

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

M.P.C. Joseph,
No.21, Collingwood Place,
Colombo 06.
Petitioner

CASE NO: CA/WRIT/138/2017

Vs.

1. G.A.N. Jayantha,
Commissioner of Revenue,
Department of Revenue –
Western Provincial Council,
No.204, Denzil Kobbekaduwa
Mawatha,
Battaramulla.
- 1A. S. Dedigama,
Commissioner of Revenue,
Department of Revenue –
Western Provincial Council,
No.204, Denzil Kobbekaduwa
Mawatha,
Battaramulla.

2. M.C.T.M.S. Fernando,
Provincial Deputy Commissioner
of Revenue (Provincial Assessor),
Stamp Duty Section,
Department of Revenue –
Western Provincial Council,
No.204, Denzil Kobbekaduwa
Mawatha,
Battaramulla.
3. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.
Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Uditha Egalahewa, P.C., with Pasindu Silva,
Miyuru Egalahewa and Arunodha
Jayawardena for the Petitioner.
Manohara Jayasinghe, S.S.C., for the
Respondents.

Argued on: 21.07.2020

Decided on: 02.09.2020

Mahinda Samayawardhena, J.

The Petitioner is an Attorney-at-Law and a Notary Public. The 1st Respondent, the Commissioner of Revenue of the Western Province, found systematic stamp duty forgeries on a large number of Deeds executed by the Petitioner. The *modus operandi* had been affixing forged stamp duty payment receipts on the Deeds, thereby defrauding the Commissioner of Lands, the Commissioner of Revenue and Government revenue.

The Petitioner's position is these forgeries were committed unknown to her by her clerk who pleaded guilty to forgery when proceedings were instituted against him in the Magistrate's Court. The Petitioner further says this clerk also deceived two other Attorneys-at-Law who had obtained the services of the clerk in the course of their notarial practice.

The 1st Respondent by letter marked P5(a) dated 18.11.2015, informed the Petitioner that the stamp duty payable on Deed No. 1989 executed by the Petitioner had not been credited to the Commissioner's account, and requested the Petitioner to pay the stamp duty in a sum of Rs. 2,399,000 with a 300% penalty thereon in a sum of Rs. 7,197,000, amounting to a total sum of Rs. 9,596,000. The payment was requested within seven days.

The Petitioner immediately paid the stamp duty but did not pay the penalty.

The Petitioner also received the letter marked P6(a) dated 24.11.2015 from the 1st Respondent, informing her that the

stamp duty payable on Deed No. 1953 executed by the Petitioner had not been credited to the Commissioner's account. Accordingly, the Petitioner was requested to pay the stamp duty of Rs. 1,319,000 with a 300% penalty thereon in a sum of Rs. 3,957,000, amounting to a sum of Rs. 5,276,000, within seven days.

The Petitioner again paid only the stamp duty, not the penalty.

The Petitioner then received 11 letters from the 1st Respondent marked P7(a)-P17(a) all dated 27.11.2015. By these letters the Petitioner was informed that for Deed Nos. 1992, 1995, 1954, 1958, 1964, 1965, 1966, 1967, 1978, 1980 and 1982 executed by her, stamp duties had not been credited to the account of the Commissioner of Revenue of the Western Province (although forged bank payment receipts had been pasted on the duplicate Deeds). She was requested to pay the said stamp duties with a 300% penalty thereon within seven days. The Petitioner immediately paid the stamp duties, but not the penalties.

The 1st Respondent sent another six similar letters all dated 02.12.2015 to the Petitioner. They are marked P18(a)-P23(a). These letters relate to Deed Nos. 1922, 1923, 1924, 1925, 1932 and 1921 executed by the Petitioner.

As she did before, the Petitioner paid the default stamp duties relevant to the said Deeds but did not pay the penalties thereon.

The 1st Respondent then sent 19 notices in respect of the 19 Deeds mentioned earlier, under section 57(1)(b) of the Financial Statute of the Western Province, No. 6 of 1990, requiring the

Petitioner to pay the stamp duties in default and the penalties thereon immediately. The said notices have been marked P24-P42. P24 and P25 are dated 08.12.2015. P26-P42 are dated 31.12.2015.

The Petitioner filed appeals against these section 57(1)(b) notices, as she is entitled to do under section 79(1) of the Financial Statute of the Western Province. The appeals are marked P43(a)-P43(s).

The P43(p) and P43(b) appeals dated 07.01.2016 were filed against the notices marked P24 and P25 dated 08.12.2015, respectively.

Against the notices marked P26-P42 all dated 31.12.2015, the appeals P43(r), P43(q), P43(i), P43(h), P43(a), P43(k), P43(l), P43(m), P43(n), P43(o), P43(s), P43(d), P43(e), P43(f), P43(g), P43(j) and P43(c) all dated 04.02.2016 were filed, respectively.

As there was no response from the 1st Respondent to these appeals, the Petitioner filed another composite appeal dated 14.07.2016 marked P44. In P44, the Petitioner referred to the previous appeals marked P43(a)-P43(s).

