AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 461 of 2010

1. State of Chhattisgarh, through the Secretary, Commercial Tax, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)

2. District Registrar, District Registration Office, Raipur (C.G.)

---- Petitioners

Versus

1. Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court, Raipur) (C.G.) through the Registrar.

2. Nilesh Kumar Thakkar, Vishal Colony, Urla Road, Birgaon, Raipur (C.G.)

3. Commissioner, C.G. Housing Board, Raipur (C.G.)

---- Respondents

And

Writ Petition (C) No. 462 of 2010

1. State of Chhattisgarh, through the Secretary, Commercial Tax, Mantralaya, D.K.S. Bhawan, Raipur (C.G.)

2. District Registrar, District Registration Office, Raipur (C.G.)

---- Petitioners

Versus

1. Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court, Raipur) (C.G.) through the Registrar.

2. Mohammad Zia-u-Hasan, S/o Late Zahural Hasan, R/o Noori Complex, Baijnathpara, Raipur, Tahsil and District Raipur (C.G.)

3. Commissioner, C.G. Housing Board, Raipur (C.G.)

---- Respondents

For Petitioners	:	Mr. Anand Dadariya, Dy. G. A.
For Respondent No. 2	:	Mr. Parag Kotecha, Advocate.
For Respondent No. 3	:	Mr. Sanjay Patel, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

16/05/18

1. Since common question of law and fact is involved in these writ petitions, they were heard together and are being disposed of by this common order. However, for sake of convenience facts of WPC No. 461 of 2010 are taken.

2. The Chhattisgarh Housing Board executed a lease deed of subject land in favour of Respondent No. 2 on 21.04.2009, in which stamp duty of Rs. 61,410.00/- was paid by Respondent No.2.

3. Thereafter, respondent No.2 filed an application under Section 45(2) of India Stamp Act, 1899 (for short, 'the Act of 1899') before the Chief Controlling Revenue Authority for refund of stamp duty alleging that excess stamp duty has been directed and recovered from respondent No.2 by bonafide mistake, which be refunded to him. The said application was opposed by State being not covered by Section 45 of the Act of 1899.

4. The Chief Controlling Revenue Authority, by its impugned order, allowed the application and directed refund of stamp duty holding that no stamp duty can be collected by the Housing Board against the house to be constructed on the said plot, questioning the said order this writ petition has been filed.

5. I heard learned counsel for the parties, considered their rival submissions made herein above and went through the record with utmost circumspection.

6. Section 45 of the Act of 1899 provides as under:-

> “**<u>45. Power to Revenue authority to refund penalty or excise duty in certain cases</u>**.- (1) Where any penalty is paid under Section 35 or Section 40, the Chief Controlling Revenue authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.
> (2) Where, in the opinion of the Chief Controlling Revenue authority, stamp duty in excess of that which is legally chargeable has been charged and paid under Section 35 or Section 40, or Section 47-A such authority may, upon application is writing made within three months of the order charging the same, refund the excess.”

7. Under Section 35 of the Act of 1899, an instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument, it can be taken in evidence.

8. Section 40 of the Act of 1899 is Collector’s power to stamp instruments impounded and penalty can be imposed under Section 40(2) of the Act, if he is of the opinion that such instrument is chargeable with duty and is not duly stamped apart from directing to make payment of stamp duty.

9. Thus, the power under Section 45(2) of the Act of 1899 can be exercised by Chief Controlling Revenue Authority only when the stamp duty in excess of legally chargeable has been charged and paid under Sections 35, 40 or Section 47-A of the Act of 1899.

10. The Full Bench judgment of Andhra Pradesh High Court **<u>Manganti Suryanarayana v. The board of Revenue, Government of A.P.</u>**[1] may be noticed herein profitably, where it has been held that Board of Revenue has no inherent power to order refund and excess stamp duty paid voluntarily or by mistake cannot be refunded under Section 45 of Act of 1899. It was held as under:-

1 AIR 1976 AP 150

“**4**. The answer to point No. 1 rests upon the provisions of Section 45 of the Act, which is the only section that provides for the refund of penalty or excess duty in certain cases indicated therein. Under sub-section (1) of Section 45, the Chief Controlling Revenue Authority is competent to refund the whole or any part of the penalty paid under Sec. 35 or 40. The party seeking refund has to apply in writing within one year from the date of the payment. Sub-section (2) which provides for the refund of excess stamp duty, reads as follows:

"Where, in the opinion of the Chief Controlling Revenue Authority, stamp duty in excess of that which is legally chargeable has been charged and paid under section 35 or Section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess."

It is the Chief Controlling Revenue Authority, which is the Board of Revenue in the State of Andhra Pradesh, that is authorised to order refund of the excess stamp duty. The power or authority of the Chief Controlling Revenue authority to refund the excess payment of stamp duty is circumscribed in the statute itself. Hence, the Board of Revenue is not empowered to order refund under Section 45 in every case where excess payment of stamp duty or penalty has been paid by a party. The Board must be satisfied that stamp duty in excess of that which is legally chargeable has been charged and paid under Section 35 or Section 40 in order to invoke its power to grant refund of the excess amount, otherwise not. It is, therefore, pertinent to examine in every case where a claim for refund of the excess stamp duty has been made by the party, as to whether stamp duty in excess has been charged and paid either under Section 35 or 40. Section 35 bars the admission of any document in evidence for any purpose unless it is duly stamped. The proviso to Section 35 provides for the admission of such document on payment of the duty with which the same is chargeable, together with penalty. Sec.40 authorises the Collector to stamp instruments impounded. It is not the case of the petitioner that the excess stamp duty has been charged and paid under Section 35 or Sec.40. Hence, the provisions of Section 45 (2) cannot be invoked by the petitioner to claim refund of the excess stamp duty. In fact, the excess stamp duty was paid by the party voluntarily and due to mistake. No one compelled the party to pay the excess stamp duty on the agreement of sale executed on 12-6-1962 and registered before the Sub-Registrar, Kaikalur on the basis of a regular sale deed. The Legislature did not intend a case for voluntary or mistaken payment of stamp duty to fall under sub-section (2) to Section 45. The Chief Controlling Revenue authority, which is the Board of Revenue is not competent to direct refund of the excess stamp duty paid voluntarily or under a mistaken impression of law by the party at

> the time of the registration of the document dated 12-6-1962. As the Act empowering the Board of Revenue to refund the excess amount of the stamp duty (sic) in the case on hand. Nor could I lay my finger on any such provision in the Act or the rules made thereunder. The party who voluntarily or by mistake paid the excess stamp duty cannot resort to the provisions of sub-section (2) of Section 45 of the Act. We have no hesitation to hold that the petitioner is not entitled to refund of the excess stamp duty under the provisions of the Act.

11. Reverting to the facts of the present case, it is quite *vivid* that it is not a case where excess stamp duty has been charged and paid under Section 35 also Section 40 or Section 47-A of the Act of 1899. Respondent No. 2 has voluntarily paid additional stamp duty to get the legal deed registered in his favour. It may be a case of payment by mistake by which Section 45 of the Act of 1899 is not attracted at all against respondent No. 2 and the Board of Revenue is absolutely unjustified in granting the application under Section 45 of the Act of 1899.

12. As a fallout and consequence of the above-stated discussion, the impugned order passed by the Board of Revenue is set aside and the application under Section 45 of the Act of 1899 would stand dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

Priyanka