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RAYMOND LTD. AND ANR.
v.
STATE OF CHHATTISGARH AND ORS.

FEBRUARY 20, 2007

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[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Stamps Act, 1899:

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ss. 31 and 32(3) and 56(4) as amended by State of Madhya Pradesh and applicable in State of Chattisgarh—Assessment of stamp duty and certificate by Collector u/s 32(3) endorsed on deed of conveyance—Revision filed by State before Board of Revenue—Maintainability—Held, revisional power contemplates a power to give final determination over order of Collector passed in terms of s.31 irrespective of the fact as to whether an endorsement had been made thereupon or not.

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s.32(3)—Legal fiction—Held is confined only in regard to receivability of instrument in evidence—It does not state that endorsement by way of certificate would be final or binding on parties—Interpretation of statutes.

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s.56(4)—Revision—Scope of—Held, revisional power is to be exercised by Board of Revenue either on its on motion or on an application by any party—The term “any party” implies both the parties to the lis and not the party filing an application u/s 31 alone.

Words and Phrases:

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“any party” occurring in s.56(4) of Stamps Act as amended by State of Madhya Pradesh—Meaning of.

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Appellant no. 1—Company intended to sell its cement division situate in the State of Madhya Pradesh which on division of the State came under the State of Chattisgarh. With a view to preassess the stamp duty payable on the instrument of sale, the appellant filed an application for adjudication of the Collector in terms of s.31 of the Stamp Act, 1899. The Collector formed a valuation committee and on its report assessed u/s 31 of the Act the stamp duty chargeable on the instrument and the registration charges. An

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endorsement on the deed of conveyance was made by respondent no. 1 on 16.1.2001 by way of certificate in terms of s.32 of the Act. The instrument was accordingly stamped and registered on 21.1.2001. However, the State Government filed a revision application before the Board of Revenue seeking revision of the order dated 16.1.2001 passed by respondent no. 2. The Board of Revenue served a notice on appellant no. 1, which challenged the notice in a writ petition before the High Court questioning the jurisdiction of the Board of Revenue entertaining the revision application. After dismissal of the writ petition, the present appeal was filed.

It was contended for the appellant, *inter alia*, that question of chargeability of an instrument would arise only at the stage of the proceedings u/s 31 of the Act and not under s.32, and thus the Board of Revenue would have no jurisdiction in the matter; that s.56(4) would not apply to s.32 of the Act; and that legal fiction created u/s 32(3) must be given its full effect.

Dismissing the appeal, the Court

HELD:1. Section 31 of the Stamps Act, 1899 provides for the power of the Collector to determine the duty with which the instrument would be chargeable, if an application in this behalf is made. The power to determine the amount of stamp duty chargeable for the instrument is, thus, contained in Section 31. If the applicant intends to challenge the said order before the revisional authority, evidently it would not deposit the amount. However, only because the determination by the Collector has been accepted pursuant whereto a certificate has been issued, that by itself cannot be held to be binding upon the State. Section 32 merely provides for the consequences flowing from such determination. [Para 13 and 19] [996-H; 998-B]

2. The legal fiction created in sub-section (3) of Section 32 of the Act is confined only to the effect that an endorsement when made, the document shall be receivable in evidence and may be acted upon and registered as if it had been originally duly stamped. The legal fiction does not state that the endorsement by way of a certificate would be final or binding on the parties.

[Para 14 15] [997-B-C]

Maruti Udyog Ltd. v. Ram Lal and Ors., [2005] 2 SCC 638¹ and *Ishikawajima-Harima Heavy Industries Ltd. v. Director of Income Tax, Mumbai*, (2007) 1 SCALE 140, relied on.

1. [2005] 1 SCR 790.

A *The Chief Controlling Revenue Authority, Board of Revenue, Madras v. Dr. K. Manjunatha Rai*, AIR (1977) Madras 10, distinguished.

