

IN THE SUPREME COURT OF BANGLADESH
Appellate Division

PRESENT

Mr. Justice Hasan Foez Siddique, C.J.

Mr. Justice M. Enayetur Rahim

Mr. Justice Jahangir Hossain

CIVIL PETITION FOR LEAVE TO APPEAL NO.268 OF 2018

(From the judgment and order dated the 14th day of November, 2017 passed by the High Court Division in Writ Petition No.10484 of 2011).

Md. Saifuzzaman Chowdhury : . . . Petitioner
-Versus-

Secretary, Ministry of Law, : . . . Respondents
Justice and Parliamentary
Affairs and others

For the Petitioner : Mr. Probir Neogi, Senior Advocate,
instructed by Mrs. Mahmuda
Begum, Advocate-on-Record

For Respondent No.1 : Mr. Sk. Md. Morshed, Additional
Attorney General with Mr. Sayem
Mohammad Murad, Assistant
Attorney General, instructed by Mr.
Haridas Paul, Advocate-on-Record

Date of hearing and judgment : The 29th day of January, 2023

JUDGMENT

M. Enayetur Rahim, J: This civil petition for leave to appeal is directed against the judgment and order dated 14.11.2017 passed by the High Court Division in Writ Petition No.10484 of 2011 discharging the Rule.

The relevant facts leading to the filing of the present leave petition are that the petitioner purchased 97 chatak low land (nul land) by a registered kabala dated 13.03.2001 from (1)Mohammad Bokhtear (2)Mohammad Harun, (3)Mosammat Laila Khatun, (4) Mosammat Samshun Nahar and (5)Golzar Begum through their constituted Attorney Mohammad Elias, at a

consideration of Tk.45,000/(forty five thousand) being the current marked rate. After receiving the full consideration money the vendors executed the sale deed and presented it for registration before the Sub-Registrar, Chandgaon (respondent No.4). The constituted Attorney of the vendors also affirmed affidavit before the Sub-Registrar and in clause 7 of the said affidavit it was clearly declared that the price of land has not been shown less. Thus having been satisfied with the information and receiving due revenue, taxes and stamp duty, the Sub-Registrar registered the sale deed being No.433 dated 13.03.2001 and ultimately it was delivered to the petitioner, annexures-A and A-1 to the writ petition.

Thereafter, on 03.04.2001 the Sub-Registrar, Chandgaon filed a report/complaint before the District Collector and Deputy Commissioner, Chattogram alleging that the value of the transferred land was Tk. 9,89,255/- and, thereby, showing less value of Tk. 9,44,255 an amount of total Tk. 2,52,587.10 became due on account of various fees and taxes (stamp duty, registration fees, additional tax, Municipal tax, tax at source and vat). On the basis of the said complaint Undervaluation Case No. 31 of 2001 was initiated by the Collector, Chattogram and respondent No.3, concerned Assistant Commissioner, issued final notice upon the petitioner on 21.09.2011 for alleged violation of Section 27 of the Stamp Act and, thereby, directed the

petitioner to pay Tk. 2,52,587.10 as total costs on account of stamp duty with additional taxes, registration fees, municipal tax, vat and penalty within 10 (ten) days from the date of receipt of the notice.

Challenging the aforesaid Final Notice the petitioner filed Writ Petition No.10484 of 2011 before the High Court Division and obtained Rule *Nisi*.

The learned Deputy Attorney General appearing on behalf of the respondent Government opposed the Rule, but did not file any affidavit-in-opposition.

In due course after hearing both the parties by the impugned judgment and order dated 14.11.2017 the High Court Division discharged the Rule.

Being aggrieved by the judgment and order passed by the High Court Division the writ petitioner is now before us having filed the instant civil petition for leave to appeal.

Mr. Probir Neogi, learned Senior Advocate appearing for the petitioner submits that the Sub-Registrar, respondent No. 4 herein, registered the sale deed in question after being satisfied with the consideration money shown in the sale deed and after perusing the affidavit wherein it has been clearly stated in clause-7 that the price of the land has not been shown less. The sale deed has been registered according to the law and the petitioner has received the sale deed and after registration and delivery of

the sale deed respondent No.4 has no legal authority to initiate any case against the petitioner. The High Court Division without considering the above aspect passed the impugned judgment which is liable to be set aside.

