

**In The High Court at Calcutta  
Constitutional Writ Jurisdiction  
Original Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**WPO No. 108 of 2018**

**With**

**WPO No. 109 of 2018**

**Jagjeet Singh Kohli**

**Vs.**

**State of West Bengal and others**

For the petitioner in both  
WPO No. 108 of 2018 and  
WPO No. 109 of 2018

: Mr. Sarvapriya Mukherjee,  
Mr. Emon Bhattacharya,  
Ms. Pooja Sah

For respondent no.5  
in both the cases

: Mrs. Manju Agarwal,  
Mr. Bajrang Manot

For respondent no.6  
in both the cases

: Mr. Satadeep Bhattacharya,  
Mrs. Anisha Kochar

For the State  
in WPO No. 108 of 2018

: Mr. Abhratosh Majumdar, Ld. AAG  
Mr. Soumitra Mukherjee,  
Mr. Avra Mazumder

For the State  
in WPO No. 109 of 2018

: Mr. Abhratosh Majumdar, Ld. AAG  
Md. Talay M. Siddiqui,  
Mr. Nilotpall Chatterjee

Hearing concluded on

: 02.02.2021

Judgment on

: 09.02.2021

**The Court:**

1. The common petitioner in the two writ applications have challenged the assessment of penalty regarding two agreements for sale, both dated May 25, 2020, entered into by the petitioner, respectively with M/s

Chetki Properties Pvt. Ltd. (In WPO No.108 of 2020) and Auckland Properties Pvt. Ltd. (in WPO No.109 of 2018) by the Collector of Stamp Revenue, Kolkata. Pursuant to arbitration clauses in the said instruments, the matters were referred to an Arbitrator. The documents were produced before the Arbitrator, who impounded the documents and sent those to the Collector for assessment of stamp duty. The Collector assessed the stamp duty and imposed penalty at rates much below the maximum leviable amount as per Section 35 of the Indian Stamp Act, 1899 that is, ten times the stamp duty. In the document between the petitioner and M/s Chetki Properties Pvt. Ltd., the stamp duty was assessed at Rs.23,69,640/- and penalty at Rs.1,30,360/-. In the agreement between the petitioner and Auckland Properties Pvt. Ltd., the stamp duty was assessed at Rs.32,81,040/- and penalty at Rs.2,18,960/-.

2. The petitioner is a party to the said arbitration proceedings and challenges the levy of penalty at less than the maximum amount permissible under Section 35 of Stamp Act.
3. Learned counsel appearing for the petitioner contends that the Arbitrator having impounded the agreements and sent the documents to the Collector for assessment of stamp duty, the Collector was bound by Section 35, proviso (a) to impose penalty of a sum equivalent to ten times such duty. It is contended that the reference was not under Section 38 of the Stamp Act. As such, the Collector did not have the liberty, granted under Section 40(b) of the said Act, to fix penalty at an amount less than the maximum rate provided in law.

4. By placing reliance on *Gangappa and another vs. Fakkirappa*, reported at (2019) 3 SCC 788, it is submitted that no discretion is vested with the authority impounding the document in the matter of collecting duty under Section 33 of the Stamp Act, in view of the expression “shall” in the proviso thereto.
5. Learned counsel appearing for the private respondents, on the other hand, argues that the reference to the Collector by the Arbitrator took place only after impoundment, as appearing from the relevant order of the Collector, which is Annexure R-2 to the affidavit-in-opposition filed by the private respondent. It was specifically recorded in the Arbitrator’s order dated March 8, 2017 that, by consent of all parties, the original agreements were to be sent to the Arbitrator for impounding and, in turn, to the Collector, Kolkata for being stamped in compliance of Section 35 of the Indian Stamp Act.
6. Even from the communication of the Arbitrator in that regard, dated September 13, 2017, which is annexed to the writ petitions, it appears that the Arbitrator sent the agreements to the Collector only after impounding those.
7. Learned counsel argues that the Collector’s powers of impounding an instrument and imposing penalty can only be exercised under Section 31, Section 40 or Section 41 of the Stamp Act. Section 40, it is argued, encompasses impoundments under Section 33 as well as assessment on reference under Section 38(2) of the Stamp Act.
8. In the present case, in view of the prior impounding by the Arbitrator, the reference to the collector was evidently under Section 38.