Ashok Leyland Ltd. v. State of T.N., [2004] 3 SCC 1²; *Consolidated Coffee Ltd. v. Coffee Board*, [1995] 1 SCC 312³; *Aswini Kumar Ghose v. Arabinda Bose*, [1953] SCR 1 and *State of W.B. v. Union of India*, [1964] 1

B SCR 371, referred to.

3. Sub-section (4) of Section 56 was inserted by way of a State Amendment. The intention of the legislature in inserting the said provision is clear and explicit as by reason thereof a power of revision has been conferred upon the highest authority of Revenue in the State, viz., Board of Revenue.

C The revisional power is to be exercised by the Board of Revenue either on its own motion or on an application by any party. The term "any party" used in the said provision implies both the parties to the lis and not the party filing an application under Section 31 of the Act alone. The revisional power is to be exercised by the Board so as to enable it to satisfy itself in regard to the amount with which the instrument is chargeable with duty. The revisional proceeding has a direct nexus with determination of an instrument being charged with duty and not the endorsement made thereupon at a subsequent stage. The revisional power contemplates a power to give final determination over the order of the Collector, i.e., an order passed in terms of Section 31 of the Act irrespective of the fact as to whether an endorsement had been made thereupon or not. Section 32 does not provide for a finality clause and, therefore, it is difficult to comprehend that the right of the parties to approach the revisional authority in terms of Sub-section (4) of Section 56 of the Act shall stand denuded. The said provision also must be given full effect to.

[Para 16, 22 and 23] [997-D-F; 998-E-F]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8167 of 2003.

From the Judgment and final Order dated 10.9.2003 of the High Court of Judicature, Chhattisgarh at Bilaspur in W.P. No. 2451/2003.

G Ashok H. Desai, Indu Malhotra, Vikas Mehta, Rajendra Barot, Shilpa Gupta and Shilpi Kaushik for the Appellants.

Ravi Shankar Prasad, Suparna Srivastava, Pooja Matlani and Rajesh Srivastava for the Respondents.

2. [2004] 1 SCR 306

H 3. [1995] 5 Suppl. SCR 632

The Judgment of the court was delivered by

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S.B. SINHA, J. 1. Interpretation and application of Sections 31, 32 and 56 of the Indian Stamp Act, 1899 (for short "the Act"), as amended by the State of Madhya Pradesh, and are applicable in the State of Chhattisgarh is in question in this appeal which arises out of a judgment and order dated 10.09.2003 passed by a learned Single Judge of the Chhattisgarh High Court in Writ Petition No. 2451 of 2003.

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2. Appellant No. 1 herein is a public limited company incorporated under the Companies Act, 1956. It had its cement division in the State of Madhya Pradesh in the year 1982. It intended to sell the same in favour of one Lafarge India Ltd. on "slump-sale" basis. The State of Chhattisgarh was carved out of the State of Madhya Pradesh in November, 2000. With a view to pre-assess the stamp duty payable on the instrument of sale and the impact thereof, an application was filed by the appellants for adjudication of the Collector in terms of Section 31 of the Act which occurs in Chapter III thereof. A report of a chartered designated valuer was enclosed with the said application.

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3. The Collector of Janjgir District, on receipt of the said application, formed a Valuation Committee comprising of Sub-Divisional Officer (Revenue) as Chairman, Sub-Divisional Officer (Building & Roads) PWD, Sub-Divisional Officer (Forest) Champa, Assistant Mining Officer, Janjgir Champa and District Registrar, Janjgir Champa as members to inspect the properties and submit an independent report in regard to the valuation of the properties sought to be transferred. The Valuation Committee assessed the same at Rs. 42,18,31,288/-. Pursuant to or in furtherance of the said report, the stamp duty chargeable on the instrument under Section 31 of the Act was assessed by the Collector at Rs. 3,74,90,300/- and registration charges of Rs. 33,75,601/-. The said order was accepted by the appellants and the amount of stamp duty and the registration charges was deposited. An endorsement on the deed of conveyance was made by Respondent No. 2 on 16.01.2001 by way of a certificate in terms of Section 32 of the Act whereupon the instrument was duly stamped.

