

Before M.M. Kumar & T.P.S. Mann, JJ

VIKAS,—Petitioner

versus

STATE OF HARYANA & OTHERS,—Respondents

C.W.P. NO. 14122 OF 2007

29th January, 2008

Indian Stamp Act, 1899—Ss. 31 & 47—A—Constitution of India, 1950—Art. 226—Registration of relinquishment deed by sisters in favour of their brother—After about 4½ years show cause notice issued that stamp duty affixed on deed was insufficient—Provisions of S. 47-A(3) stipulate period of 3 years from date of registration of document to call for and examine instruments to satisfy as to correctness of its value or consideration—Plea that period of 3 years would commence from date of audit objection is totally absurd because there was no communication of audit objection to petitioner—Action only on issuance of show cause notice—Petition allowed and orders exercising power under section 47A after expiry of period of 3 years set aside.

Held, that a perusal of sub-section (3) of Section 47-A of the Indian Stamp Act, 1899 postulate that the Collector either on its own or on a receipt of reference from the Registrar of a district in whose jurisdiction the property is situated, shall within three years from the date of registration of any document call for and examine the instrument to satisfy himself as to the correctness of its value or consideration. Show cause notice has been issued on 7th December, 2005 which is more than 4½ years after the registration of Relinquishment Deed, much beyond the period of three years stipulated by sub-section (3) of Section 47A of Act. The only argument raised by the respondents is that an audit objection was raised,—*vide* Audit Note dated 12th June, 2002 and on the basis of then audit objection it was sought to be contended that within the period of three years objections have been taken. Therefore, the period of three years would not come in the way of the respondents as audit objection was raised on 12th June, 2002. The argument is

totally absurd because there was no communication of the audit objection to the petitioner so as to constitute a basis for argument that the action was taken within period of The real action was initiated only on the issuance of show cause notice, which admittedly was issued on 7th December, 2005.

S.C. Kapoor, Senior Advocate, with
Harminderjeet Singh, Advocate, *for the petitioner.*

Pallika Monga, AAG, Haryana, *for the respondents.*

M. M. KUMAR, J.

(1) The short issue raised in this petition filed under Article 226 of the Constitution is whether the authorities could question a registered transfer deed by exercising power under Section 47A of the Indian Stamps Act, 1899 (for brevity, 'the Act'), after the expiry of period of three years. The petitioner has claimed that order dated 29th September, 2006(P-3), passed by the Collector, Rohtak—respondent No. 3, be set aside as it questions a Relinquish Deed bearing No. 1031/1, registered on 10th May, 2001, under Section 31 of the Act. The petitioner has also challenged order dated 23rd May, 2007 (P-4), passed by the Commissioner, Rohtak Division, Rohtak—respondent No. 2, on an appeal wherein the order dated 29th September, 2006, has been upheld.

(2) Brief facts of the case are that mother of the petitioner, namely, Smt. Darshna Devi, owned a house and consequent upon her death the same was vested in the petitioner, his brother Vivek and sisters. On 10th May, 2001, all the three sisters executed a registered Relinquishment Deed in favour of the petitioner and his brother Vivek in equal share of the shares inherited by them. On 7th December, 2005, respondent No. 3 issued a notice to the petitioner to show cause as the stamp duty affixed on the Relinquishment Deed was found to be insufficient (P—1). The petitioner submitted his reply denying the allegation (P—2). On 29th September, 2006 respondent No. 3 rejected the defence of the petitioner and called upon him to deposit stamp duty amounting to Rs. 60,249 by assessing the value of the property at Rs. 3,88,800 as per Collector's rate, within 30 days (P-3). Feeling aggrieved,

the petitioner preferred an appeal before respondent No. 2, which has been dismissed, —*vide* order dated 23rd May, 2007 (P-4), upholding the order dated 29th September, 2006, passed by respondent No. 3, which is subject matter of challenge in the instant petition.

(3) After hearing learned counsel for the parties we are of the considered view that this petition deserves to be allowed. It would be apposite to read Section 47A of the Act, which is as under :—

- "47-A. Instruments under-valued how to be dealt with. (1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property has reason to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or consideration, as the case may be, and the proper duty payable thereon.
- (2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the value or consideration and the duty as aforesaid, and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.
- (3) The Collector may *suo motu*, or on receipt of reference from the Inspector-General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situate, appointed under the Registration Act, 1908, shall within three years from the date of registration of any instrument, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after

such examination, he has reasons to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty :

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

(4) Any person aggrieved by an order of the Collector under sub-section 92 or sub-section 93 may, within thirty days from the date of the order, prefer an appeal before the Commissioner of the Division and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

(4) A perusal of sub-section (3) of Section 47-A of the Act postulate that the Collector either on its own or on a receipt of reference from the Registrar of a district in whose jurisdiction the property is situated, shall within three years from the date of registration of any document, call for and examine the instrument to satisfy himself as to the correctness of its value or consideration. It is conceded position that the Relinquishment Deed was registered on 10th May, 2001 by all the three sisters in favour of the petitioner, who is their brother. A show cause notice was issued on 7th December, 2005 to ascertain as to whether the stamp duty affixed on the deed was sufficient. The petitioner had filed his reply to the show cause notice and,—*vide* order dated 29th September, 2006, he was directed to deposit stamp duty for an amount of Rs. 60,249 by assessing the value at Rs. 3,88,800. The appeal filed by the petitioner also met the same fate and the order dated 29th September, 2006, passed by the Collector was upheld by the Commissioner,—*vide* order dated 23rd May, 2007 (P-4). It is, thus,

obvious that show cause notice has been issued on 7th December, 2005, which is more than 4½ years after the registration of Relinquishment Deed, much beyond the period of three years stipulated by sub-section (3) of Section 47-A of the Act.

(5) The only argument raised by the respondents is that an audit objection was raised,—*vide* Audit Note, dated 12th June, 2002 and on the basis of the audit objection it was sought to be contended that within the period of three years objections have been taken (R-1). Therefore, the period of three years would not come in the way of the respondents as audit objection was raised on 12th June, 2002. We find that the arguments is totally absurd because there was no communication of the audit objection to the petitioner so as to constitute a basis for argument that the action was taken within period of three years. The real action was initiated only on the issuance of show cause notice, which admittedly was issued on 7th December, 2005. It is well settled that the communication of the order alone confer on a paper the status of an order as has been postulated by Article 166 of the Constitution. The aforementioned provision was interpreted by a Constitution Bench of Hon'ble the Supreme Court in the case of **Bachhitar Singh versus State of Punjab, (1)**. In that case the Constitution Bench had held that till an order is communicated it would not assume the character of executive action. A similar view has been taken by Hon'ble the Supreme Court in the case of **Laxmsinarayan R. Bhattad versus State of Maharashtra (2)**. Therefore, we have no hesitation to reject the argument.

(6) For the reasons aforementioned, this petition succeeds. Orders dated 29th September, 2006 and 23rd May, 2007 (P-3 & P-4) are set aside. It is held that no proceedings could be undertaken against the petitioner in respect of Relinquishment Deed, dated 10th May, 2001.

(7) The writ petition stands disposed of in the above terms.

R.N.R.

(1) AIR 1963 S.C. 395

(2) (2003)5 S.C.C. 413