

A.F.R.

Neutral Citation No. - 2025:AHC:64553

Reserved On:25.04.2025

Delivered On:28.04.2025

Court No. - 10

Case :- WRIT - C No. - 41272 of 2024

Petitioner :- Moradabad Bareilly Expressway Limited

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Prashant Mishra, Tarun Agrawal

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Tarun Agrawal, learned counsel for the petitioner and Shri A.C. Mishra, learned ACSC for the State – respondents.
2. The instant writ petition has been filed against the impugned order dated 16.10.2024 passed by the Collector, Moradabad.
3. Learned counsel for the petitioner submits that a concession agreement was executed between the petitioner and the National Highway Authority of India (NHAI) on 19.02.2010 for design, build, finance, operate and transfer (DBFOT) for maintenance and management of NH – 24, from kms. 148 to kms. 262 (approximately 114 kms.) on Moradabad – Bareilly section. In the year, proceedings under section 33 of the Indian Stamp Act, 1899 (hereinafter referred to as, '**the Act**') were initiated against the petitioner after getting the permission from the State Government and a case was registered against the petitioner. Thereafter, on 17.08.2022, the respondent no. 3 passed the order determining the deficiency of stamp duty on the petitioner. He further submits that on 18.07.2023, the petitioner filed a recall application for recall of the order dated 17.08.2022 before the Collector, Moradabad, but the same was rejected vide order dated 27.07.2023. The said orders dated 17.08.2022 was assailed before this Court by filing Writ C No. 45484/2023, which was allowed

by this Court vide order dated 08.05.2024 and the matter was remanded to the Collector to decide the issue afresh and giving liberty to the petitioner to raise the issue of limitation and jurisdiction before the Collector. He further submits that pursuant to the order dated 08.05.2024 passed by this Court, the impugned order dated 16.10.2024 has been passed by the respondent no. 3 rejecting the ground taken by the petitioner with regard to limitation.

4. Learned counsel for the petitioner further submits that admittedly, the concession agreement was entered on 19.02.2010 and the proceedings ought to have been completed within a period of 8 years from the date of execution, i.e., 18.02.2018. In support of his submission, he has relied on sub-sections (4) & (5) of section 33 of the Act and the proviso attached thereto. He further submits that the limitation prescribed under the Act contemplates the proceedings to be concluded within 8 years after getting the prior sanction from the State Government from the date of execution. He further submits that the permission itself was granted beyond the period of 8 years and therefore, the proceedings are without jurisdiction. In support of his submissions, he has placed reliance on the judgements of this Court in ***Som Dutt Builders Limited Vs. The State of U.P. & Others*** [2005 (3) ESC 1939 (All.)] and ***Harbhajan Singh Vs. Commissioner, Moradabad Division, Moradabad & Others*** [2022 (5) ADJ 71].
5. Per contra, learned ACSC supports the impugned order and submits the issue in hand is covered by the judgement of the Apex Court in the case of ***M/S Rewa Tollway Private Limited Vs. The State Of Madhya Pradesh & Others*** and therefore, no equity is in favour of the petitioner. He further submits that it is admitted case of the petitioner that they are liable for payment of legitimate stamp duty, but with ulterior motives, the petitioner has not paid the same. He further relies upon section 19 (a) of the Act, which

contemplates payment of duty on certain instrument liable to be increased duty in the U.P. under clause 66 of section 3. He further submits that the petitioner is duty-bound to pay the legitimate stamp duty to the State, but instead of paying the stamp duty, the petitioner is trying to avoid the same. He further submits that it is admitted that the agreement was executed outside the State of U.P. and therefore, from the date of knowledge of the said agreement, the limitation shall start from the said date, instead of from the date of execution of the instrument.

6. After hearing learned counsel for the parties, the Court has perused the record.
7. The only argument raised by the learned counsel for the petitioner is with regard to jurisdiction to initiate the proceedings as well as limitation for initiating the proceedings. In the case in hand, admittedly, the concession agreement, which is the subject matter of the present proceeding, was executed on 19.02.2010. The permission was sought vide letter dated 05.03.2016 and admittedly, the permission was granted vide letter dated 31.12.2019 and thereafter, case was registered as Case No. 00563/2020 and notice was issued for the first time on 20.02.2020.
8. For better appreciation of the controversy involved in the instant case, sub-sections (4) & (5) of section 33, along with its proviso, are quoted below:-

“Section 33. Examination and impounding of instruments.:

(4) Where deficiency in stamp duty paid is noticed from the copy of any instrument, the Collector may suo motu or on a reference from any court or from the Commissioner of Stamps or an, Additional Commissioner of Stamp or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorized by the Board of Revenue in that behalf, call for the original instrument for the purpose of satisfying hiself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector shall be deemed to have been

produced or come before him in the performance of his functions.

(5) In case the instrument is not produced within the period specified by the Collector, he may require payment of deficit stamp duty, if any, together with penalty under section 40 on the copy of the instrument:

Provided that no action under sub-section (4) or sub-section (5) shall be taken after a period of four years from the date of execution of the instrument.

