

MADHYA PRADESH HIGH COURT

Premier Vegetable (Pvt.) Ltd

Vs.

State (MP)

M.P. No.236 of 1982

(V.D. Gyani, J.)

04.02.1986

ORDER

V.D. Gyani, J.

1. By this petition under Article 226 of the Constitution of India, the petitioner prays for a writ, quashing the order dt.28-8-81 (Annexure-D) passed by the respondent No.3 in Revision No.81-11/78 as also the order dt.14-4-78 (Annexure-C) passed by the S D.O. Jaora in Revenue Case No.35-C-132/75-76.

2. That M/s. Jaora Oil Mills Jaora was sold by auction and the petitioner purchased the same for Rs. 5,61,000/- on 7-2-76. The sale-certificate issued in favour of the petitioner is filed as Annexure-A to the petition. A copy of the sale-certificate was sent to the Sub-Registrar Jaora for registration. "The petition was filed on 16-4-82 and the petitioner's initial averment was to the effect that the Sub-Registrar sent it (copy of the sale-certificate) to the Sub-Divisional Officer who was invested with the powers of Collector for recovery of stamp duty of Rs. 47,685/-from the petitioner. "It was averred that the Sub-Registrar registered the copy of the sale-certificate by filling it in Book No.1 and sent its copy to the Sub-Divisional Officer, Jaora. This amendment has a material bearing as will be presently seen. The S.D.O. Jaora issued a notice to the petitioner calling upon him to show cause why the stamp duty be not deposited by him. Petitioner filed an objection Annexure-B and after hearing the petitioner, the respondent No.2 passed an order dt.14-4-78 (Annexure-C,) directing the petitioner to pay the stamp duty. The petitioner preferred a Revision Petition under section 56 of the Stamps Act, before respondent No. 3 against the order dt.14-4-78 (Annexure-C) The Revenue Board was of the view that revision should have been filed before the Commissioner and the petition was returned for proper presentation. Aggrieved by this

order dt.23-5-78, the petitioner filed a writ petition being M.P.No.169/78 which was allowed by this Court by order Dt.4-10-80 and the respondent No.3 was directed to dispose of the revision petition, in accordance with law. In compliance of this direction, the revision petition was Heard by respondent No. 3 and dismissed the same on 28-8-81 holding that stamp duty was chargeable on the certificate of sale and the petitioner was liable to pay the same. The petitioner has, therefore, now preferred the present petition praying for quashing both the orders as passed by the S. D. O. (Annexure-C) and the Revenue Board (Annexure-D).

3. Sri M. A. Khan learned counsel for the petitioner has raised the following points :

1. That the Sub-registrar Jaora was not competent to impound the sale-certificate and send the same to the respondent No. 2 the Sub-Divisional Officer for recovery of stamp-duty.
2. The reference by Sub-Registrar Jaora being itself illegal, the order passed by the Sub-Divisional Officer on 14-4-78 (Annexure-C) was without jurisdiction and for the same reason the order Annexure-D passed by the respondent No. 3.
3. The sale certificate having been issued under section 147 of the M. P, Land Revenue Code, not providing for payment of stamp-duty, as it was exempted there from the respondent No. 2 had no power to order recovery of stamp-duty.
4. That Section 29(f) of the Stamp Act is not applicable to the sale-certificate.
5. That the Sub-Registrar having filed the sale-certificate in Book No. 1, he had no jurisdiction either to impound it or request the Collector to recover the requisite stamp-duty from the petitioner.
6. Lastly, the instrument had not come before the Collector in the performance of his functions. He could neither impound it nor had he the jurisdiction to ask the petitioner to pay the stamp-duty without impounding the same.

4. Sri A. H. Khan learned Government Advocate appearing for the State and other respondents submitted that the Sub-Registrar was competent to impound the sale-certificate. The provisions of M. P. Land Revenue Code, 1959 merely prescribe a procedure for recovery of government dues as arrears of land revenue and have no application to the payment of stamp-duty as the same is governed by the provisions of the Stamp Act. According to the learned Government Advocate on true and proper construction of Article 18 of Schedule 1 of Stamp Act and the definition contained in Clause 14 of Section 2, the expression instruments, as defined in the Act, justifies the

orders passed by the respondents 2 and 3.

