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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH, JAIPUR

1422
6/5/15

S. B. CIVIL WRIT PETITION NO. 6419 OF 2015

M/S. JAL MAHAL RESORTS PRIVATE LIMITED, HAVING ITS OFFICE AT AMER ROAD, JAIPUR THROUGH ITS AUTHORIZED SIGNATORY, SHRI SANJEEV BAIRATHI.

..... PETITIONER

VERSUS

1. THE STATE OF RAJASTHAN THROUGH THE SECRETARY, FINANCE DEPARTMENT, GOVERNMENT OF RAJASTHAN, HAVING ITS ADDRESS AT SECRETARIAT, JAIPUR.
2. COLLECTOR (STAMPS), JAIPUR, HAVING ITS ADDRESS AT 102, 1ST FLOOR, REGISTRATION & STAMP BUILDING, COLLECTORATE, JAIPUR

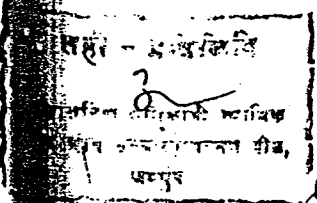
SUB-REGISTRAR (VI), JAIPUR, HAVING ITS ADDRESS AT ROOM NO. 19-21, 1ST FLOOR NAGAR NIGAM, CHOWGAN STADIUM, JAIPUR

.....RESPONDENTS

For Jal Mahal Resorts Pvt. Ltd.

Sanjeev Bairathi
Director/Authorized Signatory

R. DHAKA
OATH COMMISSIONER
Raj. High Court Jaipur



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IN THE MATTER OF ARTICLE 226 OF THE CONSTITUTION
OF INDIA FOR ISSUE OF APPROPRIATE WRIT / ORDER /
DIRECTION

AND

IN THE MATTER OF ARTICLES 14, 21, 265, 300-A OF THE
CONSTITUTION OF INDIA

AND

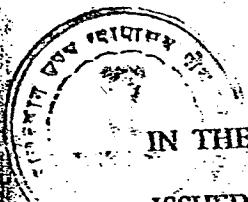
IN THE MATTER OF PASSING OF 'REVIEW ORDER' UNDER
THE GARB OF 'RECTIFICATION OF MISTAKE' BY THE
RESPONDENT NO. 2

AND

IN THE MATTER OF ORDER DATED 19.12.2014 PASSED BY
THE RESPONDENT NO. 2 UNDER SECTION 52 OF THE
RAJASTHAN STAMP ACT, 1998 RECEIVED BY THE
PETITIONER ON 23.04.2015;

AND

IN THE MATTER OF DEMAND NOTICE DATED 22.04.2015
ISSUED BY THE RESPONDENT NO. 2 RECEIVED BY THE
PETITIONER ON 23.04.2015;



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R. DHAKA
OATH COMMISSIONER
Raj. High Court Bench

For Jai Mahal Resorts Pvt. Ltd.

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Director/Authorized Signatory

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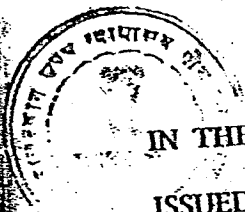
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Jr

R. DHAKA
OATH COMMISSIONER
Raj. High Court Bench

For Jet Mahal Resorts Pvt. Ltd.

Singh
Director/ Auth. Signatory

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

S.B. Civil Writ Petition No. 6419/2015
M/s. Jal Mahal Resorts Private Limited-Petitioner
Versus
The State of Rajasthan & Ors.-Respondents.

Date of Order :: 7/7/2015

Hon'ble Ms. Justice Bela M. Trivedi

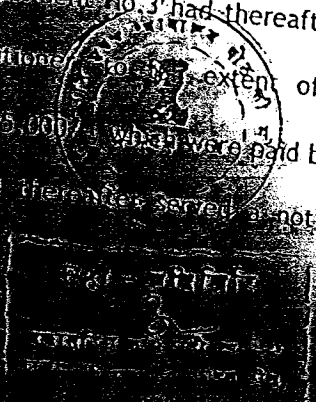
Mr. Paras Kuhad, Senior Counsel with Mr. Siddarth Ranka, Mr. Arvind Kumar Jain & Mr. Harsh Kulshrestha, for the petitioner.
Mr. J.M. Saxena, AAG, Mr. Dheeraj Tripathi, G. C. for the respondents.

