

(1963) 08 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No's. 415 and 416 of 1961

Annamalai and Co., Pte. Ltd.

APPELLANT

Vs

District Registrar, Madras and Others

RESPONDENT

Date of Decision : 08-08-1963

Acts Referred:

Stamp Act, 1899 — Article 48, 31, 40, 41, 56

Citation : AIR 1966 Mad 36 : (1964) ILR (Mad) 913 : (1965) 78 LW 503 : (1965) 1 MLJ 431

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

(1) The petitioner in W.P. 415 of 1961 was a private limited company. It had borrowed various amounts from the Reliance Bank of India Ltd. and

had mortgaged certain immovable properties to that bank. By a power-of-attorney executed by the petitioner on 13-8-1957, the bank was

authorised to sell the immovable properties. The document was stamped with stamps of the value of Rs. 11-4-0. On presentation of the power-of-

attorney for registration, the Joint Sub Registrar called for particulars of the debts due to the bank. Thereafter, the Joint Sub-Registrar impounded

the document. The District Registrar in his proceedings dated 9-10-1960 passed an order to the effect that the document numbered as P. 111 of

1957 was a power of attorney for consideration. made out of the amount of the debts owing to the Bank, and was chargeable with a stamp duty of

Rs. 7138-80 under Art. 48(e) of Schedule I of the Indian Stamp Act as amended. He called upon the petitioner to pay the deficit stamp duty and

imposed a penalty of Rs. 10 as well. The correctness of the District Registrar's interpretation of the relevant provision was disputed. Subsequently,

however, the Joint Registrar issued a notice to the petitioner calling upon him to pay the deficit duty and penalty.

(2) In like manner, another document numbered as P. 110/57 was impounded and deficit duty and penalty of Rs. 6954-60 and Rs. 10 were demanded.

(3) The petitioner thereafter moved the Board of Revenue under S. 56(1) of the Act. The Board of Revenue ordered stay of collection of stamp

duty and penalty and posted the petition for hearing on 6-1-1961. But even in advance of that date, the Board made an order dated 17-12-1960

stating that as the District Registrar ""has the powers of the Collector under the Stamp Act and has already passed orders"" the Board could not

interfere under S. 56(1) of the Act.

(4) These petitions have been filed under Art. 226 praying for the issue of writs of certiorari to quash the orders of the District Registrar and Joint

Registrar. The complaint of the petitioner is that it has not been afforded an adequate opportunity of substantiating its contentions and that the view

taken by the authorities referred to on the interpretation of S. 48(e) of the Indian Stamp Act is erroneous in law. The petitioner claims that it has no

other remedy but to approach this court.

(5) In the counter affidavit filed on behalf of the respondent, it is stated that on the presentation of the document, as it appeared to the Joint

Registrar that the document was a power-of-attorney for consideration, he made a reference to the Inspector General of Registration. The

Inspector General of Registration made a reference to the Board of Revenue. The Board of Revenue adjudicated the document as one falling

under Art. 48(e) of Schedule I by its order dated 23-1-1960. Thereafter, the Joint Registrar took up the matter and issued a notice to the

petitioner acting on the strength of the Board's view, he called upon the petitioner to show cause why the document should not be adjudicated as a

power of attorney for consideration, the consideration being the amount of debts due from the petitioner to the power of attorney holder, the bank.

The objections put forward by the petitioner were overruled. As has already been stated in the accompanying affidavit, the petition filed by the

petitioner under S. 56(1) of the Act was rejected.

(6) It is also contended in the counter affidavit that the determination of the

nature of the document is not affected by any error in the interpretation of the relevant provision.

(7) It seems clear from what has been stated above that when the Board purported to adjudicate upon the nature of the document on a reference

made to it by the Inspector General of Registration and made the order on 23-1-1960, it gave no notice of any kind to the petitioner. The Board's

opinion in the matter was communicated to the concerned lower authorities and acting upon that opinion, the Joint Registrar issued the notice dated

9-10-1960, calling for the payment of deficit duty and penalty. Before proceeding to consider whether the document does in fact fall within the

scope of Art. 48(e) of the Stamp Act, it is necessary to examine the proceedings which led the Board to adjudicate upon the matter. The Board as

the Chief Controlling Revenue Authority was asked for its decision in a proceeding under S. 56 of the Act. S. 56(2) reads:

If any Collector acting under S. 31, S. 40 or S. 41, feels doubt, as to the amount of duty with which any instrument is chargeable, he can draw up

a statement of the case and refer it with his opinion thereon for the decision of the Chief Controlling Revenue Authority.

Sub-section 3: Such an authority shall consider the case and send a copy of its decision to the Collector who shall proceed to assess and charge

the duty in conformity with such a decision".

