

In Re: Cook and Kelvey

In Re: Cook and Kelvey

SooperKanoon Citation : sooperkanoon.com/888209

Court : Kolkata

Decided On : Feb-02-1932

Reported in : AIR1932Cal736,140Ind.Cas.57

Appellant : In Re: Cook and Kelvey

Judgement :

Rankin, C.J.

1. In this case a reference has been made to this Court under Section 57, Stamp Act, by the Board of Revenue in this province. It appears that a certain document after it had been executed was brought to the Collector under Section 31, Stamp Act. It was brought with the view of having the opinion of the Collector as to the duty with which the instrument was chargeable and it became and was the duty of the Collector to determine the duty with which in his judgment, the instrument was chargeable,' On 22nd July 1930 the Collector discharged his duty under Section 31 by making an order to the effect that the document was chargeable under Article 40, Clause (b) and giving his reason for holding that it did not come under Clause (c) of that article. He was also of opinion that the instrument was chargeable under Article 23 and that the total stamp duty to be charged was Rs. 16,983-12-0. This decision of the Collector was apparently somewhat disappointing to the subjects and they were not minded to pay the amount which had been determined in order to obtain an endorsement, franking the document under Section 32 of the Act. The subjects accordingly applied to the Board of Revenue asking the Board of Revenue to override or interfere with the ruling of the

Collector and come to a more favourable decision. The Board of Revenue thereupon purported to exercise its power under Section 57 of the Act. The power there given is that

the chief controlling revenue 'authority may state any case referred to it under Section 56, Sub-section (2) or otherwise coming to its notice and refer such case with its own opinion thereon to the High Court.

2. The present is not a case which can be said to have been referred under Sub-section (2), Section 56, and it must come under Section 57 if at all, by reason of the words 'or otherwise coming to its notice.' Those words, it is true are somewhat wide and might well be held to cover a case such as the present were it not that when one attends to the terms of the following sections and to the scope of the statute one finds that the purpose of stating a case to the High Court and the High Court deciding the question raised merely is entirely a practical purpose:

The revenue authority shall on receiving such copy dispose of the case conformably to such judgment.

3. Now it is well held in all the High Courts that unless the revenue authority has still resting upon it the duty of disposing of a case it is not intended by the statute that it should have a right to make a reference to the High Court. The opinion of the High Court is merely to guide it indisposing of an actual and concrete case . Some of the cases which have in times past been stated to the High Court have failed to answer this test satisfactorily and of these some have failed because of the fact that the particular case was entirely disposed of and completed before the reference was made: (of. 25 Mad. 751 and 752). In the present case we have to consider a somewhat different objection under the same heading because we have to investigate whether the chief controlling revenue authority had begun to have any duty whatsoever in the matter of the particular instrument which is now before us. When we inquire into that we find it very noticeable that the general power of control given to the chief controlling revenue authority by Sub-section (1), Section 56, includes powers exercisable by the Collector under Ch. 4 and Ch. 10 of the Act, and it plainly does not include powers exercisable under Ch. 3. The next subsection deals not only with Sections 40 and 41 of Ch. 4 but gives the

Collector power when acting under Section 31 to state a case to the Board of Revenue if he is in doubt as to the proper decision. In the present case however the Collector did not state a case to the Board of Revenue and therefore the second subsection of Section 56 did not operate to impose any duty upon the Board of Revenue with reference to this instrument. Turning therefore to the consideration of the case under Section 31, it has to be observed that under that section the instrument may or may not have been executed and it may be brought to the Collector merely for the purpose of getting a decision.

4. It may be that after the decision the parties will come to the conclusion that the instruments should not be entered into at all. It may be that they will still come to the conclusion that the instrument should be entered into and that other steps will have to be taken. The present instrument is an instrument which was executed and, when it was brought to the Collector for his opinion, the subjects were in this position that either they could go on and pay under Section 32 what the Collector required or they would be liable to have the Collector exercise his powers under Section 33 to impound the instrument and commence proceedings under Section 40 to compel payment of the amount chargeable. Without complying with the Collector's order and without attempting to get a certificate under Section 32 which could only be got by a payment the subjects in this case applied to the Board of Revenue omitting to notice that under Section 56 the Board of Revenue had no controlling power over the Collector at that stage. It seems that they were threatened that the document would be impounded but the document has not so far been impounded. There is therefore in my judgment no duty shown for performance by the Board of Revenue entitling the Board of Revenue to ask us to decide the matter. I am quite clear that the wide words 'or otherwise coming to its notice' can only be given effect to in cases where the controlling words of Section 59 can also be given effect to. This somewhat narrow technical difficulty is one which is capable no doubt of removal. It would be very easy for the Collector to impound the document and a case to be commenced under Section 40 and according to the ruling given in the case of Reference under Stamp Act [1901] 25 Mad. 752 the Board of Revenue would be able to intervene in such a proceeding if it intervened before it was completed. The learned Advocate-General however in this case prefers that the matter should be dealt with strictly and that we should

not decide this reference without having proper jurisdiction and he prefers that proceedings for impounding the instrument may be taken and that under Section 40 and other relevant sections of the Act, the parties should be given their rights. . It may be that in these circumstances, the Board of Revenue will not think it necessary and no party will think it necessary to refer the matter for the decision of this Court. In this view it appears to me that the present reference is not competent and that we ought accordingly to reject it on that ground. There will be no order as to costs.

C.C. Ghose, J.

5. I agree.

Buckland, J.

6. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com