

HIGH COURT OF GUJARAT**PAUSHAK LIMITED & 1***Versus***CHIEF CONTROLLING REVENUE AUTHORITY****Date of Decision:** 28 March 2014**Citation:** 2014 LawSuit(Guj) 383**Hon'ble Judges:** [R M Chhaya](#)**Case Type:** Special Civil Application**Case No:** 20293 of 2006**Subject:** Constitution**Acts Referred:**[Constitution Of India Art 227, Art 226](#)[Bombay Stamp Act, 1958 Sec 39, Sec 41, Sec 32, Sec 32A, Sec 31](#)**Advocates:** [Nandish Chudgar](#), [Nanavati Associates](#), [P P Banaji](#)**Cases Referred in (+): 1****R. M. Chhaya, J.**

[1] By way of this petition under Articles 226 and 227 of the Constitution of India the petitioners have challenged the order dated 20.10.2005 passed in exercise of section 53A(1) of the Bombay Stamp Act, 1958 (hereinafter referred to as 'the Act').

[2] The facts which can be culled out from the record of the petition are as under.

[3] That the petitioner is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing of specialty chemicals. In the course of business the petitioner applied for financial assistance with Indian Bank (one of the Nationalised Banks) and obtained financial facilities - credit facility to the tune of Rs. 285 lacs as per the agreed terms and conditions. The record further indicates that in order to secure the repayment of the aforesaid loan/financial assistance the petitioner company executed a mortgaged deed in favour of the Indian Bank on 6.9.1991. The record further indicates that before the said mortgage was executed, the petitioner company referred the same to the Collector for its adjudication

as provided under section 31 of the Act and the competent jurisdictional Collector made an endorsement of the valuation of the property so mortgaged and its stamp duty on 1.4.1992 under section 32 of the Act. As a matter of record the said mortgage deed came to be registered with the Sub- Registrar No.4, Vadodara on 30.9.1991 under registration no. 486/22 of 1992. It further appears that thereafter in order to expand the business, the petitioner availed further financial assistance from the bank to the tune of Rs.70 lacks. In order to secure the said enhanced loan the petitioner company executed supplementary deed of mortgage dated 3.4.1992 in favour of the said bank. The said supplementary deed of mortgage was also referred for its adjudication of stamp duty to the Collector of Stamp who inter alia certified the same on 1.4.1992 u/s. 32 of the Act. It is the case of the petitioner that as per the certificate issued by the Collector u/s. 32 the petitioner has paid stamp duty of Rs.42,550/- on the said document and accordingly it was registered with the registering authority under registration No. 7114 dated 28.5.1992. The record further indicates that audit report indicated that in relation to the document in question (supplementary mortgage deed dated 3.4.1992) the stamp duty as per the Act is chargeable under Article 27 and not Article 36 and therefore raised audit para to the effect that mortgage deed in question has been wrongly classified. On the basis of such audit para the Collector referred the disputed deed and made reference to respondent no.1. Ultimately respondent no.1 in suo motu exercise of power u/s, 53A(1) of the Act for the first time issued show cause notice to the petitioner on 24.12.1998. The record reveals that the reply was filed by the petitioner and ultimately show cause notice has culminated into the impugned order dated 20.10.2005 which is impugned in the present petition.

[4] Heard Mr. Nandish Chudgar, learned Advocate for Nanavati Associates for the petitioners and Mr.P.P. Banaji, learned Assistant Government Pleader for the respondent.

[5] Mr. Chudgar for the petitioners has contended that show cause notice dated 24.12.1998 and the impugned order dated 20.10.2005 are bad in eye of law as the respondent has exercised its power on reference made by the Collector beyond the period of six years. Mr. Chudgar contended that thus the very exercise of power by issuance of show cause notice is beyond the statutory limit provided by 53A(1) of the Act and therefore the very initiation of proceedings is without jurisdiction. Mr. Chudgar contended that as the show cause notice was issued after the period of 6 years, the order impugned dated 20.10.2005 is also bad in eye of law. Mr. Chudgar submitted that the very exercise of power under section 53A(1) of the Act is without jurisdiction and hence, the proceedings initiated by notice dated 24.12.1998 and the impugned order dated 20.10.2005 are non-est. Mr. Chudgar asserted that the plain reading of the provisions of section 53A(1) clearly stipulates that respondent no.1 is not authorised to

take any actions even by way of reference suo motu u/s. 53A(1) beyond the period of six years. Mr. Chudgar has also further submitted that once the Collector has certified stamp duty payable upon document in question u/s. 32 and certificate has also been issued u/s. 32 the authorities cannot on the basis of audit para exercise its suo-motu jurisdiction u/s. 53A(1) of the Act. Mr. Chudgar has also relied upon the judgment in this regard in the case of *Mundra Port & Special Economic Zone Limited v/s. State of Gujarat* in Special Civil Application No. 4259 of 2007 and other allied matters whereby the similar issue has been decided and as the actions were taken beyond the period of six years the very initiation of such proceedings are quashed and set aside. Mr. Chudgar has also relied upon the judgment in the case of [Bhikhubhai Somabhai Patel Vs. State of Gujarat](#), 2001 2 GLR 1442 and contended that once the certificate is issued by the Collector after satisfaction of the value of the property, powers u/s. 53A(1) of the Act cannot be exercised.

