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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2529 of 2009

{Arising out of order dated 27-11-2008 passed by the Board of Revenue, Chhattisgarh, Bilaspur (Circuit Court Raipur) in Revision Case No.RN/14/ SA/B-103/349/2008}

Order reserved on: 3-1-2018

Order delivered on: 25-1-2018

Gujarat Ambuja Cements Limited (Ambuja Cements Limited), a Company incorporated under the Companies Act, 1956, having its Registered Office at PO Ambuja Nagar, Taluka Kodinar, District Junagadh (Gujarat) Pin 362 715 and one of its units at Bhatapara, District Raipur (C.G.), through its Authorized Signatory, Anoop Jaiswal, Aged about 48 years, S/o Late Loknath Jaiswal, Assistant Manager (Legal), M/s Ambuja Cements Ltd., P.O. Rawan, Tahsil Baloda Bazar, District Raipur (C.G.)

(Appellant)
---- Petitioner

Versus

1. State of Chhattisgarh, through District Registrar-cum-Collector (Stamps), Office of the District Registrar, Raipur (C.G.)

2. Board of Revenue, Raipur, Chhattisgarh, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Ashish Shrivastava and Mr. Soumya Rai, Advocates.

For Respondent No.1 / State: - Mr. Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. On the application filed by Ambuja Cement Eastern Limited, a company incorporated under the Companies Act, 1956, order of amalgamation was passed by this Court in Company Application No.2/2006 on 13-11-2006 and in order to transfer the property and lease, an instrument was sought to be executed and assets and

liabilities were amalgamated in favour of the petitioner Company i.e. Gujarat Ambuja Cements Limited. Thereafter, the petitioner Company made an application under Section 31 of the Indian Stamp Act, 1899 before the District Registrar, Collector of Stamps for adjudication as to proper stamp duty in respect of the order of amalgamation passed by this Court and the petitioner Company also placed before the authority, the valuation of land, building and machinery after getting it valued by M/s. Sekhri Valuers Pvt. Ltd., Mumbai. Thereafter, the Collector of Stamps carried out spot inspection on 25-12-2007 and further inspection was made on 10-1-2008 and thereafter, order dated 1-2-2008 was passed determining additional stamp duty to the extent of ₹ 10 crores under the provisions of Schedule 1A, Article 23A, which was challenged by the petitioner before the Board of Revenue. By the impugned order, the Board of Revenue has dismissed the revision. Feeling aggrieved and dissatisfied with the order passed by the Board of Revenue, this instant petition has been filed.

2. Mr. Ashish Shrivastava, learned counsel appearing for the petitioner, would submit that the learned Collector of Stamps on 10-1-2008 conduced further inspection of the petitioner Company and thereafter, called the report unilaterally from the Deputy Registrar, Bhatapara-Baloda Bazaar and on the basis of said report, straightway, order determining additional stamp duty to the extent of ₹ 10 crores was passed on 1-2-2008. The petitioner was neither afforded opportunity to file affidavit nor allowed to adduce evidence in terms of Section 31(2) of the Indian Stamp Act, 1899 and even copy of report submitted by the Deputy Registrar was not furnished

to the petitioner which has caused serious prejudice, as the order passed by the Collector of Stamps is in teeth of the principles of natural justice and the material which has never been supplied to the petitioner, was relied upon by the learned Collector of Stamps, which was affirmed by the Board of Revenue without due application of mind. Therefore, the impugned order is liable to be set aside. Mr. Shrivastava further submits that during the pendency of writ petition, under protest, an amount of ₹ 8,59,92,036/- has been paid by the petitioner Company.

3. Mr. Shashank Thakur, learned Government Advocate appearing for the State/respondent No.1, on the other hand, would support the impugned order and would submit that the Collector of Stamps is not obliged to give opportunity of hearing, as the word “may” used is directory in nature, therefore, the Collector of Stamps is justified in determining stamp duty to the extent of ₹ 10 crores which has rightly been upheld by the revisional Court, as such the writ petition deserves to be dismissed with cost(s).

4. I have heard learned counsel for the parties and given thoughtful consideration to the submissions made at the Bar and also went through the record with utmost circumspection.

5. Before proceeding further with the matter, it would be appropriate to notice the nature and object of the Indian Stamp Act, 1899 (for short, 'the Stamp Act') and the object of Section 31 of the said Act.