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4. A deed of conveyance was executed by Appellant No. 1 in favour of the said Lafarge India Ltd. on 19.01.2001 which was registered on 21.01.2001.

5. The State appears to have filed a revision application before the Board of Revenue seeking revision of the order dated 16.01.2001 passed by

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A Respondent No. 2.

6. On or about 26.12.2001, however, the Board of Revenue served a notice upon the appellants. Appellant No. 1 filed its objections in regard to the jurisdiction of the Board of Revenue to entertain the revisional application filed by the State. Questioning the jurisdiction of the Board of Revenue to issue the aforementioned notice, a writ petition was filed by the appellant, which by reason of the impugned judgment has been dismissed.

B 7. Contentions of the appellants before us are:

- C** (i) There exists a clear distinction between Sections 31 and 32 of the Act. Whereas a revision application shall be maintainable as against an order under Section 31 of the Act, viz., at a stage where the parties were yet to ascertain the impact of the duty whereafter only the stamp duty which would be payable is to be determined, the stage under Section 32 of the Act is reached, where the parties accept the adjudication, pay the money and the document is certified with an endorsement that the full duty has been paid in terms whereof a legal fiction is created under Sub-section (3) of Section 32 of the Act.
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- E** (ii) The legal fiction created under Sub-section (3) of Section 32 of the Act must be given its full effect.
- F** (iii) Section 56(4) of the Act would not apply to Section 32 thereof. If Section 56(4) of the Act, which is a residuary clause, is otherwise construed, Section 32(3) of the Act would be rendered meaningless.
- F** (iv) If the intention of the legislature was to confer a power of revision against a decision of a Collector despite an endorsement made in this behalf in terms of Section 32 of the Act, the same could have been made subject to Section 56 as was done by the State of Maharashtra while amending Bombay Stamp Act by inserting Section 53A therein.
- G** (v) The High Court misdirected itself in referring to the statements of Objects and Reasons which cannot be resorted to to interpret the plain meaning of a statute.

H 8. Mr. Ravi Shankar Prasad, learned senior counsel appearing on behalf of the respondents, would, on the other hand, support the judgment contending that Section 56 of the Act covers all situations and it is in fact a stand alone

clause.

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9. Before embarking on the rival contentions of the parties, we may notice the relevant provisions of the Act.

10. Sections 31 and 32 of the Act read as under:

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“31. Adjudication as to proper stamp. (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 fifty naye paise) 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.

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(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

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32. Certificate by Collector. (1) When an instrument brought to the Collector under section 31, is, in his opinion, one of a description chargeable with duty, and—

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(a) the Collector determines that it is already fully stamped, or

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(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

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(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

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A (3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped”

B 11. Section 56 of the Act, as amended by the Indian Stamp (Madhya Pradesh Amendment) Act, 1990, reads as under:

“56. Control of, and statement of case to, Chief Controlling Revenue-authority. (1) 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.

C (2) 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.

D (3) Such authority shall, after giving a reasonable opportunity of being heard to the parties concerned, consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision.

E (4) The Chief Controlling Revenue Authority may, on its own motion or on the application by any party, at any time for the purpose of satisfying itself as to the amount with which the instrument is chargeable with duty, call for and examine the record of any case disposed of by the Collector and may pass such order in reference thereto as it thinks fit.”

F 12. It is not in dispute that Sub-section (4) of Section 56 was inserted by the Indian Stamp (Madhya Pradesh Amendment) Act, 1990 in the year 1990.

G 13. Section 31 of the Act provides for a power of the Collector to determine the duty with which the instrument would be chargeable, if an application in this behalf is made. The power to determine the amount of stamp duty chargeable for the instrument is, thus, contained in Section 31.

