² AIR 1949 Nag 214

11. We, therefore, quash the order of the Collector impounding the instrument in question and also the order dated 20-8-1949 directing that the deficit stamp duty and penalty may be recovered from the applicant.

12. In the circumstances of the case, we order that the parties should bear their own costs.
Order quashed.