

Banarsi Das Ahluwalia vs The Chief Controlling Revenue ... on 28 September, 1967

Equivalent citations: 1968 AIR 497, 1968 SCR (1) 685, AIR 1968 SUPREME COURT 497

Author: J.M. Shelat

Bench: J.M. Shelat, J.C. Shah, S.M. Sikri

PETITIONER:
BANARSI DAS AHLUWALIA

Vs.

RESPONDENT:
THE CHIEF CONTROLLING REVENUE AUTHORITY, DELHI

DATE OF JUDGMENT:
28/09/1967

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
SHAH, J.C.
SIKRI, S.M.

CITATION:
1968 AIR 497 1968 SCR (1) 685

ACT:
Indian Stamp Act, 1899, s. 57(1) and (2)-Application to Revenue Authority to state a case for opinion of High Court--Substantial question of law involved-If Authority bound to state a case whether there is a 'pending case or not'.

HEADNOTE:
The appellant executed a deed of trust on December 20, 1961, in respect of certain properties on a stamp paper of Rs. 30/- on the footing that the deed was a declaration of trust. The SubRegistrar to whom it was presented for registration, impounded the deed and forwarded it to the Collector for action under sec. 38 (2) of the Indian Stamp Act, 2 of 1899. The Collector thereafter directed the

appellant to deposit additional stamp duty and penalty amounting to Rs. 36,685/- but the Chief Controlling Revenue Authority, Delhi, reduced the amount in revision to Rs. 3,780/-. The appellant then applied to that Authority to state a case to the High Court under section 57(1) but this application was rejected and a writ petition filed by the appellant challenging this rejection was dismissed by the High Court.

In appeal to this Court it was contended on behalf of the appellant that the Authority was, under section 57(1), bound to refer the case to the High Court even though there was no pending case before it and by its refusal to do so the Authority failed to discharge its statutory duty; that the High Court was in the circumstances competent to direct the reference and the summary dismissal of the writ petition by it was wrong. On the other hand the respondent's contention was that section 57(1) postulates the existence of a pending case; that the word "case" in the sub-section means a case which has not been finally decided by the revenue authorities and which is capable of being disposed of, where a reference is made to the High Court, in accordance with the opinion of the Court as provided by sec. 59(2),

Held: When a reference has been made to the Authority or the case has otherwise come to his notice, if an application is made under s. 57(1) and it involves a substantial question of law, whether the case is pending or not, the Authority is bound to state the case in compliance with its obligation. [695 A-B]

Section 57 affords a remedy to the citizen to have his case referred to the High Court against an order of a revenue authority imposing stamp duty and/or penalty provided the application involves a substantial question of law and imposes a corresponding obligation on the Authority to refer it to the High Court for its opinion. Such a right and obligation cannot be construed to depend upon any subsidiary circumstance such as the pendency of the case before the Authority. [694 F-G]

The Authority therefore was in error in refusing to state the case and the High Court was equally in error in summarily dismissing the writ petition as the question whether the document was a declaration of trust or was a deed of settlement was a substantial question of law. [695 C]

686

Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd., [1950] S.C.R. 536; relied upon and explained. Case law reviewed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 53 of 1965 Appeal by special leave from the judgment and order dated April 16, 1963 of the Punjab High Court, Circuit Bench at Delhi in Civil Writ No. CW-267-D of 1963.

I. M. Lall, E. C. Agrawala and P. C. Agrawala, for the appellant.

N. S. Bindra, R. N. Sachthey and S. P. Nayar, for the respondent.

The Judgment of the Court was delivered by Shelat, J. This appeal by special leave is directed against the order of the High Court of Punjab (Delhi Bench) dismissing the appellant's petition for an appropriate writ directing the Chief Controlling Revenue Authority, Delhi, to state the case to the High Court under sec. 57(1) of the Indian Stamp Act, 2 of 1899.

The facts leading to the said petition may be briefly stated: On December 20, 1961 the appellant executed a deed of trust in respect of certain properties on a stamp paper of Rs. 30 on the footing that the said deed was a declaration of trust. The SubRegistrar to whom it was presented for registration, impounded it and forwarded it to the Collector for action under sec. 38(2). The Collector served a notice on the appellant to show cause why he should not be charged with deficient stamp duty of Rs. 3,365 and a penalty of Rs. 33,650. After hearing Counsel the Collector directed the appellant to deposit the aggregate amount of Rs. 36,685. The appellant filed a revision before the Chief Controlling Revenue Authority, Delhi, who reduced the amount of deficit duty and penalty to Rs. 630 and Rs. 3,150 respectively. On December 9, 1962 the appellant applied to the said Authority to state the case to the High Court under section 57(1). That was rejected and the appellant filed a writ petition but the High Court dismissed- it in limine. The appellant's contention is that the Authority was under

