

(2003) 05 AHC CK 0237

Allahabad High Court

Case No: C.M.W.P. No. 21344 of 2003

Syed Mahfooj Hussain

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 19, 2003

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 227
- Stamp Act, 1899 - Section 26, 56(1), 56(1A)

Citation: (2003) 5 AWC 3928 : (2003) 95 RD 28

Hon'ble Judges: R.S. Tripathi, J; M. Katju, J

Bench: Division Bench

Advocate: Mohammad Isa Khan, for the Appellant;

Final Decision: Dismissed

Judgement

M. Katju, J.

This judgment will govern all similar petitions listed before us today.

2. Heard learned Counsel for the parties.

3. By means of this petition, the Petitioner has challenged the constitutional validity of the first proviso to Section 56(1A) of the Indian Stamp Act, which was inserted by the Indian Stamp (U. P. Second Amendment) Act, 2001 (U. P. Act No. 38 of 2001) copy of which is Annexure-11 to the writ petition.

4. The facts of this case are that by a sale deed dated 1.8.2001 Annexure-2 to the writ petition one Deepak Kumar transferred the land in question to the Petitioner. The Sub-Registrar, Karchhana, district Allahabad made a reference to the District Magistrate, Allahabad vide Annexure-3 to the writ petition stating that the Stamp Duty on the document was Rs. 1,17,900 but the Petitioner had paid only Rs. 23,400 hence the deficiency in the stamp duty was Rs. 94,500. The Petitioner filed an objection dated 8.5.2002 before the Respondent No. 2 vide Annexure-4 to the writ

petition alleging that there was no deficiency. The Respondent No. 2, however, by order dated 30.11.2002 Annexure-7 held that there was deficiency of Rs. 94,500 which should be recovered as land revenue. Against that order the Petitioner filed a revision u/s 56(1) of the Stamp Act before the Commissioner, Allahabad, with a stay application. True copy of the Revision and the Stay application are Annexures-8 and 9 to the writ petition. However, the Commissioner, Allahabad by order dated 25.3.2003 admitted the Revision and held that if Petitioner deposits 1/3rd of the amount in question, then the stay application will be considered. True copy of the said order dated 25.3.2003 is Annexure-10 to the writ petition. It is evident that the said order has been passed in view of the impugned first proviso to Section 56(1A) of the Stamp Act.

5. Section 56(1A) states :

(1A) Notwithstanding anything contained in any other provisions of this Act, any person including the Government aggrieved by an order of the Collector under Chapter IV, Chapter v. or under Clause (a) of the first proviso to Section 26 may, within sixty days from the date of receipt of such order, prefer an appeal against such order to the Chief Controlling Revenue Authority, who shall, after giving the parties a reasonable opportunity of being heard consider the case and pass such order thereon as he thinks just and proper and the order so passed shall be final :

Provided that no application for stay of recovery of any disputed amount of stamp duty including interest thereon or penalty shall be entertained unless the applicant has furnished satisfactory proof of the payment of not less than one-third of such disputed amount :

Provided further that where the Chief Controlling Revenue Authority passes an order for the stay of recovery of any stamp duty, interest thereon or penalty or for the stay of the operation of any order appealed against and such order results in the stay of recovery of any stamp duty, interest thereon or penalty, such stay order shall not remain in force for more than thirty days unless the Appellant furnishes adequate security to the satisfaction of the Collector concerned for the payment of the outstanding amount.

6. Learned Counsel for the Petitioner submitted that the first proviso to the impugned Section 56(1A) has created undue hardship and is an unreasonable restriction and violative of Article 14 of the Constitution.

7. In our opinion, there is no merit in this petition.

8. It may be mentioned that as held by a Division Bench of this Court in [Naveen Gun House and Others Vs. Union of India \(UOI\) and Others](#), stamp duty is a tax and the power to levy stamp duty is in the concurrent list of the Constitution, i.e., Entry 44 of the List III of the VI Ith Schedule. Hence, the State Legislature has power to pass the impugned Act.

9. It is a well-settled principle of interpretation that hardship or inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the Statute vide [Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal](#). If the language is plain and admits of only one meaning, it has to be given effect to even if it leads to hardship or possible injustice vide [Col. D.D. Joshi and Others Vs. Union of India \(UOI\) and Others](#),

10. In [The Bengal Immunity Company Limited Vs. The State of Bihar and Others](#), it was observed by the Supreme Court that if there is any hardship, it is for the Parliament to amend the law, but the Court cannot be called upon to discard the cardinal rule of interpretation for mitigating a hardship. If the language of an Act is sufficiently clear, the Court has to give effect to it, however inequitable or unjust the result may be. As is said, "dura lex sed lex" which means "the law is hard but it is the law". In our opinion, even if the impugned amendment is causing hardship to some people, it is not for this Court to amend the law. A legal enactment must be interpreted in its plain and literal sense as that is the first principle of interpretation. In our opinion, the impugned amendment to the Stamp Act is clear and unambiguous. It clearly states that no stay of recovery of any disputed amount of stamp duty including interest or penalty can be entertained unless the Appellant has deposited 1/3rd of the deposited amount.

