**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-34700-2024 (O&M)
Reserved on: 04.08.2026
Pronounced on: 10.08.2026
Uploaded on: 10.08.2026**

RAM SUNDER PRASAD SINGH

-PETITIONER

V/S

U.T. CHANDIGARH THROUGH ADDITIONAL DEPUTY COMMISSIONER AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ashim Aggarwal, Advocate
for the petitioner.

Mr. Jaivir S. Chandail, Addl. Standing Counsel, with
Mr. Deepak Malhotra, Addl. Standing Counsel
for the respondent No.1.

Ms. Ayushi Sharma, Advocate, with
Mr. Ujval Mittal, Advocate
for the respondents No.2 and 3.

***

<u>KULDEEP TIWARI, J.</u>

1. The Joint Commissioner, Municipal Corporation, Chandigarh (hereinafter referred to as "M.C.C."), having formed an opinion that adjudication of the proper stamp duty was required in respect of the licence/lease deeds executed between M.C.C. and M/s Paschatya Entertainment Pvt. Ltd. for Zone-II and M/s Ram Sundar Parsad for Zone-I, impounded the said licence/lease deeds in exercise of the powers conferred under Section 33 of the Indian Stamp Act, 1899 (hereinafter referred to as "the Stamp Act"), and forwarded the same to the Collector,

Stamp Duty, Chandigarh Administration, vide letter/order dated 16.05.2023, for adjudication of the proper stamp duty under Section 31 of the Stamp Act. Pursuant thereto, the Collector, vide order dated 26.09.2024, determined the deficiency in stamp duty at ₹7,93,298/- and directed recovery thereof along with a penalty equivalent to 50% of the deficient stamp duty, i.e. ₹3,96,649/-. Consequently, a total amount of ₹11,89,947/- was directed to be recovered from the petitioner.

2. Deriving grievance from the orders (*supra*), the petitioner has invoked the writ jurisdiction of this Court, assailing the legality and validity thereof.

<u>FACTUAL MATRIX</u>

3. The facts, shorn of unnecessary details, germane to the adjudication of the instant writ petition are that M.C.C., for the operation and management of 32 paid parking sites, invited e-bids/tenders for a period of three years, the reserve price whereof was fixed at ₹2.12 crores per annum. The petitioner submitted a bid of ₹5,01,03,001/- per annum and, being the highest bidder, was issued a Letter of Intent dated 16.01.2020. Pursuant thereto, the petitioner completed the requisite formalities by furnishing three bank guarantees issued by a nationalised bank, each equivalent to 10% of the annual bid amount. The petitioner was further required to execute a Memorandum of Understanding/Licence Deed on stamp paper (after confirming the value of stamp paper from the Sub-Registrar, U.T. Chandigarh) within fifteen days from the issuance of the Letter of Intent, and to deposit the original thereof with the licensor.

However, the petitioner failed to execute the licence deed within the stipulated period, compelling M.C.C. to issue a show-cause notice dated 08.07.2020 for non-compliance with the terms and conditions of the tender. The petitioner was also advised to pay stamp duty in accordance with Schedule I-A read with Section 3 of the Stamp Act. Despite the same, the petitioner neither executed the licence deed nor paid the requisite stamp duty. Consequently, M.C.C., vide communication dated 07.07.2021, once again called upon the petitioner to submit the licence deed in terms of Clause 8 of the tender document, failing which action was liable to be initiated under Clause 32(d) thereof.

4. Ultimately, the petitioner executed the licence deed by affixing stamp duty of ₹3,34,020/- and got the same registered before the Sub-Registrar, Chandigarh, on 16.07.2021. In compliance with the terms and conditions of the tender, the original licence deed was deposited with M.C.C., while a photocopy thereof was furnished to the petitioner by the Joint Commissioner, M.C.C. It is apposite to note that the parking contract was to expire on 31.01.2023. During audit, the Audit Department of M.C.C., upon examining the licence deed, opined that the petitioner had committed fraud upon M.C.C. by paying stamp duty after incorporating the following recital in the licence agreement:

> *"That the amount of the lease/licence deed is ₹5,01,03,001/- for a period of 3 years and which on computing to 1 year as rent is computed to ₹1,67,01,000/- (approx.)."*

5. Consequently, upon noticing the aforesaid misleading and mischievous recital, the Audit Department raised the matter, which was

subsequently considered by the Joint Commissioner, M.C.C. Thereafter, vide letter/order dated 16.05.2023, the Joint Commissioner impounded the licence/lease deed in question and forwarded the same to the Collector for adjudication of the proper stamp duty. The Collector, vide order dated 26.09.2024, not only assessed the deficiency in stamp duty at ₹7,93,298/-, but also imposed a penalty equivalent to 50% of the deficient stamp duty, i.e. ₹3,96,649/-. Thus, a total sum of ₹11,89,947/- was ordered to be recovered from the petitioner.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONER

6. Learned counsel for the petitioner contends that, at the time of registration of the licence deed, the Sub-Registrar did not raise any objection regarding the insufficiency of stamp duty. It is further submitted that the instrument in question is a simpliciter operation and management agreement, which falls within Article 5(d) of Schedule I-A to the Stamp Act and attracts a stamp duty of ₹15 on an agreement/Memorandum of Understanding. The finding of the Collector that the instrument is a lease deed is also assailed. It is further argued that the nomenclature of an instrument is not determinative of the stamp duty payable thereon and that the true nature and intent of the document must be gathered from its contents read in their entirety. Since only the operation and management of the parking lots were entrusted to the petitioner, no lease was created in his favour so as to render him liable to pay the alleged deficient stamp duty. Moreover, it is submitted that the Audit Department of M.C.C. is not empowered under the Stamp Act either to determine the nature of an

instrument or to opine on the quantum of stamp duty payable thereon.