ORDER

BY THE COURT :

REPORTABLE :

1. The precise issue involved in the instant petition is, whether the respondent No.2-Collector (Stamps) could have reviewed and set aside his own order dated 22/9/2014 (Annexure-10) under the guise of exercising the powers of rectification under Section 52 of the Rajasthan Stamp Act, 1998 (hereinafter referred to as 'the said Act'), vide the impugned order dated 19/12/2014?
2. The short facts necessary for the purpose of deciding the present petition are that the petitioner had entered into a lease agreement dated 22/11/2005 with the Government of Rajasthan for development of 100 acres of land adjacent to Mansagar Lake. The said lease deed was registered before the Sub-Registrar, Jaipur VI i.e. the respondent No.3 on 22/3/2006. The respondent No.3 had thereafter computed the stamp duty to be paid by the petitioner to the extent of Rs.1,43,47,600/-, and registration charges of Rs.25,000/- which were paid by the petitioner. It appears that the respondent No.3 thereafter served a notice dated 15/4/2010 to the petitioner under



Section 54 of the said Act (Annexure-3), to which the petitioner filed objections (Annexure-4). However thereafter the respondent No.2-Collector (Stamps) issued the notice dated 26/7/2010 to the petitioner under Sections 51, 52 and 53 of the said Act, on the reference sent by the respondent No.3 (Annexure-5). The petitioner filed its submissions to the respondent No.2, and the respondent No.2 after considering the submissions and the factual and legal aspects of the matter, passed the order dated 22/9/2014 (Annex.11) dropping the proceedings of reassessment holding interalia that the stamp duty was payable by the petitioner as per the notification dated 19/9/2002.

3. It further appears that the respondent No.3 thereafter filed a review application dated 16/10/2014 (Annex.11) before the respondent No.2, seeking review of the order dated 22/9/2014 under Section 52 of the said Act. The respondent No.2 therefore issued the notice dated 1/12/2014 (Annex.12), calling upon the petitioner to show cause as to why the order dated 22/9/2014 should not be reviewed under Section 52 of the said Act. The petitioner filed the reply dated 15/12/2014 (Annex.13) raising objection against the maintainability of the review application. The respondent No.2 however passed the order impugned dated 19/12/2014, reviewing the earlier order dated 22/9/2014 (Annex.16) exercising the powers of rectification under Section 52 of the said Act. Pursuant to the said order, the petitioner company was also served with the demand notice dated 22/4/2014 (Annex.17) calling upon it to pay the deficit stamp duty with interest and penalty to the tune of Rs.297.5902 crores. The said order dated 19/12/2014 and the demand notice dated 22/4/2014 are under challenge in the present petition.

The learned Senior Counsel Mr. Paras Kuhad for the petitioner pressing

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into the service the provisions contained in the said Act, more particularly Section 52 of the said Act, vehemently submitted that the respondent No.2 could not have reviewed his own order under the guise of rectification of the mistake. According to him, the respondent No.2 after thoroughly scrutinising the factual and legal aspects of the matter had passed the order dated 22/9/2014 and there was no mistake apparent from the record which could be said to be rectifiable under Section 52 of the said Act. He also submitted that in absence of any specific provisions contained in the Act empowering the Collector to review his own order, he could not have exercised such powers under the garb of rectification of the mistakes, under Section 52 of the said Act. Mr. Kuhad has relied upon the decision of Apex Court in case of Deva Metal Powders (P) Ltd. vs. Commissioner, Trade Tax, Uttar Pradesh, (2008) 2 Supreme Court Cases 439, and other decisions to submit that the mistake apparent from the record is rectifiable, however such rectification would not cover the case where the revision or review of the order is intended.

5. However, the learned counsel Mr. J.M. Saxena for the respondent submitted that the earlier order passed by the Collector was erroneous, and therefore the same was sought to be rectified by the impugned order. According to him, the notification under which the benefit on payment of stamp duty was granted to the petitioner was not applicable to the case of the petitioner, and therefore on the rectification application made by the respondent No.3 to the respondent No.2, the same was sought to be corrected by the impugned order. Relying upon the decision of the Apex Court in case of Ameer Trading Corpn. Ltd. vs. Shapoorji Data Processing Ltd., (2004) 1 Supreme Court Cases 702, he submitted that the intention of legislature could

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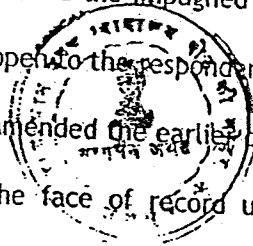
be gathered from the language and phraseology employed by the legislature, and in the instant case, the powers of rectification under Section 52 impliedly included the powers of review.

6. In order to appreciate the rival contentions raised by the learned counsels for the parties, it would be appropriate to reproduce the relevant Section 52 as contained in the Act. Section 52 reads as under :-

"52 - Rectification of mistakes - With a view to rectifying any mistake apparent from the record, the Collector may amend any order made by him under this Act, within ninety days of the date of order either on his own motion or on the mistake being brought to his notice by person affected by the order :

Provided that if any such amendment is likely to affect any person prejudicially, it shall not be made without giving to such person reasonable opportunity of being heard."