Provided further that with the prior permission of the State Government an action under sub-section (4) or sub-section (5) may be taken after a period of four years, but before a period of eight years from the date of execution of the instrument.”

9. Bare reading of sub-section (4) of section 33 of the Act contemplates that where deficiency in stamp duty paid is noticed from any instrument, the Collector may *suo motu* or on reference from any other authorities as contemplated under the Act on behalf of the State call for the original instrument for the purpose of satisfying as to the adequacy of the duty paid thereof. In the event of failure to produce the original document, sub-section (5) contemplates that the Collector may require payment of deficit stamp duty, if any, together with penalty under section 40 on the copy of the instrument. Further, a rider has been imposed that no action under sub-section (4) or sub-section (5) shall be taken after a period of four years from the date of execution of the instrument, but in the event for taking proceedings after four years, prior permission of the State Government is required, but before a period of eight years from the date of execution of the instrument.
10. In other words, the Legislature, in its wisdom, has put a rider of prior permission of the State Government to make the deficiency of stamp duty on any instrument within a period of 8 years from the date of its execution. The proviso attached to the said section contemplates that with the prior permission of the State Government, an action under sub-section (4) or sub-section (5)

may be taken after a period of four years, but before a period of eight years from the date of execution of the instrument.

11. In the case in hand, the permission was granted by the State Government on 31.12.2019 and thereafter, the proceedings were initiated for the first time by issuing notice to the petitioner on 20.02.2020.
12. Learned ACSC has tried to cover the limitation on the basis of the letter (Annexure No. CA – 1 to the counter affidavit) that the permission was sought within the time vide letter dated 05.03.2016, the limitation for grant of permission is within 8 years and therefore, the action is within the limitation and the order is within jurisdiction.
13. The said argument appears to be attractive, but on close scrutiny of sub-sections (4) & (5) of section 33 of the Act as well as the proviso attached thereto clearly shows that the proceedings can be initiated only with prior permission and the permission itself was granted after 8 years, i.e., on 31.12.2019.
14. Sub-sections (4) & (5) of section 33 of the Act as well as the proviso attached thereto are clear that no action beyond the period of 4 years or if the action is to be taken after 4 years from the date of execution of the instrument, prior permission has to be taken, but before 8 years. The intent of the Legislature is clear that after four years of limitation, if any action is required to be taken, the same can only be taken with the prior permission of the State Government, but before 8 years. The limitation, at best, can be said to be initiated by issuance of notice within four or eight years and for any action beyond the said period, the limitation can not be extended and if taken, such action is to be treated as *per se* illegal and without jurisdiction.
15. Admittedly, in the case in hand, the permission was sought on 05.03.2016, but after getting permission from the State

Government, at least, a notice has to be issued within the period prescribed from the date of execution of the instrument, i.e., 8 years, but in the case in hand, admittedly, both the permission dated 31.12.2019 as well as issuance of notice dated 20.02.2020 was beyond the prescribed period of 8 years.

16. Therefore, by any stretch of imagination, it can be said to be the intent of the Legislature extending the period beyond 8 years from the date of execution of the instrument in question as the concession agreement was executed on 19.02.2010.
17. The argument of learned ACSC that from the date of knowledge of the instrument, the limitation should be counted, cannot be accepted as such there is no provision under the Stamp Act. Further, if such an argument is accepted, that will lead to open a flood gate of litigations as well as uncertainty of proceeding, which is never the intention of the Government.
18. This Court, in ***Som Dutt Builders Limited*** (supra) has held as under:-

“6. As regards the first issue, although the agreement had been executed on 11.6.1987, action was first sought to be initiated only on 31.10.1994, which was after a lapse of more than 7 years. Admittedly the said action was initiated on the basis of a photo copy of the document dated 11.6.1987, by summoning the original document. The first proviso to Section 33 of the Act makes it clear that no action can be taken under Section 33(4) of the Act (which deals with the cases where copy of the document is produced and the original instrument is called for) after a period of four years from the date of execution of the instrument. Since admittedly action was being taken on the basis of a document executed on 11.6.1987 and more than four years had elapsed, the provision of Section 33(4) of the Act could not be attracted. The second proviso to Section 33 of the Act having been

inserted only w.e.f. 1.9.1998 would not be attracted in this case.”

19. The record shows that permission was granted on 31.12.2019 and thereafter, the case was registered and for the first time, notice dated 20.02.2020 was issued to the petitioner and as such, both grant of permission and notice were issued after the period of eight years as provided in 2nd Proviso to sub-section (5) of section 33, which are beyond the period of limitation. Therefore, the present proceeding is wholly without jurisdiction.
20. In view of the aforesaid facts & circumstances of the case, as also the law laid down by this Court in the cases cited above, the impugned order dated 16.10.2024 passed by the Collector, Moradabad cannot be sustained in the eyes of law. The same is hereby quashed accordingly.
21. The writ petition succeeds and is allowed.
22. The authority concerned is directed to refund any excess amount deposited by the petitioner along with interest @ 4% per annum from the date of its deposit till the date of refund, within a period of four weeks from the date of production of a certified copy of this order.

Order Date :-28/04/2025

Amit Mishra