

Anand Narain vs District Judge, Faizabad And Ors. on 17 February, 1955

Equivalent citations: AIR1955ALL615, AIR 1955 ALLAHABAD 615

ORDER

Lall, J.

1. The petitioner instituted a suit (No. 39 of 1947) in the court of the Civil Judge at Faizabad. The suit was referred to arbitration. The arbitrators delivered an award and the Court passed a decree in terms of the award on 30-4-1948.

2. The record was consigned to the record room of the. District Judge in due course and remained there for about five years. It was in 1953 that the Inspector of Stamps while inspecting the records in the record room of the District Judge noticed the award and the decree. He was of the opinion that these documents should have been stamped. He made a report to that effect to the Chief Inspector of Stamps and sent a copy thereof to the District Judge.

The Junior Secretary to the Board of Revenue as the Chief Controlling Revenue authority also drew the attention of the District Judge to the Stamp Reporter's report. Some notes passed between the District Judge and the Civil Judge and also between the District Judge and the Junior Secretary, Board of Revenue.

Thereafter the District Judge impounded the documents on 7-7-1953, Three days later i.e. on 10-7-1953 he forwarded the award and the decree to the Collector of Faizabad under Section 38(2) Indian Stamp Act (2 of 1899). The Stamp Officer of Faizabad exercising the powers of the Collector under Section 40, Stamp Act issued notice to the petitioner on 27-8-1953 which was received by him on 26-9-1953. The petitioner has come to this Court and prays that the District Judge's order dated 7-7-1953 impounding the documents and the Stamp Officer's order dated 27-8-1953, calling upon the petitioner to show cause, may be cancelled.

3. The question that arises for decision is whether the District Judge had power to pass the order impounding the documents or not. The learned State counsel contends that the power of impounding the documents was exercised under Section 33, Stamp Act. This section so far as is material for purposes of this petition runs as follows:

"Every person in charge of a public office except an officer of police before whom any instrument, chargeable in his opinion, with duty is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped impound the same."

The record room of the District Judge is a public office and the District Judge is in charge of the said office. It is true that in some judgements a subordinate judicial officer e.g. a Small Cause Court or a Civil Judge is generally placed in immediate charge of the record room but he exercises supervision thereof under the control and guidance of the District Judge.

It is not known whether any such arrangement exists at Faizabad. But assuming that such arrangement does exist the District Judge does not cease to be in charge of the record room.

4. If the District Judge was, on perusal of the report of the Inspector of Stamps, of the opinion that the decree and the award had not been duly stamped he had power under Section 33 to impound the same.

5. The learned counsel for the petitioner has cited several cases, e.g. -- 'In re Payanda Khan, AIR 1945 Pat 96 (A); -- 'Mohd. Asharaf v. Umed Ali' AIR 1918 Cal 1023 (B); -- 'In re Narayan Das Nathurama', AIR 1943 Nag 97 (C); -- 'Thakur Das v. Emperor', AIR 1932 Lah 495 (D) & -- 'Ujjal Singh Sunder Singh v. Ahmad Yar Khan', AIR 1936 Lab 985 (E).

All these authorities lay down that the mere fact that a document is physically placed before a court or an officer in charge of a public office does not mean that the said document comes before that Court or officer "in the performance of his functions". This contention is perfectly correct and I have no hesitation in agreeing with the learned counsel that the mere circumstance that a document is present before a Court or an officer does not give jurisdiction to it or to him to exercise power of impounding it under Section 33.

What is needed is that it should have come to the Court or the officer "in the performance of his functions." In the present case, however, there is no gainsaying the fact that the Stamp Inspector had sent the report to the District Judge as a person in charge of the record room under Rule 330 of the U. P. Stamps Rules 1942. This rule is to be found on page 438 of the U. P. Stamp Manual 1945 edition.

These are statutory rules and have the force of law. Rule 330 makes it obligatory on the Stamp Inspector to send such reports to the Court or the head of the office and imposes on the latter a duty to "examine the report soon after he receives it".

In order to examine the report it was necessary to have a look on the documents which in the Inspector's opinion, were not duly stamped. Thus the documents came before the learned District Judge "in the performance of his functions". It is not for me to express any opinion as to whether or not the documents were duly stamped and whether or not the learned District Judge's view was correct. But the learned Judge did find that they were not duly stamped and as such he had jurisdiction to impound the same and to forward them to the Collector.

6. The learned counsel for the petitioner contended that the District Judge should have given an opportunity to his client to be heard before impounding the documents. In this connection it may be pointed out that Section 33 does not make it obligatory on the person impounding the documents to

issue notice to any party affected thereby to show cause why the documents concerned should not be impounded. Rule 330 gives an option to the Court or the head of office to hear the party where 'he considers it necessary'. No absolute right is given to any party to be heard. It purely rests, with the discretion of the Court or the head of office to hear the party or not.

7. Moreover the decision of the District Judge is not final. The mere fact that the District Judge has impounded the documents and was of the opinion that they were not duly stamped, does not in any way saddle the petitioner with the responsibility to pay any duty or penalty. The matter is yet to be heard and decided by the Collector or by the Stamp Officer exercising his powers under Section 40.

It is open to the petitioner to plead before him that neither the award nor the decree was a document executed by him. He may also contend, if he is so advised, that the documents were not required to be stamped or that in any case it is not he who is liable to pay the stamp duty or penalty. These and all other pleas that may be raised by him shall be considered on the merits by the Stamp Officer. It is he who will give the final decision. No decision has yet been given. All that the appellant has been called upon to do is to appear before the Stamp Officer and to state his point of view.

8. In my opinion no good ground exists for interfering in this matter. In the circumstances the petition fails and it is hereby dismissed.