5. It would not be out of place to mention here as the learned counsel for the petitioner laid great stress on fact that the document in question had already been entered into Book No. 1. The respondent filed an affidavit dt. 19-8-85 by Vimalchand Godha who was the Sub-Registrar Jaora at the material time. He has explained the circumstances in which the sale-certificate was entered in Book No. 1 at serial No. 128 of 1976 on 6-5-76. According to him as the certificate was received by post, he without verifying the fact whether stamp-duty has been paid or not entered the same. He has further averred that had it not been received by post, and had it been presented for registration by somebody present in person, he would have definitely enquired about the stamp-duty. He has further stated on oath, that it was by *bona fide* mistake that he entered the sale-certificate in Book No. 1 and on realizing this mistake, he wrote a letter No. 199 dt. 5-7-76 enquiring of the Sales-tax Officer, Ratlam about the payment of Stamp Duty but no reply was received from him. Thereafter on 15-7-76, he informed the respondent No. 2 about the recovery of stamp-duty amounting to Rs. 47,685/- from the petitioner. This affidavit has not been controverted by the petitioner.

6. Before proceeding to consider the submission made by the learned counsel for the petitioner, it is worth-while to note that the petitioner on being noticed, had submitted that the sale-certificate issued by the Sales-Tax Officer-cum-Additional Tehsildar, Ratlam in his favour was defective and he prayed for time to get the same corrected by the Sales-tax Officer, who at the time of auction had promised the petitioner that he would not be required to pay any amount by way of stamp-duty etc. Subsequently thereafter by another application, an objection was raised that after issuance of the sale-certificate stamp-duty could not be recovered. (Ref. Annexure-C para, 1, Ann- P. Para 2). Thus, it will be seen that initially even the petitioner before the S.D. O. had taken shelter behind the promise allegedly made by the Sales-tax Officer with regard to the payment of stamp-duty. Whether Section 147 of the M. P. Land Revenue Code in terms or by implication exempts sale-certificate from stamp-duty? It was contended by the learned counsel that in case of sale of property by auction, for recovery of government dues, no stamp-duty as such payable on the sale of property for the recovery of such dues and Section 147 has been referred to by the learned counsel. This point was urged before the Board and has been rightly concluded that Section 147 of the M. P. Land Revenue Code merely prescribes a procedure of recovery of government dues. So far as the question of payment of stamp-duty is concerned, the

same is governed by the separate, Act. At any rate, there is no scope for interference on this count.

7. Learned counsel for the petitioner on the basis of Clause 12 of Section 17(2) contended that the sale-certificate granted to the purchaser of any property sold by public auction by Civil or Revenue Officer, is exempt from registration. But this exemption from registration does not mean exemption from stamp-duty if a document which is not compulsorily registrable is submitted for registration. Sub-section(2) of Section 17 of the Registration Act is preceded by Sub-section(1) (a), (b) and (c). Sub-section (2) thereof enumerates certain documents to which sub-section 1 (b) and (c) of the Registration Act is not applicable, (b) and (c) are non-testamentary instruments which purport to declare and assign limit or extinguish whether in present or in future any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property; and (c) enumerates non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest, and such instruments are documents of which registration is compulsory as the title of this part suggests "of registrable documents."

A certificate of sale is granted by Civil or Revenue Officer is a registrable documents though not required to be compulsorily registered, but once it is submitted for registration, it cannot be said that such document is exempt from stamp-duty. The, petitioners insistence for having the document registered, is evident from the record. It is not for pure academics that the orders Annexures-C and D are sought to be quashed. It is also an admitted fact that the sale-certificate issued by the Sales-tax Officer was sent by post for registration. It was contended that in view of Section 29(f) no stamp-duty could either be levied or was leviable. Section 29(f) of the Stamp Act reads as follows :-

29. "Duties by whom payable-In the absence of an agreement to the contrary, the expenses of providing, the proper stamp shall be borne :-'

(a) In the case of any instrument described in any of the Following articles of Schedule, I namely :-

No. 2 (Administration Bond),.

No. 6 (Agreement relating to Deposit of Title deeds, pawn or pledge.),

No. 13. (Bill of Exchange,).