9. Learned counsel cites *Peeteti Subba Rao vs. Anumala S. Narendra* reported at (2002) 10 SCC 427 to argue that Section 35 falls under Chapter IV of the Indian Stamp Act and empowers the Trial Court to direct the party, who wants the document to be acted upon, to pay stamp duty of ten times the amount of the proper duty. This is for the purpose of enabling the document to be admitted in evidence. In such a situation, the document would be admitted only on payment of the said sum. In a case where the party is not willing or cannot afford to pay the sum, the court has to adopt the procedure envisaged in Section 38(2) of the Act. The restriction imposed on the Collector in imposing the penalty amount is that under no circumstances the penalty should go beyond ten times the duty, which is the furthest limit meant only for extreme situations.
10. Learned counsel next submits that the petitioner has no *locus standi* to maintain the writ petition. Counsel relies on *Vinoy Kumar vs. State of U.P. and others*, reported at (2001) 4 SCC 734, for the proposition that, generally speaking, a person shall have no *locus standi* to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly nor substantially invaded nor is there any imminent danger of rights being invaded or his acquired interests violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour of the person invoking the jurisdiction.
11. Learned Senior Counsel appearing for the State-respondent submits that 'impounding' a document means temporary confiscation of the

same, in the present case, to make good the deficiency of stamp duty. The Arbitrator can impound a document under Section 33(1) or Section 38(1) of the Indian Stamp Act. Although the maximum penalty ought to have been levied in the present case in the absence of mitigating circumstances, the reference by the Arbitrator in the present case, it is submitted, was apparently under Section 38(2) of the Stamp Act.

- 12.** A conjoint reading of the provisions of the Stamp Act vindicates the arguments of the private-respondent that the Collector has authority to assess stamp duty only under Sections 31, 38 and 40 of the Stamp Act. It is well-settled that if the statute provides an act to be done in a particular manner, it shall be done, if at all, in that manner alone. The conferment of authority on the Collector to decide the proper stamp duty and levy penalty flows from Sections 31, 38 and 40 of the Stamp Act only.
- 13.** The present case could not fall within Section 31, which envisages a situation where an instrument is brought to the Collector and the person bringing it applies to have the opinion of the Collector as to the duty chargeable. In such cases, the Collector shall determine the duty with which, in his judgment, the instrument is chargeable.
- 14.** Section 38(1), on the other hand, envisages a situation where a person impounding an instrument under Section 33 admits such instrument in evidence upon payment of a penalty as provided by Section 35 or of duty as provided by Section 37 and thereafter sends to the Collector an authenticated copy of such instrument, together with a certificate in writing stating the amount of duty and penalty levied, along with such

amount. In the present case, the Arbitrator was the authority contemplated under Section 33 of the Stamp Act. The Arbitrator, however, did not assess the stamp duty or levy penalty, but stopped at impounding the document and leaving the task of imposing stamp duty and, as a necessary consequence, assessing penalty to the Collector.

- 15.** Hence, the transmission of the document to the Collector could only be under Section 38(2) of the Stamp Act, which contemplates a situation where a person, upon impounding an instrument under the authority derived from Section 33, sends the instrument in its original to the Collector.
- 16.** The orders of the Arbitrator, directing the agreements-in-question to be sent to him for impoundment and sending the instruments to the Collector, clearly reveal that the Arbitrator himself impounded the documents and sent the originals thereof to the Collector for assessment of stamp duty, thereby attracting sub-section (2) of Section 38 of the Stamp Act.
- 17.** Section 40 clearly provides that when the Collector impounds any instrument under Section 33 or receives any instrument sent to him under Section 38(2), the Collector shall require the payment of the proper duty, together with a penalty for an amount “not exceeding ten times the amount of the proper duty or of the deficient portion thereof”.
- 18.** Thus, in the present case, the exercise of jurisdiction by the Collector in assessing stamp duty and penalty was clearly under Section 40 of the Stamp Act, which permits the Collector to levy penalty of an amount less than or equal to ten times the assessed stamp duty.

19. Unlike the receiving authority under Section 33, as contemplated under Section 38(1), the Collector, within the ambit of Section 40, is not bound by the fetter imposed by proviso (a) to Section 35 of the Stamp Act, which mandates fixation of penalty at ten times the amount of the proper duty or the deficient portion thereof.
20. Thus, in the present case, the Collector acted fully within jurisdiction, as conferred under Section 40 of the Indian Stamp Act, 1899, in levying penalty at rates less than ten times the assessed stamp duty in respect of the instruments-in-question.
21. As regards the *locus standi* of the petitioner to maintain the writ petition, it is well-settled that the question of assessment of stamp duty pertains to revenue and can be contentious only between the State and the person having liability to deposit such duty. Thus, ordinarily, the petitioner would not have *locus standi* to maintain the present writ petition. However, taking the broadest view possible in favour of the petitioner, it is within the rights of a person to make an application under Article 226 of the Constitution of India to invoke the court's jurisdiction in order to rectify any gross violation of statutory or fundamental rights or of principles of Natural Justice. Even giving such leeway to the petitioner, in view of the preceding discussions, the writ petitions deserve dismissal.
22. Accordingly, WPO No.108 of 2018 and WPO No.109 of 2018 are dismissed on contest, without any order as to costs.

- 23.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**