

Trustees Of H.C.Dhanda Trust vs The State Of Madhya Pradesh on 17 September, 2020

Equivalent citations: AIR 2020 SUPREME COURT 4349, AIR ONLINE 2020 SC 728

Author: Ashok Bhushan

Bench: M.R. Shah, R. Subhash Reddy, Ashok Bhushan

1

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3195-3196 OF 2020
(ARISING OUT OF SLP(C)Nos.10972-10973 OF 2020)

TRUSTEES OF H.C. DHANDA TRUST

...APPELLANT

VERSUS

STATE OF MADHYA PRADESH & ORS.

...RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN,J.

Leave granted.

2. The appellant by these appeals challenges the judgment of learned Single Judge of the High Court of Madhya Pradesh, Bench at Indore in Writ Petition No.8888 of 2011 dated 30.03.2017 dismissing the Writ Petition of the appellant as well as the judgment dated 04.09.2017 of the Division Bench dismissing the Writ Appeal filed by the appellant against the judgment of the learned Single Judge. The Division Bench has dismissed the writ appeal vide its judgment dated 04.09.2017 holding it as not maintainable.

3. Brief facts of the case giving rise to these appeals are:

Late Shri Harish Chand Dhanda, a Minister in erstwhile Government of Maharaja Holkar of Indore received the free gift of land measuring 108,900 sq.ft.

(one lac eight thousand nine hundred) situate at Yeshwant Niwas Road, Indore by Order No.58 of 22.04.1946. Late Shri H.C. Dhanda got constructed in the above piece of land, a building known as 'Hotel Lantern'. Another piece of land situate at 5, Ravindra Nath Tagore Marg, Indore was gifted to Late Shri H.C. Dhanda by his father-in-law late Col. V.B. Jadhav on 05.10.1948. Late Shri H.C. Dhanda possessed various other movable and immovable properties in the city of Indore with which we are not concerned in the present appeals. Late Shri H.C. Dhanda executed his last Will dated 26.10.2002. In his Will he mentioned his movable and immovable properties apart from the above two immovable properties and by his Will he created a Trust in which he appointed his son, Yogesh Dhanda as Chairman of Trust, Shri B.J. Dave, Chartered Accountant, Indore and one Shri Chhaganlal Nagar as member. The above two immovable properties apart from other properties were put in Trust under the aforesaid Will. All Trustees under the Will were the executors of the Will. Shri H.C. Dhanda died on 05.07.2003.

4. A meeting of Board of Trustees was held on 06.04.2005. A resolution was passed by Executors/Trustees to transfer and vest area by executing a Deed of Transfer with a site plan from the trustees to beneficiaries by registering the same. On 21.04.2005 a Deed of Assent was executed between M/s H.C. Dhanda Trust, a private trust as one part and Jogesh Dhanda and others as other part. By Deed of Assent the Trustees/Executors gave assent to complete the title of the Legatees and vest absolutely and forever in their favour both Lantern Hotel and Jahaj Mahal property. A notice was issued by the Collector of Stamps, District Indore stating that in Deed of Assent dated 21.04.2005 proper stamp duty has not been paid, 22.03.2007 was fixed for appearance. The notice further stated that why deficit stamp duty of Rs. 1,62,82,150/- on the document dated 21.04.2005, and ten times penalty should not be imposed. The Trust appeared before the Collector of Stamps and filed its objection. The Collector of Stamps passed an order dated 22.09.2008 holding the Deed of Assent dated 21.04.2005 as a gift deed. The Collector held that under Indian Stamp Act, 1899, the stamp duty payable on a gift deed would be 8% of the market value, Municipal duty 1% and Janpad duty 1%. The Collector found deficit duty to the extent of Rs.1,28,09,700/- and also imposed ten times penalty i.e. Rs.12,80,97,000/-. The order called upon the Trust to deposit amount of Rs.14,09,06,700/- within thirty days. Aggrieved against the order of Collector, Reference Application was filed by the appellant before the Board of Revenue, Madhya Pradesh, Gwalior. Board of Revenue vide its order dated 25.10.2011 upheld deficiency of stamp duty of Rs.1,28,09,700/- and ten times penalty of Rs.12,80,97,000/-. The order called upon the Trust to deposit amount of Rs.14,09,06,700/- within thirty days. Board of Revenue vide its order dated 25.10.2011 upheld the order of the Collector dated 22.09.2008 and dismissed the Reference Application. Challenging the order of the Board of Revenue as well as the Collector of Stamps a Writ Petition No.8888 of 2011 was filed by the appellant in the High Court of Madhya Pradesh. Learned Single Judge of the High Court vide its judgment dated 30.03.2017 dismissed the writ petition. Learned Single Judge upheld the order of the Collector by which deficiency in the stamp duty and ten times penalty was imposed.

