**PUNJAB AND HARYANA HIGH COURT**

S. Sarup Singh

Vs

Union of India

(Mehar Singh, J.)

21.08.1964

**ORDER**

**Mehar Singh, J.**

1. This is a petition under Article 226 of the Constitution by Sardar Sarup Singh, petitioner, against three respondents, respectively Union of India, through the Secretary in the Ministry of Finance, the Chief Controlling Revenue Authority for Delhi State, and the Collector of Stamps, Delhi for an appropriate writ, direction or order quashing the order, dated March 3, 1964, passed by respondent 2 demanding certain amount as deficiency in stamp duty with another amount as a penalty before the document could be considered properly stamped and registered.

2. The facts are not much in dispute. Sometime in February 1952 the petitioner's wife purchased a building site in the Diplomatic Enclave for Rs. 41,000/-. The petitioner contributed Rs. 23,300/- as a gift to his wife to meet part of the price to be paid for the site. The petitioner has throughout claimed that he forms a joint Hindu family with his sons and in the petition he has stated that this amount that he gifted to his wife came out of the joint Hindu family funds. As the building on the site was being built by his wife, the petitioner made further gifts of the total amount of Rs. 1,40,000/- to his wife to enable her to complete the building. The building was completed sometime in 1954. Subsequently the petitioner executed a registered release deed on February 15, 1956, making a declaration that the property in question was the sole property of his wife. Subsequently on March 27, 1962, the petitioner executed an instrument, described as a trust deed, in which he has given some history of his family, history of the acquisition of the property in the family, and has then stated that the whole of the property has been the property of the joint Hindu family that he forms with his sons. Then he recites the facts concerning the first gift of Rs. 23,300/- to his wife sometime in 1952 and remaining gift of Rs. 1,40,000/- between that year and 1954 in connection with the building on the site purchased by his wife in the Diplomatic Enclave. He also refers in this instrument to the release deed of February 15, 1956. There is then

a recital in this instrument to the effect that "the house at 3 Kitchner Road, Diplomatic Enclave, New Delhi, belongs to my wife Sardarni Raminder Sarup Singh and neither I personally, nor the joint Hindu family has any rights in it, as already declared in the registered Release Deed dated 15th of February, 1956." After this recital the petitioner goes on to say "And whereas I am now of 65 years of age and in order that there should be no confusion or doubt about the properties, I, the said Sarup Singh, hereby declare as follows", and then follows the description of the property with the joint Hindu family on the date of the instrument, but item 2 in this part of the instrument is "that the gift made to my wife, Sardarni Raminder Sarup Singh, was made out of the funds of the joint Hindu family". In this part, which is a declaratory part of the instrument, this is about all that is stated with regard to the gift of monies made by the petitioner to his wife, but there is complete omission of the property at 3, Kitchner Road in Diplomatic Enclave, New Delhi. This instrument was presented for registration on May 29, 1962, and on the same date impounded by the Registration Authority under Section 33 and Section 38 of the Indian Stamp Act, 1899 (Act 2 of 1899), and forwarded to the Collector of Stamps to be dealt with according to the provisions of this Act for the matter of realisation of statutory duty and any penalty that may be imposed in connection with the deficiency in that behalf. The Sub-Registrar treated the instrument as a gift-deed under item 33 in Schedule I, as amended in Delhi, of the said Act and was of the opinion that the instrument was liable to a stamp duty of Rs. 4,200/- and Corporation Fee of Rs. 5,600/-, the total of which is Rs. 9,800/-. The instrument was stamped on a stamp paper of Rs. 30/-. He, therefore, pointed out that the deficiency was of Rs. 9,770/-. The Collector of Stamps, respondent 3, took this matter into consideration and came to the conclusion that the instrument will be taken as a deed of gift of moveable, it being a gift of money, and thus liable to a stamp duty of Rs. 3,260/- at the rate of 2 per cent on the total amount gifted, that is to say Rs. 1,33,300. So, deducting Rs. 30/-he found the deficiency of Rs. 3,230/-. He then proceeded to impose a penalty of Rs. 16,150/-, which is five times the amount of the deficiency under Section 40 of the Act. The petitioner was directed to pay a total amount of Rs. 19,380 under the order of respondent 3 made on February 22, 1963. The petitioner went in revision to the Chief Controlling Revenue Authority, respondent 2, against the order of respondent 3, and this authority by its order of March 3, 1964, while dismissing the revision application pointed out that there was a mistake in the calculation of the duty which came to Rs. 3,270/-, and, deducting Rs. 30/- out of it, it found the deficiency as Rs. 3,240/-. It reduced the penalty to an equal amount, that is to say to another amount of Rs. 3,240/-. In other words, under the order of respondent 2 the demand against the petitioner came to Rs. 6,480/-. It was after that on April 4, 1964, that the petitioner filed the present petition under Article 226 of the Constitution seeking to have the orders of respondents 2 and 3 quashed.

