

(1968) 07 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 4369 of 1965

Ama Stores

APPELLANT

Vs

Collector of Madras and Another

RESPONDENT

Date of Decision : 29-07-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Section 56(1), 56(2), 57

Citation : AIR 1970 Mad 148

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Advocate : T. Martin, for the Appellant; J. Kanakaraj, for Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramakrishnan, J.—The Petitioner, Ama Stores, represented by its partner M. T. M. Abubacker, has filed this writ petition under Article

226 of the Constitution of India praying for the issue of a writ of certiorari quashing respectively the orders of the Collector of Madras, the 1st

Respondent, and the Commissioner of Land Revenue, Prohibition, Excise and Settlement of Estates, Board of Revenue, Madras, the 2nd

Respondent. The petitioner contended that a certain, document executed by him on 25-10-1963 was an agreement, which merely recited the facts

of an already completed sale and also the conditions under which the sale took place. Hence he pleaded that it would suffice, for the purpose of

paying the appropriate court-fee under the Stamp Manual, if the document was stamped as an agreement, for which the duty payable is Rs. 2 1/4.

This was the duty actually paid on, the document, viz., Rs. 2 1/4. The petitioner had to bring this agreement before the Registrar of Trade Marks

for the purpose of transferring the trade mark; but that officer was of the opinion that the document in question was really a sale deed and sent it to the Collector of Madras for impounding.

For the levy of proper stamp duty the 1st respondent, the Collector of Madras, construed the terms of the document and came to the conclusion

that it was a sale deed and not a mere agreement regarding a prior completed sale. The decision of the Collector was that as a sale deed a stamp

duty of Rs. 1460-25 should be levied, and in addition a penalty of Rs. 250 should be paid. Aggrieved against the above decision the petitioner

filed an appeal to the Board of Revenue, the 2nd respondent, who as the Chief Controlling Revenue authority, has got certain powers conferred

u/s 56(2) of the Act. It was this power that was invoked by the petitioner in his appeal against the order of the Collector. The Board of Revenue in

an elaborate order passed on 8-10-1965 came to the conclusion that the levy of stamp duty and penalty by the Collector was proper and

dismissed the appeal petition of the petitioner.

2. It is contended by the learned counsel for the petitioner in this writ petition, and that is the main ground for the relief that he seeks, that the Board

of Revenue as the Chief Controlling Revenue-Authority, whose appellate power the petitioner invoked, ought to have given the petitioner an

opportunity for making a personal representation, especially, since in his appeal petition, he had specifically asked for that relief. It is urged for the

petitioner that when the Board of Revenue disposed of the appeal only on the grounds set forth by the petitioner in the appeal memo ignoring the

specific request made by the petitioner that he should be heard, there was non-compliance of the principles of natural justice.

3. Reliance was placed by the learned counsel for the petitioner on the decision of the Supreme Court in *The Board of Revenue, U.P. and Others*

Vs. Vidyawati and Another, and the decision of Srinivasan, J. in *Annamalai and Co., Pte. Ltd. Vs. District Registrar, Madras and Others*, , for the

stand taken that a proper compliance with the duties imposed by the statute on the Board of Revenue as the Chief Controlling Revenue Authority

in such a case should be viewed as involving a duty to hear the petitioner in person, especially when a large financial commitment would be

imposed on him if his contentions are to be overruled. In the Supreme Court

decision cited above the matter came up before the Board of

Revenue on a reference by the Collector u/s 56(2) of the Stamp Act. Such a reference is made by the Collector when without taking a decision

himself he feels doubt as to the amount of duty payable. The Supreme Court held:

The question before the Board u/s 56(2) being one of construction of an instrument and the application of the Act to it being a pure question of

law which may result in payment of large amounts by the executants- of the document, it would not in our opinion be improper to hold that for the

determination of such a question the Legislature intended that the party affected by the decision of the Board of Revenue should be given a hearing,

and that the Board should Act judicially in deciding a pure question of law".

4. The Supreme Court also observed at page 1220 of the judgment:

It seems to us. considering the nature of the duty cast on the Board of Revenue u/s 56(2) requiring it to construe instruments submitted to it

thereunder and the application of the Act to them which may result in payment of heavy amounts of deficit duty and even heavier amounts as

penalty, that the Legislature intended that the Board of Revenue should hear the person executing the document before saddling him with large

pecuniary liability.

