

RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

Bherulal

Civil Special Appeal No. 244 of 2000
(B.J. Shethna and Sunil Kumar Garg, JJ.)

10.10.2000

JUDGEMENT

Shethna, J.

1. Section 56 of the Indian Stamp Act, 1899 reads as under:

"56. (1) The powers exercisable by a Collector under Chapter IV and Chapter V and under clause (a) of the first proviso to Section 26 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."

2. Section 75 of the Indian Stamp Act, 1899 reads as under :

"75. Power to make rules generally to carry out Act : The State Government may make rules to carry out generally the purposes of this Act and may by such rules prescribe the fines, which shall in no case exceed five hundred rupees to be incurred on breach thereof."

3. In exercise of powers conferred by the Indian Stamp Act, 1899 as adapted to Rajasthan by Rajasthan Stamp Law (Adaptation) Act, 1952, the Government of

Rajasthan framed Rajasthan Stamp Rules, 1955 (for short "the Rules").

4. Rule 73 was inserted in the Rules vide notification dated 21-2-95 with effect from 22-2-95, which reads as under:-

"73 Revision by the Chief Controlling Revenue Authority - (i) Any person aggrieved by an order made by the Collector under Chapters IV and V and under clause (a) of the first proviso to Section 26 and under Section 31 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order :

Provided that no stay application shall be entertained under Section 56 of the Act or under this rule unless it is accompanied by a Bank guarantee for payment of entire recoverable amount or a satisfactory proof of the payment of fifty per cent of the recoverable amount.

(ii) The Chief Controlling Revenue Authority may suo motu or on information received from the registering officer or otherwise call for and examine the record if any case decided of proceeding having held by the Collector for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings and pass such order with respect thereto as it may think fit :

Provided that no revision application shall be entertained under Section 56 of the Act or under this rule unless it is accompanied by satisfactory proof of the payment of fifty per cent of the recoverable amount."

5. However vide notification dated 26-2-97, the aforesaid proviso to Rule 73 (i) of the Rules was substituted by the following proviso :

"Provided that no revision application shall be entertained under Section 56 of the Act or under this rule unless it is accompanied by the satisfactory proof of payment of fifty per cent of the recoverable amount."

6. The validity of same proviso was challenged by the respondents - petitioners by way of S. B. Civil Writ Petition No. 3901/99 (reported in AIR 2000 Rajasthan 245). Similarly several persons filed different writ petitions and challenged the validity of said proviso.

7. The learned single Judge by his judgment and order dated 15-2-2000 (reported in

AIR 2000 Rajasthan 245) allowed the writ petition No. 3901/99 filed by the respondent - petitioner Bherulal and another and declared the proviso to Rule 73 (i) as *ultra vires* and accordingly struck down. The learned single Judge also quashed the impugned circular dated 1-3-97. Accordingly, the learned single Judge also set aside the order passed by the Board of Revenue dismissing the revision petition filed by the petitioners for want of deposit of 50% of recoverable amount and remanded the matter to the Board of Revenue with a request to decide the revision petition on merits. This has been challenged by the State of Rajasthan and others in this special appeal.

8. On the basis of Section 76 of the Indian Stamp Act, 1899, it was submitted by the learned counsel Sri Jangid for the appellant that Section 76 itself provides that Rule framed there under shall constitute a part of the Act after being published in the official gazette for the reason that it merely declares the Rules having statutory force. Before appreciating this contention of Shri Jangid, we would like to reproduce Section 76 of the Indian Stamp Act itself, which reads as under :

"76. Publication of Rule - (1) All rules made under this Act shall be published in the Official gazette.

(2) All rules published as required by this section shall upon such publication, have effect as if enacted by this Act."

We may state that this very contention was raised by the learned counsel Shri Jangid before the learned single Judge, but the same was not accepted by the learned single Judge in view of two Supreme Court judgments; (i) *State of U.P. v. Baburam Upadhyay* reported in and (ii) *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav*, reported in ²

9. However, an attempt was made by learned counsel Sri Jangid to distinguish the Supreme Court judgment in the case of Subhash Chandra Yadav (supra) by submitting that the facts in this case are different, therefore, Subhash Chandra Yadav's case has no application. The judgment of learned single Judge Bheruram's case (supra) is already reported in AIR 2000 Rajasthan 245. In para 32 of the said judgment, the learned single Judge has observed as under:

"32. A verbatim provision was considered by the Hon'ble Supreme Court in *General Officer Commanding-in-Chief*, AIR 1988 Supreme Court 876 (supra) and the Court held that it merely shows that the Rules were having statutory

force, but before a rule framed under the statute is regarded as statutory provision or a part of the statute, it must fulfill two conditions, namely, (i) it must conform to the provisions of the statute under which it is framed; and (ii) it must also come within the scope and purview of the rule making power of the Authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void."

10. Having carefully gone through the judgment delivered by Hon'ble Supreme Court in Subhash Chandra's case (AIR 1988 Supreme Court 876), we are fully convinced that the same applies with full force to the instant case and the learned single Judge has rightly relied upon the same. Hence, this submission of the learned counsel Shri Jangid has to be rejected and accordingly it is rejected.

11. It is true that the appeal or revision is statutory remedy and proper rules can be framed for that provided the Statute enacted by competent legislature. It can always be with the conditions. However, in the instant case, it was not permissible for the State Government to introduce aforesaid proviso to Rule 73 by subordinate Legislature because in our considered opinion, the Legislature do not authorize the State Government for enacting the said rules. In the present case, the State Government in exercise of its rule making power amended the Legislature (Legislation) *per se* by adding the aforesaid proviso by which parties are compelled to deposit 50% of the recoverable amount while filing the revision petition. Therefore, in our considered opinion, when the State Government had limited competence then it could not have made the procedure of entertaining the revision so much burdensome that it renders proviso to Rule 73 nugatory. Thus, in our considered opinion, substituting proviso to Rule 73(i) of the Rules of 1955 is *ultra vires* to provision of Section 75 of the Act and, therefore, it was liable to be struck down and in our considered opinion, the learned single Judge has rightly struck down the same.

12. In view of above discussion, we do not find any substance or merits in this appeal. Accordingly, this appeal fails and is dismissed.

Appeal dismissed.

Cases Referred.

1. AIR 1961 SC 751

2. AIR 1988 SC 876