7. Learned counsel next submits that the communication dated 05.04.2023 issued by M.C.C. requesting the Collector to recover the deficient stamp duty on the basis of the audit report is wholly without jurisdiction and beyond the powers of M.C.C. It is submitted that the licence agreement expired on 31.01.2023, whereas the instrument in question was impounded only on 16.05.2023. It is, therefore, contended that the impounding of the instrument after the expiry of the contractual period, and that too on the basis of an audit objection, is wholly without the jurisdiction of the impounding authority, as it had become *functus officio* upon the expiry of the agreement. It is further contended that the Joint Commissioner neither has the authority to receive evidence nor is he a person in charge of a public office. Moreover, no determination has been made by the State Government under Section 33(3) of the Stamp Act declaring M.C.C. to be a public office or the Joint Commissioner to be a person in charge thereof, and no notification to that effect has been produced. Consequently, the Joint Commissioner lacked the statutory competence to impound the instrument. It is also argued that the order of impounding is vitiated for the additional reason that no opinion regarding the insufficiency of stamp duty was recorded by the Joint Commissioner before impounding the instrument in question.

8. Further, inviting the attention of this Court to Section 38(2) of the Stamp Act, it is contended that where an instrument is impounded, the original instrument is required to be forwarded to the Collector. Since,

in the instant case, the original instrument was never forwarded in accordance with the statutory mandate, the proceedings undertaken by the Collector under Section 31 of the Stamp Act are vitiated in law. In support of this submission, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***"Hariom Agrawal vs. Prakash Chand Malviya", AIR 2008 SC 166,*** to contend that there is no scope for the impounding of a photocopy of a deed for the purposes of the Stamp Act.

9. Lastly, it is submitted that the Collector, in the exercise of powers under Section 31 of the Stamp Act, is not competent to impose penalty and enforce the recovery of the deficient stamp duty. After assessing the deficiency in stamp duty, the function of the Collector comes to an end. In support of these submissions, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***"Government of Uttar Pradesh and others vs. Raja Mohammad Amir Ahmad Khan", AIR 1961 SC 787***; and the judgment of the Delhi High Court in ***"M. Chowdhury vs. The Collector of Stamps, Delhi", (1970) ILR 1 Delhi 606.***

<u>SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS</u>

10. *Per contra*, learned counsel for the respondents jointly refute the submissions advanced on behalf of the petitioner. It is submitted that, pursuant to the petitioner having emerged as the highest bidder and the consequent issuance of the Letter of Intent dated 16.01.2020, he was required to complete the requisite formalities by (i) furnishing three bank

guarantees, each equivalent to 10% of the accepted bid amount, (ii) executing the licence deed on stamp paper after confirming the value of the stamp paper from the office of the Sub-Registrar, U.T. Chandigarh, and (iii) depositing the original licence deed with the licensor. It is further submitted that, upon execution and deposit of the original licence deed with M.C.C., the opinion of the Sub-Registrar was obtained, whereupon he pointed out the deficiency in stamp duty. The Sub-Registrar opined that, in the event the instrument was treated as a service agreement, stamp duty was payable at the rate of 3% of the consideration amount, along with registration charges of ₹10,020/-. However, if the instrument was treated as a lease deed, stamp duty was chargeable at the rate of 2% on the amount or value of the average annual rent, in addition to stamp duty at the rate of 3% on the security amount. It is submitted that parking contracts attract stamp duty as lease deeds and the original instrument remained in the custody of the licensor in terms of the Letter of Intent.

11. Learned counsel further submit that the petitioner does not dispute his liability to pay stamp duty, rather the dispute pertains only to the quantum thereof. It is argued that the petitioner, in order to evade payment of the proper stamp duty, deliberately described the value of the instrument in such a misleading and mischievous manner that the discrepancy escaped notice and came to light only during the audit. Upon detecting the deficiency in stamp duty, the Audit Department raised an objection and placed the matter before the Joint Commissioner, M.C.C., who, in the discharge of his official duties, formed an opinion that the

instrument in question was insufficiently stamped and, consequently, exercised the powers conferred under Section 33 of the Stamp Act to impound the same. It is further submitted that, after impounding the instrument, the matter was referred to the Collector under Section 31 of the Stamp Act for adjudication of the proper stamp duty, which was determined vide the impugned order dated 26.09.2024. It is, therefore, contended that the impugned orders do not suffer from any procedural or legal infirmity warranting interference by this Court.

