

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 3616 of 2011

State of Chhattisgarh, Through the Secretary, Government of Chhattisgarh, Department of Commercial Tax (Registration) DKS Bhawan, Mantralaya, Raipur, Chhattisgarh – Represented through Shri L.S. Kindo, District Registrar-cum-Collector of Stamps, Raigarh, District Raigarh, Chhattisgarh and OIC of the case

--- Petitioner

Versus

1. Arun Kumar Gupta, S/o. Krishna Kumar Gupta, R/o. Sadar Bazar, Raigarh, Tahsil & District Raigarh, Chhattisgarh
2. Krishna Kumar Gupta, S/o. Lt. Shri Bhagirathi Gupta, R/o. Sadar Bazar, Raigarh, Tahsil & District Raigarh, Chhattisgarh

-- Respondents

For Petitioner-State : Mr. Sangharsh Pandey, Dy. Govt. Advocate
For the Respondent : Mr. S. N. Nande, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

17.07.2018

1. The present petition is against the order dated 17th Sept. 2010 passed by the Revenue Board, Bilaspur in Case No. R.W./13/S.A/B-105/46/2010.
2. The issue of deficit of stamp duty arises in a transaction between respondent No.1 Arun Kumar Gupta and Respondent No.2 Krishna Kumar Gupta. It was stated that both the parties are related as son and father and they have entered into an internal arrangement and the deed of indenture was executed on 30.03.1996. The transaction of sale was executed between respondent No.1 and respondent No.2 for a consideration of Rs.2,50,000/-. Subsequently it was found that as per the

objection made by the Sub-Registrar the valuation of the property was actually of Rs.9,14,300/- and a reference was made by the Sub-Registrar to the Collector of Stamp u/s 47-A of the Indian Stamp Act to determine the value of the fact. The reference was made by the Sub-Registrar that an amount of Rs.68,813/- of the stamp duty and Registration fee of Rs.5,316/- was actually to be recovered and paid. Thereafter, the Collector found the value of property as Rs.5,80,300/- and accordingly it was found that the stamp duty of Rs.34,045/- was less paid and a registration fee of Rs.2,644/- was payable thereby it was found that a total amount of Rs.36,689/- was paid less and it was directed that the said sum of Rs.36,689/- would be recovered from the respondents. Against such order of the Collector dated 29.05.1997, an appeal was preferred before the Commissioner, Bilaspur vide Appeal No.81-B/105/99-2000. The said appeal was decided on 14.02.2000, however, the appeal preferred by the respondent was dismissed. Against such order, a review was preferred before the Commissioner, Bilaspur. The said review was also dismissed by order dated 31.07.2000. Being aggrieved by such order eventually an appeal was preferred before the Board of Revenue and the Board by order dated 26.10.2001 remitted the appeal back to the Commissioner/Board of Revenue as in the meanwhile, the Court of the Commissioner was abolished. Eventually the said appeal was again adjudicated by the Single Member of Board of Revenue, Bilaspur by order dated 8th August, 2003 wherein it was

found that the orders passed by the Commissioner and the Collector i.e., 29.5.1997 are well merited which do not call for any interference. Therefore, as a result, the order of the Collector of Stamp was affirmed. Lastly in the year 2010, the respondent again preferred review petition against the order of Board of Revenue along-with application for condonation of delay. The Board of Revenue condoned the delay and by order dated 17th September, 2010 reviewed the order and finally cancelled all earlier orders including the order passed by it on 08.08.2003 and that of the Collector dated 29.05.1997. Therefore, the instant writ petition is preferred by the State.

3. Learned counsel for the petitioner-State would submit that the order of review as has been exercised by the Board of Revenue after a period of 7 years i.e., from 08.08.2003 is grossly illegal and is against the provisions of section 51 of the Chhattisgarh Land Revenue Code. It has been contended that unless and until the new facts are discovered, no review can be made by any authority of its own order thereby the earlier order cannot be substituted with new observation. It is, therefore, contended that the order of Board of Revenue dated 17.09.2010 is grossly illegal which needs to be set aside.
4. Per contra, Shri S.N. Nande, learned counsel appearing on behalf of respondent No.1 supports the order of Board of Revenue and submits that the order of the Board is well merited. It is contended that u/s 56(4) of the Stamp Act 1899,

the Chief Controlling Revenue Authority at any time for the purpose of satisfying itself may interfere with the order which touches upon the charge of duty on any instrument. It is submitted that the said exercise of power is further protected by the provisions of Section 51 of the Chhattisgarh Land Revenue Code, 1959 which gives the power to review its power and the Board of Revenue being the Chief Revenue Controlling Authority was well within its jurisdiction to review its order if it is illegal. Consequently such order cannot be interfered by this Court.

5. Perused the documents filed along-with the petition.
6. The nature of issue revolves around the fact of review which has been exercised by the Revenue Board, Chhattisgarh on 17th September, 2010. The initial order of the Revenue Board dated 8th August 2003 is on record. A perusal of earlier order dated 08.08.2013 would show that the order passed by the Commissioner on 14.02.2000 was under challenge before the Board. The series of facts go to show that on 30.3.1996 the sale deed was executed between respondent No.1 and Respondent No.2 and while the sale deed was put to registration, the Sub-Registrar referred the instrument to Collector of Stamps in exercise of powers u/s 47-A as amended under the Indian Stamp Act 1899 to the Collector of Stamps.
7. For the sake of reference, the relevant part of section 47-A is reproduced herein below:

“47-A. Instruments undervalued how to be dealt with.- (1) If the Registering Officer appointed under the Registration Act, 1908 (No.16 of 1908), while registering any instrument finds that the market value of any property which is the subject matter of such instrument has been set forth less than the minimum value determined in accordance with any rules under this Act, he shall before registering such instrument refer the same to the Collector for the determination of the market value of such property and the proper duty payable thereon.

