

# CALCUTTA HIGH COURT

Eastern Manganese and Minerals

Vs.

State of W.B

Civil Rule Nos. 2419 and 2420 of 1957

(G.K. Mitter, J.)

02.09.1959

## ORDER

**G.K. Mitter, J.**

1. This is an application by the Eastern Manganese and Minerals (Private) Limited, a company carrying on business at 4 Lyons Range, Calcutta, to direct the Board of Revenue to state a case to this Court under Section 57 (1) of the Indian Stamp Act. The application is made under Article 226 of the Constitution for the issue of a Writ of Certiorari calling upon the respondents the State of West Bengal, the Board of Revenue and the Collector of Stamp Revenue to certify and send the proceedings had before them to this Court for the purpose of examination and for setting aside and/or quashing the same, a Writ of Mandamus commanding the respondents and each of them to cancel forthwith and/or withdraw and/or forbear from giving effect to the orders referred to in paragraph 12 of the petition and other reliefs.

2. The facts are shortly as follows : The petitioner company entered into an agreement with another company called the Chrestian Mica Industries Ltd., on 22-8-1956 whereby the petitioner agreed to purchase for a consideration of Rs. 24 lakhs all the mining and surface rights and mines, lands, hereditaments and premises described in the Schedule to the deed as also the development and ore reserves together with all buildings, machinery, plants, implements etc. The agreement recited that the consideration money would be apportioned and appropriated towards immovable and movable properties comprised in the sale in such a manner as the parties would consider proper. Pursuant to the above agreement, it is stated, the consideration money of Rs. 24 lakhs was apportioned as between several subjects of sale in the manner following, namely, Rs. 12 1/2 lakhs towards the mica mining and surface rights and mines in the said lands, mouzas, villages, hereditaments and premises and buildings and ore reserves and all other immovable properties and Rs. 11 1/2 lakhs towards all machinery, plants, implements and other movable properties, effects and things.

3. On 18-9-1956, it is stated, the vendor company delivered possession to the petitioner of all the movable properties including the machines, plants, implements etc. and title to the same passed by delivery of possession of these movables. On 4-11-1956 the petitioner sent to the

Superintendent of Stamps, Calcutta Collectorate a transfer deed from the vendor to the petitioner for adjudication of the stamp duty payable thereon under Section 31 of the Stamp Act. It was mentioned in that letter that the consideration for the transfer of Rs. 24 lakhs was to be paid in instalments including Rs. 7,50,000/- in part satisfaction of a mortgage created by Trust Deed dated 12-9-1946 mentioned in the engrossed document.

4. On 6-11-1956 the Collector passed his order on the application. In the said order lie recorded that the conveyance included the sale of both movables and immovables and the test to determine whether a document is a conveyance was to find out whether the intention of the party was that the document should be the sole repository and appropriate evidence of the transaction of sale. It was further noted that from the text of the conveyance the sale price for both movables and immovables was fixed at Rs. 24 lakhs to be paid over a period of 12 years only and the sale price of movables being stated to be Rs. 11,50,000/- to be paid later. Therefore, the duty should be paid on the whole amount of Rs. 24 lakhs.

5. The document of conveyance which was executed on 8-11-1956 between Chrestien Mica Industries Limited and the petitioner is Annexure-E to the present petition. It recites the title of the vendor, the agreement of 22-8-1956, the clause in the agreement as to the apportionment of the consideration between the several subjects of sale, the actual splitting thereof, the delivery of possession of the plants, implements and other movables by the vendor to the purchaser which were described as not intended to pass by the document and the sanction of the Government of Bihar to the transfer and assignment. The material part of the document reads as follows :

"Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the said sum of Rupees twelve lacs and fifty thousand paid and to be paid in manner following, that is to say, as to Rupees ten thousand paid on the twenty-second day of August one thousand nine hundred and fifty six as to Rupees forty thousand paid on or before the execution of these presents (the receipts of which two sums are hereby acknowledged) and as to the balance of Rupees twelve lacs and also Rupees eleven lakhs and fifty thousand to be paid in manner hereinafter mentioned and appearing the Vendor Company doth hereby assign, issue and transfer unto the Purchaser Company all those the Vendor Company's mining and surface rights and mines in and upon the lands mouzahs villages hereditaments and premises described in the said schedule hereto and all other rights privileges and advantages comprised in the said Instruments and Indentures of Lease mentioned in the said Schedule to have and to hold the said mining and surface rights and mines in the lands mouzas villages etc. unto the Purchaser Company for the residue of the now unexpired period of the said Indenture of lease.