12. Learned counsel lastly submit that the instrument in question is covered by the definition of "lease" under Section 2(16) of the Stamp Act, which includes any instrument by which tolls of any description are let. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in ***"Nasiruddin and another vs. State of Uttar Pradesh through Secretary, 2018(1) RCR (Civil) 1004"***, wherein it was held that whenever tolls of any description are let, the transaction partakes the character of a lease. Consequently, Schedule I-A read with Section 3 of the Stamp Act would govern the assessment of stamp duty in the present case.

ANALYSIS OF RELEVANT PROVISIONS OF THE STAMP ACT

13. Section 31 of the Stamp Act prescribes the adjudication process for ascertaining the proper stamp duty payable. It provides a formal mechanism for obtaining the opinion of the Collector on a document as to the duty, if any, with which it is chargeable. A document can be brought before the Collector at any time, either before or after its

execution, whether previously stamped or not.

14. Section 32 of the Stamp Act provides for the issuance of a final certificate/endorsement by the Collector where the stamp duty has been fully paid or the deficiency has been made good after it has been assessed under Section 31.

15. Section 33 of the Stamp Act mandates that every person having authority to receive evidence, and every person in charge of a public office before whom an instrument is produced or comes in the performance of his functions, shall impound the same if it appears that the instrument is not duly stamped. Sub-section (2) thereof requires such authorized person to examine the instrument to verify whether it is stamped with the correct value and description as required by the law in force, and also to ensure that the stamp duty conforms to the legal requirement when the instrument was first executed.

16. Sections 31 to 33 are reproduced hereunder:-

> *"**31. Adjudication as to proper stamp**.—(1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than [fifty naye paise]) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.*
>
> *(2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is*

chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that—

(a) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and

(b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

32. Certificate by Collector.*— (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and*

(a) the Collector determines that it is already fully stamped, or

(b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped:

Provided that nothing in this section shall authorize the Collector to endorse—

(a) any instrument executed or first executed in [India] and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;

(b) any instrument executed or first executed out of [India] and brought to him after the expiration of three months after it has been first received in [India]; or

(c) any instrument chargeable [with a duty not exceeding ten naye paise], or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

***33. Examination and impounding of instruments**.— (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a pubic office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in [India] when such instrument was executed or first executed:

Provided that—

(a) nothing herein contained shall be deemed to require any Magistrate of Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1989);

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt, —

(a) [the [State Government]] may determine what offices shall be deemed to be public offices; and

(b) [the [State Government]] may determine who shall be deemed to be persons in charge of public offices."

ISSUES EMERGING FOR DETERMINATION BY THIS COURT

17. The rival submissions advanced on behalf of the contesting litigants set this Court upon the task of discerning and tracing answers to the following issues that emerge for its determination:-

(i) Whether the instrument in question is a mere "Simpliciter Operation and Management Agreement" or, in substance, a "Lease Deed" ?

(ii) Whether the Joint Commissioner, M.C.C. had become functus officio, particularly in view of the fact that the licence agreement expired on 31.01.2023, whereas the instrument in question was impounded subsequently on 16.05.2023 ?

(iii) Whether the opinion of the Joint Commissioner, M.C.C., regarding insufficiency of stamp duty on the instrument in question is anchored in reasons ?

(iv) Whether the Joint Commissioner, M.C.C., holds a public office within the meaning of Section 33 of the Stamp Act ?

(v) Whether the Collector, in the exercise of powers under Section 31 of the Stamp Act, is competent to impose a penalty and enforce the recovery of the deficient stamp

duty ?

18. In order to ascertain the true nature and character of the instrument in question and to return a finding on Issue No. (i), it becomes imperative to succinctly advert to the relevant factual matrix. The M.C.C., for the operation and management of 32 paid parking sites, invited e-bids/tenders for a period of three years. The petitioner, having emerged as the highest bidder, was issued a Letter of Intent dated 16.01.2020, whereupon possession of the parking sites was also delivered to him. In terms of the conditions embodied in the tender document, the petitioner was obligated to execute a Memorandum of Understanding/Licence Deed on stamp paper (after confirming the value of stamp paper from the Sub-Registrar, U.T. Chandigarh) within fifteen days from the issuance of the Letter of Intent. In compliance therewith, the petitioner executed the licence deed and got the same registered before the Sub-Registrar, Chandigarh, on 16.07.2021.

19. At this stage, sub-section (16) of Section 2 of the Stamp Act also warrants consideration, inasmuch as it defines the expression "lease". The said provision stipulates that a lease means a lease of immovable property and also includes ***"any instrument by which tolls of any description are let"***. Sub-section (16) of Section 2 is extracted hereunder:

> *"**2. Definitions**.— In this Act, unless there is something repugnant in the subject or context, —*
>
> *XX XX XX*
>
> ***(16) "Lease"**. — "lease" means a lease of immovable property, and includes also—*
>
> *(a) a patta;*

> *(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immovable property;*
>
> ***(c) any instrument by which tolls of any description are let;***
>
> *(d) any writing on an application for a lease intended to signify that the application is granted;"*

20. The aforesaid factual matrix, when read in conjunction with the statutory definition of "lease", unmistakably leads to the conclusion that the parking sites were leased out by the M.C.C. to the petitioner through execution of the instrument in question. The instrument, therefore, falls within the ambit of a lease deed and consequently attracts the stamp duty payable under Schedule I-A, read with Section 3 of the Stamp Act. The instrument in question cannot, by any stretch of reasoning, be regarded as a simpliciter operation and management agreement.