H Section 32 merely provides for the consequences flowing from such

determination. The Collector, in the event of fulfilling either of the conditions specified in Clauses (a) and (b) of Sub-section (1) of Section 32, is mandated to certify by endorsement on such instrument that the full duty, which is chargeable, has been paid. A

14. Sub-section (3) of Section 32 of the Act raises a legal fiction. However, the said legal fiction is confined only to the effect that an endorsement when made, the document shall be receivable in evidence and may be acted upon and registered as if it had been originally duty stamped. B

15. Legal fiction created under Sub-section (3) of Section 32 of the Act, therefore, does not state that the endorsement by way of a certificate would be final or binding on the parties. C

16. It is true that Sub-section (2) of Section 56 of the Act does not refer to Section 32 but the same, in our opinion, was not necessary. Sub-section (4) of Section 56 was inserted by way of a State Amendment. The intention of the legislature in inserting the said provision is clear and explicit as by reason thereof a power of revision has been conferred upon the highest authority of Revenue in the State, viz., Board of Revenue. The revisional power is to be exercised by the Board of Revenue either on its own motion or on an application by any party. The term "any party" used in the said provision is of some significance. By reason of the said provision, not only the State but also the person who had filed an application under Section 31 of the Act, thus, may file a revision application before the Board of Revenue. The terms "any party", therefore, implies both the parties to the lis and not the party filing an application under Section 31 of the Act alone. The revisional power is to be exercised by the Board so as to enable it to satisfy itself in regard to the amount with which the instrument is chargeable with duty. The revisional proceeding has a direct nexus with determination of an instrument being charged with duty and not the endorsement made thereupon at a subsequent stage. D

17. Submission of Mr. Ashok Desai, learned senior counsel appearing on behalf of the appellants, that the question of chargeability of an instrument with duty arises only at the stage of Section 31 of the Act and not under Section 32 thereof, and thus, the Board of Revenue would have no jurisdiction in the matter, cannot be accepted. Determination by the Collector is under Section 31 of the Act. Thus, it is only that order which can be the subject matter of revisional application. E

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- A 18. Section 31 of the Act contemplates two situations viz. where the Collector determines that the instrument brought before him was already fully stamped or an additional amount of stamp duty is required to be paid. The question of issuance of a certificate by way of an endorsement in either of the cases would arise when the additional stamp duty, if any, is paid.
- B 19. If the applicant intends to challenge the said order before the revisional authority, evidently it would not deposit the amount. However, only because the determination by the Collector has been accepted pursuant whereto a certificate has been issued, by itself cannot be held to be binding upon the State.
- C 20. The Act deals with a fiscal matter. It was indisputably enacted keeping in mind the revenue of the State, The amendment has been carried out to see that no evasion in regard to collection of actual stamp duty payable on instruments takes place. The Act provides for determination of such amount at different stages.
- D 21. If an application under Section 31 of the Act is not filed, it would be for the Registrar to do so at the time when the document is presented for registration in which event the matter would be referred to the Collector.
- E 22. We have noticed hereinbefore that Section 32 does not provide for a finality clause.
- F 23. In absence of any finality clause, it is difficult to comprehend that the right of the parties to approach the revisional authority in terms of Sub-section (4) of Section 56 of the Act shall stand denuded. The said provision also must be given full effect to. It cannot be said that the revisional authority although is conferred with a power to satisfy itself as to the correctness or otherwise of the order of the Collector determining the quantum of stamp duty payable to an instrument, it would not have any jurisdiction to do so only because the order was accepted by one party to the dispute.
- G 24. The revisional power contemplates a power to give final determination over the order of the Collector, i.e., an order passed in terms of Section 31 of the Act irrespective of the fact as to whether an endorsement had been made thereupon or not.
- H 25. Strong reliance has been placed by Mr. Desai on *The Chief Controlling Revenue Authority, Board of Revenue, Madras v. Dr. K.*

Manjunatha Rai AIR (1977) Madras 10, wherein a Special Bench of the Madras High Court has read finality and conclusiveness in an order passed under Section 32 of the Act. In absence of power of revision, the determination made under Section 31 of the Act and consequent certificate granted in terms of Section 32 of the Act was to be final. But, when a judicial or quasi judicial order is subject to revision, the same cannot be said to be final.