section 57(1) bound to refer the case to the High Court even though there was no pending case before it, that by its refusal to do so the Authority failed to discharge its statutory duty, that the High Court was in the circumstances competent to direct the reference and therefore the High Court's summary dismissal of the writ petition was wrong. The respondent's contention, on the other hand, is that section 57(1) postulates the existence of a pending case, that the word "case" in the sub-section means a case which has not been finally decided by the revenue authorities and which is capable of being disposed of, if a reference is made and the High Court pronounces its opinion on such reference, in accordance with such opinion as provided by sec. 59(2). It is contended that therefore the High Court cannot direct the Autho-

riety to state the case except where the case is still Depending before the Revenue Authorities. How can the Authority, it was argued, dispose of the case conformably to the High Court's opinion when there is no case pending before it which it can dispose of?

To appreciate the rival contentions it is necessary to read at this stage the relevant provisions of the Act. Section 56(1) provides that 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. Sub-section 2 provides:--

"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."

Section 57(1) provides:

"The Chief Controlling Revenue Authority may state any case referred to it under section 56, sub-section (2), or otherwise coming to its notice, and refer such case, with its own opinion thereon.....

Section 59 provides that the High Court upon the hearing of any such case, shall decide the questions, raised, thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded. Section 59(2) provides that the High Court shall send to the Revenue Authority by which the case was stated a copy of such judgment and the Revenue Authority shall, on receiving such copy, dispose of the case conformably to such judgment. Some of the earlier decisions of the High Courts of Madras and Calcutta took the view that though the words "otherwise coming to its notice" in sec. 57(1) are of Wide import apparently enabling the Authority to state a case sub- section 1 of that section has to be construed in such a manner as to harmonise with the provisions of section 59(2) so that those provisions can be worked out. Therefore unless section 57(1) is construed to mean that, it is only when there is a pending case which the Authority can state and can dispose of in conformity with the opinion of the High Court that a reference can be made by it under that sub-section. Thus, in the Reference Under the Stamp Act, Section 57(1) the High Court of Madras held that an adjudication by a Collector under section 31, of the Act as to the duty with which an instrument is chargeable is by section 32 made final and such a case cannot be referred to the High Court under section 57. Two documents purporting to be mortgages of crops to secure repayment of Rs. 2,300 and odd and)Rs. 2 lacs and odd containing also an ancilliary lien on the estates where the crops were to be grown were adjudicated by the Deputy Collector as chargeable under Arts. 40(c) and 41. The Deputy Collector levied duties amounting to Rs. 70-12-0 and Rs. 688-12-0 respectively. The duties were accordingly paid and the Deputy Collector certified and endorsed the documents under section 32. The mortgagees applied to the Board of Revenue for a refund of duty stating that Art. 40(c) did not apply and thereupon the Board referred the case under section 57(1). The High Court held that on a reading of section 57(1) with section 59(2) the word "case meant a matter which had yet to be disposed of by the revenue authorities conformably to the judgment of the High Court and that the effect of section 32 was that once the Collector endorsed the document the matter was finally determined.

There being no pending case, the Board could not make a reference. The reason given in this decision for holding the reference incompetent was that the words "dispose of conformably to the judgment of the High Court" in section 59(2) suggested that there must be a pending case before the authorities which on a reference to the High Court and on the High Court pronouncing its judgment can be disposed of in conformity with such judgment. A similar question once again arose, in the Reference Under Stamp Act, Section 57(1) reported in the same volume at page 752. In this case the Sub-Registrar impounded the documents under section 33 and forwarded them to the Collector for action under section 38(2). The Collector certified by his endorsement under section 40 that they were not chargeable with duty. The matter was referred to the Board of Revenue which disagreed with the Collector and referred the case to the High Court. The question was whether this was a "case" which could be referred? Arnold White, C.J. held that it was-, because under section 56(1) powers exercisable by a Collector were subject to the control of the Revenue Board, therefore a case brought to its notice would be a "case otherwise coming to the notice"