21. The conclusion (*supra*) garners strength from the judgment of the Hon'ble Supreme Court in ***Nasiruddin (supra),*** wherein it was held that contracts executed by Municipal Corporation for collection of tolls (fees) from squatters, vendors, kiosks, etc. and for collection of parking fees amount to a lease. The relevant observations read thus:-

> *"13) The expression "Lease" defined in Section 2(16) clause (c) shows that it also includes therein "any instrument by which tolls of any description are let".*
>
> *14) Similarly the expression "executed" and "execution" with reference to any instrument, as defined in Section 2(12) of the Stamp Act, means "signed" and "signature".*
>
> *15) Likewise the expression "Instrument" defined in Section 2(14) shows that it includes therein every document by which any right or liability is, or purports to be created, transferred, limited,*

extended, extinguished or recorded.

16) In our considered opinion, reading of the contract in question would show that it was meant to collect tolls (fees) called "Tehbazari" in local parlance from squatters, venders, kiosks etc. and was for collecting parking fees. Such contract, in our view, is regarded as an instrument by which tolls of any description are let. In other words, by awarding such contract to the appellants, the Corporation had let their right to the appellants to collect the fees from a class of persons and for carrying on particular activity in the city.

17) The expression "Lease" under the Stamp Act has a wider meaning as compared to its original meaning contained in Section 105 of Transfer of Property Act (for short "the T.P. Act"). If "Lease" under Section 2(16) of the Stamp Act includes therein four specified category of documents set out in clauses (a) to (d), we do not find any such inclusion in Section 105 of the Transfer of Property Act. It is for this reason, we are of the view that the definition of "Lease" for the purpose of Stamp Act is extensive in nature. It is also clear from the use of the expression "and includes also" in Section 2 (16) of the Stamp Act.

18) So by fiction, "any instrument by which tolls of any description are let" is considered as "Lease" for the purpose of payment of stamp duty under the Stamp Act.

19) Justice G.P. Singh, the learned author in his book "Principles of Statutory Interpretation" in 13th edition - at pages 179 and 180 has dealt with this subject under the heading "Definition sections or interpretation clause". In its sub-heading (a) "Restrictive and extensive definition", the author has explained as to where the words "mean", "include", "includes", and "means and includes" are used in any definition clause in the Act then how such definition should be interpreted. The following passage is apposite to quote.

> *"(a) Restrictive and extensive definitions*
>
> *The Legislature has power to define a word even artificially. So the definition of a word in the definition*

> *section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word is defined to 'mean' such and such, the definition is prima facie restrictive and exhaustive; whereas, where the word defined is declared to 'include' such and such, the definition is prima facie extensive. When by an amending Act, the word 'includes' was substituted for the word 'means' in a definition section, it was held that the intention was to make it more extensive. Further, a definition may be in the form of 'means and includes', where again the definition is exhaustive, on the other hand, if a word is defined 'to apply to and include', the definition is understood as extensive. These meanings of the expressions 'means', 'includes' and 'means and includes' have been reiterated in Delhi Development Authority vs. Bhola Nath Sharma, (2011) 2 SCC 54. The use of word 'any' e.g. any building also connotes extension for 'any' is a word of very wide meaning and prima facie the use of it excludes limitation."*

20) In our opinion, the aforesaid rule of interpretation applies while interpreting the definition of Lease under Section 2(16) of the Stamp Act.

21) As mentioned above, the Corporation in these cases awarded the contract to the appellants to recover the tolls (fees) from squatters, vendors, kiosks etc. and for parking the vehicles in specified places. The contract was, therefore, for recovery of tolls and created rights and liabilities in favour of contracting parties qua each other. It cannot be disputed that the expression "tolls of any description" in clause (c) would include all kinds of levy, charges, fees etc. which the Corporation is entitled to charge under its Bye-laws (41). A fortiori, the fees in question would also fall under Section 2(16)(c) of the Stamp Act.

22) In our opinion, the contract in question also satisfied the definition of the expression "Instrument" as defined in Section 2(14) of the Stamp Act because it created a right and liability and

> *lastly, it also satisfied the definition of expression "executed" and "execution" as defined in Section 2 (12) of the Stamp Act because it contained the signature of contracting parties."*

22. As a sequitur to the above discussion, the answer to Issue No. (i) is that the instrument in question is, in substance, a lease deed, and stamp duty is payable accordingly.

23. Now comes the turn to address Issue No. (ii), viz. *"whether the Joint Commissioner, M.C.C., had become functus officio upon the expiry of the tenure of the licence agreement"*. For answering this issue, a brief advertence to the relevant factual matrix again becomes necessary. It is not in dispute that the licence agreement expired on 31.01.2023, whereas the instrument in question was impounded subsequently on 16.05.2023. Notably, during the course of its annual inspection, the Audit Stamp Department of the M.C.C. examined the instrument and noticed that, by incorporating an incorrect recital in the head-note thereof, the petitioner had misled the authorities and thereby evaded the payment of the proper stamp duty. The audit report, in the due course and in discharge of official duties, was thereafter placed before the Joint Commissioner, M.C.C., for appropriate action. On consideration of the report, the Joint Commissioner formed an opinion that, on account of the incorrect recital of facts in the instrument, the petitioner had conveniently evaded payment of the proper stamp duty and accordingly impounded the instrument in exercise of powers under Section 33 of the Stamp Act.

