

RAJASTHAN TAX BOARD, AJMER

Revision NO.1162/2015/Udaipur

M/s Human Beings Heritage Private Limited,
(a company incorporated in India under the Companies Act
1956) having its registered office at No.1 Ground Floor, Arjun,
Opp. Mewar Complex, Gogunda, Udaipur District (Rajasthan)
through its authorised signatory Rajesh Yadav s/o Late Shri
Mohanlal Yadav, aged about 52 years

R/o Plot No.21, Luvikush Colony, Bharat Nagar, Jaipur

.. Revisionist

V/s

1. Collector Stamps,
Udaipur

2. Dashrath Singh S/o Pukh Singh

R/o Akhawaton Ka Bas Khara Bera Purohitan

Tehsil Luni, Distt Jodhpur

Respondent

3. Bharat Timber and Constructions company,

1A, Ancharage Ground Floor, 7 Vachha Gandhi Road

Gasmdevi, Mumbai-400007

Perfoma Respondent

D.B.

SUNIL SHARMA, Member

MADAN LAL, Member

Present:

Mr. Suneel Pareek, Advocate for the revisionist appellant

Mr. Sunil Nath, Advocate for the revisionist appellant

Mr. Jameel Zai, Deputy Government Advocate for the respondent State

Date : 07.09.2015

JUDGMENT

For the bench by Sunil Sharma, Member:

(1) This revision application has been filed before the Rajasthan Tax Board (for short, "the Board") under sub section (2) of section 65 of the Rajasthan Stamp Act, 1998, (hereinafter referred to as, "the Act") by M/s Human Beings Heritage Private Limited, Gogunda, challenging the order, dated July 20, 2015, of Collector, Stamps, Udaipur, passed



under section 35 of the Act (case no.69 of 2015) , in matter of one Mr. Dasarath Singh, father of Mr. Pukh Singh, resident of Akhawaton Ka Vaas, Tehsil Luni, district Jodhpur.

(2) The brief facts of the case are that above named Mr. Dasarath Singh, applied to Collector, Stamps, Udaipur, for adjudication of appropriate stamp duty on an Agreement of Sale dated December 12, 2012 of the property comprising of Khasra no.5275, Rawala Gogunda, executed in his favour by M/s Human Beings Heritage Private Limited, Udaipur, revisionist in present case. After having got arrived at market value of the property arrived at Rs. 9 crore, Collector, Stamps, Udaipur passed an order dated July 20, 2015 under section 35 of the Act, and calculated outstanding recoverable stamp duty on the aforesaid property at Rs.26,99,900/-, interest at Rs.920,669/- and surcharge at Rs.2,70,000/- , aggregated to Rs.38,90,569/-, directing, inter alia, the registering authority concerned to register the aforesaid document of sale agreement in favour of Mr. Dashrath Singh, as one having been fully stamped, after the aforesaid recoverable amount had been deposited in the government treasury by the applicant. The respondent in the above case, M/s Human Beings Heritage Private Limited, has assailed the aforesaid order of Collector, Stamps, Udaipur on the ground that no sale agreement was executed between the revisionist and Mr, Dasarath Singh for the aforesaid property owned by the revisionist who has claimed to have sold it to one ,M/s Bharat Timber and Constructions Company,(for brevity, " M/s BTC ") by getting a sale deed registered in favour of the latter on October,17,2014 at the Sub Registrar office , Gogunda, Udaipur as entered at serial no. 3770 of its official records. Also, the impugned property, as per version of the petitioner, had been taken possession of by M/s BTC after its purchase had been effected from the revisionist who denied contracting any agreement to the sale of the impugned property with above named Dashrath Singh who was alleged to have

for




prepared the instrument of sale agreement on the strength of an invalid Power of Attorney.

(3) At present, we have heard the revision application on the basic preliminary issue of admissibility against the background of the revisionist's insistence that mandatory requirement of pre- payment of 25 percent of the recoverable demand in the aforesaid impugned order, as required under sub section (1) of section 65 of the Act for the purpose of admission, was not applicable to the case on hand, for reason that it was filed under sub section (2) of section 65 of the Act against the impugned order passed under section 35 of the Act by the Collector Stamps, Udaipur; and, it was not accompanied with the treasury receipts regarding payment of any amount of the aforesaid recoverable demand.