Mr. Neogi further submits that since the sale deed is registered in compliance with the provision of section 60 of the Registration Act and in performance of the duty of the registering authority, the subsequent proceeding as contained in Undervaluation Case No. 31 of 2001 is illegal and without jurisdiction.

The learned Advocate further submits that since there is no law or rule, providing or determining the value of land of a particular area, and there is also no Gazette Notification regarding fixation of rate of land of the said area and the Sub-Registrar having been satisfied with the declared and negotiated rate of land between the parties registered the deed and subsequent claim against the petitioner is without any basis. The High Court Division failed to appreciate the above facts in passing the impugned judgment.

The learned Advocate lastly submits that the land has been purchased by a company namely Aramit Cement Limited but the notice has been issued upon a private person namely Mr. Saifuzzaman Chowdhury, the present petitioner, who is not a party of the alleged sale deed

and as such the notice issued upon the petitioner is illegal.

Mr. Sk. Md. Morshed, learned Additional Attorney General referring to sections 27, 31, 32, 48 and 70 of the Stamp Act, 1899 submits that in initiating the Undervaluation Case being No.31 of 2001 and, thereafter, issuing the impugned notice by the District Collectorate, Chattogram no illegality has been committed and as such there is no scope to say that the said notice has been issued without lawful authority and is of no legal effect. He further submits that the High Court Division rightly and properly decided the issue and, as such, the leave petition is liable to be dismissed.

We have considered the rival submissions of the learned Advocates for the respective parties, perused the impugned judgement and order and materials available on record and also relevant provisions of law.

It appears from Annexure-B to the writ-petition that the Sub-Registrar, Chandgaon Sub-Registration Office, Chattogram vide its office Memo 367 dated 03.04.2001 made a report to the Collector and Deputy Commissioner, Chattogram, stating, *inter alia*, that the schedule deed has been registered without proper stamp which is violated section 27 of the Stamp Act.

The contents of the said memo run as follows:

“ গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
চান্দগাঁও সাব রেজিস্ট্রারের কার্যালয়
রেজিস্ট্রেশন কমপ্লেক্স, কোর্ট হিল, চট্টগ্রাম।

স্মারক নং-৩৬৭

তারিখঃ ৩/৪/০১

মাননীয়,

কালেক্টর বাহাদুর ও
জেলা প্রশাসক, চট্টগ্রাম।

বিষয়ঃ জমির মূল্য কম দেখাইয়া রাজস্ব ফাঁকি দেওয়া প্রসঙ্গে।

জনাব,

যথাবিহীত সম্মান পূর্বক মহোদয়ের নিকট আবেদন করা যাইতেছে যে, নিম্নে প্রদর্শিত একখানা স্ট্যাম্প আইনের ২৭ ধারা লংঘন করিয়া চান্দগাঁও রেজিস্ট্রি অফিসে নিবন্ধিত হইয়াছে। যাহার সরকারের প্রকৃত স্ট্যাম্প শুদ্ধ রেজিঃ/ফিস/অতিরিক্ত কর/ এল,জিল, কর ও উৎসর কর ইত্যাদি রাজস্ব দেওয়া হইয়াছে বলিয়া প্রতিয়মান হয়। অতএব, সরকারের ঘাটতি রাজস্ব আদায় করে রেজিস্ট্রেশন আইনের ৬ষ্ঠ খন্ডের ৪০ (ঘ) বর্ণিত নির্দেশ মোতাবেক এর রিপোর্ট করা হইল।

১। ক্রমিক নং-৪৩৫

দলিল নং-৪৩৩

২। রেজিস্ট্রির তারিখ ১৩/৩/২০০১

৩। দাতার নাম ও ঠিকানা মোহাম্মদ বখতেয়ার পীং মৃত হামুদ মিয়া সাং চান্দগাঁ ডাক চান্দগাঁও, চট্টগ্রাম।

৪। গ্রহীতার নাম ও ঠিকানা সাইফুজ্জামান চৌং পীং আলহাজ্ব আখতারুজ্জামান চৌং সাং ৫৩ কাসুঘাট ভারী শিল্প এলাকা অস্পষ্ট।