24. From the aforesaid sequence of events, it is manifest that neither the Audit Stamp Department nor the Joint Commissioner, M.C.C.

had become *functus officio* upon expiry of the licence agreement. In its annual exercise, the Audit Stamp Department is duty-bound to examine every document to ascertain whether the requisite stamp duty has been duly paid thereon. Such scrutiny is an integral part of its official functions. Where an instrument is found to be insufficiently stamped, the Audit Department is required to bring the same to the notice of the competent authority, which, in the present case, is the Joint Commissioner, M.C.C. Consequently, once the audit report was placed before him, the Joint Commissioner, in the discharge of his official duties, examined the instrument, formed the requisite opinion, and proceeded to impound the same in exercise of the powers vested in him under Section 33 of the Stamp Act. The action so taken is in consonance with the provisions of Section 33 of the Stamp Act.

25. Even otherwise, the doctrine of *functus officio* has no application in the sphere of administrative law. The impounding of a document is purely an administrative function under Section 33 of the Stamp Act, whereas the assessment of deficiency in stamp duty by the Collector under Sections 31, 40, and 47-A of the Stamp Act is, undisputedly, a quasi-judicial function. Gainful reference in this regard can be placed upon the judgment rendered by the Hon'ble Supreme Court in ***"Orissa Administrative Tribunal Bar Association vs. Union of India and others", 2023 SCC OnLine SC 309,*** wherein it was held that if the doctrine of *functus officio* were to be applied to the sphere of administrative decision-making by the State, its executive power would

be crippled and the State would not be in a position to change or reverse any policy or policy-based decision. The apposite observations are extracted hereinafter:-

> *"89. For the reasons discussed above, the decision to abolish the OAT cannot be assailed on the ground that there was a violation of the principles of natural justice. Article 14 of the Constitution has not been violated.*
>
> > *<u>vi. The Union Government did not become functus officio after establishing the OAT</u>*
>
> *90. P Ramanatha Aiyer's The Law Lexicon (1997 edition) defines the term functus officio as:*
>
> > *"A term applied to something which once has had a life and power, but which has become of no virtue whatsoever ... One who has fulfilled his office or is out of office; an authority who has performed the act authorised so that the authority is exhausted"*
>
> *91. Black's Law Dictionary (5th edition) defines the term as follows:*
>
> > *"Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority ... an instrument, power, agency, etc. which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect."*
>
> *92. The doctrine of functus officio gives effect to the principle of finality. Once a judge or a quasi-judicial authority has rendered a decision, it is not open to her to revisit the decision and amend, correct, clarify, or reverse it (except in the exercise of the power of review, conferred by law). Once a judicial or quasi-judicial decision attains finality, it is subject to change only in proceedings before the appellate court.*
>
> *93. For instance, Section 362 of the Code of Criminal Procedure 1973 provides that a court of law is not to alter its judgment once it is signed:*

> *"362. Court not to alter judgment.—Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."*

In Hari Singh Mann v. Harbhajan Singh Bajwa, (2001) 1 SCC 169, this Court recognized that Section 362 was based on the doctrine of functus officio:

> *"10. … The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error."*

94. The doctrine of functus officio exists to provide a clear point where the adjudicative process ends and to bring quietus to the dispute. Without it, decision-making bodies such as courts could endlessly revisit their decisions. With a definitive endpoint to a case before a court or quasi-judicial authority, parties are free to seek judicial review or to prefer an appeal. Alternatively, their rights are determined with finality. Similar considerations do not apply to decisions by the state which are based entirely on policy or expediency.

95. Turning to the present case, the appellants' argument that the Union Government was rendered functus officio after establishing the OAT does not stand scrutiny. The decision to establish the OAT was administrative and based on policy considerations. If the doctrine of functus officio were to be applied to the sphere of administrative decision-making by the state, its executive power would be crippled. The state would find itself unable to change or

> *reverse any policy or policy-based decision and its functioning would grind to a halt. All policies would attain finality and any change would be close to impossible to effectuate.*
>
> *96. This would impact not only major policy decisions but also minor ones. For example, a minor policy decision such as a bus route would not be amenable to any modification once it was notified. Once determined, the bus route would stay the same regardless of the demand for, say, an additional stop at a popular destination. Major policy decisions such as those concerning subsidies, corporate governance, housing, education and social welfare would be frozen if the doctrine of functus officio were to be applied to administrative decisions. This is not conceivable because it would defeat the purpose of having a government and the foundation of governance. By their very nature, policies are subject to change depending on the circumstances prevailing in society at any given time. The doctrine of functus officio cannot ordinarily be applied in cases where the government is formulating and implementing a policy."*

26. Furthermore, the reliance placed by learned counsel for the petitioner upon ***M. Chowdhury (supra)*** is wholly misplaced. The question therein was whether, after passing of the decree, the Sub-Judge was having power to impound the document by invoking Section 33 of the Stamp Act. The said question was answered in the negative.