26. Strong reliance has also been placed by Mr. Desai on a decision of this Court in *Ashok Leyland Ltd. v. State of T.N.* [2004] 3 SCC 1, wherein *inter alia* it was noticed:

“69. The Court went further to quote the position taken in *St. Aubyn v. Attorney General*, [1951] 2 All ER 473 wherein Lord Radcliffe observed thus, “The word ‘deemed’ is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense impossible.”

70. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* it was stated that the purpose and object of creating a legal fiction in the statute is well known. But when a legal fiction is created it must be given its full effect. It was held in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1951) 2 All ER 587:

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.”

27. It must, however, be noticed that therein the court has also noticed a decision of this Court in *Consolidated Coffee Ltd. v. Coffee Board* [1995] 1 SCC 312 wherein it has been held that mere use of the word “deemed” is itself not sufficient to set up a legal fiction.

A 28. Furthermore, it is not the law that the court, irrespective of the nature, purport and object of the statute, shall assign a meaning which was not intended to be given by the Legislature. Legal fiction created in terms of Sub-section (3) of Section 32 of the Act was only in regard to the receivability of instrument in evidence. The legal fiction for the aforementioned purpose is raised only to the extent that for the said purposes it shall be deemed to have been originally duly stamped, viz., the determination of chargeability of additional duty would be no significance if the additional duty determined by the Collector, if any, has been deposited.

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C 29. In *Maruti Udyog Ltd. v. Ram Lal and Ors*, [2005] 2 SCC 638, this Court held:

D “35. In construing a legal fiction the purpose for which it is created should be kept in mind and should not be extended beyond the scope thereof or beyond the language by which it is created. Furthermore, it is well-known that a deeming provision cannot be pushed too far so as to result in an anomalous or absurd position. The Court must remind itself that the expressions like “as if is adopted in law for a limited purpose and there cannot be any justification to extend the same beyond the purpose for which the legislature adopted it.”

E [See also *Ishikawajma-Harima Heavy Industries Ltd. v. Director of Income Tax, Mumbai*, (2007) 1 SCALE 140.

F 30. We, however, accept that if the meaning of the provision of a statute is clear and explicit, it is not necessary to advert to the objects and reasons thereof in view of the decisions of this Court in *Aswini Kumar Ghose v. Arabinda Bose* (1953) SCR 1 and *State of W.B. v. Union of India* (1964) 1 SCR 371, as by taking recourse to the statements of Objects and Reasons, the generality of the words used in the statute cannot be cut down. It is axiomatic that an extended meaning thereof also cannot be given. If the contention of Mr. Desai is accepted, an extended meaning will have to be assigned to Sub-section (3) of Section 32 of the Act which is not contemplated under the statute.

G 31. Reliance placed by Mr. Desai on Section 53A of the Act, as amended by the Bombay Stamp Act, is again of no assistance inasmuch as an object can be achieved by different legislature by using different terms. Section 53A of the Bombay Stamp Act makes Section 32 subject to Section 53A. It was probably done by way of abundant caution. If a higher forum is provided, an

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order passed by a lower authority, whether the term "subject to" is used or not, shall be subservient thereto. When determination made by a statutory authority is capable of being challenged by way of revision, it is axiomatic that only the revisional order shall be final and not the order of the original authority. A

32. It is trite that no court can direct a matter to be governed by a statute other than that which is really applicable. [See *Neeraj Munjal and Ors (III) v. Atul Grover and Anr.*, [2005] 5 SCC 404. B

33. For the reasons aforementioned, we do not find any merit in this appeal which is dismissed accordingly with costs. Counsel's fee assessed at Rs. 50,000/-. C

R.P.

Appeal dismissed