(4) At the outset, Mr. Suneel Parik and Mr. Sunil Nath, counsels, appearing on behalf of the revisionist argued that the revisionist was, by law, not required to deposit mandatory as provided in proviso to sub section (1) of section 65 of the Act because that the above mandatory condition of pre-deposit of twenty five percent was not attracted in their case: for, being aggrieved by the impugned erroneous order passed under section 35 of the Act by Collector, Stamps, Udaipur, the revisionist had challenged it under sub section (2) of section 65 of the Act without having to fulfill mandatory requirement of pre deposit of 25 % of the recoverable demand raised in the impugned order, since his right to revision in the aforesaid matter was not circumscribed by invariability of (twenty five percent of the recoverable demand) as pre deposit laid down in sub section (1) of section 65 of the Act.

(5) Advancing arguments, Mr. Sunil Nath, the learned counsel for the revisionist, asserted that in the matters related to sub section (2) of section 65 of the Act, no pre-payment condition for the purpose of



admission of the revision application in the Board existed on the statute and for that matter it was not legally tenable to apply this constraint for purpose of admitting the revision application in respect of the impugned matter in the Board.

(6) Moreover, he averred that they had challenged the propriety of the impugned order and legality of the official proceedings undertaken during the course of finalization of the aforesaid matter under section 35 of the Act by Collector, Stamps, Udaipur in which no pecuniary constraints of pre deposit of demand had been prescribed for matters to be adjudged under sub section (2) of section 65 of the Act. In such perspective, the Board had inherent jurisdiction to hear this application without invoking the statutory requirement of pre-deposit of 25 % of recoverable demand by virtue of non applicability of such a stipulation in the present case.

(7) Mr. Suneel Pareek, the learned counsel for the revisionist, argued that there was no legal compulsion for the Board to deny admit such a case for adjudication under sub section 2 of section 65 of the Act if the revisionist came before the Board without fulfilling the requirement of pre deposit of 25 percent of the recoverable demand set out in proviso to sub section (1) of section 65 of the Act since the matter decided under section 35 of the Act by the authority immediate below related to the procedure on admission and denial of execution respectively with regard to presenting documents for registration and was specifically covered under sub section (2) of section 65 of the Act which contained no circumscribing provision of pre deposit, expressly or otherwise, as a condition for admission of the aforesaid case for adjudication by the Board.

(8) Arguing vehemently, Mr Sunil Nath counsel for revisionist asserted that the both the sub-sections (1) and (2) of section 65 of the Act worked in separate fields and in functioning also they were



independent of each other, thus creating a legal framework that dispensed with the legal compulsion of pre-deposit of 25% of recoverable demand in the matters to be adjudged under sub section (2) of section 65 of the Act, in contradistinction to the cases filed under sub section (1) of section 65 of the Act that warranted compliance of the legal pre requisite of 25% payment of the recoverable demand.

(9) In support of his plea, they relied upon the judgment of the Hon'ble Rajasthan High Court in case of M/s. Choksi Heraius Pvt. Ltd. Udaipur Vs. State & Ors., reported in AIR 2008 Rajasthan, 61, (C.S. No. 458 of 2006, D/- 1-11-2007), wherein the orders passed by the Collector, Stamps, under Chapters IV, V and Clause (a) of the proviso to section 29 and / or section 35 of the Act were challenged, and also the validity of the provisions of proviso to section 65(1) of the Act, was under assail.

(10) Appearing on behalf of the respondent Revenue, Mr. Jameel Jai, Deputy Government Advocate, contended that applicability of sub section (2) of section 65 was invariably related to and inexorably entwined with that of sub section (1) of section 65, and being inter dependent on each other, both the provisions could not be read in isolation from each other. He argued that if the revisionist came before the Board under sub section (2) section 65 of the Act, he would not be exempt from rigours of pre deposit condition as envisaged in preceding sub section (1) thereof and his revision application could not be entertained by the Board on the issue of admissibility for failure of payment of 25% of the recoverable demand raised in the impugned order.

(11) He contended that the plea of the revisionist petitioner that his case was covered under sub section (2) of section 65 of the Act for he was aggrieved by the impugned order passed under section 35 of the Act



and accepting the premise that the Board could call for and examine the record of its case decided in proceeding held by the Collector, Stamps, Udaipur for the purpose of satisfying himself as to the legality or propriety of the aforesaid order dated July 20, 2015, was not disputed but what actually the bone of contention was how the revisionist could press for admission of his case banking on the above factors which did not in any way relieve him of his statutory liability of 25% pre-payment of recoverable demand, because it was expressly provided for in the proviso to sub section (1) of section 65 of the Act.

(12) Summing up arguments, Mr. Jameel Jai, the learned counsel for the Revenue, prayed for dismissal of the revision application at preadmission stage for non fulfillment by revisionist of the mandatory requirement of 25% pre deposit as expressly set out in sub section (1) of section 65 of the Act which was equally applicable to cases covered under sub section (2) of section 65 of the Act.

