

Trideshwar Dayal And Anr vs Maheshwar Dayal And Ors on 19 December, 1989

Equivalent citations: 1990 AIR 485, 1989 SCR SUPL. (2) 529, 1989 ALL. L. J. 1333, 1990 (1) SCC 357, 1990 UJ(SC) 1 458, (1990) 1 UPLBEC 367, (1990) 1 ALL WC 367, (1990) 18 DRJ 305, (1990) 40 DLT 460, (1990) REVDEC 143, (1990) 1 SCJ 568, AIR 1990 SUPREME COURT 485

Author: L.M. Sharma

Bench: L.M. Sharma

PETITIONER:
TRIDESHWAR DAYAL AND ANR.

Vs.

RESPONDENT:
MAHESHWAR DAYAL AND ORS.

DATE OF JUDGMENT 19/12/1989

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
RAMASWAMI, V. (J) II

CITATION:
1990 AIR 485 1989 SCR Supl. (2) 529
1990 SCC (1) 357 1989 SCALE (2) 1436

ACT:
Indian Stamp Act, 1899: Sections 33, 56 and 47-A (U.P. State Amendment)--Arbitration award--Insufficiently stamped--Impounding-Limitation for--Chief Controlling Revenue Authority--Whether competent to interfere with the order of Collector.

HEADNOTE:
A dispute between the appellants and respondent No. 1 was referred to an arbitrator who made an award and filed it before the civil court. On objection by the appellants, the prayer for making the award a rule of the court was rejected. On appeal, the High Court confirmed the same. This Court refused special leave and a petition for review was also

dismissed.

Meanwhile, respondent No. 1 applied to the Collector for summoning the award and for realising the escaped duty and penalty. The application was allowed. The appellants moved the Chief Controlling Revenue Authority under Section 56 of the Indian Stamp Act, 1899 and the authority set aside the Collector's order. The respondents challenged the said order in a writ petition before the High Court which allowed the same and remanded the case to the Collector for deciding it afresh.

Aggrieved, the appellants filed this appeal by special leave, contending inter alia, that; (a) Respondent No. 1 had no locus standi to move the Collector for impounding the award: (b) the Collector had no authority to pass the impugned order after a decade; and (c) the Collector did not have the power to enquire into the correct valuation of the property which was subject matter of the award. Disposing of the appeal, this Court,

HELD: 1.1 It is well settled that if a court acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e. an appeal would lie to the court to which it would lie if its order was with jurisdiction. [532A]
530

1.2 There is no question of limitation arising and it cannot be said that what had to be done promptly in 1976 could not be done later. The orders of the Collector dated 15.7.1983 and 22.7.1983 were passed as the follow-up steps in pursuance of the civil court's direction dated 18.3.76 and no valid objection can be taken against them. The Collector, therefore, shall have to proceed further for realisation of the escaped duty. [532G]

1.3 The Chief Controlling Revenue Authority had full power to interfere with the Collector's order, provided it was found to be erroneous. But this Court does not find any defect in the Collector directing taking of steps for realisation of the stamp duty. [532B]

Janardan Reddy and Ors. v. State of Hyderabad and Ors., [1951] SCR 344, relied on.

2. The instant case comes from Uttar Pradesh where express provisions have been made by the insertion of Section 47-A, authorising the Collector to examine the correctness of the valuation. Hence the Collector had the power to enquire into the valuation of the property which was the subject matter of the award. [533A-B]

Himalaya House Co. Ltd., Bombay v. Chief Controlling Revenue Authority, [1972] 3 SCR 332, referred to.

3. It is clarified that on the strength of the present judgment it will not be open to the respondent to urge that the effect of the High Court decision dated 8.7.1981 and the order of this Court dismissing the special leave petition therefrom and later the review application have disappeared or have got modified. [533D-E]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5055 of 1989.

From the Judgment and Order dated 27.2.1989 of the Allahabad High Court in C.M.W.P. No. 12322 of 1984. Satish Chandra, E.C. Agarwala, Atul Sharma, Ms. Purnima Bhatt and V.K. Pandita for the Appellants.

G.L. Sanghi, B.D. Agarwal, G. Ganesh, K.L. John and Ms. Shobha Dikshit for the Respondents.

The Judgment of the Court was delivered by SHARMA, J. This case arises out of a proceeding under the Indian Stamp Act, 1899. Special leave is granted.