5. Srinivasan, J., in the second of the decisions cited above had before him a case where the District Registrar, who has got the powers of a

Collector under the Stamp Act, construed a certain document and levied a stamp duty of Rs. 1138-80. The executant of the document feeling

aggrieved against the District Registrar's Order moved the Board of Revenue u/s 56(1) of the Act. At the same time the Inspector General of

Registration had perused the order of the District Registrar levying duty in that case, and as the matter involved some loss of revenue he referred it

to the Board of Revenue u/s 56(2). Both the petitioner's appeal and the reference were dealt with by the Board of Revenue, and the appeal of the

executant of the document was dismissed and the levy made by the District Registrar was confirmed. Srinivasan, J., who dealt with the case in the

writ petition observed:

It is true that the authority is not required under the Madras Stamp Act to furnish his reasons for the conclusion that he reached, and where the

matter is put in issue and a dispute is raised and the adjudication is certainly a quasi-judicial one and imposes an onerous liability on the party, one

would have expected at least brief reasons in support of the conclusions reached.

"More than all, as I have pointed out, no opportunity whatsoever

was given to the party to make his representations before any of the authorities who dealt with the matter "" italics (here in " ") mine"".

6. There was a decision of this Court given much earlier in 1950 and reported in In Re: V.S. Shanmuga Mudaliar, . Mr. P. V. Rajamannar, the

learned Chief Justice, speaking for the Bench observed:

The only ground on which this writ is sought is that the Board did not give any opportunity to the petitioner to be orally heard. There is nothing in

the Act or in the Rules framed thereunder which enjoins on the Board the duty to give an oral hearing to a person who invokes their revisional

jurisdiction. All that quasi-judicial Tribunal like the Board of Revenue have to do is to give sufficient opportunity to the persons who approach them

for the exercise of their jurisdiction to state their case.....This opportunity has been given to the petitioner, because presumably he has stated all his

grounds of objection to the order of the Revenue Divisional Officer in his revision petition.

7. The decision of the Bench of this Court was given in 1950 long prior to the decision of the Supreme Court in The Board of Revenue, U.P. and

Others Vs. Vidyawati and Another, . The learned Government Pleader, however submits that the decision of the Supreme Court will not apply to

this case because that case dealt with a reference by the Collector u/s 56(2) of the Act, whereas the present case is an appeal petition by the party

to the Board of Revenue u/s 56(1). In such a case it is urged that the principles laid down by the Bench of this Court in In Re: V.S. Shanmuga

Mudaliar, , will apply. I am unable to agree. Section 56(1) does not mention specifically about any right of appeal or revision to the aggrieved party

in such cases. It vests in the Chief Controlling authority a power of control over the decision of the Collector. But both the judgment of this Court

in In Re: V.S. Shanmuga Mudaliar, as well as that of Srinivasan, J. in Annamalai and Co., Pte. Ltd. Vs. District Registrar, Madras and Others, ,

have construed that this power of control of the Chief Controlling Revenue authority u/s 56(1) is a quasi-judicial power which could be invoked at

the instance of the aggrieved party. Section 56(2) also vests a quasi-judicial power in the same authority, namely the Chief Controlling Revenue

Authority but with this difference, that Section 56(2) is, made applicable when the Collector feels himself a doubt as to the amount of duty payable

on the instrument, draws up a statement of the case and refers it with his own opinion for the decision of the Chief Controlling Revenue Authority.

u/s 56(2) the Chief Controlling Revenue Authority is moved to act by the Collector before he: takes a decision; u/s 56(1) he is moved to act by the

aggrieved party after the Collector has taken a decision. But in either case the power exercised by the Chief Controlling Authority is the power of a

quasi Judicial tribunal for deciding an issue between the subject on the one hand and the Revenue on the other regarding the interpretation of a

document. That interpretation has been held by the Supreme Court as involving a substantial question of law.

The point that arose for decision by the Supreme Court is somewhat different, namely whether on a reference by the party the Chief Controlling

Revenue Authority will be obliged to make a reference to the Court u/s 57 of the Stamp Act for its determination of the proper duty payable on

instrument. The Supreme Court held that the power in Section 57 of the Stamp Act is in the nature of an obligation or is coupled with an obligation,

and can be demanded to be exercised also by the party affected by the assessment of stamp duty. The Authority is obliged to make such a

reference when an important and intricate question of law in respect of the construction of the document arises. As a public officer it is his duty to

make the reference. If he omits to do so, the Court can direct him to discharge the duty in an application under Article 226 of the Constitution.