of the Board and a case which has to be disposed of under s. 59(2) conformably to the judgment which the High Court may pronounce. He held that though the words in sec. 56(1) are powers "exercisable" by the Collector they would also mean "exercised" by the Collector. Bhashyam Ayyangar and Moore, JJ. disagreed with the Chief Justice and held following the decision in 25 Mad. 751, that the reference was not competent and the High Court had no jurisdiction to decide it. After analysing the different sections, Bhashyam Ayyangar, J. held that though section 56(1) gave wide control to the Revenue Board over the action of the Collector, it could be exercised only until the Collector had, not yet exercised his power under sec. 40 and issued his certificate. Once the certificate was issued and the document with his endorsement was returned to the party as one either properly stamped or exempt from duty there was no power in the Board to recall the document from the party and to levy duty where the Collector had certified it to be exempt and hence the Board had no power to refer such a case under sec. 57(1). The effect of this decision is that the Collector by exercising his power and certifying the document exhausts the Board's power of control under section 56(1). The case having been concluded there would also be no pending case which the Board could refer to the High Court. He also disagreed with the Chief Justice that the word "exercisable" in section 56(1) could not mean "exercised" as the legislature had used the word "exercisable" deliberately to mean that once such power was exercised, the Board's control over such a case was exhausted. Following this decision, the Allahabad High Court in a Stamp Reference by the Board of Revenue(1) held that once the Collector had taken action under sec. 40(1) and, had received the deficient duty and penalty imposed by him and certified the document the jurisdiction of the Chief Controlling Revenue Authority to refer such a case to the High Court was ousted, In that case a sale deed was forwarded to the Collector under sec. 38(2) who held that it was insufficiently stamped; the deficit according to him, amounted to Rs. 4/- and he levied penalty of Rs. 5/-. The deficit and the penalty were paid and presumably the Collector endorsed the document. Under s. 40(a) such a certificate is conclusive. The High Court in these circumstances held that the case before the Collector having been concluded and there being no pending case the controlling power of the Revenue Board was exhausted and it had no power to refer such a case under s. 57(1). The case *In re. Cooke and Kalvay*(2) was a case falling under sec. 56(2), i.e., a case "otherwise coming to

the notice" of the Board of Revenue. Rankin C.J. held in this case that though those words were wide, they could be given effect to only in cases where the concluding words of s. 59 could also be given effect to. He held, therefore, that if the Collector had in that case impounded the document which he had not but only decided the duty payable on it, the Board could interfere and refer the case under s. 57(1) provided such interference was made before the Collector completed the case. In the Board of Revenue v. Lakshmipat Singhania⁽³⁾ certain share transfer deeds were filed in the Court. The Court impounded them and forwarded them to the Collector under sec. 38(2). The Collector passed an order determining the duty payable. Both the duty and penalty as decided by the Collector were paid and the Collector certified and endorsed the deeds. The matter having come to the notice of the Revenue Board, it made the reference. The High Court held that the purpose of section 57(1) was a practical one and that that section could not apply unless there was a case pending before the Authority whether it was a case referred to it under section 56(2) or otherwise coming to its notice and in respect of which that Authority could give effect to the advisory opinion of the High Court. Therefore the Collector having certified, the case (1) [1913] I.L.R. 40 All. 128.

(2) I.L.R. (1932) 59 Cal. 1171, (3) I.L.R. (1958) 2 All. 246.

before him was concluded and there remained nothing, pending in respect of which a reference could be competent. A similar view has also been taken by the Mysore High Court in Shri Rama Krishna Theatre v. Chief Revenue Controlling Authority.⁽¹⁾ The view first expressed in I.L.R. 25 Mad. 752 appears to have prevailed until the question arose whether sec. 57(1) confers a discretion on the authority whether to state a case or not or whether it casts an obligation on that Authority to state the case when a subject calls upon it to do so in a case involving a substantial question of law. Such a question was mooted in the Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd. ⁽²⁾ In that case the Mills executed on March 22, 1945 the document in question in favour of the Central Bank of India for borrowing a certain amount and stamped it with a stamp of Rs. 16-8-0 'on the basis that it was a deed of hypothecation. It was sent to the Registrar of Companies and the Registrar sent it to the Superintendent of Stamps. On April 4, 1945, the Assistant Superintendent of Stamps informed the Mills that the document was a mortgage with possession and hence was not duly stamped. On July 19, 1945, that officer informed the Mills of his decision that the document being a mortgage with possession was chargeable with a duty of Rs. 56,250 and called upon the Mills to pay the deficit of Rs. 56,238/8/- and Rs. 5,000 as penalty. The Mills paid up the amounts and on that the Assistant Supdt. of Stamps informed the Mills that the document would be certified and returned to the Registrar. The Mills thereafter filed a suit for rectification of the document. On December 9, 1945 the Assistant Supdt. informed the Mills that the Collector had been requested to recover the said deficit duty and penalty and on January 11, 1946 the Collector demanded the said amounts. On January 25, 1946, the High Court passed a decree rectifying the said document. On February 1, 1946 the Mills requested the Assistant Superintendent to refer the case to the Authority under section 56(2). The Mills applied to the Authority on February 5, 1946 that the said order should either be rescinded or a case should be stated to the High Court under section 57(1). On July 4, 1945 the Authority rejected the application. The Mills applied to the High Court against the Authority for a direction that he should be asked to state the case. The Trial Judge granted relief under s. 45 of the Specific Relief Act calling upon the Authority to state the case on the ground that a substantial question of law as to the effect of rectification had arisen. In the Letters Patent Appeal by