৫। দলিল লিখকের নাম আলহাজ্ব মোহাম্মদ ইলিয়াছ

সনদ নং-৮০/৮৪

৬। তপশীলঃ-

ক) মৌজা চররাস্তামাটি থানাঃ চান্দগাঁও

খ) আর, এস, খতিয়ান নং-৮৬৫

গ) আর, এস, খতিয়ান নং- ২৩২৫

৭। জমির পরিমাণ/১৩। দলিলের রকমঃ কবলা

৮। দলিলে প্রদর্শিত মূল্যঃ ৪৫,০০০/- জমির শ্রেণীঃ নাল

৯। গড় মূল্য মোতাবেক প্রতি শতকের মূল্যঃ ১,৪৭,৬৫/-

১০। গড় মূল্য অনুযায়ী মোট মূল্যঃ ৯,৮৯,২৫৫/-

১১। কম মূল্য (কলাম ৮ ও ১০ এর পার্থক্য)ঃ ৯,৪৪,২৫৫/-

১২। আদায়যোগ্য ফিস ও করাদিঃ

ক) স্ট্যাম্প শুদ্ধ : ৯৪৪২৫/-

খ) রেজিঃ ফিস : ২৩৬০৬.৩৭

গ) অতিরিক্ত কর : ৯৪৪২.৫০

ঘ) পৌরকর/জেলা পরিষদ করঃ ৯৪৪২.৫০

ঙ) উৎস কর : ৯৪৪২৫.৮০

২১২৪৫.৭৩

২,৫২,৫৮৭.১৫

বিনীত

স্বা/- অস্পষ্ট

চান্দগাঁও সাব রেজিস্ট্রার

চট্টগ্রাম।

৩/৪/২০০১”

On the basis of the said report, the Office of the Collectorate and Deputy Commissioner, Chattogram, started Undervaluation Case No.31 of 2001. Eventually, a final notice was issued to the present petitioner and the contents of the said notice are as follows:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার

জেলা প্রশাসকের কার্যালয়

(অবমূল্যায়ন শাখা)

চট্টগ্রাম

মূল্যায়ন মামলা নং-৩১/০১

প্রসেস নং-৩৯০৮

তারিখঃ ২১/৯/১১

শেষ চূড়ান্ত নোটিশঃ

গ্রহীতার নাম ঠিকানাঃ সাইফুজ্জামান চৌঃ

পীং আলহাজ্ব আখতারুজ্জামান চৌঃ

সাং বালুরঘাট ভারী শিল্প এলাকা, ডাকঃ মোহরা, থানা- চান্দগাঁও চট্টগ্রাম।

সূত্র ক্রমিক নং-৪৩৫ দলিল নং-৪৩৩ রেজিঃ তারিখ ১৩/৩/০১

সূত্রে বর্ণিত মামলার যেহেতু আপনি/আপনার স্ট্যাম্প আইনের ২৭ ধারা লংঘন করিয়া বাজার মূল্যের কম মূল্য দেখাইয়া সাব-রেজিস্ট্রার, সদর/চান্দগাঁও/পাহাড়তলী চট্টগ্রাম কার্যালয়ে তপসীলস্থ জমি রেজিস্ট্রেশন করিয়াছেন। তৎপ্রেক্ষিতে সরকারী বকেয়া রাজস্ব আদায়ের লক্ষে সূত্রোক্ত মামলায় আপনি/আপনাদেরকে নোটিশ জারী করা সত্ত্বেও আপনি/আপনারা নিম্নস্বাক্ষরকারীর আদালতে হাজির হন নাই বিধায় আপনি/আপনাদের বিরুদ্ধে-----টাকা জরিমানা ধার্য করা হইল।