3. There is power given in Sub-section (1) of section 57 of Act 2 of 1899 to the Chief Controlling Revenue Authority to state a case to the High Court for the latter's opinion (a) when a case has

been referred to it under Sub-section (2) of section 56 of the Act by the Collector, and (b) when it otherwise comes to its notice, by which I take it that at least when a case comes to its notice in the exercise of its revisional powers under Sub-section (1) of section 56 of the Act, it can even then make a reference; but in either case whether the case is before the Chief Controlling Revenue Authority on the revisional side under subsection (1) or on a reference by the Collector under Sub-section (2), it is a case pending before it when it makes a further reference to the High Court under Sub-section (l) of section 57 of the Act. Nothing of the sort has happened in this case. For the sake of clarity I may state that the petitioner never applied to respondent 2 for statement of any case to the High Court under the provisions of sub-section (1) of Section 57 of the Act. A reference under Sub-section (1) of Section 57 of the Act is to be heard by three Judges of the High Court according to Sub-section (2) of that section. Obviously it is treated as quite an important matter. Instead the petitioner has come straight in a petition under Article 226 of the Constitution seeking to have the orders of respondents 2 and 3 quashed. It is for all practical purposes the settled position that where an approach is provided to the High Court by the statute itself, then it is that approach that has to be made to the High Court and not any other, such as recourse to Article 226 of the Constitution. This is what happens normally and in this case there is no exceptional circumstance that there should be departure from this. This, however, is confined only to the prayer of the petitioner when he seeks to have the orders of respondents 2 and 3 quashed. There is another aspect of the matter and that is the power of this Court by mandamus to direct the Chief Controlling Revenue Authority to make a reference of the case to this Court. If there was ever any doubt about any such powers in the High Court, it has been finally resolved in Chief Controlling Revenue Authority v. The Maharashtra Sugar Mills Ltd., AIR1950 SC 218. But then two questions immediately arise; the first question is whether this Court can call for a reference when no matter is pending before respondents 2 and 3, and the second question is whether that can be done in spite of the fact that in the present case the petitioner himself never made any application that respondent 2 should make reference to this Court before coming to this Court in the present petition ? A Davison Bench of the Madras High Court in Shanmugha Mudaliar v. Board of Revenue, Madras AIR 1955 Mad 304, and a Single Judge of that Court in Saradambal v. Chief Controlling Revenue Authority, AIR 1960 Mad 21. following the Maharashtra Sugar Mills Ltd., case, AIR 1950 SC 218 answered the first question in the affirmative that even if no case is pending before the authorities below, the High Court has power to call for the statement of a case by a mandamus. There is no discussion of this matter in the first case, but there is discussion of the matter by the learned Single Judge in the second case. The learned counsel for the respondents has made reference to Nanak Chand Mehrotra v. Board of Revenue, U. P. AIR 1958 All 320, in which the learned Judges considered the Maharashtra Sugar Mills Ltd., case AIR 1950 SC 218 as also the first of the two Madras cases. With regard to the first Madras case they pointed out that this question has not been discussed in it. With regard

to the Maharashtra Sugar Mills Ltd., case AIR 1950 SC 218 they observed that:

"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."

It appears that the learned Judges have proceeded on some misapprehension of the factual position in that case because at page 219, column 1, of the report in AIR 1950 SC 218 it is not stated that the petition made by the party, who was called upon to pay the stamp duty in that case, to the Assistant Superintendent of Stamps f6r reference under Section 56(2) to the Chief Controlling Revenue Authority, was pending before it. It is true that it is not clearly stated there that it had been disposed of, but that was an appeal to the Supreme Court from the case reported as Chief Controlling Revenue Authority, Bombay v. Maharashtra Sugar Mills Ltd., AIR 1948 Bom 254, and in this report at page 255, column 2, the learned Acting Chief Justice says this about this aspect of the matter --

"Apparently the Assistant Superintendent of Stamps refused to make a reference to the Chief Controlling Revenue Authority under Section 56(2), Stamp Act."