The 1st Respondent did not reply P44 either. Hence the Petitioner handed over P45 on 22.02.2017, reminding the 1st Respondent of the appeals filed and also requesting that an inquiry be held to prove her innocence.

No inquiry was held on these appeals. Instead the 1st Respondent filed cases in the Magistrate's Court to recover the penalties as fines.

The Petitioner has filed this application seeking to quash P5(a)-P23(a) letters and P24-P42 section 57(1)(b) notices by a writ of certiorari; to prevent the Respondents from taking any legal action to recover the said penalties by a writ of prohibition; and to direct the 1st Respondent to consider P43(a)-P43(s) and P44 as proper appeals and to hold an inquiry into the matters reflected in P3(a), P6, P7(a), P8, P9, P11, P13 by mandamus.

The gravamen of the submission of learned President's Counsel for the Petitioner is that in violation of the rules of natural justice, the Petitioner was not heard on her appeals marked P43(a)-P43(s) and P44 prior to the 1st Respondent taking steps to recover the penalties imposed by instituting actions in the Magistrate's Court.

Let me now consider this submission.

Section 57(1)(b) of the Financial Statute of the Western Province states:

if he [the Commissioner] is of opinion that such instrument is chargeable with stamp duty and is not duly stamped, he shall, by notice in writing, require the person liable to pay the stamp duty to pay the proper duty or the amount required to make up the same, together with a penalty not exceeding three times the amount of the proper duty.

This section allows the Commissioner to impose a penalty equal to three times the stamp duty payable, in addition to the stamp duty in default.

Hence, I hold the P24-P42 notices sent under section 57(1)(b) of the Financial Statute contain lawful decisions. These notices cannot be quashed by certiorari.

Section 79(1) of the Financial Statute states any person aggrieved by the decision made under section 57(1)(b) may appeal against it to the 1st Respondent Commissioner within thirty days after the service of notice.

By the appeals marked P43(p) and P43(b) dated 07.01.2016, the Petitioner appealed against the P24 and P25 notices dated 08.12.2015, issued under section 57(1)(b) of the Financial Statute.

In the appeal P43(p), the Petitioner, whilst attaching a photocopy of the envelope which contained the notice, specifically stated it had been posted on 10.12.2015.

In the appeal P43(b), the Petitioner, whilst attaching a photocopy of the envelope which contained the notice, specifically stated it had been posted on 12.12.2015.

This has not been denied by the 1st Respondent immediately thereafter or in the statement of objections filed before this Court.

I consider both appeals as having been filed within time and therefore P43(p) and P43(b) constitute valid appeals.

The other appeals marked P43(a), P43(c)-(o), P43(q)-(s) all dated 04.02.2016 were filed against the notices marked P26-P42 dated

31.12.2015, issued under section 57(1)(b) of the Financial Statute.

Although it appears these appeals have been filed out of time, the Petitioner in the said appeals, whilst attaching a photocopy of the envelope containing the notices, clearly stated the said notices had been posted on 07.01.2016, thereby intimating she had received the notices on a date subsequent to the date of posting.

This position has not been denied by the 1st Respondent either immediately thereafter or in the statement of objections filed before this Court.

The said appeals are dated 04.02.2016 and have therefore been filed within the appealable period.

According to section 79(1), appeals shall be filed within thirty days not from the date of notice but after the service of notice.

I consider the appeals marked P43(a)-P43(s) to be valid appeals.

The Petitioner wishes P44 also to be regarded as a valid appeal. However, P44 cannot be regarded as a valid appeal as it has been filed out of time. But this does not make any difference. P44 is redundant, as the Petitioner had already tendered valid appeals by P43(a)-P43(s).

According to section 79(6) of the Financial Statute, unless there is an adjustment, "*the Commissioner shall fix a time and place for the hearing of the appeal*" made against a notice under section 57(1)(b), and a proper inquiry shall be held. A detailed

procedure is laid down in section 79 running into subparagraphs (1)-(13) regarding the conduct of such an appeal. An aggrieved party can appeal against the decision of the Commissioner to the Board of Review and then to the Court of Appeal. The procedure is exhaustively set out in chapters XXV and XXVI of the Financial Statute.

There cannot be any dispute that no inquiry contemplated by section 79 was held by the 1st Respondent in respect of the appeals marked P43(a)-P43(s).

Without a hearing and decision on these appeals, the 1st Respondent could not have instituted proceedings in the Magistrate's Court to recover the penalties.

For the aforesaid reasons I quash all the Magistrate's Court proceedings initiated by the 1st Respondent to recover the penalties as reflected in the notices marked P24-P42 by certiorari, and direct the 1st Respondent by mandamus to hold an inquiry in respect of the appeals filed by the Petitioner in P43(a)-P43(s) and make an appropriate Order in terms of the law.

The application of the Petitioner is allowed. Let the parties bear their own costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal