AFR

Case :- WRIT - C No. - 24629 of 2012

Petitioner :- Mohd. Chand And Another
Respondent :- State Of U.P. And Others
Petitioner Counsel :- Satish Mandhyan
Respondent Counsel :- C.S.C.

Hon'ble Pankaj Mithal,J.

Heard learned counsel for the parties.

An order was passed by the Collector, Meerut on 24.12.2010 in a stamp case under Section 47-A of the Indian Stamp Act, 1899 determining deficiency in stamp duty in respect of the sale deed dated 14.8.2006. Petitioners preferred an appeal under Section 56 of the Act against the said order before the Commissioner of the Division who exercises powers of the Chief Controlling Revenue Authority also. The appeal has been dismissed by the impugned order dated 8.8.2011.

Petitioners have invoked the writ jurisdiction of this Court challenging both the above orders.

The primary ground for challenge is that the appellate order has been passed by the same officer who has passed the basic order.

I have perused both the orders dated 24.12.2010 and 8.8.2011 passed by the Collector and the Commissioner.

Both the above orders have been passed by the same person first in the capacity of the Collector and then in capacity as Commissioner.

Learned Standing counsel on the basis of the instructions received pursuant to the direction of this Court submits that there was no *mala fide* intention on part of the appellate authority in deciding the appeal and it is only on account of the fact that petitioners had insisted for early decision that the appellate authority overlooked the fact that the order appealed against was the order passed by him as the inferior authority.

The right to appeal is not an inherent right but is only a statutory right. It can not be availed of unless it has been provided under the statute. Section 56 of the Act provides for an appeal against the order of the Collector. The object of providing a statutory appeal is to test the correctness of the order and that too by a superior authority/Court.

The appeal is only removal of the cause of action from an inferior court to superior court for deciding the soundness of the decision of the inferior court.

The officer who has passed the order as inferior court or authority can not legally test the correctness of his own decision while exercising the powers of the superior court in appeal.

In the event the appeal against the inferior court or authority is allowed to be heard by the same officer who has passed the order impugned in appeal, it would make the appeal illusory and nugatory frustrating the purpose of its filing.

The appeal is conceptually different from a review. The review is reconsideration of the subject by the same judge to cure an error which may be apparent on record while an appeal is re-hearing of the matter by a superior Court/authority to test correctness of the decision of the lower court/authority. Allowing the appeal to be heard by the same officer who had passed the basic order would tantamount to reducing the appellate jurisdiction into that of review. Therefore, also no person should normally hear the appeal against his own order.

One of the fundamental principles of natural justice is that no man can be a judge in his own cause. The above principle is not confined to its literal interpretation to mean that if a person is a party in a litigation he can not sit and decide the same as a Judge but may also be extended in cases where he has some interest in the litigation or in any party to the litigation and even to cases where he happens to be a

witness of one of the parties. The said principle would also be attracted in a case where a Judge may not be a party to the cause of action in any manner aforesaid but has delivered the order/judgment which is to be tested in appeal.

There is another famous dictum based upon the principle of natural justice enshrined by Lord Hewart, C.J., which says "*Justice should not only be done but should manifestly and undoubtedly be seen to be done" **

Thus, it is cardinal that in the matter of dispensation of justice certain rules have to be observed which manifestly ensure that justice has been done and for that purpose it is essential that veracity of the judgment ought not to be allowed to be tested by the same person in appeal rather it should be tested by another person.

Earlier as per the practice prevalent in the High Courts of India in the absence of any specific prohibition in law a practice prevailed of including judges in Bench against whose judgment the appeal is to be heard but slowly this practice was given up and fell in desuetude. In ***AIR 1963 SC 1 R. Vishwanathan Vs. Abdul Wajid*** while dealing with the issue of the practice of having judges making a reference to the larger Bench as a member of the larger Bench, it was observed that it is desirable that a judge should not take part in the determination of appeal against his own decision unless the statute expressly authorizes him to do so. The principle is that one who has made the decision having a judicial flavour should not participate in appeal arising from such a decision.

In view of the aforesaid facts and circumstances and the principles of law I am of the opinion that the Commissioner has manifestly erred in law and acted against the settled principles of natural justice by deciding the appeal against his own order passed as an inferior authority.

In view of the above, the writ petition is allowed on the above score only and the appellate order dated 8.8.2011 passed by the Commissioner is quashed and the matter is remanded to the Court of the Commissioner for decision by any other officer other than the officer who had passed the order as Collector.

22.5.2012

SKS

**** [1923] All ER Rep. 233 R. v Sussex Justices Exp. Mc Carthy.***