5. An SLP was filed in this Court challenging the order of the learned Single Judge by the appellant which was withdrawn by the appellant on 4.5.2017 seeking liberty to file writ appeal in the High Court. The writ appeal was filed by the appellant being Writ Appeal No.255 of 2017 which has been dismissed by the Division Bench on 4.9.2017 holding the writ appeal as not maintainable. Aggrieved against the aforesaid two orders these appeals have been filed by the appellant.

6. This Court by its order dated 10.11.2017 issued limited notice to the following effect:

“Issue notice, returnable in six weeks, limited to the quantum of penalty that has been imposed by the Collector (Stamps). Subject to the condition that stamp duty is paid within a period of one month, there shall be stay of the order qua the penalty.”

7. In response to the above notice the respondents have appeared.

8. We have heard Shri A.K. Chitale, learned senior counsel, for the appellant and Shri Tushar Mehta, learned Solicitor General, for the State.

9. Shri A.K. Chitale, learned senior counsel appearing for the appellant submits that the Deed of Assent executed on 21.04.2005 is referable to Section 331 and 332 of Indian Succession Act, 1925. Shri Chitale submitted that document in question is not a Gift Deed. Shri Chitale submits that the penalty imposed by the Collector of Stamps was wholly illegal. There was no dishonest conduct on the part of the appellant, Deed of Assent was executed bona fide on which there was no deficiency in the stamp duty. Shri Chitale submits that no reason has been given by the Collector of Stamps as to why maximum penalty of ten times was imposed on the appellant while determining the stamp duty. Shri Chitale submits that the Collector of Stamps has not exercised his jurisdiction in reasonable and fair manner and imposition of ten times penalty on the appellant deserves to be set aside.

10. Shri Tushar Mehta, learned Solicitor General refuting the submission of counsel for the appellant contends that nature of document having been found to be gift the Collector has rightly determined the deficiency in the stamp duty and imposed ten times penalty. Shri Mehta submits that there was clear intention of the appellant to evade the payment of stamp duty which clearly called for imposition of ten times penalty. Shri Mehta referred to the order of Board of Revenue and submits that Board of Revenue has also upheld imposition of ten times penalty by holding that the applicant has executed Deed of Assent suppressing the facts intentionally due to which there has been loss of stamp duty. This can neither be termed as wrong nor illegal.

11. We have considered the submissions of the parties and perused the records.

12. Only question to be determined in these appeals is as to whether the imposition of ten times penalty by the Collector of Stamps under Section 40 of the Indian Stamp Act, 1899 was validly imposed or not.

13. The Collector of Stamps vide its order dated 22.09.2008 determined the nature of document dated 21.04.2005 as Gift Deed. The Collector of Stamps in his order also proceeded to determine the market value of property, Lantern Hotel situate at Yashwant Niwas Road and Jahaj Mahal situate in Ravindra Nath Tagore Marg, on the market value of both above properties stamp duty payable was determined as Rs.1,28,09,900/-, stamp duty of Rs.200/- only having been paid on the document deficit duty was determined as Rs.1,28,09,700/-. The Collector of Stamps by the same order also imposed ten times penalty of Rs.12,80,97,000/-.

14. Before we proceed to consider the respective submissions, it is useful to extract the order of the Collector of Stamps which contains the discussion regarding imposition of penalty, which is as follows:

“.....In the above background, the deed in question is classified in the category of a gift deed. The total market value of the property in question in the position of year 2005-06 under the document is fixed at market value Rs.12,80,99,000/-, on which total stamp duty of Rs.1,28,09,900/- is payable. Only Rs.200/- stamp duty has been paid on the document. Thus, remaining stamp duty Rs.1,28,09,700/- and, since the party has not mentioned the actual nature of the document with an intention to escape the duty, therefore, under Section 40 of the Indian Stamp Act, 1899, ten times penalty Rs.12,80,97,000/- is imposed. Thus, total Rs.14,09,06,700/- shall be deposited in the treasure within 30 days.”