[6] Mr. P.P. Banaji, learned Assistant Government Pleader has supported the initiation of proceedings u/s. 53A(1) of the Act by notice dated 24.12.1998 and has also supported the impugned order. It was pointed out by Mr. Banaji, learned Assistant Government Pleader that the Sub-Registrar, Vadodara made reference on 18.1.1996 to respondent no.1 and therefore it cannot be said that proceedings u/s. 53A(1) of the Act were not initiated within a period of six years. Mr. Banaji contended that respondent no.1 has rightly exercised its power u/s.53A(1) of the Act and no interference is called for by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India and/or its jurisdiction under Article 227 of the Constitution of India as no error apparent on the face of record is committed by the respondent authority while passing the impugned order dated 20.10.2005. Mr. Banaji, learned Assistant Government Pleader contended that the order is self explanatory and well reasoned and petitioner is liable to pay stamp duty as determined by the impugned order. Mr. P.P. Banaji submitted that because of audit para respondent was right in exercising its power suo motu even after beyond the period of six years.

[7] Before considering the submissions made by learned Advocates appearing on behalf of the respective parties, certain dates are required to be mentioned which are as under :

- (i) Supplementary Mortgage Deed is dated 3.4.1992.
- (ii) Certificate u/s. 32 of the Act was issued by the Collector of Stamp on 1.4.1992.
- (iii) Show Cause Notice u/s. 53A(1) of the Act is dated 24.12.1998.

Section 53A(1) of the Act reads as under : "Section 53A: Revision of Collector's decision under Sections 32, 32A, 39 and 41:

[1] Notwithstanding anything contained in subsection (3) of Section 32, subsection(3) of section 32A, subsection(2) of section 39 and subsection(2) of section 41, when through mistake or otherwise any instrument is charged with less duty than leviable thereon, or is held not chargeable with duty, by the Collector, the Chief Controlling Revenue Authority may, within a period of six years from the date of certificate of the Collector under Sections 32, 32A, 39 or 41, as the case may be, required the concerned party to produce before him the instrument and, after giving a reasonable opportunity of being heard to the party, examine such instrument whether any duty is chargeable or any duty is less levied thereon and pass an order for recovery of the deficit duty, if any, from the concerned party. An endorsement shall be made on the instrument after payment of such deficit duty.

[2] On failure to produce the original instrument by the party, the Chief Controlling Revenue Authority shall proceed under this Section on the basis of the true copy or an abstract of the instrument filed with the Collector and such true copy or abstract shall be deemed to be the original instrument for the purposes of this section."

On bare reading of the aforesaid provision it is clear that the Chief Controlling Revenue Authority may within a period of six years from the date of certificate of the Collector u/s. 32, 32A and 41 of the Act, as the case may be, required the concerned party to produce before him the instrument and after giving reasonable opportunity of being heard, examine such instrument and then determine the chargeable stamp duty if it is found that there is any deficit, endorsement shall be made on the instrument after payment is made.

[8] Section clearly stipulates that Chief Controlling Authority can exercise of its power u/s. Sub-section (1) of section 53A of the Act within a period of six years. The provision is therefore clear that such power can be exercised by the Chief Controlling Authority within a period of six years from the date on which the certificate is issued by the Collector u/s. 32, 32A, 39 or 41 of the Act. As noted hereinabove, the deed in question in the instant case is dated 3.4.1992. Whereas the certificate u/s. 32 of the Act was given by the Collector of Stamp on 1.4.1992 and therefore the period of six years would end on 30.3.1998. Whereas admittedly the show cause notice is dated 24.12.1998. These facts clearly establish that the Chief Controlling Revenue Authority, the respondent herein, has exercised powers u/s. 53A(1) of the Act after six years.

[9] The respondent has taken a stand that the audit para was raised and therefore the Collector made reference to the respondent on 18.1.1996. Such a defence would not enhance the period of six years as provided u/s.53A of the Act. Making a reference by Sub Registrar cannot be equated with exercise of powers by Chief Controlling Revenue Authority u/s. 53A and therefore the contention of the respondent that once the

reference is made by Sub Registrar the same amounts to initiation any proceedings u/s. 53A of the Act deserves to be outright rejected. On the contrary, in the instant case, if the reference was made by Sub Registrar on 18.1.1996 the respondent could have acted u/s. 53A(1) of the Act by issuing notice either immediately or at least before the period of six years was over. This Court (Coram: Hon'ble Mr. Justice K.S.Jhaveri) in identical case being SCA No.4259 of 2007 and other allied matters held that the power of revision is available to the authority only for a period of six years from the date of the certificate from the Collector u/s. 32, 32A, 39 and 41 of the Act and has been pleased to quash the proceedings initiated u/s. 53A of the Act as the same were initiated beyond the period of six years.

[10] In light of the admitted facts, in the instant case, respondent no.1 has exercised its power u/s. 53A of the Act beyond the period of six years and therefore initiation of proceedings by issuing of notice dated 24.12.1998 is without jurisdiction and bad and resultantly therefore the impugned order dated 20.10.2005 is also without jurisdiction as the same is based on notice which was issued beyond the statutory period of six years as provided by the Act.

[11] It may be noted that in view of the fact that this court has come to this conclusion the contention raised by Mr. Chudgar, learned Advocate for the petitioner is not dealt with and the same is kept open. In light of the aforesaid therefore the petition is allowed. Impugned order dated 20.10.2005 as well as show cause notice dated 24.12.1998 are hereby quashed and set aside. Rule made absolute with no order as to costs.