(1978) 10 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 2143 of 1976

Southern Textiles APPELLANT

Vs

The Revenue Divisional Officer and Another RESPONDENT

Date of Decision : 23-10-1978

Acts Referred:
Stamp Act, 1899 — Section 3, 33, 33(1), 35, 37

Citation : (1979) ILR (Mad) 106

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : M.N. Krishnamani, for the Appellant; V. Ramajagadeesan, for Government Pleader for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Mohan, J.—This writ petition is for a writ of mandamus restraining the first Respondent, the Revenue Divisional Officer, Padmanabhapuram,

Kanyakumari District, from demanding from the Petitioner the sum of Rs. 16,335 pursuant to his Memorandum No. A5/2101/76, dated 31st

January, 1976. The facts leading to the writ petition are shortly as under.

2. The Petitioner filed Employees State Insurance Original Petition No. 1 of 1973, before the learned District Judge, constituting the Employees''

State Insurance Tribunal, Nagercoil, challenging a show cause notice issued to the Petitioner for the recovery of S sum of Rs. 3,455 by way of

Special contribution under the Employees'' State Insurance Act. The challenge was on the ground that the Petitioner was not a factory inasmuch as

power is not used for the manufacture. In order to prove that contention, the Petitioner was obliged to file a lease deed, dated 9th February, 1972

which admittedly ought to have been registered, but was not so registered. The learned District Judge was of the view that since the lease deed had

neither been stamped nor registered, it could not be admitted in evidence. Therefore, the Petitioner preferred an interlocutory application seeking

the permission of the Court to mark the document in evidence. Thereupon the document was impounded. It appears from the records that he

District Judge suggested the levy of stamp duty and penalty amounting to Rs. 16,335. When the matter went up to the Collector the impugned

Memo dated 31st January, 1976 came to be issued to the Tahsildar, Agastheeswaram, to the following effect:

The District Judge, Kanyakumari at Nagercoil in the reference cited has forwarded an impounded document produced by Southern Textiles,

Nagercoil, the Applicant in Employees State Insurance Original Petition No. 1 of 1973 of the District Court u/s 33 of the Indian Stamp Act, and

requested to realise the stamp duty and penalty amounting to Rs. 16,335 from the party. The Tahsildar, Agastheeswaram, is requested to realise

the amount from the party and remit it under the receipt head of accounts Stamps and report the fact along with the original challan early.

Hence, the present writ petition.

3. The first and foremost point that is raised before me is that the District Judge has no jurisdiction to levy duty, or penalty or even to suggest such

a levy of either duty of penalty. In this ease, as seen from the impugned Memo there was no independent application of the mind by the Collector,

who has merely proceeded as if the Petitioner was liable for the suggestion made by the District Judge. This total abdication of power is clearly

against Section 40 of the Stamp Act. The further point urged by the learned Counsel for the Petitioner is that assuming, without admitting, that the

District Judge could suggest levy of duty or penalty, the calculation itself is wrong. What is to be taken into account for recovery is only one year''s

rental and not three years'' rental.

4. The learned Government Pleader does not controvert the facts that the District Judge impounded the document, that he suggested the levy of

duty and penalty and that that suggestion was accepted without any further adjudication by the Collector, with the result the impugned Memo came

to be issued. However, he would contended that in view of Section 38 of the Act it should be deemed that the District Judge himself has levied the duty and penalty and, therefore, the petition carries no merit.

5. What exactly is the power of the Court concerning this is discernible from Section 38 of the Indian Stamp Act, hereinafter referred to as the

Act. That may be set out:

38(1). When the person impounding an instrument u/s 33 has by law or consent of parties authority to receive evidence and admits such instrument

in evidence upon payment of a penalty as provided by Section 35, or of duty as provided by Section 37 he shall send to the Collector an

authenticated copy of such instrument, together with a certificate in writing stating the amount of duty and penalty levied in respect thereof, and shall

send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case the person so impounding an instrument shall send it in original to the Collector.

The power of a District Judge to impound a document is contained in Section 33(1), which is as under:

38(1). Every person having 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, changeable, 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.

After impounding it is sent to the Collector for adjudication u/s 40(1), which reads as follows:

When the Collector impounds any instrument u/s 33, or receives any instrument sent to him u/s 38, Sub-section (2), not being an instrument

chargeable with a duty not exceeding twenty-five naye paise only, or mortgage of crop Article 41(1)(a) of Schedule I chargeable u/s 3 with a duty

or a bill of exchange or promissory note, he shall adopt the following procedure:

....

6. This is a case in which the document was, no doubt, impounded. However, how the learned District judge came to suggest the levy of duty of

penalty thereby assuming the role of Collector is in inexplicable. I have already noted the admitted facts and I am proceeding only on that basis.

There is absolutely no scope to contend that Section 38 could be applied to this case. Section 39 deals with a situation where the instrument is

admitted in evidence upon payment of penalty u/s 35 or duty as provided by Section 37. Merely because the learned District Judge has suggested

a particular amount as duty and penalty that does not mean that the Collector should abdicate his judicial function of determining the correct duty

and penalty. The impugned memo clearly shows that there is a total abdication of the statutory fraction, which reveals utter disregard of Section 40.

Therefore, the complaint of the writ Petitioner is well justified. It is not open to the Revenue Divisional Officer, as seen from the impugned Memo,

to direct recovery of the sum of Rs. 16,335, mechanically at the suggestion of the District Court. It is also curious to note that having referred to

Section 33 of the Act and having come to know that the document was impounded under that section and seat there should have been an

adjudication u/s 40. Therefore the impugned Memo has clearly no legal basis. On this short ground, the writ petition will stand allowed.

7. Inasmuch as I hold that the impugned Memo has on legal basis, it is not necessary for me to consider the correct duty and penalty leviable,

which is a matter for adjudication by the Collector, notwithstanding the writ petition being allowed.

8. I. The Petitioner will be entitled to his costs.