6. It appears to me, therefore, that the consideration for the transfer of the vendor's mining and surface rights was not only Rs. 12,50,000/- paid and to be paid in the manner indicated but also a sum of Rs. 11,50,000/- to be paid in the manner thereafter mentioned. The document, therefore, was one for 24 lakhs of rupees and it appears to me that the adjudication of the Collector under Section 31 of the Stamp Act was quite right and proper.

7. Not being satisfied with the said adjudication, the petitioner filed an application under Section 57(1) of the Indian Stamp Act before the Board of Revenue and prayed for refund of the stamp

duty amounting to Rs. 17,250/- representing the duty paid on the sum of Rs. 11,50,000/- for the movables and alternatively requested the respondent No. 2 to refer the matter to this Court for a decision on the said question. On 15-7-1957 the Board of Revenue rejected the petitioner's application on the ground that it was inadmissible. A copy of the order conveying the Board's decision is annexed to the petition and marked "G".

8. The petitioner's complaint is that the Board of Revenue had not only a power under Section 57 (1) of the Act but a duty under the said section to refer the question of determination of the stamp duty payable on a document of this kind by this Court. According to the petitioner, the question is one of construction of a document and a serious question of law.

9. Mr. Mukherjee, learned Advocate for the petitioner drew my attention to several sections of the Stamp Act and to a decision of the Supreme Court in the case of *Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd*<sup>1</sup>.

10. Before referring to this decision it will be useful to refer to a few sections of the Indian Stamp Act to see when and in what circumstances a reference under Section 57 (1) of the Act can be demanded by an aggrieved party. Under Section 17 of the Act, "All instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution". Under sub-section 31 (1),

"When any instrument, whether executed or not and whether previously stamped or not, 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 and pays a fee of such amount (not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable".

Under sub-section (2),

"The Collector may require to be furnished with an abstract of the instrument and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable are fully and truly set forth therein."

11. Under Section 32 (1).

"When an instrument brought to the Collector under Section 31 is, in his opinion, one of a description chargeable with duty, and

(a) the Collector determines that it is already fully stamped, or

(b) 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

<sup>1</sup>1950 SCR 536

determined, has been paid, the Collector shall certify by endorsement on such instrument

the full duty (stating the amount) with which it is chargeable has been paid."

Under sub-section (2), when, according to the opinion of the Collector, the instrument is not chargeable with duty, he shall certify to that effect. Under sub-section (3),

"Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise and may be acted upon and registered as if it had been originally duly stamped."

Sections 31 and 32 of the Act are contained in Chapter 3. Chapter 4 of the Act contains Sections 53 to 48. Under Section 33(1) :

"Every person 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."

Under Section 35 :

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped."

Section 38 provides as follows :

"38 (1). When the person impounding an instrument under Section 33 has by law or consent of parties, authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by Section 37, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of duty and penalty levied in respect thereof and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, the person so impounding an instrument shall send it in original to the Collector."

Under Section 39, when a copy of an instrument is sent to the Collector under Section 38 (1), he may, if he thinks fit, refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument. Under Section 40 (1) :

"When the Collector impounds any instrument under Section 33, or receives any

instrument sent to him under Section 38 (2), he shall

(a) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be, or

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five

Under Section 45 (1) :

"Where any penalty is paid under Section 35 or Section 40, the Chief Controlling Revenue authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(2) Where, in the opinion of the Chief Controlling Revenue-authority, stamp duty in excess of that which is legally chargeable has been charged and paid under Section 35 or Section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess."

Sections 56 and 57 appear in Chapter 6 of the Act. Under Section 56(1) :

"The powers exercisable by a Collector under Chapter IV and Chapter V shall in all cases, be subject to the control of the Chief Controlling Revenue-authority.

(2) If any Collector, acting under Section 31, Section 40 or Section 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.

(3) Such authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision."

Under Section 57 (1), the Chief Controlling Revenue authority may state any case referred to it under Section 56 (2), or otherwise coming to its notice and refer such case with its own opinion thereon, if it arises in a State, to the High Court for that State.

12. Under Section 59, the High Court upon hearing of any such case shall decide the question raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded.

13. Under Section 60, power is given to Courts other than those mentioned in Section 57, in case any doubt is felt as to the amount of duty to be paid in respect of any instrument under proviso to Section 35, to draw up a statement of the case and refer it to the High Court with his own opinion

thereon as if it was a reference under Section 57 of the Act.