the Authority the Division Bench of the High Court confirmed the said decree and held that the words "otherwise (1) I.L.R. [1962] Mys. 396.

(2) A.I.R, 1948 Bom. 254.

comes to his notice" in section 57(1) were very wide and did not cover only the cases which the Revenue Authority wanted, to move the High Court at its own instance but also covered cases where an application was made to it in that behalf by the citizen. The High Court observed that looking to the scheme and the object of the Act, the one solitary safeguard which the citizen had was to get his liability to pay stamp duty determined by the High Court in cases where important and substantial questions of law were involved. Consequently, where a serious question of law was involved there was a duty cast on the Authority to state the case and the citizen had a right to have such a case determined by the High Court. There would be a breach of duty if the Authority failed to appreciate that there was a serious point of law involved and such breach of duty could be enforced by an order under sec. 45 of the Specific Relief Act.

It will be noticed that when the Assistant Supdt. of Stamps decided on July 19, 1945 that the document was a mortgage chargeable with the duty of Rs. 56,250 and ordered the Mills to pay the deficit and the penalty, the case before him was concluded. In fact he wrote to the Registrar of Companies returning the document that it would be certified by him on payment of the said amounts. The Collector thereafter was requested to recover the two amounts and a demand was also made on the Mills. It is true that the application of the Mills dated February 1, 1945 to the Collector under sec. 56(2) was not decided when the Mills on February 5, 1946 asked the Authority to state the case. But unlike section 57(1) the Collector under sec. 56(2) may refer the case, if he is in doubt. The duty of the Collector not being obligatory, the case was concluded long before the Mills' application dated February 5, 1946. In any event as the Collector did not refer the case under sec. 56(2) to the Authority it cannot be said that there was any pending case either before him or the Authority and yet the High Court ordered the Authority to state the case. The Authority appealed to this Court and as reported in Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd.(1) urged three points: (i) whether under sec. 57 there is an obligation on the Authority to state a case; (ii) whether having regard to s. 226 of the Government of India Act, 1935 the High Court had jurisdiction to order a reference, the matter being one of revenue and (iii) that the matter having proceeded beyond the stage of assessment and having reached the stage of recovery the High Court could not direct a reference of the case-, in other words, there being no case pending before the Authority a reference by it would not be competent and the High Court therefore would have no jurisdiction either to direct or to decide such reference even if made. This Court after referring with approval to the decision of the Privy Council in *Alcock Ashdown v. Chief Revenue Authority, Bombay*(2) and to section 51 of the Income-tax Act, 1918 which contained provisions similar to section 59 of the Stamp (1) [1950] S.C.R. 536 (2) 50 I.A. 227, L/P(N)7SCI-5 Act held that though sec. 57(1) used the word "may" the Power to state the case was coupled with the duty of the Authority as a public officer to do the right thing and therefore the word "may." as held by the Privy Council must mean "shall". Though the case had gone beyond the stage of assessment and even steps for recovery were already taken and the case was therefore concluded this Court upheld the High Court's decision to issue the mandamus. The decision thus establishes that the fact that the case is

concluded and is no longer pending cannot make a reference incompetent or disable the High Court from pronouncing its judgment thereon. This decision has since then been followed in Appalanarasimhalu v. Board of Revenue,(1) Shanmugha Mudaliar v. Board of Revenue,(2) Saradambal v. Board of Revenue,(3) and Sarup Singh v. Union of India(4).

