Government of Uttar Pradesh and Others Vs Raja Mohammad Amir Ahmad Khan

Appeal (civil) 369 of 1957

Court: Supreme Court of India

Date of Decision: Feb. 16, 1961

Acts Referred:
Stamp Act, 1899 â€” Article 58, 31, 32, 33, 48

Citation: AIR 1961 SC 787 : (1962) 1 SCR 97

Hon'ble Judges: M. Hidayatullah, J; J. L. Kapur, J; J. C. Shah, J

Bench: Full Bench

Final Decision: dismissed

Judgement

Kapur, J.
This is an appeal against the judgment and order of the High Court of Allahabad on a certificate granted by that court. The

respondent file a petition under Art. 226 of the Constitution praying that the imposition of stamp duty by the Collector of Sitapur, of Rs. 85,595/7/-

and a penalty of Rs. 5/- was against law and could not be realized against him and prayed that the order be quashed. On September 12, 1948, the

respondent executed a wakf by oral recitation of Sigha and then it was written on a stamped paper which was signed by the respondent and

attested by witnesses. On September 15, 1948, it was presented to the Collector for his opinion under s. 31 as to the duty chargeable. As the

Collector himself was in doubt, he referred the matter to the Board of Revenue which, after a fairly long time, held that the document was liable to

duty in accordance with Art. 58 of the Stamp Act. On October 29, 1951, the Collector held that Rs. 85,598/7/- were payable as stamp duty and

ordered that it be deposited within fifteen days. Notice to this effect was served on the respondent on November 10, 1951. Thereupon the

respondent filed a petition in the High Court under Art. 226 which was dismissed on November 3, 1952 on the ground that it was premature. On

February 2, 1954, a further notice was served upon the respondent to deposit the amount of the stamp duty plus the penalty of Rs. 5/- within a

month otherwise proceedings would be taken against him under s. 48 of the Stamp Act. Thereafter on March 1, 1944, the respondent filed a

petition under Art. 226 of the Constitution in the Allahabad High Court challenging the legality of the imposition of the stamp duty and the penalty

and prayed for a writ of certiorari. A full bench of the High Court quashed the order of the Collector and the State of U.P. has come in appeal to

this Court.

2. The decision of this appeal depends upon the interpretation of Sections 31, 32 and 33 of the Stamp Act. The relevant portion of s. 31 provides

:-

S. 31(1) ""When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector and the person

bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding

five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his

judgment, the instrument is chargeable.

3. It is admitted that the document in dispute was submitted to the Collector for his opinion under s. 31 and the opinion of the Collector was sought

as to what the duty should be. Under s. 32 of the Act when such an instrument is brought to the Collector under s. 31 and he determines that it

was already fully stamped or he determines the duty which is payable on such a document and that duty is paid, the Collector shall certify by

endorsement on the instrument presented that full duty with which it is chargeable has been paid and upon such endorsement being made, the

instrument shall be deemed to be fully stamped or not chargeable to duty as the case may be. Under the proviso to s. 32, the Collector is not

authorised to make the endorsement if an instrument is brought to him a month after the date of its execution. Then follows s. 33 which is as follows

:

S. 33 ""Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an

officer of police, before whom an 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.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain

whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or

first executed : Provided that -

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit

so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII of Chapter XXXVI of the

Code of Criminal Procedure, 1898;

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer

as the Court appoints in this behalf.

(3) For the purposes of this section, in case of doubt, -

(a) the collecting Government may determine what offices shall be deemed to be public offices; and

(b) the collecting Government may determine who shall be deemed to be persons in charge of public offices.

4. The decision of this appeal depends upon the interpretation to be put upon the words ""before whom any instrument chargeable............ is

produced or comes in the performance of his functions"". Dealing with these words the High Court held :-

With all respect, therefore, we agree that the learned Judges deciding 127715 case took a correct view of the words ""is produced or comes in the

performance of his functions"" used in Section 33 of the Act to mean ""that production of the instrument concerned in evidence or for the purpose of

placing reliance upon it by one party or the other.

5. The High Court was also of the opinion that the object of paying the whole stamp duty was to get the instrument admitted into evidence or its

being acted upon or registered or authenticated as provided in Sections 32(3), 35, 38(1) and 48(1) of the Stamp Act.