8. Srinivasan, J., fa (1985)1 Mad LJ 431 = (AIR 1986 Mad 36), had before him an application by the aggrieved party u/s 56(1) for collecting the

levy of stamp duty and penalty by the Collector, who happened to be the District Registrar in that case. The Inspector General of Registration, the

superior officer of the District Registrar, had also applied to the Board of Revenue for determination of the correct amount of stamp duty. The

decision involved the question whether the Collector had levied the proper duty, and the learned Judge observed:

When the Hoard was thus called upon to ascertain the amount of duty, particularly as there had been a dispute between the petitioner and the

registering authority in that regard, the decision which the Board proceeded to render would undoubtedly have been more valuable had it been

given after hearing what the affected party had to say in the matter.

Then the learned Judge proceeded to examine the gist of the document and found that the result of the decision of the Board was that the party

would have to pay a duty of nearly Rs. 7000, The learned Judge referred to an earlier decision of the Supreme Court in Chief Controlling Revenue

Authority v. Maharashtra Sugar Mills, (1950) 2 MLJ 564; but the later decision referred to above in The Board of Revenue, U.P. and Others Vs.

Vidyawati and Another, , was not cited before the learned Judge. The learned Judge, however, observed:

....where the matter is put in issue and a dispute is raised and the adjudication is certainly a quasi-judicial one and imposes an onerous liability on

the party, one would have expected at least brief reasons in support of the conclusion reached. More than all, as I have pointed out, no

opportunity whatsoever was given to the party to make his representations before any of the authorities who dealt with the matter.

9. It is urged by the learned Government Pleader that the Supreme Court in The Board of Revenue, U.P. and Others Vs. Vidyawati and Another,

, proceeded on the footing that they were dealing with the matter u/s 56(2) and not u/s 56(1) "on the application filed by the respondents inviting it

to exercise its power of control thereunder". The Supreme Court left the question open, as to whether the Chief Controlling Revenue Authority,

whose power of control is invoked by the aggrieved party, is exercising a quasi-judicial power or only an administrative power. But it is difficult to

hold that the scheme of the Stamp Act leaves the aggrieved party without a right of appeal especially in cases where he is ordered to pay a heavy

amount of stamp duty and penalty, on the basis of the interpretation of the nature of a document for the purpose of the stamp law by a Collector,

and that the only occasion when the Chief Controlling Revenue Authority is called upon to exercise quasi judicial powers, is when the Collector

who feels a doubt as to the amount of duty payable on an instrument asks for his decision u/s 56(2).

On the other hand, the more reasonable view seems to me to be that after the Collector has exercised his power under Chapters IV and V by

levying stamp duty, and the power of the Chief Controlling Revenue Authority is invoked by the aggrieved party u/s 56(1) and if thereafter, that

Authority proceeds to exercise that power, it must also be viewed as the exercise of a quasi-judicial function. It is immaterial for this purpose,

whether that power is exercised at the instance of the aggrieved party or the instance of the Revenue. In the present case the Chief Controlling

Revenue Authority has taken up the application of the party for disposal as an ""appeal"" against the orders of the Collector. It has written out an

elaborate order canvassing the grounds set out by the party in his petition of appeal"". From the circumstances of the case it has to be held that what

was exercised by the Chief Controlling Revenue authority in this case was not an administrative function but a quasi-judicial function invoked for

the purpose of modifying the orders of the Collector in favour of the aggrieved party. In such a case it is clear that the authority has to act quasi-

judicially, just as in the case u/s 56(2). This carries with it an obligation to give opportunity to the party for being heard, especially when a large

amount of duty and penalty is involved. In the present case the party himself has also asked for a personal hearing in his memorandum of appeal.

For the aforesaid reasons I am of the opinion that the requirements of natural justice had to be followed in this case where the Chief Controlling

Revenue authority was requested by the aggrieved party to interfere in a quasi judicial capacity. That requirement carried with it an obligation to

give the party a personal hearing. I therefore allow the writ petition and quash the order of the second respondent, the Commissioner of Land

Revenue dismissing the appeal of the petitioner. The second respondent is directed to restore the appeal to his file and dispose it of after giving an

opportunity to the petitioner for a personal hearing. No order as to costs.