15. Section 40 of Indian Stamp Act, 1899 provides for Collectors power to stamp instruments impounded. Section 40(1) which is relevant for the present case which is as follows:

“40. Collectors power to stamp instruments impounded. — (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being an instrument chargeable with a duty not exceeding ten naye paise only or a bill of exchange or promissory note, he shall adopt the following procedure: —

(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;

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 rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.”

16. According to Section 40(1)(b) if the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the of the proper duty or the amount required to make up the same, together with a penalty of the 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. The statutory scheme of Section 40(1)(b) as noticed above indicates that when the Collector is satisfied that instrument is not duly stamped, he shall require the payment of proper duty together with a penalty of the five rupees. The relevant part of Section 40(1)(b) which falls for consideration in these appeals is: “or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or deficient portion thereof.”

17. The amount of penalty thus can be an amount not exceeding ten times. The expression “an amount not exceeding ten times” is preceded by expression “if he thinks fit”. The statutory scheme, thus, vest the discretion to the Collector to impose the penalty amount not exceeding ten times. Whenever statute transfers discretion to an authority the discretion is to be exercised in furtherance of objects of the enactment. The discretion is to be exercised not on whims or fancies rather the discretion is to be exercised on rational basis in a fair manner. The amount of penalty not exceeding ten times is not an amount to be imposed as a matter of force. Neither imposition of penalty of ten times under Section 40(1)

(b) is automatic nor can be mechanically imposed. The concept of imposition of penalty of ten times of a sum equal to ten times of the proper duty or deficiency thereof has occurred in other provisions of the Act as well. We may refer to Section 35(a) in this context is as follows:

“35. Instruments not duly stamped inadmissible in evidence, etc. — 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 :

Provided that—

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b)”

18. It is relevant to notice that Section 35 contemplates that when ten times the amount of the proper duty of or deficient portion thereof exceeds

five rupees, of a sum equal to ten times such duty or portion is required to be deposited. Under Section 39 Collector is empowered to refund penalty. As noticed above under Section 35(a) there is no option except to pay sum equal to ten times of such duty or deficient portion but Section 39 empowers the Collector to refund any portion of the penalty in excess of five rupees which is expressed in following words: “if he thinks fit refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument.”

19. The legislative intent which is clear from reading of Sections 33,35,38 and 39 indicates that with respect to the instrument not duly stamped, ten times penalty is not always retained and power can be exercised under Section 39 to reduce penalty in regard to that there is a statutory discretion in Collector to refund penalty.

20. Section 39(1)(b) of the Indian Stamp Act, 1899 came for consideration before this Court in Gangappa and another vs. Fakkirappa, 2019(3) SCC 788 (of which one of us Ashok Bhushan, J. was a member). This Court noticed the legislative scheme and held that the legislature has never contemplated that in all cases penalty to the extent of ten times should be ultimately realized. In paragraph 16 following has been laid down by this Court:

“16. Deputy Commissioner under Section 38 is empowered to refund any portion of the penalty in excess of five rupees which has been paid in respect of such instrument. Section 38 Sub-section (1) again uses the expression "if he thinks fit". Thus, in cases where penalty of 10 times has been imposed, Deputy Commissioner has discretion to direct the refund of the penalty in facts of a particular case. The power to refund the penalty Under Section 38 clearly indicates that legislature have never contemplated that in all cases penalty to the extent of 10 times should be ultimately realised. Although the procedural part which provides for impounding and realisation of duty and penalty does not give any discretion Under Section 33 for imposing any lesser penalty than 10 times, however, when provision of Section 38 is read, the discretion given to Deputy Commissioner to refund the penalty is akin to exercise of the jurisdiction Under Section 39 where while determining the penalty he can impose the penalty lesser than 10 times.” 20.