Two decisions to which our attention was drawn need consideration. In Nanak Chand v. Board of Revenue, U.P.(5) the High Court of Allahabad held that a reference under sec. 57 can be made only when a case is pending and in which the question about the amount of stamp duty is yet to be decided. It also held that once the Authority has decided the case the fact that proceedings for realisation of duty remain pending would not make the case a pending case. At page 321 of the report the High Court observed that the language of sec. 57, viz., that "the 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" made it clear that the reference has to be made at the stage when the case is still pending before it. When the High Court's attention was drawn to the decision in Maharashtra Sugar Mills'(6) case and Appalanarasimhalu v. Board of Revenue(7) and Shanmugha v. Board of Revenue(8) the High Court distinguished the Maharashtra Sugar Mills'(6) case on the ground that the application for reference made under s. 56(2) to the Collector had not been decided when the Authority was asked to state the case under section 57(1) and that therefore it was possible to say that the case was still pending. As regards the two Madras decisions the High Court agreed that the reference applied there was after the cases were concluded but observed that the Madras High Court had not examined the question whether reference under s. 57(1) was in such cases competent and that it relied on the decision in Maharashtra Sugar Mills'(6) case without noticing that in that case reference was applied for while the application asking the (1) A.I.R. 1952 Mad. 811.

(2) I.L.R. [1955] Mad. 1037.

(3) A.I.R. 1959 Mad. 1086.

(4) I.L.R. [1965] Pun. 140.

(5) A.I.R. 1958 All. 320.

(6) [1950] S.C.R. 536.

(7) A.I.R. [1952] Mad. 811.

(8) I.L.R. [1955] Mad. 1037.

Collector to refer the case under section 56(2) to the Authority had not been disposed of. In the Eastern Manganese and Minerals v. State of West Bengal(1) the Calcutta High Court following In re Cook and Kelvey(2) refused to direct reference on the ground that when an adjudication as to proper stamp has been made under sec. 31 and the duty is paid without the document having been impounded or when the document is not sent to the Collector under sec. 38(2) there is no case pending before the Authority and the Authority cannot state a case or cannot similarly be asked to

state the case. With respect, the reasons given in these two decisions for distinguishing the Maharashtra Sugar Mills⁽¹⁾ do not seem to be correct. As aforesaid, it is clear from the facts of that case that there was no case pending before the Authority or any other Revenue Authority and yet mandamus granted by the High Court was confirmed by this Court. Therefore that decision was binding on both the High Courts.

Whatever may have been the view in the past on the scope of section 57(1), the position after the decision in Maharashtra Sugar Mills' case⁽³⁾ is settled that sec. 57(1) imposes a duty on the Authority to state a case when it raises a substantial question of law. As the Privy Council stated in *Alcock Ashdown v. Chief Revenue Authority, Bombay*⁽⁴⁾, "To argue that if the legislature says that a public officer, even a revenue officer, shall do a thing and he without cause or justification refuses to do that thing, yet the Specific Relief Act would not be applicable, and there would be no power in the Court to give relief to the subject, is to state a proposition to which their Lordships must refuse assent." It also must now be taken as settled that that duty is not affected by the question whether the case is pending before the Authority or not. The principle underlying the decision is that sec. 57 affords a remedy to the citizen to have his case referred to the High Court against an order of a revenue authority imposing stamp duty and/or penalty provided the application involves a substantial question of law and imposes a corresponding obligation on the authority to refer it to the High Court for its opinion. Such a right and obligation cannot be construed to depend upon any subsidiary circumstance such as the pendency of the case before the Authority. If the position is as held in *I.L.R. 25 Mad. 752* the mere fact that the Collector has determined the duty and closed the case would render nugatory not only the controlling jurisdiction of the Authority but the remedy which sec. 57(1) gives to the citizen as also the obligation of the Authority to state the case. The difficulty which the learned judges felt in *I. L. R. 25 Mad. 752* and repeated in subsequent decisions is not, in our views, a real one because as soon as a reference is made and the (1) A.I.R. 1960 Cal. 340. (2) I.L.R. [1932] 59 Cal. 1171. (3) [1950] S.C.R. 536. (4) 50 I.A. 227, 233.

L/P(N)7SCI-5 (a) High Court pronounces its judgment the decision of the Authority is it large and the Authority, as required by sec. 59(2) would have to dispose of the case in conformity with such judgment. The position therefore is that when a, reference has been made to the Authority or the case has otherwise come to his notice, if an application is made under s. 57(1) and it involves a substantial question of law, whether the case is pending or not, the Authority is bound to state the case in compliance with its obligation. The Authority is in a similar position as the Income-tax Tribunal under analogous provisions in the Income-tax Act. In our view, the Authority was in error in refusing to state the case and the High Court was equally in error in summarily dismissing the writ petition as the question whether the document was a declaration of trust or was a deed of settlement is a substantial question of law. The appeal is therefore allowed and the High Court's order is set aside. We direct the Chief Controlling Revenue Authority, Delhi, to state the case to the High Court under sec. 57(1). There will be no order as to costs.

R.K.P.S

Appeal allowed.