6. The Indian Stamp Act is a very complicated statute and a breach of its provisions is fraught with very serious consequences, both civil and criminal, to the citizen, even if he has acted in complete good

faith. The Stamp Act is a purely fiscal measure enacted to secure revenue for the State on certain class of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. It is designed to secure revenue for the State on certain classes of instruments and all its provisions must be construed as having in view the protection of revenue and the prevention of evasion of the revenue that it imposes. The stringent provisions of the Act are concerned solely in the interest of the revenue, and once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument. The enactment is prohibitory. Chapter III relates to adjudication as to stamps and Section 31 is properly headed as adjudication as to proper stamp which states as under: -

> "**31. Adjudication as to proper stamp**.—(1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount not exceeding five rupees and not less than fifty naya paise as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.
>
> (2) For this purpose the Collector may require to be furnished with an abstract of the instrument and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with

which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly :

Provided that,—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid."

7. The object of Section 31 of the Stamp Act is that it enables a person, without liability to fine, but on payment of small adjudication fee, to resolve genuine doubt as to amount of duty payable on an instrument. Although the executed instruments may be adjudicated upon by the Collector, they can only be brought within one month from the date of their execution. The Section provides that any person can apply to the Collector for adjudication as to proper stamp duty in respect of an instrument whether executed or not and whether previously stamped or not, on payment of fee, not exceeding ₹ 5/- and not less than fifty paise, as the Collector may direct in this behalf.

8. Sub-section (2) of Section 31 of the Stamp Act confers discretionary powers upon the Collector to ask the party to furnish

him with the abstract of the instrument for the purpose of adjudication. He may also require an affidavit or other evidence with a view to ascertain whether all facts and circumstances affecting the chargeability with the duty have been truly set forth in the instrument in question. The first proviso to Section 31 of the Stamp Act excludes such evidence to be used by any person in any civil proceedings, except in an enquiry regarding the stamps. The second proviso relieves the person from any penalty when full duty as adjudicated is paid. The provisos give incentive to parties to state the full and true facts about the chargeability of the instrument. Section 31 applies to a case where a person voluntarily produces a document to obtain the opinion of the Collector as regards the duty payable thereon.

9. Thus, Section 31 of the Stamp Act that is adjudication as to proper stamp by the Collector is a valuable statutory right conferred on the citizen and that determination to be made by the Collector under Section 31 is quasi judicial determination, as sub-section (2) of Section 31 confers power upon the Collector to ask for the party to furnish with him an abstract of the instrument in order to adjudicate and also calls for affidavit or other evidence.

10. If law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority. Authority which acts quasi-judicially is required to act according to the rules whereas the authority which acts administratively is dictated by policy and expediency. (See **Indian National Congress v. Institute of Social Welfare**[1].)

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1 (2002) 5 SCC 685

11. In the matter of **<u>Ridge v. Baldwin</u>**[2], it has been held by Lord Reid that an administrative function is called quasi-judicial when there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice; when there is no such obligation, the decision is called 'purely administrative'. It has been further held by Lord Reid as under: -

> "In cases of the kind with which I have been dealing the Board of Works … was dealing with a single isolated case. It was not deciding, like a judge in a law suit, what were the rights of the persons before it. But it was deciding *how he should be treated*—something analogous to a judge's duty in imposing a penalty … So it was easy to say that such a body is performing a *quasi-judicial* task in considering and deciding such a matter and to require it to observe *the essentials* of all proceedings of a judicial character—*the principles of natural justice. Sometimes the functions of a minister or* department may also be of that character and *then the rules of natural justice can apply in much* the same way …....."

12. Similarly, in the matter of **<u>Nageswara Rao v. A.P.S.R.T.C.</u>**[3], it has been observed as under:-

> "The concept of a *quasi-judicial* act implies *that the act is not wholly judicial*, it describes only a duty cast on the executive body or authority to conform to *norms of judicial procedure* in performing some acts *in exercise of its executive power* ….....
>
> The aforesaid decisions accept the fundamental principle of natural justice that in the case of *quasi-judicial* proceedings, the authority empowered to

2 (1963) 2 All E.R. 66
3 A. 1959 S.C. 308

> decide the disputes between opposing parties must be one without bias towards one side or other in the dispute."