27. The Commercial Sub-Judge passed the decree on 03.12.1960, whereafter the document was impounded on 25.02.1961. In that backdrop, it was contended that once the Commercial Sub-Judge had passed the final decree, he became *functus officio* and, therefore, could not, in any capacity, impound the document by exercising powers under Section 33 of the Stamp Act. It was in those circumstances that the Delhi High Court held that, after passing of the decree, the Sub-Judge had

become *functus officio*. The ratio of the said decision, therefore, has no application to the facts of the present case.

28. In summa, the Issue No. (ii) is answered in the negative.

29. The Issue No. (iii) calls for determination as to whether the opinion of the Joint Commissioner, M.C.C., regarding the insufficiency of stamp duty on the instrument in question is grounded in reason.

30. Upon scrutiny of the instrument in question, the Audit Stamp Department of the M.C.C. observed that the head-note thereof contained an incorrect description. It was on the basis of this misleading recital that the petitioner managed to evade payment of the proper stamp duty. According to the authorities, the petitioner, having submitted the highest bid of ₹5,01,03,001/- per annum, and given that the nature of the instrument was that of a lease, was obligated to pay stamp duty at the rate of 2% of the average annual value, amounting to ₹10,02,060/-. Additionally, the petitioner was required to pay stamp duty of ₹1,25,257.50/- on the security amount of ₹41,75,250/-. However, the petitioner paid stamp duty of only ₹3,34,020/-, having erroneously computed the rent for one year as ₹1,67,01,000/-.

31. Consequently, the Audit Department brought this apparent mischievous and misleading conduct of the petitioner to the notice of the Joint Commissioner, M.C.C. Relying upon the audit report and the instrument itself, which constituted sufficient evidence for forming the opinion that the instrument was inadequately stamped, the Joint Commissioner rightly invoked Section 33 of the Stamp Act and

impounded the instrument.

32. Accordingly, the answer to Issue No. (iii) is in the affirmative.

33. Insofar as Issue No. (iv) is concerned, the question posed is whether the Joint Commissioner, M.C.C., holds a public office within the meaning of Section 33 of the Stamp Act.

34. Section 33 of the Stamp Act empowers the State Government to determine what offices shall be deemed to be public offices. The contention advanced by learned counsel for the petitioner is that, in the absence of any determination by the State Government under Section 33(3) of the Stamp Act, the office of the Joint Commissioner, M.C.C., cannot be regarded as a public office. This contention, however, is devoid of any legal foundation.

35. A plain reading of sub-section (3) of Section 33, which has already been extracted hereinabove, makes it evident that it commences with the words, "*For the purposes of this section, **in cases of doubt**, the State Government may determine what offices shall be deemed to be public offices.*" Thus, the requirement of a determination by the State Government arises only when there exists a doubt. The office of the Joint Commissioner, M.C.C., cannot, by any reasonable construction, be regarded to be other than a public office. Accordingly, the mere non-determination or non-declaration by the State Government does not curtail the powers of the Joint Commissioner, M.C.C., to impound a document under Section 33 of the Stamp Act.

36. Therefore, the answer to Issue No. (iv) is also in the affirmative.

37. This brings us to the final Issue No. (v), which seeks a determination as to whether the Collector, in exercise of powers under Section 31 of the Stamp Act, is competent to impose a penalty and enforce recovery of the deficient stamp duty.

38. It is apposite to note that, under Section 31, where an instrument is referred to the Collector for adjudication, the Collector is required only to determine the duty with which, in his judgment, the instrument is chargeable. Section 31 does not contemplate any further action to be taken by the Collector.

39. The aforesaid issue has already been considered by the Hon'ble Supreme Court in ***Raja Mohammad Amir Ahmad Khan (supra).*** In that case, the Supreme Court was seized of the issue regarding the consequences of a person applying to the Collector for determination of the proper duty payable on an instrument under Section 31 of the Stamp Act. In that case, the respondent had executed a wakf by oral recitation of Sigha and then it was written on a stamped paper which was signed by the respondent and attested by witnesses. Thereafter, it was presented to the Collector for his opinion under Section 31 as to the duty chargeable. After having opinion from the Board of Revenue, the Collector held that the document was liable to duty in accordance with Article 58 of the Stamp Act and ordered that the deficient stamp duty be deposited within fifteen days. A notice was also served upon the respondent that failure to deposit

the amount and penalty would invite initiation of proceedings under Section 48 of the Stamp Act. The legality and validity of the imposition of stamp duty and penalty was under consideration before the Hon'ble Supreme Court. The State took a stand that if an instrument, whether stamped or not, is submitted for the opinion of the Collector before it is executed, i.e., it is signed, then the Collector is required to give his determination of the duty chargeable and return the document to the person seeking his opinion under Section 31 of the Stamp Act, but if the document is scribed on a stamped paper or unstamped paper and is executed, then under Section 33 of the Stamp Act the Collector is required to impound the document if he finds that it is not duly stamped. Conversely, the stand of the respondent was that, on his giving his opinion under Section 31, the Collector becomes functus officio and can take no action under Section 33.

40. The Hon'ble Supreme Court held that Section 31 is complete by itself and it ends by saying that the Collector shall determine the duty with which, in his judgment, the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector. After giving his opinion under Section 31, the duties and powers of the Collector under Section 31 come to an end.

41. It was further held that the scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under Section 31. If it is not properly stamped and the person executing the document

wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under Section 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed document is in the same position as an instrument which is unexecuted and unstamped. The relevant observations of the Hon'ble Supreme Court are extracted hereunder:-

> *"6. Counsel for the State referred to the various sections of the Act; first to the definition section; Section 2(11) which defines what is "duly stamped"; s. 2(14) which defines "instrument" and s. 2(12) which defines "executed". He then referred to s. 3 which lays down what "chargeable" means and then to s. 17 which provides that all instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of the execution. Certain other sections i.e. Sections 35 and 38(1) were also referred to and so also Sections 40(1)(a), 41, 42 and 48 but in our opinion it is not necessary to refer to these sections. What has to be seen is what is the consequence of a person applying to a Collector for his determination as to the proper duty on an instrument. The submission on behalf of the State (appellant) was that if an instrument whether stamped or not is submitted for the opinion of the Collector before it is executed, i.e., it is signed, then the Collector is required to give his determination of the duty chargeable and return the document to the person seeking his opinion but if the document is scribed on a stamped paper or unstamped paper and is executed then different consequences follow. In the latter case it was submitted that under s. 33 the Collector is required to impound the document if he finds that it is not duly stamped. On the other hand*

it was submitted on behalf of the respondent that on his giving his opinion the Collector becomes functus officio and can take no action under s. 33. It is these two rival contentions of the parties that require to be decided in this case.

7. After an inordinately long delay, the Collector determined the amount of duty payable and impounded the document. Power to impound is given in s. 33 of the Act. Under that section any person who is a Judge or is in-charge of a public office before whom an instrument chargeable with duty is produced or comes in the performance of his functions is required to impound the instrument if it appears to him not to be duly stamped. The question is does this power of impounding arise in the present case? The instrument in dispute was not produced as a piece of evidence nor for its being acted upon e.g. registration, nor for endorsement as under s. 32 of the Stamp Act but was merely brought before the Collector for seeking his advise as to what the proper duty would be. The words "every person............ before whom any instrument.......... is produced or comes in the performance of his functions" refer firstly to production before judicial or other officers performing judicial functions as evidence of any fact to be proved and secondly refer to other officers who have to perform any function in regard to those instruments when they come before them e.g. registration. They do not extend to the determination of the question as to what the duty payable is. They do not cover the acts which fall within the scope of s. 31, because that section is complete by itself and it ends by saying that the Collector shall determine the duty with which, in his judgment, the instrument is chargeable, if it is chargeable at all. Section 31 does not postulate anything further to be done by the Collector. It was conceded that if the instrument is unexecuted i.e. not signed, and the opinion of the Collector is sought, he has to give his opinion and return it with his opinion to the person seeking his opinion. The language in regard to executed and unstamped documents is no different and the powers and duties of the Collector in regard to those instruments are the *same, that is, when he is asked to give his opinion, he has to determine the duty with which, in his judgment, the instrument is chargeable and there his duties and powers in regard to that matter end. Then follows s. 32. Under that section the Collector has to certify by endorsement on the instrument brought to him under s. 31 that full duty has been paid, if the instrument is duly stamped, or it is unstamped and the duty is made up, or it is not chargeable to duty. Under that section the endorsement can be made only if the instrument is presented within a month of its execution. But what happens when the instrument has been executed more than a month before its being brought before the Collector? Section 31 places no limitation in regard to the time and there is no reason why any time limit should be imposed in regard to seeking of opinion as to the duty payable.*

8. Chapter IV of the Act which deals with instruments not duly stamped and which contains Sections 33 to 48, provides for impounding of documents, how the impounded documents are to be dealt with, Collector's powers to stamp instruments impounded and how the duties and penalties are to be recovered. It would be an extraordinary position if a person seeking the advice of the Collector and not wanting to rely upon an instrument as evidence of any fact to be proved nor wanting to do any further act in regard to the instrument so as to effectuate its operation should also be liable to the penalties which unstamped instruments used as above might involve. The scheme of the Act shows that where a person is simply seeking the opinion of the Collector as to the proper duty in regard to an instrument, he approaches him under s. 31. If it is properly stamped and the person executing the document wants to proceed with effectuating the document or using it for the purposes of evidence, he is to make up the duty and under s. 32 the Collector will then make an endorsement and the instrument will be treated as if it was duly stamped from the very beginning. But if he does not want to proceed any further than seeking the determination of the duty payable then no consequence will follow and an executed document is in the same *position as an instrument which is unexecuted and unstamped and after the determination of the duty the Collector becomes functus officio and the provisions of s. 33 have no application. The provisions of that section are a subsequent stage when something more than mere asking of the opinion of the Collector is to be done."*

42. In view of the foregoing discussion, this Court can safely conclude that the Collector's function comes to an end once he determines the deficiency in stamp duty. Consequently, he is not competent to impose a penalty or direct recovery of the deficient stamp duty, the same being beyond the scope of his statutory jurisdiction under Section 31 of the Stamp Act. Accordingly, Issue No. (v) is answered in the negative.