No. 15. (Bond),
No. 16. (Bottomry Bond),
No. 26 (Customs Bond),
No. 27 (Debenture),
No. 32 (Further Charge),
No. 34 (Indemnity Bond),
No. 40 (Mortgage-deed),
No. 49 (Promissory Note),
No. 55. (Release), No. 56 (Respondentia Bond),
No. 57 (Security Bond or Mortgage Deed),
No. 58 (Settlement),
No. 62(a) (Transfer of Shares, in an incorporated company or other body corporate),
No. 62(b) (Transfer of debenture, being marketable securities whether the debenture is liable to duty or not, except debentures provided for by Section 8),
No. 62(c) (Transfer of any interest secured by a bond, mortgage deed or policy of insurance;
by the person drawing, making or executing such instrument:
(b) in the case of a policy of insurance other than fire insurance by the person effecting the insurance :
(bb) in the case of a policy of fire insurance - by the person issuing the policy :
(c) in the case of conveyance (including a reconveyance of mortgaged property - by the grantee; in the case of a lease or agreement to lease - by the lessee or intended lessee;
(d) in the case of a counter-part of a lease-by lessor :-
(e) in the case of an instrument or exchange-by the parties in equal shares;
(f) in the case of a certificate of sale - by the purchaser of the property to which such certificate relates;"

It is thus, clear that in event of a sale-certificate, sought to be registered the expenses of stamp-duty are to be borne by the purchaser of the property to which such certificate relates. The contention, that Section 147 M. P. Land Revenue Code, 1959 though a later legislation yet not providing for such an eventuality, the purchaser, of property in this case, the petitioner cannot be burdened with the stamp-duty, payable under the law. The learned counsel, urged that the two provisions 29(f) of the stamp Act and Section 147 of the M. P. Land Revenue Code are repugnant. The omission,

under section 147 as regards the liability of the purchaser of property, to pay the stamp-duty is indicative of the legislative intent that the purchaser is not liable to pay such duty, this argument cannot be accepted. Firstly, the Stamp Act is a central legislation and secondly, because Section 147 Land Revenue Code merely confines itself with the process for recovery of arrears, it cannot be said to be a comprehensive provision, which covers registration of the sale-certificate and the stamp- duty payable thereon. There being separate enactments, for the purpose, the question of registration and payment of stamp-duty should be governed by the respective enactments.

8. It was also contended by the learned counsel for the petitioner that once the Sub-Registrar, had made entries in the Book No. 1 the registration was complete and nothing remained to be done thereafter.

9. The facts that the Sub-Registrar, by a *bona fide* mistake made by the entry in Book No. 1 as sworn by him his affidavit filed in this court cannot be over-looked.

10. There is neither any inconsistency nor any repugnancy between the two provisions Section 29(f) of the Stamp Act and Section 147 of the M. P. Land Revenue Code.

11. Sri M. A. Khan next argued that having entered the sale certificate in the Book No. 1 the Sub-Registrar became functus-officio and had no jurisdiction even to refer or report the matter to the Collector, who in turn could not legally impound it. It is also contended that without impounding the Stamp duty could not be asked for or demanded. The learned counsel has placed reliance on a judgment of this court as reported in *Komalchand v. State*.¹ It was a reference under section 57 of the Stamp Act, and the following two questions were referred by the court for its opinion and the court by majority held :

- 1) "Where after the registration of a document the registering authority can hold an enquiry regarding the value of the property covered by the deed and call upon the executants to pay the deficit stamp duty?.
- (2) "Whether the stamp-duty payable on the deed executed by the petitioner Komalchand is as for a partition deed or for a settlement deed?."

12. The learned Government Advocate submitted that the petitioner has tried to confuse the whole issue. Annexure-A is the letter dt. 15-7-76, which the Sub-Registrar, wrote to the Sub Divisional Officer Jaora. It is contended by him that the sale-certificate was filed by the Sub-Registrar in Book No. 1 in compliance of Section 89(4) of the Registration Act which reads as follows :-

Section 89(4) "Every Revenue Officer granting a certificate of sale to the purchaser of immovable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1".

This letter Annexure 'A' has been filed relied upon and filed by the petitioner. It clearly contains, a recital, that without verifying or ascertaining the payment of Stamp-duty the sale-certificate was filed in Book No. 1. Sub-Registrar concerned has also sworn an affidavit dt. 19-8-85 admitting the mistake committed by him.

13. The learned Government Advocate also referred to para 239 of the M. P. Registration Manual which provides for the course of action to be followed in such an eventuality.

239(1) "It is noticed that through ignorance or oversight on the part of R. Os. many insufficiently stamped documents are registered and returned to presenters. The amounts involved are usually small but it may happen that Government loses a considerable sum in duty and registration fee. In order to safeguard Government revenue it is necessary that they should be reported to the D. C. with a copy of the document prepared from the records of the registration officer for considering the desirability of launching a prosecution under Section 62(1)(b) of the Stamp Act, 1899 and of according his sanction thereto under Section 70. Before according his sanction to the prosecution under Section 70 of the Act, the D. C. should serve the executant with a notice (i) to produce the document, and (ii) to show cause why he should not be prosecuted.