13. Thus, it flows from the above analysis that the *quasi-judicial* obligation to follow the principles of natural justice attaches to a *function* or the exercise of a power. Where the statute directs that the party to be affected should be heard before making the order, the function shall be quasi-judicial function. (See **Shivji Nathubhai v. Union of India**[4] and **Union of India v. P.K. Roy**[5].)

14. Reverting to the facts of the case, particularly to sub-section (2) of Section 31 of the Stamp Act, it clearly flows that the Collector has been conferred with the power to ask the party making an application to furnish him the abstract of the instrument in order to adjudicate proper stamp duty and also may call for affidavit or other evidence which means oral and documentary evidence as defined in Section 3 of the Indian Evidence Act, with a view to ascertain all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein and even decline to proceed with the application unless such abstract and evidence are furnished accordingly as asked for by the Collector.

15. If the facts of the present case are examined in light of the above discussion, it would appear that after passing of the order by this Court on 13-11-2006 in company petition, the petitioner for the purpose of adjudication with regard to stamp duty payable in the order of amalgamation and to transfer the property, moved an

4 A. 1960 S.C. 606
5 A. 1968 S.C. 850

application under Section 31 of the Stamp Act before the Collector of Stamps along with the valuation of the properties of the Transferor Company submitted by their valuer and on such application, the Collector of Stamps on 25-12-2007, carried out inspection of the plant and machinery and the inspection remained incomplete, and further inspection was scheduled to be held on 10-1-2008 which was held accordingly and beyond the back of the petitioner, report from the Registrar regarding valuation of the subject property was called, but the Collector did not require the petitioner to furnish any affidavit or other evidence as required under Section 31(2) of the Stamp Act and on 1-2-2008, passed the impugned order determining stamp duty which is apparent from the entire copies of the order sheets filed along with the writ petition. Once the inspection was done by the Collector of Stamps on 1-2-2008, he could have directed the petitioner to file affidavit or other evidence as he may deem necessary to prove all the facts and circumstances affecting the chargeability of the instrument with duty, but that has not been done. As held herein-above, the function and duty of the Collector of Stamps under Section 31 of the Stamp Act is only to determine the stamp duty payable on the instrument and the function being quasi-judicial function and that binds the revenue as well as the person applying for, therefore, he ought to have directed the petitioner to file affidavit and also could have given an opportunity to adduce evidence to prove the circumstances affecting the chargeability of the instrument with duty which the learned Collector of Stamps did not adhere to and straightway after making inspection and calling report from the

Deputy Registrar, Baloda Bazaar-Bhatapara, proceeded to determine the power conferred under Section 31(1) of the Stamp Act. Compliance of the principles of natural justice incorporated in the shape of sub-section (2) of Section 31 of the Stamp Act i.e. asking for affidavit and production of other evidence ought to have been followed by the Collector, as it is an adjudication as to proper stamp duty on the instrument brought before him in his quasi-judicial function and, therefore, the principles of natural justice ought to have been followed by the Collector while adjudicating the valuable statutory right of the petitioner to get proper stamp duty adjudicated by the statutory authority i.e. the Collector of Stamps under Section 31 (2) of the Stamp Act and to get certificate under Section 32 of the Stamp Act binding to the petitioner as well as to the revenue.

16. In view of the above, my irresistible conclusion would be, the procedure prescribed has not been followed in adjudicating proper stamp duty payable on the instrument brought by the petitioner and thus, the Collector of Stamps is absolutely unjustified in not adhering to the procedure prescribed under the law and in proceeding further to determine the stamp duty. The illegality has been perpetuated by the Board of Revenue i.e. the chief controlling authority, while dismissing the revision.

17. The fallout and consequence of the aforesaid discussion is that the impugned order passed by the Collector of Stamps as affirmed by the Board of Revenue are quashed. The matter is remitted to the Collector of Stamps for following the due procedure of law as

stated herein-above and then to determine afresh the stamp duty payable on the instrument brought by the petitioner expeditiously, as the application for determination of adjudication as to stamp duty was filed before the Collector for the first time way back on 8-12-2006. It is stated at the Bar that the petitioner had already deposited the amount in dispute before the Collector. Since the matter is being remitted to the Collector for fresh adjudication, the amount already deposited shall not be refunded to the petitioner and that shall be subject to the final outcome of the remand proceeding by the Collector of Stamps and the Board of Revenue, if any.

18. The writ petition is allowed to the extent sketched herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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