43. Had the instrument been forwarded to the Collector under Section 38 of the Stamp Act, the position would have been different. However, the indisputable fact in the present case is that the instrument in question, after being impounded, was sent to the Collector under Section 31 of the Stamp Act. The impugned order dated 26.09.2024, therefore, warrants interference to the extent it imposes a penalty equivalent to 50% of the deficient stamp duty and directs recovery of the deficient stamp duty.

44. Now that all the issues framed hereinabove stand answered, it is appropriate at this stage to also deal with the submission of learned counsel for the petitioner that, since the original instrument was never forwarded, the proceedings initiated by the Collector under Section 31 of the Stamp Act are vitiated in law. This contention is noted only to be rejected.

45. The reason for rejecting the aforesaid contention is that, upon execution and registration of the licence deed before the Sub-Registrar, Chandigarh, on 16.07.2021, the original licence deed was deposited with the licensor/M.C.C., in terms of the conditions of the tender document. Thus, there is no dispute that the original licence deed remained in the custody and possession of the M.C.C. Moreover, neither Section 31 nor Section 33 of the Stamp Act mandates production of the original instrument before the Collector. The underlying object of impounding an instrument is to ensure that the same is not used for any further purpose.

46. The reliance placed by learned counsel for the petitioner upon ***Hariom Agrawal (supra)*** is also misconceived, as the said decision has no application to the facts of the present case. The controversy before the Hon'ble Supreme Court in the said case pertained to the evidentiary value of a photocopy as secondary evidence. In that case, the original agreement executed between the parties was stolen and, therefore, was not produced before the court. Instead, only a photocopy was tendered as secondary evidence under Section 63 of the Indian Evidence Act, 1872. The photocopy revealed that the original agreement bore only a notarial stamp of ₹4/-. It was in those circumstances that the question arose whether the court could impound the photocopy of the instrument of improper description in exercise of its powers under the Stamp Act.

47. In the aforesaid circumstances, the Hon'ble Supreme Court held that there is no scope for inclusion of a copy of a document as an instrument for the purpose of the Stamp Act, and that a copy of an

instrument cannot be validated by impounding, nor can it be admitted as secondary evidence under the Stamp Act. The relevant observations are extracted hereunder:-

> *"3. On 12.5.2003 a suit for eviction was filed by the respondent-landlord before the Civil Judge, Bhopal under Section 12(1)(f) of the Madhya Pradesh Accommodation Control Act, stating the bonafide need for the use of the accommodation by his elder son. It was the case of the appellant-tenant that the original copy of the agreement which was with him was stolen and thus he was unable to produce the original document dated 28.3.1988, but was in possession of a photostat copy of the agreement and made a prayer for receipt of the photocopy of the agreement as secondary evidence under Section 63 of the Indian Evidence Act, 1872. The trial court allowed the application for admission of the photocopy of the document and admitted it as secondary evidence under Section 63 of the Evidence Act.*
>
> *4. On being aggrieved by the order of the trial court, the respondent-landlord filed a writ petition before the High Court. The High Court set aside the order of the trial court and remitted the matter back to decide the question as to whether a photocopy of an improperly stamped original document can be received in secondary evidence. After hearing the parties, the trial court by its order dated 9.8.2005 ordered that the document be impounded, it being insufficiently stamped; the document was sent to the Collector of Stamps for affixing appropriate stamp duty and thereafter for sending the document back to the court. This order was challenged by the respondent in a review petition which was dismissed by the trial court. Thereafter, a writ petition was filed before the High Court. The High Court by its judgment dated 3.5.2006 held that the impugned document which is a photocopy of the agreement, original of which is lost, cannot be admitted in evidence; and that such a document can neither be impounded nor can be accepted in secondary evidence.*

5. It is an admitted fact that the photostat copy which is sought to be produced as secondary evidence does not show that on the original agreement proper stamp duty was paid. The photostat copy of the agreement shows that the original agreement carried only a notarial stamp of Rs.4/-. Thus the original instrument bears the stamp of sufficient amount but of improper description. From the facts of the case, the issue which requires consideration is: Whether the court can impound the photocopy of the instrument (document) of improper description exercising its power under the provisions of the Indian Stamp Act, 1899?. For answering this question, Sections 33 and 35 of the Act might render some help. Relevant extracts of the Sections are:

> *33. Examination and impounding of instruments - (1) Every person by law or consent of parties, authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.*
>
> *(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in (India) when such instrument was executed or first executed:*
>
> *35. Instruments not duly stamped inadmissible in evidence, etc.- No instrument chargeable with duty shall be admitted in evidence for any person having by law or consent of parties to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:*
>
> *XX XX XX*

8. It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that an instrument which is *not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Indian Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Indian Stamp Act, 1899."*

FINAL ORDER

48. Consequently, in light of the findings returned on the issues formulated hereinabove, **the impugned order dated 26.09.2024 is partly set aside, insofar as it directs recovery of the deficient stamp duty and imposes a penalty equivalent to 50% of the deficient stamp duty.** However, liberty is reserved in favour of M.C.C. to take further necessary steps for recovery of the assessed deficient stamp duty in accordance with law.

49. Accordingly, the instant writ petition is **partly allowed** to the aforesaid extent.

50. Pending application, if any, stands disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

August 10, 2026
devinder

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No