11. In *Abel v. Lee* 1871 LR 6 CP 365, Willes, J., observed "I utterly repudiate a notion that it is competent to a Judge to modify the language of an Act of Parliament in order to bring it in accordance with his views as to what is right and reasonable". In *Miller v. Salomans*, 7 Ex 475, Polak, J., observed, "If the meaning of the language be plain and clear we have nothing to do but to obey it-to administer it as we find it, and to take a different course is to abandon the office of the Judge and to assume the province of legislation". The same view has been taken by our Supreme Court in [Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr](#),

12. Learned Counsel for the Petitioner submitted that we should read into the impugned Section 56(1A), a provision empowering the appellate authority to waive or stay even the 1/3rd amount which has to be deposited, in certain circumstances when there is hardship etc. In our opinion a Court cannot supply a casus omissus. As held by the Supreme Court in [Dadi Jagannadham Vs. Jammulu Ramulu and Others](#), the Court cannot correct a deficiency in the Statute. An interpretation which has the effect of adding certain words and clauses to an enactment should be avoided vide *Fakhruddin v. State of U. P.* 1976 ALR 274 (FB).

13. A Taxing Statute cannot be struck down merely on the ground that the imposition is heavy vide [Jagannath and Others Vs. Union of India \(UOI\)](#). There are several taxing Statutes, which may be harsh, but they cannot be held to be unconstitutional for that reason. Thus, when a Sales Tax law is made under which the dealer cannot pass on the incidence of the tax to the purchaser, this will not

make the law unconstitutional vide [S. Kodar Vs. State of Kerala](#), and [Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others](#), A Stamp Act, as already observed above, is a taxing statute, and as regards a taxing statute, it is well settled that equity has no place in it. As observed by Rowlatt, J. in his classic statement in *Cape Brady Syndicate v. IRC* (1921) 1 KB 64, "There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied", and this view has been approved by our Supreme Court in [Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator](#), and [Banarasi Devi Vs. Income Tax Officer, Calcutta](#),

14. The Supreme Court in [Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar](#), observed that equity is out of place in tax laws. In [The Commissioner of Income Tax, Lucknow Vs. Sh. Madho Pd. Jatia](#), the Supreme Court held that there could be no consideration of equity if the language of the provision was plain and clear. In [Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others](#), the Supreme Court observed that while interpreting a taxing statute, one cannot go by the notion as to what is just and expedient.

15. We are of the opinion that no doubt the impugned first proviso to Section 56(1A) is a harsh provision but it is not for this Court to cure this defect vide [Shrimati Tarulata Shyam and Others Vs. Commissioner of Income Tax, West Bengal](#), as it would then be taking on the role of the Legislature. If there is a *casus omissus* the defect can only be remedied by legislation, vide [S.P. Gupta Vs. President of India and Others](#). The Supreme Court held in these cases that where there was a lacuna in the Act, that could not be filled up by the Court, but only by the Legislature.

16. In [The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc.](#), it was held by the Supreme Court that the right of appeal is a creature of the statute, and it is for the Legislature to decide whether the right should be given conditionally or unconditionally. In this decision, the Appellant had challenged the constitutional validity of Section 406(2)(e) of the Bombay Provincial Municipal Corporation Act, which required the deposit of the impugned tax as a pre-condition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax imposed. In other words, 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution.

17. No doubt in *STATE OF TRIPURA v. MANORANJAN CHAKRABORTY AND OTHERS*, (2001) 10 SCC 740, it was held that if gross injustice is done, the High Court under Article 226 can interfere. However, as observed in [Shyam Kishore and others Vs. Municipal Corporation of Delhi and another](#), the resort to Articles 226 and 227 in such cases should be discouraged. As held in [Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others](#), in tax matters ordinarily there should not be any short-circuiting of the alternative statutory remedy of appeal/revision.

18. A counter-affidavit has been filed by the Respondents in Writ Petition No. 608 of 2003, Smt. Kanchan Jaiswal v. State of U. P., and we are treating that as the counter-affidavit in this case and in the other similar writ petitions listed before us, so far as the legal aspect is concerned.

19. In paragraph 4 of the counter-affidavit, it is stated that the object of the impugned enactment was to prevent evasion of stamp duty. It had been experienced that there was very slow realisation of stamp duty and as such, the new provision was added. We find nothing unconstitutional in this. Tax laws are often amended to prevent evasion of tax.

20. Moreover, it may be pointed out that the impugned amendment has not deleted Section 56(1) which stated that the power of the Collector is subject to the control of the Chief Controlling Revenue Authority. Hence, if in a rare and exceptional case the Collector has imposed exorbitant stamp duty arbitrarily, the Chief Controlling Revenue Authority, on an application, can modify the same. However, this should be done only in rare and exceptional cases, otherwise the provision for appeal u/s 56(1A) will become redundant.

21. Since the language of the impugned first proviso to Section 56(1A) is plain and unambiguous, we cannot interpret it otherwise. We find no unconstitutionality in the impugned enactment. Obviously, it was made so that Government dues may be recovered quickly. As held by the Supreme Court in [Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others](#), the Government requires Revenue for various purposes and it cannot run on Bank guarantees. Thus, there is no constitutional infirmity in the impugned provision. The petition is, therefore, dismissed. Other similar petitions listed before us today are also dismissed on the ground of alternative remedy of appeal u/s 56(1A), or u/s 56(1) in rare and exceptional cases.