(13) We have heard rival contentions of the counsels of the parties to the issue and gone through the aforesaid case of the Hon'ble Rajasthan High Court, cited supra, with all humility. It is imperative that before proceeding ahead we should look gainfully at the relevant provisions of the law as laid down in section 65 of the Act, as a whole, which reads as under-

"65. Revision by the Chief Controlling Revenue Authority,-

(1) Any person aggrieved by an order made by the Collector under Chapters IV and V and under Clause (a) of the first proviso to Sec. 38 and under Sec. 35 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision on such order :

Provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof



of the payment of twenty five per cent of the recoverable amount.

(2) The Chief Controlling Revenue Authority may suo moto or on information received from the registering officer or otherwise call for and examine the record of any case decided in proceeding held by the Collector for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of the proceedings and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

(14) In the perspective of above rendering , a conjoint reading of the sub section (1) and sub section (2) of section 65 makes out that both sub sections supplement, and are not at variance, with each other, thus together making an organic whole. They cannot be split in two separate constructs because the opening part of the aforesaid statute under sub section (1) of section 65 of the Act in no uncertain terms informs , inter alia, that any person aggrieved by an order made by the Collector under section 35 of the Act, may apply to the Chief Controlling Revenue Authority, (presently, the Board) for revision on such order provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of twenty five per cent of the recoverable amount, which is applicable to and relevant in case of every revisionist.

(15) The phraseology used by the legislature in construction of the section 65, as a whole, does not suffer from any *causus omissus* and what is required is a harmonious reading of sub section 1 and 2 of section 65 that clearly brings forth that all the cases decided by the Collector under Chapters IV and V and under Clause (a) of the first

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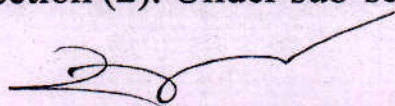

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proviso to section 38 and under section 35 of the Act, save the cases where in its wisdom and by its volition or suo moto or on the information received from the registering authority, the Board exercises authority to call for record, examine the case and proceed to decide the case under sub section (2) of section 65 of the Act, would be considered for adjudication by the Board under sub section (1) of section 65 of the Act subject to the accompaniment of proof of the payment of twenty five percent of the recoverable amount.

(16) The Hon'ble Rajasthan High Court in the aforesaid case (supra) held "that the enactment of the proviso to sub-section (1) of Section 65 of the Act of 1998 is within the legislative competence of the Government and is otherwise not violative of fundamental right of the parties as guaranteed under Chapter III of the Constitution. Hence, the proviso to sub-section (1) of Section 65 is held constitutionally valid. It further declared therein that "the provisions of proviso to Section 65 (1) of the Rajasthan Stamp Act, 1998 is held to be intra vires and valid."

(17) However, the aforesaid case of M/s. Choksi Heraius Pvt. Ltd. Udaipur Vs. State & Ors., supra, relied upon by counsel for the revisionist, in fact, did not endorse any such contention that in case a revision application on an order passed under section 35 of the Act was preferred before the Board under sub section (2) of section 65 of the Act, it would not be saddled with the liability of pre deposit of 25% of the recoverable demand raised in the order sought to be assailed before the Board. It rather succinctly expounded the meaning and intention of the legislature with respect to its application to any given case and it is squarely applicable in the case at hand; an excerpt from it is reproduced herein below:



"The next argument raised by the learned counsel for the petitioners is that Section 65 of the Act comprises two parts being under sub-section (1) and sub-section (2). Under sub-section (1),



any person aggrieved by an order passed by the Collector can apply for revision, while under sub-section (2), Chief Controlling Revenue Authority may suo motu or on information received from the registering officer, or otherwise, call for and examine the record of any case decided in the proceeding held by the Collector. It was contended that the requirement of pre-deposit as provided in the proviso to sub-section (1), is not attracted in the case covered by sub-sec. (2), thus liable to be struck down being discriminatory. Considering this argument, we found that proviso to sub-section (1) cannot be struck down on the argument raised above, because sub-section (1) of Section 65 gives a remedy to any person aggrieved by an order passed by the Collector and the said remedy is provided on the condition of payment of fifty per cent of recoverable amount, whereas sub-section (2) gives power to the Chief Controlling Revenue Authority to examine an order passed by the Collector suo motu or on information received from the registering officer or otherwise."

Further elaborating the concept enunciated above, the Hon'ble Rajasthan High Court observed:

(18) The word "otherwise" used covers those matters where a revision is preferred under sub-section (1), therefore, while sub-section (1) gives a remedy to any person aggrieved of the order passed by the Collector, sub-section (2) gives authority to the Chief Controlling Revenue Authority for exercising such powers in the circumstances provided under sub-section (2) itself. Therefore, provisions of sub-sections (1) and (2) exist in different context provided therein. Hence, it cannot be said to be bringing about any discrimination on the anvil as contended because a remedy provided for aggrieved person on certain conditions cannot be equated with the power of revisional authority to call for and examine



the matter suo motu or on information. Hence, we are not impressed with this argument raised by the learned counsel for the petitioners.”

