hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7279 OF 2014

Saryu Properties and Hotels Pvt. Ltd.
A company incorporated under the provisions of
the Companies Act, 1956 and having its registered
office at Plot No. 25,"Girnara", B Wing, 1st Floor,
Palimala Road, Pali Hill, Bandra (West),
Mumbai 400 050 … Petitioner

Versus

1. Chief Controlling Revenue Authority,
Maharashtra State, Pune, Ground Floor,
Opposite Vidhan Bhavan, New
Administrative Building,
Pune 411 001, Maharashtra State.

2. Collector of Stamps, Kurla,
New Administrative Building,
R.C. Chembur Marg, Chembur,
Mumbai, Maharashtra …. Respondents

Mr.Vishal Kanade a/w Mr. Kingshuk Banerjee and Mr. Dhru Joshi i/by M/s. Wadia Ghandy & Co. for the petitioner.

Mr. Vikas Mali, AGP For the respondent State.

CORAM : SHANTANU KEMKAR &
PRAKASH D. NAIK, JJ.

RESERVED ON : 19/12/2016
PRONOUNCED ON : 06/01/2017

ORAL JUDGMENT (Per Shantanu Kemkar,J.) :

With the consent of learned counsel for the parties, heard finally.

2. The Petitioner company engaged in the business of hospitality and Hotel Management and which owns and operates two hotels in Mumbai namely “Ramada Powai Hotel & Convention Centre” and “The Residence Hotel and Apartments” has filed this petition seeking quashment of the order dated 14.7.2014 passed by the Chief Controlling Revenue Authority, Maharashtra Pune (hereinafter referred to as “respondent No. 1”) in the Appeal No. 24 of 2014.

3. Briefly stated, the petitioner had filed an appeal before the respondent no. 1 challenging only the part of the order dated 24.12.2013, passed by the Collector of Stamps, Kurla (respondent no. 2), in Adjudication Case No. 1206 of 2013/K which was against it. While deciding the said appeal, the respondent no. 1 not only maintained the part of the order which was against the petitioner but without affording any opportunity of hearing and without there being argument raised by respondent no.2 who was respondent in the said appeal, has set aside that part of the order passed by the respondent no. 2 which was in favour of the petitioner and which

was not challenged by any person. Thus according to the petitioner, while exercising the appellate jurisdiction conferred upon it under section 53(1A) of the Maharashtra Stamp Act, 1958 (for short “the Act), respondent no.1 by exceeding the jurisdiction had set aside that part of the order which was in favour of the petitioner and against which no appeal was preferred by any person. In the circumstances the petitioner has prayed for quashment of the impugned order and for remanding the matter to the respondent no. 1 for deciding it afresh.

4. On the other hand, learned AGP appearing for the respondents has supported the impugned order. He submits that the respondent no. 1 while deciding the appeal filed by the petitioner has rightly set aside that part of the order which was in favour of the petitioner as the respondent no. 1 is empowered for the same in view of provision contained in section 53A of the Act.

5. In order to decide the question raised in this writ petition as to while exercising the powers under section 53(1A) of the Act, whether the respondent no. 1 could have reversed the part of the order which was in favour of the petitioner thereby could have directed the petitioner to pay the deficit stamp duty which was

held to be properly paid by the respondent no. 2, it would be appropriate to extract section 53(1A) of the Act.

> "53(1A) : Any person aggrieved by an order of the Collector under Chapter III, Chapter IV, Chapter V and under clause (a) of the second proviso to section 27 may, within sixty days from the date of receipt of such order, by an application in writing, accompanied by a fee of three hundred rupees, file 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."

It is also necessary to quote section 53A of the Act which reads thus :

> "53A. (1) Notwithstanding anything contained in sub-section (3) of section 32, sub-section (2) of section 39 and sub-section (2) of section 41, when through mistake or otherwise any instrument is charged with less duty than leviable thereon or is held not chargeable with duty, as the case may be, by the Collector, the Chief Controlling Revenue Authority may, within a period of six years from the date of certificate of the Collector under section 32, 39 or 41, as the case may be, require the concerned party to produce before him the instrument and, after giving a reasonable opportunity of being heard to the party, examine such instrument whether any duty is chargeable, or any duty is less levied, thereon and order the recovery of the deficit duty, if any, from the concerned party. An endorsement shall thereafter be made on the instrument after payment of such ! deficit duty.
>
> (2) On failure to produce the original instrument by the party, the Chief Controlling Revenue Authority shall proceed under this section on the basis of the true copy or an abstract of the instrument filed with the

> Collector under section 31 or sub-section (2) of section 37 and such copy or abstract shall be deemed to be the original instrument for the purposes of this section."

