

PETITIONER:
THE STATE OF PUNJAB & ORS.

Vs.

RESPONDENT:
M/S MAHAJAN SABHA, GURDASPUR & ORS

DATE OF JUDGMENT 21/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 SCC (1) 538 JT 1995 (9) 103
1995 SCALE (6) 755

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

This appeal by special leave arises from the order of the High Court dated August 10, 1994 made in C.R. No.2836/94 dismissing the revision filed by the State on 5.2.1990. When the respondents had gone to the High Court by way of writ petition, it had given liberty to the respondents to file an appeal before the District Judge. The appeal was accordingly filed before the Additional District Judge at Gurdaspur. In C.A. No.11/19 of 1991 by order dated March 21, 1991, the District Judge held that once the Sub-Registrar had registered the document, he became functus officio and, therefore, he has no power to make a reference to the Collector for collecting the deficit stamp duty and registration charges. When this was questioned, as stated earlier, the High Court rejected the revision. Thus this appeal by special leave.

The facts would lie in short compass. The sale deed No.3033 was executed in favour of the respondents for a consideration of Rs.2,50,000/- in respect of the building situated in Gurdaspur. Since it is a society registered under the Societies Registration Act, no stamp duty was affixed on the sale deed. Equally, no registration charges were paid. When it was pointed out by the auditing authority, the Sub-Registrar had made a reference to the District Collector for collection of the stamp duty of Rs.32,350/- and also registration fee of Rs.1,000/-. On receipt of the reference, the Collector issued notice to the respondent who filed his objections on October 9, 1989 contending that since the document was registered two years prior to the issuance of the notice, the Collector ceased to have any power to take action calling upon the respondents to pay the stamp duty and the registration fee. As stated earlier, the Collector had rejected the contention and consequential orders were passed by the Additional District

Judge and thereafter revision in the High Court ended in favour of the respondents.

The only question canvassed in this case is whether limitation of two years prescribed in sub-section (3) of Section 47A of the Indian Stamp (Punjab Amendment) Act, 1982, Act 20 of 1982) (for short 'the Act') stands attracted. Section 47-A reads thus :

"47-A(1) : Instrument under valued how to be dealt with - If the Registering Officer appointed under the Registration Act, 1908 (Central Act No.16 of 1908), while registering any instrument relating to the transfer of any property has reason to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, prefer the case to the Collector, for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon.

(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, or on receipt of reference from the Inspector General of Registration or the Registrar of a district, appointed under the Registration Act, 1908 (Central Act No.16 of 1908) in whose jurisdiction the property or any portion thereof which is the subject matter of the instrument is situate, shall, within two years from the date of registration of any instrument, not already referred to him under sub-section (1) call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has to believe that the value of consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with procedure provided for in sub-section (2) and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(4) Any person aggrieved by an order of the Collector under sub-section (2) or sub-section (3) may, within thirty days from the date of that order, prefer an appeal before the District Judge and all such appeals shall be heard and disposed

of in such manner as may be prescribed by rules made under this Act.

Explanation :- For the purpose of this section, value of any property shall be estimated to be the price which in the opinion of the Collector or the appellate authority, as the case may be, such property would have fetched, if sold in the open market on the date of execution of the instrument relating to the transfer of such property."

It has been contended on behalf of the respondents that when the Collector initiated action under sub-section (2) of Section 47-A, he gets jurisdiction only if the action is initiated within two years from the date of the registration of the instrument. Since it was sought to be revised after two years, the Collector is devoid of jurisdiction to take action under sub-section (3) of Section 47-A. We find no force in the contention.

Sub-section (1) of Section 47-A gives power to the Registration Authority, i.e., Sub-Registrar, when he has reason to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the case to the Collector for determination of the value of the property or the consideration, as the case may be, for proper stamp duty payable thereon. For initiation of action under sub-section (2) before giving opportunity to the vendee etc., the condition precedent is the receipt of reference under sub-section (1). In other words, on receipt of reference under Section 47A(1), notice under Sub-section (2) is to be given to the vendee/vendor. The impugned notice given to the respondents clearly indicates that the Collector had taken action under the sub-section (2) and (3) of Section 47-A of the Act on the receipt of reference under sub-section (1) of Section 47A. It reads thus :

"Regarding determination/assessment of the deficient amount of duty by Collector under Sub-section (2) and (3) of Section 47-A of the Indian Stamp Act, 1809 in respect of sale deed No.3033 dated 4.9.87."

It would thus be seen that the question of initiating the action under sub-section (2) would arise only after receipt of the reference under sub-section (1). The reference will be only by the Registering Authority, namely, the sub-Registrar who registered the document.

By operation of sub-section (3) which envisages that "the Collector may suo motu or (emphasis supplied) call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and after such examination, he has to believe that the value of consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with procedure provided in sub-section (2) and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty." The limitation of two years prescribed in sub-section (3) would apply only in a case where the Collector takes action either suo motu or on receipt of reference from the Inspector General of Registration or the Registrar of the District appointed under the Registration Act, 1908 (Central Act 16 of 1908) in

whose jurisdiction the property or any portion thereof, which is the subject matter of the instrument, is situated. In case of initiation of the action by the aforesaid officers, the limitation of two years from the date of the registration of any instrument would arise. In other words, the limitation prescribed in sub-section (3) of Section 47-A has no application to the case when a reference was made by the Registering Authority, namely, the primary authority under sub-section (1) of Section 47-A. If all the three sub-sections are conjointly read, the inevitable conclusion would be that the action of the Collector taken under sub-sections (2) and (3) on reference under sub-section (1) is not controlled by the limitation of two years prescribed under sub-section (3). Accordingly, we hold that the action initiated by the Collector was not barred by limitation.

Admittedly, neither stamp duty nor the registration fee has been paid on the value of the instrument mentioned in registered document No.3033. Under those circumstances, the action taken by the authorities is clearly consistent with the provisions of the Act.

The appeal is accordingly allowed. The order of the High Court and that of the Additional District Judge is set aside and that of the Collector is confirmed. But in the circumstances, parties are directed to bear their own costs.