The expression “if he thinks fit” also occurs in Section 40 sub-clause (b). The same legislative scheme as occurring in Section 39 is also discernible in Section 40(b), there is no legislative intentment that in all cases penalty to the extent of ten times the amount of proper stamp duty or deficient portion should be realised. The discretion given to Collector by use of expression “if he thinks fit” gives ample latitude to Collector to apply his mind on the relevant factors to determine the extent of penalty to be imposed for a case where instrument is not duly stamped.

Unavoidable circumstances including the conduct of the party, his intent are the relevant factors to come to a decision.

21. The purpose of penalty generally is a deterrence and not retribution. When a discretion is given to a public authority, such public authority should exercise such discretion reasonably and not in oppressive manner. The responsibility to exercise the discretion in reasonable manner lies more in cases where discretion vested by the statute is unfettered. Imposition of the extreme penalty i.e. ten times of the duty or deficient portion thereof cannot be based on the mere factum of evasion of duty. The reason such as fraud or deceit in order to deprive the Revenue or undue enrichment are relevant factors to arrive at a decision as to what should be the extent of penalty under Section 40(1)(b).

22. We may refer to judgment of this Court in *Peteti Subba Rao vs. Anumala S. Narendra*, 2002 (10) SCC 427. This Court had occasion to consider in the above case provisions of Section 40 of the Indian Stamp Act, 1899. Referring to Section 40 this Court made following observation in paragraph 6:

“6.....The Collector has the power to require the person concerned to pay the proper duty together with a penalty amount which the Collector has to fix in consideration of all aspects involved. The restriction imposed on the Collector in imposing the penalty amount is that under no circumstances the penalty amount shall go beyond ten times the duty or the deficient portion thereof. That is the farthest limit which meant only in very extreme situations the penalty need be imposed up to that limit. It is unnecessary for us to say that the Collector is not required by law to impose the maximum rate of penalty as a matter of course whenever an impounded document is sent to him. He has to take into account various aspects including the financial position of the person concerned.”

23. This Court in the above case categorically held that it is only in the very extreme situation that penalty needs to be imposed to the extent of ten times.

24. The Collector by imposing ten times penalty in his order has given the reason for imposition as “the party has not mentioned the actual nature of the document with the intention to escape the duty”. When the Collector found intention to escape the duty, it was the case of imposition of penalty but whether the reason given by the Collector is sufficient for imposition of extreme penalty of ten times is the question which needs to be further considered. The High Court while considering the question of imposition of penalty of ten times has also given almost same reason in following words:

“.....But in the present case the complete title has been transferred by Trust to Jogesh Dhanda and Ishan Dhanda in the name of Deed of Assent. Therefore, there was intention to evade the heavy stamp duty on such transaction. Therefore, the Collector of Stamp has rightly imposed 10 times penalty which is maximum under the Act.

In view of the above, I do not find any merit in this writ petition. The same is hereby dismissed.”

25. No other reasons have been given either by the Collector or by the High Court justifying the imposition of maximum penalty of ten times. It is not the case of Collector that the conduct of the

appellant was dishonest or contumacious. The High Court in its judgment has noticed that although the resolution was passed on 06.04.2005 to execute the Deed of Transfer by Trustees in favour of Jogesh Dhanda and Ishan Dhanda, but later on they deliberately executed the deed in the name of Deed of Assent on a stamp paper of Rs.200/-. For the reason given by the Collector as well as by the High Court that there was intention to evade the stamp duty in describing the document as Deed of Assent the imposition of the penalty was called for but in the facts and circumstances and the reasons which have been given by the Collector of Stamps as noticed above we are satisfied that this was not a case of imposition of extreme penalty of ten times of deficiency of stamp duty. Taking into consideration all facts and circumstances of the case, we are of view that ends of justice will be served in reducing the penalty imposed to the extent of the half i.e. five times of deficiency in the stamp duty.

26. In result the appeals are allowed the order of the Collector of Stamps dated 22.09.2008 is modified to the extent that penalty imposed of ten times of Rs.12,80,97,000/- is modified into five times penalty i.e. Rs.6,40,48,500/-. The appeals are partly allowed to the above extent.

.....J. (ASHOK BHUSHAN)J. (R. SUBHASH REDDY)J. (M.R. SHAH) NEW DELHI, SEPTEMBER 17, 2020.