6. Undisputedly vide its order dated 24.12.2013, the respondent no. 2 Collector of Stamps had held that the stamp duty paid on the document of memorandum of deposit of title deed by way of constructive delivery submitted by the petitioner for adjudication and stamp duty deposited on adjacent two documents in the form of Franking to be just and proper and on those documents no additional Stamp Duty is payable. Accordingly, the respondent no.2 had certified those documents as duly stamped. It is pertinent to mention and is also not in dispute that this part of the order which was in favour of the petitioner, was not challenged in appeal by any person.

7. On the document of mortgage, the respondent no.2 Collector of Stamps assessed the stamp duty at Rs.5,80,000/- under section 6(i) of the Act and a fine of Rs.7,88,800/- held to be payable. Only this part of the order was challenged by the petitioner, by filing appeal under section 53(1A) of the Act before the respondent no. 1. However, by the impugned order, the respondent no. 1 while dismissing the petitioner's appeal also set aside the part of the

order which was in favour of the petitioner. Feeling aggrieved, the petitioner has filed this petition.

8. We have heard learned counsel for the parties and perused the record.

9. In our considered view in the absence of appeal preferred by any person against that part of the order, which was decided by respondent no. 2 in favour of the petitioner, the respondent no.1 ought to have construed that no person was aggrieved by that part of the order. Section 53(1A) empowers the appellate authority to pass such order thereon as he thinks fit. The use of the expression “thereon” in Section 53(1A) indicates that on the grounds raised in the appeal. In the circumstances, in view of the powers conferred upon him under section 53(1A) of the Act, respondent no.1 was required to give its decision and pass order in respect of the grounds raised in the appeal which necessarily means that the appeal preferred by the appellant before him in respect of the decision appealed against. By virtue of the power “to pass such order thereon as he thinks just and proper”, respondent no.1 could have passed appropriate orders but it is not open for the respondent no.1 to itself raise the ground so as to set aside that

part of the order which was in favour of petitioner. Our this view finds support from the law laid down by the Division Bench of this court in the case of **<u>The Motor Union Insurance Co. Ltd. Vs. Commissioner of Income Tax</u>**[1]**.**

10. Learned AGP argued that since respondent no. 1 is empowered under section 53A of the Act he had rightly set aside the order while hearing appeal under Section 53(1A) of the Act as he found that the instrument is filed with less duty than leviable and therefore, the impugned order is just and proper.

11. On going through the impugned order, it is clear that the same has been passed by respondent no.1 in the appeal filed by the petitioner under section 53(1A) of the Act against the part of the order which was against it. The impugned order nowhere reflects that the respondent no. 1 had exercised his powers under Section 53A of the Act. In order to exercise powers under section 53A of the Act, respondent no.1 is required to give reasonable opportunity of being heard to the party. Undisputedly, in the present case that has not been done by the respondent no. 1 and the power has been exercised by him while deciding the petitioner's appeal without giving opportunity of hearing to the

1 1944 BLR Vol XLVII 222

petitioner in regard to the setting aside of the order which was in its favour. It is not in dispute that before passing the impugned order setting aside that part of the order which was in favour of the petitioner, the petitioner was not put to notice or granted opportunity of hearing. In the circumstances, the submission of the learned AGP that the respondent no. 1 has rightly set aside that part of the order in view of his powers under Section 53A of the Act, can not be accepted. However, we accept the prayer made during the course of hearing by learned AGP and rightly not opposed by the learned counsel for the petitioner, to grant liberty to the respondent no. 1 to proceed against the Petitioner under Section 53A of the Act. As we are granting liberty to the respondent no. 1 to proceed against the petitioner under Section 53A of the Act we are not dealing with merits of the matter including the issue which has been decided by the respondent no. 1 against the petitioner, but we set aside the impugned order and remand the matter to respondent no.1 for deciding it afresh keeping all contentions of the petitioner open in regard to all questions, which shall be decided by the respondent no. 1 afresh.

12. Accordingly, the matter is remanded back to the respondent no. 1 to pass fresh order in regard to the grounds raised in the

appeal with liberty to respondent no.1 to exercise his powers under section 53A of the Act and to take appropriate decision in that regard in accordance with law.

13. With the aforesaid direction and liberty, petition stands disposed of.

14. No orders as to the costs.

(PRAKASH D. NAIK, J.) **(SHANTANU KEMKAR, J.)**