7. From the bare perusal of the said provision, it clearly transpires that the Collector could rectify any mistake apparent from the record and amend any order passed by him under the Act within 90 days of the said order, either on his own motion or on the mistake having been brought to his notice by the person affected by the order. In the instant case, the respondent No.2 has sought to review or revise his earlier order dated 22/9/2014, at the instance of the respondent No.3 who had filed the rectification application before him under Section 52 of the said Act. Now, as transpiring from the impugned order, the respondent had not only reviewed his earlier order while exercising the powers under Section 52, but had gone into the merits of the case and passed the impugned order by giving reasons in detail. Such a course was not open to the respondent No.2, inasmuch as the respondent No.2 could have only amended the earlier order made by him by rectifying the mistakes apparent on the face of record under Section 52 of the said Act, and could not have reappreciated the documents afresh and passed the order afresh setting aside



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 प्रशासनिक अधिकारी कार्यालय
 जयपुर जिल्ला, राजस्थान

his earlier order. In the opinion of the Court the decision of the Apex Court in case of Deva Metal Powders (P) Ltd. vs. Commissioner, Trade Tax, Uttar Pradesh (supra) clinches the issue. It has been observed therein as under :-

"12. A bare look at Section 22 of the Act makes it clear that a mistake apparent from the record is rectifiable. In order to attract the application of Section 22, the mistake must exist and the same must be apparent from the record. The power to rectify the mistake, however, does not cover cases where a revision or review of the order is intended. "Mistake" means to take or understand wrongly or inaccurately; to make an error in interpreting; it is an error, a fault, a misunderstanding, a misconception. "Apparent" means visible; capable of being seen; obvious; plain. It means "open to view, visible, evident, appears, appearing as real and true, conspicuous, manifest, obvious, seeming." A mistake which can be rectified under Section 22 is one which is patent, which is obvious and whose discovery is not dependent on argument or elaboration.

13. In our view rectification of an order does not mean obliteration of the order originally passed and its substitution by a new order. What the Revenue intends to do in the present case is precisely the substitution of the order which according to us is not permissible under the provisions of Section 22 and, therefore, the High Court was not justified in holding that there was mistake apparent on the face of the record. In order to bring an application under Section 22, the mistake must be "apparent" from the record. Section 22 does not enable an order to be reversed by revision or by review, but permits only some error which is apparent on the face of the record to be corrected. Where an error is far from self-evident, it ceases to be an apparent error. It is, no doubt, true that a mistake capable of being rectified under Section 22 is not confined to clerical or arithmetical mistake. On the other hand, it does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof. As observed by this Court in Master Construction Co. (P) Ltd. v. State of Orissa, an error which is apparent from record should be one which is not an error which depends for its discovery on elaborate arguments on questions of fact or law."

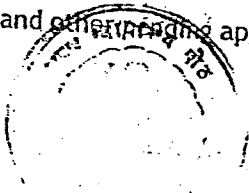
8. It is also held by the Apex Court in catena of decisions that a mistake apparent on record must be an obvious and patent mistake, and the mistake should not be such which can be established by a long-drawn process of reasoning. To cite a few decisions are in case of Commissioner of Central Excise vs. RDC Concrete (India) Pvt. Ltd., (2011) 12 SCC 166; in case of T.S. Balaran vs. Volkant Bros (1971) 2 SCC 526; in case of ITO vs. Ashok Textiles Ltd., AIR 1961 SC 699 etc.

9. It is also axiomatic that a quasi judicial authority can not review its own order, unless the power of review is expressly conferred on it by the statute

under which it derives its jurisdiction. The power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. A beneficial reference of the decisions of the Apex Court in case of Kuntesh Gupta vs. Management of Hindu Kanya Vidyalaya, (1987) 4 SCC 525 and in case of Patel Narshi vs. Shri Praduman Singhji, (1971) 3 SCC 844, be made in this regard.

10. In view of the aforesaid legal position, it is held that there being no provision under the said Act, conferring power on the respondent No.2 to review his own order, the impugned order is required to be held as having been passed without any authority of law, and therefore illegal. At this juncture, it may be noted that the Chief Controlling Revenue Authority has the powers to call for the record of any case decided in the proceeding held by the Collector and pass appropriate orders under Section 65 of the said Act. Hence, it is clarified that the concerned authority if it thinks fit, shall be at liberty to exercise the powers conferred upon it under the Act to revise the order dated 22/9/2014 passed by the respondent No.2 in accordance with law.

11. For the reasons stated above, the impugned order dated 19/12/2014, and the demand notice dated 22/4/2015 deserve to be set aside and same are hereby set aside. The petition stands allowed accordingly. By this order, the stay application and other pending application, if any also stand disposed of.



SA
(Bela M. Trivedi) J.

Sanjay Solanki
PA

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10-07-15