14. The facts of the case cited by Mr. Mukherjee were as follows. The Maharashtra Sugar Mills Ltd. had borrowed money from the Central Bank of India for the purpose of its business. In order to secure the loan, a document was executed on 22-3-1945 with a stamp of Rs. 16-8-0 only on the footing that it was a deed of hypothecation without possession of the goods. When the deed was sent to the Sub-Registrar for registration, he impounded the same and sent it to the Stamp office. The Assistant Superintendent of Stamp wrote to the respondent that the document was a mortgage with possession, chargeable with duty under Article 40 (a) of the Schedule to the Act and inquired why it was not duly stamped before execution. The respondent's solicitor contended that the document was never intended by the parties to be a mortgage with possession. The Assistant Superintendent intimated that the document was chargeable with a duty and a penalty of Rs. 5,000/- has been imposed. On 27-7-1945 the respondent filed a suit against the Bank contending that the document was not a mortgage with possession. It was alleged that since a doubt had arisen as to whether the document gave effect to the common intention of the parties the Court's direction was sought for and if the Court found that the document as framed did not give effect to the said common intention of the parties, the instrument may be rectified. On 9-8-1945 the respondent's solicitor informed the Assistant Superintendent of the institution of the suit and requested that the demand for payment of stamp duty and penalty might not be pressed. This was, however, not acceded to. On 25-1-1946 the suit filed by the respondent was disposed of and the rectification as prayed was ordered. The respondent's solicitors immediately intimated the result of the suit to the Assistant Superintendent and sent a copy of the deed showing the rectifications made in the original document. On 1-2-1946 the solicitors inquired of the Assistant Superintendent as to whether he was agreeable to make a reference under Section 56 (2) to the appellant as the question of liability to pay the stamp duty and penalty involved important questions of law. A petition on behalf of the respondent to the appellant was also filed on February 5, in which it was prayed that either the order of the Assistant Superintendent of Stamps be rescinded or in the alternative a case may be referred under Section 57 of the Act for the opinion of the High Court. The petition was rejected. The respondent thereupon filed a petition in the High Court on 19-7-1946, praying for the issue of a writ of certiorari and an order under Section 45 of the Specific Relief Act. Blagden J. directed the appellant to state a case under Section 57 of the Stamp Act to the Court for its opinion and the appellant filed an appeal but failed and then he preferred an appeal to the Supreme Court. On behalf of the appellant it was urged that the Chief Controlling Revenue-authority could not be compelled to state a case and it only had a discretion in the matter of stating a case under sub-section (1) of Section 57. Kania C. J. in delivering the judgment of the Court observed that the absence of the words "feels doubt as to the amount of duty to be paid" in respect of an instrument under Section 57 as contrasted with Section 56 supported the view that the reference contemplated in the first mentioned section was not for the benefit of the appellant only but enured also for the party affected by the assessment. He also held that the power contained in Section 57 was in the nature of an obligation or was coupled with an obligation and in the circumstances could be demanded to be used also by the parties affected by the assessment of the stamp duty. It appears that Mr. Daphtary appearing on behalf of the appellant argued that the scheme of the Stamp Act was different from that of the Income-tax Act and whereas under the Income-tax Act there was a duty cast on the authorities to state a case, there was no corresponding duty under the Stamp Act. This was not accepted by the Supreme Court. They referred to the judgment of the Privy Council in *Alcock, Ashdown and Co. Ltd. v. Chief Controlling Revenue Authority*<sup>2</sup>, and observed that the provisions of Section 51 (1)

and (3) of the Income-tax Act construed by the Judicial Committee ran on the same lines as Section 59 of the Stamp Act. The Supreme Court, therefore, took the view that

<sup>250</sup> Ind App 227

even if the Chief Controlling Revenue Authority did not himself feel that the case was one which called for a statement to be made to the High Court, if it was made to appear to the latter Court that the Chief Controlling Revenue Authority had notice that the case involved serious questions of law, it was his duty to state a case for the opinion of the High Court and if he failed in that duty he could be compelled to perform it.

15. The learned Government Pleader does not contend that the High Court cannot in a proper case call upon the Chief Controlling Revenue Authority to state a case, but his contention is that where a party applies under Section 31 for adjudication of stamp duty payable on an instrument and pays the duty found payable by the Collector, he cannot, under the Act, ask the Chief Controlling Revenue Authority to state a case for the opinion of the High Court. He relies on a judgment of Rankin C. J. in the case of *In re, Cook and Kelvey*, ILR 59 Cal 1171 : (AIR 1932 Calcutta 736 (SB)). The facts in that case were practically identical with the facts in the case before me. A certain document after it had been executed was brought to the Collector under Section 31 of the Stamp Act for his opinion as to the duty with which the instrument was chargeable. The Collector made an order that the document was chargeable under Article 40 clause (b) and gave his reason for holding that it did not come under clause (c) of that Article. The petitioner applied to the Board of Revenue asking the Board of Revenue to override or interfere with the ruling of the Collector and come to a decision favorable to the petitioner. The Board of Revenue thereupon purported to exercise its power under Section 57 of the Act. Rankin C. J. observed that the case was not one where it could be said to have been referred under sub-section (2) of Section 56 and it must therefore come under Section 57, if at all, by reason of the words "or otherwise coming to his notice". He observed :

"Now, it is well held in all the High Courts that, unless the revenue-authority has still resting upon it the duty of disposing of a case, it is not intended by the statute that it should have a right to make a reference to the High Court. The opinion of the High Court is merely to guide it in disposing of an actual and concrete case."