The reference that was made by the Inspector General of Registration and the opinion that was given by the Board are not before this court. But it

is clear that the necessity for the opinion of the Board arose by reason of the doubt which the appropriate lower authorities had with regard to the

proper amount of duty with which the document was chargeable. When the Board 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. It will be

noticed that the result of the decision of the Board was that the party was mulcted with the payment of a duty of nearly Rs. 7000 in each case. It is

unfortunate that the Board did not think it necessary to hear any representations which the party could have put forward. It is true that in the instant

case there had been no application from the party to make a reference to this court. But under S. 57 of the Act where any case has been referred to the Board under S. 56(2) or when a case otherwise comes to the notice of the Board, it is competent to the Board to refer the case for the opinion of the High Court. Very often, an intricate or important question of law in the construction of document arises, but the intricacy and the complicated nature of the question is a matter which would ultimately rest upon the contention which the party puts forward and would not be immediately apparent on the face of the document. I shall presently refer to the document itself, but at this stage, I would content my self with observing that the true view of S. 57 of the Act is that the Board is in fact under a duty to make a reference in a case of this description. Most certainly, it should at least have given a hearing to the party in the mater. It is seen from the counter affidavit itself that the party was wholly unaware that the matter had reached the Board by way of S. 56(2) of the Act. Had the party been given a notice and an opportunity of being heard, an order made by the Board in these circumstances would certainly have been entitled to much greater weight than ex parte decision which it has rendered.

(8) In Chief Controlling Revenue Authority v. Maharashtra Sugar Mills Ltd 1950 2 MLJ 564: (AIR 1950 SC 218), the Supreme Court had occasion to deal with the scope of S. 57 of the Stamp Act and the nature of the power that is given to the authority thereunder. The question arose in considering a relief sought by an affected party who sought a writ of mandamus to direct the Chief Controlling Revenue Authority to state a case to the High Court. The jurisdiction of the High Court itself was questioned, firstly on the ground that it was a matter which related to the revenue and secondly, that as the proceeding had passed beyond the stage of assessment and had reached the stage of recovery, the High Court had no jurisdiction. These contentions were held by their Lordships of the Supreme Court to be totally unsound. In dealing with S. 57, they pointed out that it was not on principle sound ""to hold that these difficult questions should be left under the Stamp Act to the final decision of the appellant (Chief Controlling Revenue Authority) and if the party affected by the assessment has a grievance, there is no relief at all in law for him. The

construction of a document is not always an easy matter and on the ground that it is a substantial question of law, parties have been permitted to take the matter up to the highest court. If so, it appears difficult to start with the assumption that because this is a revenue Act, the decision of the appellant should be considered final and conclusive. The provisions of S. 56(2) and S. 60 giving power to the Collector and the Court to send a statement of the case to the appellant and the High Court respectively, in our opinion, instead of helping the appellant, go against his contention. In those two sections this power is given when the referring authority has a doubt to solve for himself. The absence of the words ""feels doubt as to the amount of duty to be paid in respect of an instrument"" in S. 57 supports the view that the reference contemplated under that section is not for the benefit of the appellant only but enures also for the benefit of the party affected by the assessment. In our opinion, the power contained in S. 57 is in nature of an obligation or is coupled with an obligation and under the circumstances can be demanded to be used also by the parties affected by the assessment of the stamp duty"". Their Lordships further held that it was open to the court to compel the performance of the statutory duty thus cast on the Chief Controlling Revenue Authority.

(9) From what was stated at the Bar, it appears that the petitioner mortgaged his properties by deposit of title deeds with the bank. In the affidavit it is stated that long prior to the execution of the power of attorney, the petitioner had borrowed various amounts from the said bank for which it had also mortgaged Immovable properties. The power of attorney also mentions in its preamble:

Whereas we have borrowed from the said Reliance Bank of India Ltd., various sums of money and whereas the following properties among others have been hypothecated to the said bank as security for these borrowings....."" and the document purported to confer power upon the Bank to sell these properties at its discretion and to credit the sale proceeds towards the discharge of the borrowings. Even without the conferment of the power to sell, it would appear that a mortgagee by deposit of title deeds would have the authority under the Transfer of Property Act to sell the properties without the intervention of the court in certain circumstances. It seems at least doubtful whether the original borrowings by the debtor

could be regarded as a consideration for the power conferred by this document, when that power could in certain circumstances exist even without this particular document. I may point out also that there is no indication in any order made by any of the concerned authorities as to the reasons upon which it was held to be a power for consideration, and how that consideration, by any reasonable interpretation of the recitals in the document could be regarded as covering the amount borrowed. Though it is so set out in the counter affidavit on behalf of the respondents, that averment in the counter affidavit cannot possibly be accepted as the basis upon which the appropriate authority proceeded. 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 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.

(10) In a decision of this Court in N. Saradambal Ammal Vs. The Chief Controlling Revenue Authority, Madras, Ramachandra Iyer J., as he then was, had to consider the jurisdiction of the Chief Controlling Revenue Authority to make a reference under S. 57 and of the court to direct a reference under Art. 226. After an examination of several decisions it was held that while the Chief Controlling Revenue Authority would have no jurisdiction to make a reference except in a case which was pending before it, no such limitation operated when the court dealt with the matter by the issue of prerogative writ to direct a reference. Though the Revenue Authority could have decided the case finally, as far as it was concerned it is yet open to this court to call for reference.

(11) I am accordingly satisfied that this is a fit case where a writ should issue directing a reference. It is true that the petitioners have asked for writs of certiorari to quash the order made by the Joint Registrar, calling for the payment of this amount of duty. But having regard to the circumstances of the case, since the matter is certainly a difficult one, which deserves to be referred to this court, a writ of mandamus to direct a reference would

be the appropriate relief. Rules will issue accordingly. There will be no order as to costs.

(12) Order accordingly