

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 11th OF DECEMBER, 2023

WRIT PETITION No. 4874 of 2011

BETWEEN:-

1. M/S SIDHIVINAYAK DEVELOPERS UJJAIN THROUGH PARTNER RAJENDRA & ANOTHER S/O PANNALALJI SURANA, AGED ABOUT 51 YEARS, OCCUPATION: BUSINESS 93, GORDHANDHAM NAGAR COLONY, UJJAIN (MADHYA PRADESH)
2. M/S. SIDDHI VINAYAK DEVELOPERS UJJAIN THRU: PARTNER RAVI SOLANKI S/O KAILASHCHANDRAJI SOLANKI, AGED ABOUT 43 YEARS, OCCUPATION: BUSINESS 33, BRIJ DHAM, DEWAS ROAD (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI MAQBOOL AHMED MANSOORI – ADVOCATE)

AND

1. COLLECTOR OF STAMP & DISTRICT REGISTER THE STATE OF MADHYA PRADESH & 3 ORS GOVT. UJJAIN (MADHYA PRADESH)
2. DEPUTY REGISTRAR BHARATPURI (MADHYA PRADESH)

3. AUDIT (MADHYA PRADESH)

4. REVENUE BOARD (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI KOUSTUBH PATHAK – G.A.)

.....
This petition coming on for admission this day, the court passed the following:

ORDER

Heard.

2] This petition has been filed by the petitioners under Article 226 of the Constitution of India against the order dated 06.10.2010, passed by the Board of Revenue affirming the order dated 22.02.2010, passed by the Collector of Stamp the respondent No.1 whereby the Collector has reviewed his earlier order dated 20.03.2009, and the petitioners were directed to pay stamp duty to the tune of Rs.3,34,751/-.

3] In brief, the facts of the case are that a declaration deed was executed by the petitioner on 24.03.2005 under the provisions of *Madhya Pradesh Prakoshth Swamitva Adhiniyam*, 1976, and on which the petitioner also paid the requisite stamp duty. The aforesaid document was audited subsequently and an audit objection was raised in the year 2006, and the matter was referred by the Sub-Registrar to the Collector of Stamp under Section 47-A(3) of the Indian Stamp Act, 1899 (in short ‘the Act of 1899’), and the Collector of Stamp, vide his order dated 30.03.2009, increased the valuation and the consequential stamp duty to the tune of

Rs.3,34,751/- including the fine of Rs.5,000/-, out of which Rs.2 lakhs has already been paid by the petitioners and the petitioners are also ready to pay the remaining amount. However, the aforesaid transaction again came under the scrutiny during the audit objection in the 2009 and the matter was again referred to the Collector Stamp, Ujjain, who has again exercised his powers under Section 47-A(3) of the Act of 1899 and has further increased the stamp duty to Rs.6,75,647/- and being aggrieved, petitioners also preferred a revision under Section 56(4) of the Act of 1899, which also came to be dismissed by the Board of Revenue vide the impugned order dated 06.10.2010.

4] Counsel for the petitioners has submitted that the Collector of Stamp has erred in exercising its jurisdiction second time while passing the order dated 22.02.2010 after having exercised the same power under the provisions of Section 47-A(3) of the Act of 1899 while passing the earlier order dated 30.03.2009. It is submitted that the *suo-motu* exercise of power of review by the Stamp Collector is nowhere provided under the Act of 1899 and the power of review being a creation of statute could not have been exercised by the Collector, who has no such powers conferred under the Act of 1899.

5] In support of his submissions, counsel for the petitioners has also relied upon certain decisions in the case of **Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others** reported as **(2010) 9 SCC 437** paras 12, 13 and 14 and another decision in the case of **Assistant Commercial Taxes Officer Vs. Makkad Plastic Agencies** reported as **(2011) 4 SCC 750** para 17.

6] A reply to the petition has also been filed, and the State has rebutted the averments made in the petition. Counsel for the respondents/State has submitted that no illegality has been committed by the Collector in holding that the petitioners are liable to pay the enhance stamp duty.

7] Heard counsel for the parties and perused the record.

8] From the record, it is apparent that the Collector has exercised his power under Section 47-A (3) of the Act of 1899 which reads as under:-

“47-A. Instruments undervalued, how to be dealt with.—

(1).....

(2).....

(3) The Collector may, *suo-moto* within five years from the date of registration any instrument not already referred to him under sub-section (1) call for and examine the instrument for the purposes of satisfying himself as to the correctness of the market value of the property which is the subject matter of any such instrument and the duty payable thereon and if after such examination, he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2) the difference if any in the amount of duty, shall be payable by the person liable to pay the duty.”

9] So far as the decision relied upon by the counsel for the petitioners are concerned, the Supreme Court in the case of

Kalabharati Advertising (supra) has held as under:-

“Review in absence of statutory provisions:

12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires,

illegal and without jurisdiction. (vide: Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & Anr., AIR 1965 SC 1457; and Harbhajan Singh v. Karam Singh & Ors., AIR 1966 SC 641).

13. In Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji, AIR 1970 SC 1273; Major Chandra Bhan Singh v. Latafat Ullah Khan & Ors., AIR 1978 SC 1814; Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya, Sitapur (U.P.) & Ors., AIR 1987 SC 2186; State of Orissa & Ors. v. Commissioner of Land Records and Settlement, Cuttack & Ors., (1998) 7 SCC 162; and Sunita Jain v. Pawan Kumar Jain & Ors., (2008) 2 SCC 705, this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible.”

(emphasis supplied)

10] In the case of **Assistant Commercial Taxes Officer (supra)**

the Supreme Court has held as under:-

“17. Both the aforesaid two decisions which were rendered while considering taxation laws are squarely applicable to the facts of the present case. It is also now an established proposition of law that review is a creature of the statute and such an order of review could be passed only when an express power of review is provided in the statute. In the absence of any statutory provision for review, exercise of power of review under the garb of clarification/modification/correction is not permissible. In coming to the said conclusion we are fortified by the decision of this Court in Kalabharati

Advertising v. Hemant Vimalnath Narichania and Others
reported in (2010) 9 SCC 437.”

(emphasis supplied

11] So far as the case on hand is concerned, it is apparent from the aforesaid facts that the Collector, after having exercised the same power under the provisions of Section 47-A(3) of the Act of 1899 while passing the earlier order dated 30.03.2009, has exercised its jurisdiction second time while passing the order dated 22.02.2010. Thus, the power of review was already exercised by the Collector while passing the earlier order dated 30.03.2009, by enhancing the stamp duty and directing the petitioners to pay a sum of Rs.3,34,751/- including the penalty. In such circumstances, this Court is of the considered opinion that even on the basis of subsequent audit objections, which were raised by the Auditor, the Collector could not have exercised his power of review for the second time, which would clearly be in excess of his power of review u/s.47-A(3) of the Act of 1899.

12] In view of the same, this Court is inclined to allow the present petition and the **impugned order dated 06.10.2010 passed by the Board of Revenue as also the order dated 22.02.2010, passed by the Stamp Collector being contrary to law are liable to be and are hereby set aside.**

13] Accordingly, the petition stands **allowed.**

(SUBODH ABHYANKAR)
JUDGE