6. Counsel for the State referred to the various sections of the Act; first to the definition section; section 2(11) which defines what is ""duly

stamped""; s. 2(14) which defines ""instrument"" and s. 2(12) which defines ""executed"". He then referred to s. 3 which lays down what ""chargeable

means and then to s. 17 which provides that all instruments chargeable with duty and executed by any person in British India shall be stamped

before or at the time of execution. Certain other sections i.e. Sections 35 and 38(1) were also referred to and so also Sections 40(1)(a), 41, 42

and 48 but in our opinion it is not necessary to refer to these sections. What has to be seen is what is the consequence of a person applying to a

Collector for his determination as to the proper duty on an instrument. The submission on behalf of the State (appellant) was that if an instrument

whether stamped or not is submitted for the opinion of the Collector before it is executed, i.e., it is signed, then the Collector is required to give his

determination of the duty chargeable and return the document to the person seeking his opinion but if the document is scribed on a stamped paper

or unstamped paper and is executed then different consequences follow. In the latter case it was submitted that under s. 33 the Collector is

required to impound the document if he finds that it is not duly stamped. On the other hand it was submitted on behalf of the respondent that on his giving his opinion the Collector becomes functus officio and can take no action under s. 33. It is these two rival contentions of the parties that

require to be decided in this case.

7. After an inordinately long delay, the Collector determined the amount of duty payable and impounded the document. Power to impound is given

in s. 33 of the Act. Under that section any person who is a Judge or is in-charge of a public office before whom an instrument chargeable with duty

is produced or comes in the performance of his functions is required to impound the instrument if it appears to him not to be duly stamped. The

question is does this power of impounding arise in the present case ? The instrument in dispute was not produced as a piece of evidence nor for its

being acted upon e.g. registration, nor for endorsement as under s. 32 of the Stamp Act but was merely brought before the Collector for seeking

his advise as to what the proper duty would be. The words ""every person....... before whom any instrument.......... is produced or comes in the

performance of his functions"" refer firstly to production before judicial or other officers performing judicial functions as evidence of any fact to be

proved and secondly refer to other officers who have to perform any function in regard to those instruments when they come before them e.g.

registration. They do not extend to the determination of the question as to what the duty payable is. They do not cover the acts which fall within the

scope of s. 31, because that section is complete by itself and it ends by saying that the Collector shall determine the duty with which, in his

judgment, the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector. It was

conceded that if the instrument is unexecuted i.e. not signed, and the opinion of the Collector is sought, he has to give his opinion and return it with

his opinion to the person seeking his opinion. The language in regard to executed and unstamped documents is no different and the powers and

duties of the Collector in regard to those instruments are the same, that is, when he is asked to give his opinion, he has to determine the duty with

which, in his judgment, the instrument is chargeable and there his duties and powers in regard to that matter end. Then follows s. 32. Under that

section the Collector has to certify by endorsement on the instrument brought to him under s. 31 that full duty has been paid, if the instrument is

duly stamped, or it is unstamped and the duty is made up, or it is not chargeable to duty. Under that section the endorsement can be made only if

the instrument is presented within a month of its execution. But what happens when the instrument has been executed more than a month before its

being brought before the Collector ? Section 31 places no limitation in regard to the time and there is no reason why any time limit should be

imposed in regard to seeking of opinion as to the duty payable.

8. Chapter IV of the Act which deals with instruments not duly stamped and which contains Sections 33 to 48, provides for impounding of

documents, how the impounded documents are to be dealt with, Collector''s powers to stamp instruments impounded and how the duties and

penalties are to be recovered. It would be an extraordinary position if a person seeking the advice of the Collector and not wanting to rely upon an

instrument as evidence of any fact to be proved nor wanting to do any further act in regard to the instrument so as to effectuate its operation should

also be liable to the penalties which unstamped instruments used as above might involve. The scheme of the Act shows that where a person is

simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under s. 31. If it is properly

stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to

make up the duty and under s. 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the

very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow

and an executed document is in the same position as an instrument which is unexecuted and unstamped and after the determination of the duty the

Collector becomes functus officio and the provisions of s. 33 have no application. The provisions of that section are a subsequent stage when

something more than mere asking of the opinion of the Collector is to be done.

9. Our attention was drawn to the observations of Rankin C.J. in Re Cooke and Kelly [I.L.R(1932) .59 Cal. 1171.] but those observations are

obiter as the High Court held that the reference under s. 57 of the Stamp Act was incompetent. The doctrine of functus officio was applied in

several cases : Collector, Ahmednagar v. Rambhau Tukaram Nirhali [A.I.R. 1930 Bom. 392.]. In that case a certificate of sale had been signed

but the certificate was not duly stamped which was pointed out when it was sent to the Sub-Registrar for registration. The Sub-Registrar informed

the Judge about it and the Judge got back the certificate from the purchaser and thinking that he had power to impound the document and to

impose a penalty asked for the opinion of the High Court and it was held that after he had signed it he was functus officio and could not act any

further and could not impound it. The same principle was laid down in Paiku v. Gaya [I.L.R. [1948] Nag. 950.] and in 192839 and in our opinion

as soon as the Collector determined the duty he became functus officio and he could not impound the instrument under s. 33 and consequential

proceedings could not, therefore, be taken.

10. The appeal is therefore dismissed with costs.

11. Appeal dismissed.