If, in compliance with the notice, the document is produced before the D. C. he should impound it under Section 33 and action should then be taken under Section 40(1)(b) of the Act to recover the duty and penalty. If the duty and

penalty are paid up no prosecution need be instituted unless it appears to the Collector that the offence was committed with the intention of evading payment of the proper duty, vide proviso to Section 43 of the Act.

(2) If, however after service of the notice, the document is not produced and/or no satisfactory cause is shown, the D. C. may sanction the prosecution under Section 70 of the Act read with Section 62(1)(b) in cases where the executants was liable to pay the proper stamp duty. No such action need be taken against executants not liable to pay the proper stamp duty under Section 29 of the Act."

14. As stated above, the filing of sale-certificate in Book No. 1 without verifying or ascertaining the stamp duty payable thereon; was the result of a *bona fide* mistake on the part of the Sub-Registrar, can the petitioner claim any relief on the basis of this mistake? Can he base any claim thereon? Can Article 226 of the Constitution be invoked for such a purpose? are question of wide import. The Full Bench decision in (*Komalchand v. State*)² relied upon by the petitioner was a reference under Article 226 of the Constitution of India. Section 29(f) and 89(4), of the Stamp Act (sic) should be read together. They cannot be and should not be read in isolation. Learned counsel for the petitioner submitted that Section 89(4) enjoins the Sub-Registrar to fill the sale-certificate in Book No. 1 therefore, there was no question of any mistake being committed in filing the same in Book No. 1. But this filing does not exclude consideration in Book No. 1 under section 89(4) of the Stamp Act the payment of stamp-duty by the purchaser as laid down by Section 29(f) of the Stamp Act. They must be read together. Section 3 of the Stamp Act, speaks of the liability of instruments to duty. Section 3 as amended by M.P. makes the duties chargeable as mentioned in Schedule I or Schedule IA. 'Certificate of Sale' is one of the instruments included in Schedule IA and is to be found at No. 18. Thus, there is no doubt that the 'Certificate of Sale' issued either by Civil or Revenue Court is chargeable to Stamp-duty. Should the petitioner be allowed to take advantage of a mistake committed *bona fide* by Sub-Registrar by filing the same in Book No. 1 without realizing the stamp-duty? Can Article 226 be invoked for such a purpose? The question has to be answered in the negative for unless the breach of the constitutional or statutory provision is alleged and proved, the High Court will not interfere under Article 226. The existence of a right and its infringement is the foundation of the exercise of jurisdiction under Article 226 when the petitioner has no right or his right is not beyond dispute no relief can be granted to him under Article 226, and no right can

either be claimed or said to flow from the mistake of any authority or servant. In this case, the petitioner a purchaser of immovable property is seeking to avoid paying the stamp-duty of Rs. 47,685/- chargeable on a certificate of sale of property at a public auction for Rs. 5,61,000/- taking shelter behind an error *bona fide* committed by the Sub-Registrar, in filing the certificate in Book No. 1 without verifying and realising the stamp duty chargeable thereon.

15. Lastly Shri Khan M.A. urged that in compliance of Section 89(4) of the Registration Act, what was sent to the Sub-Registrar was a copy of certificate of sale, and a copy could neither be impounded nor levied with stamp-duty. This argument is like chasing the shadow and leaving the substance. The substantive question is whether the petitioner under the law was liable to pay the stamp duty? or he is arbitrarily called upon to pay the same, secondly whether the instrument itself is chargeable to stamp duty? If the instrument is chargeable to stamp duty and undoubtedly it is, and the petitioner's liability to pay the same under section 29(f) of the Stamp Act, cannot be disputed, such an argument is of no help to the petitioner, whose initial stand before the respondent No. 2 was that it was held out by the auctioning Authority that the purchaser would be not required to pay any duty for registration etc. (See Ann 'C') in short raising issue of 'Promissory Estoppel', which has rightly been not raised nor is it available to the petitioner. In such circumstances, the argument fails.

16. The petition for the foregoing reasons, fails and is accordingly dismissed with costs. Counsel's fee Rs. 250/- if certified to be adjusted against the security deposit made by the petitioner.

Petition dismissed.

Cases Referred.

1. 1965 Jab LJ 656 (FB)
2. 1965 Jab LJ 656