স্ট্যাম্প শুল্কঃ ৯৪৪২৬/- টাকা। রেজিস্ট্রি ফিঃ ২৩৬০৬/৩৭ টাকা

অতিরিক্তঃ ৯৪৪২/৫৫ টাকা। পৌর কর ৯৪৪২/৫০ টাকা

উৎস কর : ৯৪৪২৫/৮০ টাকা। ভ্যাট ২১২৪৫/৭৩ টাকা।

জরিমানা × টাকা। সর্বমোট ২,৫২,৫৮৭/১০ টাকা।

এমতাবস্থায় অত্র নোটিশ প্রাপ্তির ১০ (দশ) দিনের মধ্যে সরকারী বকেয়া রাজস্ব ট্রেজারী চালান মূলে বাংলাদেশ ব্যাংক ও রশিদ মূলে সোনালী ব্যাংক, কোর্ট হিল শাখার মাধ্যমে সরকারী কোষাগারে জমা দিয়ে চালান ও রশিদের কপি আদালতে দাখিল করার জন্য আপনি/আপনাদেরকে নির্দেশ দেয়া যাচ্ছে। অন্যথায় আপনি/আপনাদের বিরুদ্ধে যথযথ আইনানুগ ব্যবস্থা গ্রহণ করা হইবে। অন্যথায় সার্টিফিকেট মামলা রুজু করা।

তফশীলঃ

মৌজাঃ চররাঙ্গামাটিয়া থানাঃ চান্দগাঁও জেলাঃ চট্টগ্রাম

আর.এস খতিয়ান নং-৮৬৫

আর.এস দাগ নং- ২৩২৫

বি.এস. খতিয়ান নং

বি.এস দাগ নং-

স্বা/- অস্পষ্ট

সহকারী কমিশনার

ম্যাজিস্ট্রেট

অবমূল্যায়ন মামলা শাখা

জেলা প্রশাসকের কার্যালয়

চট্টগ্রাম।”

The learned Advocate for the petitioner has tried to convince us that the alleged deed was executed in favour of a company and as such the notice issued to the petitioner is absolutely illegal without serving notice upon the company and its Director(s). From Annexure-E to the writ petition it transpires that the alleged deed was executed in favour of Aramit Cement Limited represented by its Managing Director Saifuzzaman Chowdhury, the present petitioner and, accordingly, Undervaluation Case No.31 of 2001 has been initiated against him and as such we do not find any legal basis to the above submission of the learned Advocate for the petitioner.

We have carefully examined the provisions of section 27, 31, 32, 48 and 70 of the Stamp Act, 1899 as referred to by the learned Additional Attorney General.

Section 27 of the said Act runs as follows:

"27. Facts affecting duty to be set forth in instrument- *The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein."*

Section 31 runs as follows:

"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 Taka and not less than fifty poisha 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 inquiry 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."

Section 32 runs as follows:

"32. Certificate by collector- (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and-

- (a) the Collector determines that it is already fully stamped, or
- (b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect

of the instrument is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorise the Collector to endorse-

- (a) any instrument executed or first executed in Bangladesh and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;
- (b) any instrument executed or first executed out of Bangladesh and brought to him after the expiration of three months after it has been first received in Bangladesh;
- (c) any instrument chargeable with the duty of ten poisha or five poisha or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped."

Section 48 is as follows:

"48. Recovery of duties and penalties- All duties, penalties and other sums required to be paid under this chapter may be recovered by the Collector by distress and sale of the movable

property of the person from whom the same are due, or by any other process for the time being in force for the recovery of arrears of land-revenue."

Section 70 is as follows:

"70. Institution and conduct of prosecutions- (1) *No prosecution in respect of any offence punishable under this Act shall be instituted without the sanction of the Collector or such other officer as the Government generally, or the Collector specially, authorises in that behalf.*

(2) *The Chief Revenue-authority, or any officer generally or specially authorised by it in this behalf, may stay any such prosecution or compound any such offence.*

(3) *The amount of any such composition shall be recoverable in the manner provided by section 48."*

Further, the word '**Collector**' has been defined in section 2(9) of the Stamp Act, 1899, which is as follows:

(9) "Collector":

(a) *means the collector of a district; and*

(b) *includes a Deputy Commissioner and any officer whom the Government may, by notification in the official Gazette, appoint in this behalf:*

Having examined and considered the above provisions of law coupled with the facts and circumstances of the case, we have no hesitation to hold that, the Collector, Chattogram on the basis of a report of concerned Sub-Registrar with regard to the valuation of the property in question initiated the instant undervaluation case.

The impugned proceeding against the petitioner has been initiated by the Collector and Deputy Commissioner, Chattogram within its jurisdiction, i.e. in view of the

relevant provision of Stamp Act,1899 and thus, there is neither violation of the Registration Act nor the Stamp Act.

In view of the above, we find no merit in the civil petition for leave to appeal.

Accordingly, the same is dismissed.

C. J.

J.

J.