(1-A) Where the market value as set forth in the instrument is not less than the minimum value determined in accordance with any rules under this Act, and the Registering Officer has reason to believe that the market value has not been truly set forth in the instrument, he shall register such instrument and thereafter refer the same to the Collector for determination of market value of such property and proper duty thereon.”

8. The Collector upon such reference after hearing the parties, passed an order on 29.05.1997 vide Annexure P-2 whereby it was found that the value of property is Rs.5,80,300/- and found that Rs.34,045/- of stamp duty was less paid as also the registration fee of Rs.2,644/- was less paid. Thereafter, as appears, with other ancillary additions, recovery of Rs. 36,689/- was ordered which is filed as Annexure P-2. Against such order respondent Arun Kumar Gupta preferred appeal before the Commissioner, Bilaspur. The Commissioner, Bilaspur by order dated 14.02.2000 affirmed the order of the Collector vide Annexure P-3. Thereafter, again the respondent

preferred review petition before the Commissioner and the Commissioner by order dated 31.07.2000 dismissed the review petition filed as Annexure P-4 thereby the original order dated 29.05.1997 passed by the Collector to pay the deficit stamp duty came to fore.

9. This order of the Commissioner was subject of challenge in appeal before the Revenue Board. Eventually the revenue Board remanded the case to the Commissioner. In the meanwhile, the Commissioner's Office was abolished. It was further heard by the Revenue Board, Bilaspur and the order was passed on 08th August, 2003 (Annexure P-5). The revenue Board also affirmed the order of the Collector about the valuation of the property and in respect of the stamp duty to be paid. Thereafter nothing had transpired for a considerable time and eventually it appears that the review petition was again filed by respondent Arun Kumar Gupta before the Board of Revenue, Chhattisgarh, after lapse of considerable period of time. The Board in exercise of powers u/s 51 of the C.G. Land Revenue Code condoned the delay of 7 years and reviewed its order dated 08.08.2003 and also interfered in such order of the Collector dated 29.5.1997 and set aside the same. Therefore, the nucleus of adjudication of this petition is of the order of Revenue Board exercising the power of review.

10. The power of review is contemplated u/s 51 of the C.G. Land Revenue Code 1959 which reads as under:

“51. Review of orders.- (1) The Board and every revenue officer may, either on its/his

own motion or on the application of any party interested review any order passed by itself/himself or by any of its/his predecessors in office and pass such order in reference thereto as it/he thinks fit;

(i) if the settlement commissioner, Collector or settlement officer thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Board, and if an officer subordinate to a Collector or Settlement Officer proposes to review any order, whether passed by himself or by any predecessor; he shall first obtain the sanction in writing of the authority to whom he is immediately subordinate;

(i-a) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order.

(ii) no order from which an appeal has been made, or which is the subject of any revision proceedings shall, so long as such appeal or proceedings are pending be reviewed;

(iii) no order affecting any question of right between private persons shall be reviewed except on the application of party to the proceedings, and no application for the review of such order shall be entertained unless it is made within [sixty days] / [ninety days] from the passing of the order “

11. Reading of the aforesaid section clearly establishes and makes a reference that in order to exercise the power of review, the grounds provided under Order 47 Rule 1 must

exist. For the sake of brevity, the provisions of Order 47 Rule 1 of C.P.C., which deals with review are reproduced herein-below:

“ORDER XLVII (REVIEW)”

1. Application for review of judgment.-- (1)

Any person considering himself aggrieved--

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate Court the case on which he applies for the review.

Explanation.-The fact that the decision on a question of law on which the judgment of the Court is

based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

12. Reading of such provisions would show that unless and until it comes to the surface that certain facts could not be brought before the Court which passed the order or any apparent mistake is on the face of record, the powers of review cannot be pressed into motion. The reading of the order dated 17th Sept. 2010 passed by the Revenue Board apparently do not satisfy such requirement of Order 47 Rule 1 CPC. The Supreme Court in a case law reported in **AIR 2000 S.C (Vol.87) Page 1650 - Lily Thomas Vs. Union of India** has laid down the power of review and the parameters to exercise the same. It lays down that the power of review can be exercised for correction of mistake and not for substitution of view. It further lays down that such power can be exercised within the limits of statutes dealing with the exercise of power and the review cannot be treated as an appeal in disguise. It further held that mere possibility of two views on the subject is not ground for review and in order to exercise power of review, the mistake should be apparent on the face of record. The submission made by the learned counsel for the respondent that for 7 years, the State was in dormant stage to recover the deficit amount of stamp duty cannot be helpful to the respondent since there cannot be estoppel against the law.
13. Here in the instant case, the original order of Revenue Board is of the year 2003. The revenue Board in the year 2010

again exercised its review power without following the principles as contemplated u/s 47 Rule 1 of C.P.C. The facts would suggest that the Revenue Board again went into merits of the case without a finding that some important facts were left for consideration to exercise the power of review. The order reflects that the review was treated as appeal in disguise.

14. In view of the above discussion, the petition succeeds and is allowed. The order dated 17.09.2010 passed by the Board of Revenue in Review Case No. R.W/13/S.A/B-105/46/2010 is set aside.

**Sd/-
(GOUTAM BHADURI)
JUDGE**