(19) Coming to sub section (2) section 65 of the Act, we find that its construct has three aggregates which empower the Board with authority to take up adjudication ,by calling for and examining the record, of the order made by the Collector under Chapters IV and V and under Clause (a) of the first proviso to Sec. 38 and under Sec. 35 of the Act and pass such order with respect thereto as it may think fit by way of three different methods, namely:

(1)suo moto

(2)on information received from the registering officer

(3)or, otherwise

(20) A harmonious reading of the above statutory construction expounds the meaning and intention of the law with respect to its application by the Board as to any given case through any of the above three modes of action which in actuality denote the inherent authority vested in the Board to be exercised by it of its own and, as and when the situation so arises for the purpose of satisfying itself as to the legality or propriety of the order passed and about the regularity of the proceedings.

(21) The authority to exercise such three modes of action is vested in the Board sub section (2) of section 65 of the Act which are, namely: first, ‘suo moto’, second , ‘on information received from the registering officer’; and , third ‘otherwise’, by which it may call for and examine the record of any case decided in proceeding held by the Collector.

(22) In other words, it may be plainly understood to mean that if a revision application is preferred by the revisionist under sub section (2) of section 65 of the Act, such as action cannot be equated with an of act suo moto exercise of powers by the Board, because in case such a cognizance of the matter has no been taken by the Board by itself, it should rather emanate from a self-prompted deliberation, discretion or



volition by the Board, which factor is lacking here, for the Board did not initiate any action in this regard at its own initiative but was rather persuaded, through the application of revision filed by the revisionist petitioner in this case, so to do. Therefore, the suo moto mode of action by the Board is ruled out in the present scenario.

(23) As regards the mode of action where the Board, on information received from the registering authority, may call for and examine the record for the purpose of satisfying itself as to the legality or propriety of the order passed and as to the regularity of the proceedings, that also is not applicable in the circumstances obtaining in the present case, because no such information was received by the Board from the registering authority as to cause an action upon which the Board may have decided whether or not to call for record and decide the case and passed fresh orders as may be necessary. Moreover, the authority to resort to this mode of action also singularly resides in the Board conferred under sub section (2) of section 65 of the Act and even this mode of action cannot be invoked extraneously by filing an application for revision by the revisionist on his matter under sub section (2) of section 65 of the Act. Therefore, this mode of action, does not sit pretty on the shoulders of the revisionist, either.

(24) Now, the remaining third mode of action for the Board to exercise authority under sub section (2) of section 65 rests on the word phrase, 'otherwise' which encompasses a wide array of subjects to be included in its ambit; since only revisions are the subject matter of this word phrase, it may safely be presumed that all those cases where orders were passed by the Collector, under Chapters IV, V and Clause (a) of the proviso to Section 29 and / or Section 35 of the Act and were sought to be covered under sub section (2) of section 65 of the Act, by the revisionist would fall under its ambit, save cases initiated suo moto or on information from the registering authority by the Board, in which the



Board would invoke provisions of sub section (2) of section 65 of the Act; As such, the instant revision application is not entertainable for admission purposes as it falls under otherwise category of action for want of without payment of twenty five of the recoverable demand.

(25) In the above perspective, the revision application filed under sub section (2) of section 65 of the Act imparts authority only to the Board to exercise power , on its own , suo moto or on information received from the registration authority, whereas sub section 1 of section 65 of the Act provides right of revision to a person aggrieved by an order of Collector and the above sub section (1) is inclusive of and governs the 'otherwise' mode of action laid down under sub section (2) of section 65 of the Act for purposes of admission on payment of 25% of recoverable demand. Since the revisionist is a person aggrieved by the aforesaid impugned order of the Collector stamps, Udiapur, his case is included in "otherwise" category as discussed above and therefore naturally falls under sub section (1) of section 65 of the Act, for purpose of admission subject to the payment of twenty five percent of the recoverable amount.

In the perspective of the facts and law prevailing in the aforesaid case, the Bench finds that non fulfillment of mandatory requirement of pre-payment of 25% of the recoverable demand under sub section(1) of section 65of the Act by the revisionist renders the revision application liable for dismissal for the purposes of its admission in the Board. Therefore, the above revision application dismissed is on the grounds of inadmissibility as enumerated above.


(Madan Lal)
Member


(Sunil Sharma)
Member