2. A dispute between the appellants and the respondent No. 1, who are members of a family, was referred to an arbitrator, who made an award on 9.10.1973, and filed the same within a few days before the civil court for making it a rule of the court. On objection by the present appellants, the prayer was rejected on 18.3.1976 and the order was confirmed by the High Court on 3.7.1981 in a regular first appeal. An application for special leave was dismissed by this Court on 18.4.1983 and a prayer for review was also rejected. It is stated on behalf of the appellants that in the meantime the respondent No.1 applied before the Collector for summoning the award and realising the duty and penalty. A copy of the award was annexed to the application. The respondent's prayer was opposed by the appellants but was allowed by the Collector on 15.7.1983; and, on a request made to the civil court for sending the award, the civil court asked the office to do so. The appellants moved the Chief Controlling Revenue Authority under s. 56 of the Indian Stamp Act (hereinafter referred to as the Act) against the Collector's order dated 15.7.1983. The Authority in exercise of its revisional power set aside the impugned order of the Collector, inter alia, on the ground of lack of jurisdiction. The respondent challenged this judgment before the High Court in a writ case which was allowed by the impugned judgment dated 27.2.1989. The matter was remanded to the Collector to decide the case afresh in the light of the observations. The High Court also doubted the power of the Chief Controlling Revenue Authority to entertain the appellants' application under s. 56 of the Act. This judgment is the subject matter of the present appeal.

3. Mr. Satish Chander, the learned counsel for the appellants, contended that there cannot be any doubt about the power of the Chief Controlling Authority to correct an erroneous order of the Collector. Emphasis was laid on the language of s. 56 suggesting its wide application. The learned counsel was also right in arguing that the Authority is not only vested with jurisdiction but has the duty to quash an order passed by the Collector purporting to be under Chapters IV and V of the Act by exercising power beyond his jurisdiction. To hold otherwise will lead to an absurd situation where a subordinate authority makes an order beyond its jurisdiction, which will have to be suffered on account of its unassailability before a higher authority. This Court in *Janardan Reddy and Others v. The State of Hyderabad and Others*, [1951] SCR 344, after referring to a number of decisions, observed that it is well settled that if a court acts without jurisdiction, its decision can be

challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the court to which it would lie if its order was with jurisdiction. We, therefore, agree with the appellants that the Chief Controlling Revenue Authority had full power to interfere with the Collector's order, provided it was found to be erroneous. Their difficulty, however, is that we do not find any defect in the Collector directing to take steps for the realisation of the stamp duty.

4. It was contended on behalf of the appellants that the respondent No. 1 had no locus standi to move the Collector for impounding the award and sub-section (1) of s. 33 of the Act had no application. The learned counsel proceeded to say that in the circumstances it has to be assumed that the Collector acted suo motu under sub-section (4) of the said section and since the proviso to sub-section (5) directs that no action under sub-section (4) shall be taken after a period of four years from the date of execution of the instrument, the Collector had no authority to pass the impugned order after about a decade. In reply, Mr. G.L. Sanghi urged that the order for impounding the award was passed by the civil court itself on 18.3.1976, and the further orders of the Collector dated 22.7.1983 and of the civil court dated 27.8.1983 were passed merely by way of implementing the same. The learned counsel is right in relying upon the concluding portion of the order of the civil court dated 18.3.1976 directing the impounding of the award and sending it to the Collector for necessary action. It is true that further steps in pursuance of this judgment were not taken promptly and it was the respondent No. 1 who drew the attention to this aspect, but it cannot be legitimately suggested that as the reminder for implementing the order came from the respondent, who was motivated by a desire to salvage the situation to his advantage, further steps could not be taken. There is no question of limitation arising in this situation and it cannot be said that what had to be done promptly in 1976 would not be done later. The orders of the Collector dated 15.7.1983 and 22.7.1983 must, therefore, in the circumstances, be held to have been passed as the follow-up steps in pursuance of the civil court's direction dated 18.3.1976, and no valid objection can be taken against them. The Collector, therefore, shall have to proceed further for realisation of the escaped duty.

5. It was next contended that in any event the Collector did not have the power to enquire into the correct valuation of the property which was the subject-matter of the award. Reliance was placed on the observations in *Himalaya House Co. Ltd. v. Bombay v. Chief Controlling Revenue Authority*, [1972] 3 SCR

332. There is no merit in this point either. The case comes from Uttar Pradesh where express provisions have been made by the insertion of s. 47-A, authorising the Collector to examine the correctness of the valuation.

6. Lastly Mr. Satish Chandra argued that the respondent No. 1 is taking keen interest in the present proceeding in an attempt to illegally re-open the question of making the award a rule of the court, which stood concluded by the impugned judgment of the High Court and the order of this Court dismissing the special leave petition therefrom and he can not be allowed to do so. The reply of Mr. Sanghi has been that this aspect is not relevant in the present proceeding for realisation of the duty and need not be decided at this stage. His stand is that an award which is not made rule of the court

is not a useless piece of paper and can be of some use, say by way of defence in a suit. He said that this question will have to be considered if and when the occasion arises. Having regard to the limited scope of the present proceeding, we agree with Mr. Sanghi that we may not go into this aspect in the present case, but we would clarify the position that on the strength of the present judgment it will not be open to the respondent to urge that the effect of the High Court decision dated 8.7.1981 and the orders of this Court dismissing the special leave petition therefrom and later the review application has disappeared or has got modified.

7. The appeal is disposed of in the above terms, but the parties are directed to bear their own costs of this Court.

G.N.
of.

Appeal disposed