

(1978) 10 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 2143 of 1976

Southern Textiles, Nagercoil

APPELLANT

Vs

The Revenue Divisional Officer, Padmanabhapuram,
Kanyakumari Dt. and another

RESPONDENT

Date of Decision : 23-10-1978

Acts Referred:

Stamp Act, 1899 — Section 3, 33, 33(1)(a), 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 Govt. Pleader, for the Respondent

Judgement

Mohan, J.—This Writ Petition is for a Writ of Mandamus restraining the first respondent, the Revenue Divisional Officer,

Padmanabhapuram, Kanyakumari Dist., from demanding from the petitioner the sum of Rs. 16,335, pursuant to his Memorandum No. A5/2-

101/76, dated 31st January 1976. The facts leading to the Writ Petition are shortly as under: The petitioner filed E.S.I O.P. No. 1 of 1973 before

the learned District Judge, constituting the Employees State Insurance Tribunal, Nagarcoil, challenging a show cause notice issued to the petitioner

for the recovery of a 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 admitted 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 the 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 Nagarcoil in the reference cited has forwarded an impounded document produced by Southern Textiles.

Nagarcoil, the applicant in E.S I.O.P. No. 1 of 1973 of the District Court under 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.

2. 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 or 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 S.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.

3. 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 contend that in view of S.35 of the Act it should be deemed that the District Judge himself has levied the duty

and penalty and, therefore, the Writ Petition carries no merit.

4. What exactly is the power of the Court concerning this is discernible from S.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 under 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 S.35 or of duty as provided by S.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 S.33(1)(a), which is as under:

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, 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".

After impounding, it is sent to the Collector for adjudication under S.40 (I) which reads as follows:

When the Collector impounds any instrument under S.33, or receives any instrument sent to him under S.38, sub-sec. (2) , not being an

instrument chargeable with a duty not exceeding twenty-five naye paise only or a mortgage of crop. Art.41 (a) of Schedule I chargeable under S.3

with a duty or a bill of exchange or promissory note, he shall adopt the following procedures.....

5. 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 or

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

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

evidence upon payment of penalty under S.35 or duty as provided by S.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 function, which reveals utter disregard of S.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 S.33 of the Act and having come to know that the document was impounded under that section and sent, there should have been an adjudication under S.40,

Therefore, the impugned Memo has clearly no legal basis. On this short ground, the Writ Petition will stand allowed. In as much as I hold that the impugned Memo has no 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. The petitioner will be entitled to his costs, Counsel's fee Rs. 250.