So that it is not true that in the Maharashtra Sugar Mills Ltd., case AIR 1948 Bom 254 there was anything pending before the Chief Controlling Revenue Authority and for this reason no further reference need be made to Nanak Chand Mehrotra's Case, AIR 1958 All 320. But the first question is answered in the affirmative by their Lordships of the Supreme Court in the Maharashtra Sugar Mills Ltd., case AIR 1950 SC 213 because in that case the writ petition had been filed after all matters had been disposed of by the Chief Controlling Revenue Authority, and yet their Lordships held that the High Court had the power to direct by a mandamus the statement I of a case by the Chief Controlling Revenue I Authority.

4. There seems to be no direct case on the second question though the learned counsel for the petitioner relies upon the observation of the learned Single Judge in Saradambal's case, AIR 1960 Mad 21, to show that when nothing is pending before the Chief Controlling Revenue Authority a petition for mandamus to the High Court for the statement of a case by that authority may be made without first making an application in this behalf to that authority for the reason that no such infructous application can be made to that authority it having no jurisdiction to make a reference unless the case is pending before it. The observation of the learned Judge to which the

learned counsel has drawn attention is this --

"I am, therefore, of opinion that whatever might have been the position before the Constitution, by virtue of Article 226 the High Court's power to issue an appropriate writ to direct a reference under Section 57(1) of the Act does not depend upon the pendency of a case before the Chief Controlling Revenue Authority. The result is that while the Chief Controlling Revenue Authority may not have power to refer the matter under Section 57(1) in a case where there is no matter pending before it that is to say, after the matter had been disposed of by any subordinate authority or by itself, the matter would be different when the High Court is approached under Article 226 of the Constitution for the issue of a writ of certiorari to quash the final order of the inferior Tribunal, or to issue a writ of mandamus to direct the Chief Controlling Revenue Authority to refer the case. If such a direction is given, the order, which has finally disposed of the matter is deemed to have been quashed and the matter set at large. I am therefore of opinion that it would be open to this court to issue an appropriate writ in the circumstances of the Case."

Now, this does lend support to the contention of the learned counsel for the petitioner. I have already pointed out that whether the case is before the Chief Controlling. Revenue Authority under Sub-section (1) or Sub-section (2) of Section 56, it can make a reference under Sub-section (1) of Section 57, and in either event the case is then pending before it. There is concensus of judicial opinion that the Chief Controlling Revenue Authority cannot make a reference under Sub-section (1) of Section 57 unless the case is pending before it. Obviously, in the circumstances, it would be meaningless to make an application to that authority with a prayer which it has no jurisdiction to allow. In any case, even if there was this difficulty the learned Judge in Sardambal's case, AIR 1960 Mad 21 overcomes this by pointing out that as soon as a mandamus is issued to the Chief Controlling Revenue Authority to state a case to the High Court under Section 57(1) of the Act, the substantial effect is to quash its order and then direct it to make the reference so that immediately as its order is quashed the matter becomes at large and must be deemed to be pending when the authority is called upon to make the reference. I, respectfully agree with the approach of the learned Judge in this respect. So the answer to the second question is that in the circumstances of the present case without any application being made first to respondent 2 seeking reference by that authority to this Court. This Court can direct respondent 2 to state a case under section 57(1) of the Act. A Division Bench of this Court proceeded in the the same manner in Caltex (India) Ltd., v. Union of India, L. P. A. No. 85-D of 1960, decided on October 29, 1963, (Punj) though it is a fact that in that case an application to the Chief Controlling Revenue Authority for a reference to the High Court had already been made, but as I have already pointed out it makes hardly any difference whether any such application has or has not been made.

5. The only matter that remains for consideration then is whether this is a proper case for the issue of a direction in the nature of a mandamus to respondent 2 to state the case under Sub-section (1) of Section 57 of the Act. Now, here is a case in which the demand depends upon the interpretation of a document. The question involved is whether a gift of moveable in the shape of money, made at least 8 years before the deed now under consideration, and the recital of such gift in this deed, would or would not turn it into a gift-deed in the present case which attracts stamp duty under item 33 in Schedule I of the Act. I think this is a substantial question of law and so this is a fit case in which a direction in the nature of a mandamus be made to respondent 2 to state the case under Subsection (l) of Section 57 of the Act, and it is ordered accordingly.

6. Although this petition has succeeded, but it has succeeded in a different manner than the manner in which the petitioner sought relief, so the parties are left to their own costs.