According to His Lordship, the general power of control given to the Chief Controlling Revenue Authority was contained in sub-section (1) of Section 56 under which the power exercisable by a Collector under Chapters IV and V were to be subject to the control of the Chief Controlling Revenue Authority. Chapter III which contains Sections 31 and 32 is not mentioned in Section 56 and therefore the learned Government Pleader contended that Section 56 (1) does not embrace a case falling within Section 31 or Section 32. That is the view which was taken by Rankin C. J. He said :

"Turning, therefore, to the consideration of the case under Section 31, it has to be observed that under that section, the instrument may or may not have been executed and it may be brought to the Collector merely for the purpose of getting a decision. It may be that, after the decision, the parties will come to the conclusion that the instrument should not be entered into at all. It may be that they will still come to the conclusion that the instrument should be entered into and that other steps will have to be taken. The present

instrument is an instrument which was executed and when it was brought to the Collector for his opinion, the subjects were in this position that either they could go on and pay under Section 32, what the Collector required or they would be liable to have the Collector exercise his powers under Section 33 to impound the instrument and commence proceedings under Section 40 to compel payment of the amount chargeable. Without complying with the Collector's order and without attempting to get a certificate under Section 32 which could only be got by a payment, the subjects in this case applied to the Board of Revenue omitting to notice that, under Section 56, the Board of Revenue had no controlling power over the Collector at that stage."

His Lordship concluded that in his judgment it was not shown that any duty lay on the Board of Revenue making it obligatory on its part to ask the High Court to decide the matter. According to His Lordship :

"I am quite clear that the wide words "or otherwise coming to its notice" can only be given effect to in cases where the concluding words of Section 59 can also be given effect to. This somewhat narrow and technical difficulty is one which is capable no doubt of removal. It would be very easy for the Collector to impound the document and a case to be commenced under Section 40; and, according to the ruling given in the case of Reference under the Stamp Act, ILR 25 Mad 752, the Board of Revenue would be able to intervene in such a proceeding if it intervened before it was completed."

16. The judgment of Rankin C. J. has been followed in a recent case of the *Allahabad High Court Board of Revenue v. Lakshmipat Singhania*<sup>3</sup>, There the Court took the view, after examination of sections of the Stamp Act mentioned and in view of the judgment of Rankin C. J., that there being no case pending before the Chief Controlling Revenue Authority within the meaning of Section 57 (1), the reference could not be entertained.

17. It is regrettable that a party who pays the stamp duty after adjudication by the Collector does not seem to have any right given to him under the Act of getting a decision of the High Court on the proper amount of duty payable on the instrument. If he wants to get an adjudication on this point, it would appear from the different sections noted above and the judgment of Rankin C. J. that he has to have the document impounded and then make an application to Chief Controlling Revenue Authority, if he is not satisfied with the decision of the Collector, under Section 56 (1) of the Act and only then he can bring himself under the provisions of Section 57 of the Act to call upon the Revenue Authority to state a case, if the Revenue Authority does not do it himself. This is, however, a matter for the Legislature to consider and the Act being as it is, I hold that when an adjudication as to proper stamps payable has been made under Section 31 of the Act and the duty is paid, without getting the document impounded under Section 33 or when the document is not sent to the Collector under Section 38 (2), there is no case pending before the Chief Controlling Revenue Authority and the Chief Controlling Revenue Authority cannot state a case itself for the opinion of the Court and cannot similarly be asked to state a case for the opinion of the Court.

18. Quite apart from all this, it appears to me that there is no serious question of law to be tried in this case. As I have already said, the consideration for the transfer of the immovable property was not only 12 1/2 lakhs but the whole of 24 lakhs, according to the document and the Collector cannot therefore be blamed for having come to the

<sup>3</sup> AIR 1958 All 417 (SB)

conclusion he did. This, however does not affect the maintainability of the application as to whether it lies under Section 57 (1) of the Act.

19. The Rule is accordingly discharged. There will be no order as to costs.

Civil Rule No. 2420 of 1957

20. The other case, being Civil Rule No. 2420 of 1957, is covered by the same judgment and the Rule will be discharged without any order as to costs.

Rules discharged.