

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

H. Nayana N. Silva,  
No.23/4, St. Rita's Road,  
Mount Lavinia.  
Petitioner

**CASE NO: CA/WRIT/165/2017**

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 1<sup>st</sup> Respondent, the Commissioner of Revenue of the Western Province, found systematic stamp duty forgeries on a number of Deeds executed by the Petitioner. The *modus operandi* had been affixing forged stamp duty payment receipts on the duplicate Deeds, thereby defrauding the Registrar of Lands, the Commissioner of Revenue and Government revenue.

The Petitioner's position is these forgeries were committed unknown to her by the clerk of the senior lawyer under whom she is practicing, and the said clerk pleaded guilty to forgery when proceedings were instituted against him in the Magistrate's Court.

The Petitioner's senior is the Petitioner in CA/WRIT/137/2017. The Petitioner further says this clerk similarly committed frauds on her senior and another Attorney-at-Law (i.e. the Petitioner in CA/WRIT/138/2017) who obtained the services of the clerk in the course of their notarial practice.

The 1<sup>st</sup> Respondent by letter marked P6(a) dated 17.11.2015 informed the Petitioner that the stamp duty payable on Deed No. 586 executed by the Petitioner had not been credited to the Commissioner's account and requested the Petitioner to pay the stamp duty together with a 300% penalty thereon, amounting to a total sum of Rs. 2,156,000, within seven days.

The Petitioner immediately paid the stamp duty, but not the penalty.

The Petitioner then received the letters marked P8(a) and P8(b) both dated 23.11.2015 from the 1<sup>st</sup> Respondent, informing her that the stamp duty payable on Deed Nos. 585 and 630 executed by the Petitioner had not been credited to the Commissioner's account. Accordingly, the Petitioner was requested to pay the stamp duty and a 300% penalty thereon in a sum of Rs. 168,000 within seven days.

Again, the Petitioner paid only the stamp duty; the penalty was not paid.

The 1<sup>st</sup> Respondent then sent three notices marked P10(a), P10(b) and P10(c) dated 08.12.2015 in respect of the three 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 stated penalties immediately.

The Petitioner filed appeals against the said section 57(1)(b) notices, as she is entitled to do under section 79(1) of the Financial Statute of the Western Province.

Appeal P11(a) dated 07.01.2016 was filed against the P10(b) notice; appeal P11(b) dated 07.01.2016 was filed against the P10(c) notice; and appeal P11(c) dated 07.01.2016 was filed against the P10(a) notice.

The 1<sup>st</sup> Respondent, without holding an inquiry into these appeals, then served the section 87 notices dated 11.01.2016 marked P12(a), P12(b) and P12(c) on the Petitioner. The Section 87 notice conveyed the intention of the 1<sup>st</sup> Respondent to take

legal action against the Petitioner for the recovery of default stamp duties.

The 1<sup>st</sup> Respondent by the letters marked P14(a)-P14(c) dated 25.04.2016 informed the Petitioner of his inability to grant concessions or relief, as the matter pertains to forged documents defrauding government revenue.

It appears this is the appeal decision of the 1<sup>st</sup> Respondent in respect of the said appeals marked P11(a)-P11(c). This decision was taken without an inquiry as contemplated in the Financial Statute of the Western Province.

This is the first complaint of the Petitioner.

Let me now consider the second complaint of the Petitioner.

The Petitioner received the letter marked P21 dated 08.03.2016 from the 1<sup>st</sup> Respondent, whereby she was informed to pay an aggregate amount of Rs. 366,000 as default stamp duties and a 300% penalty thereon, on the basis stamp duties had not been paid on Deed Nos. 553, 573 and 574 executed by her.

The Petitioner paid the default stamp duties but not the penalties.

The 1<sup>st</sup> Respondent sent the notice marked P15 dated 23.05.2016 under section 57(1)(b), informing the Petitioner to pay the said amount immediately.

Against this notice, the Petitioner filed appeals P18(a), P18(b) and P18(c) all dated 08.12.2016.

As no inquiry was held, the Petitioner by P19 dated 22.02.2017 requested that the 1<sup>st</sup> Respondent hold an inquiry.

The 1<sup>st</sup> Respondent by P20 dated 22.03.2017 informed the Petitioner of his inability to grant relief and also that legal actions had already been initiated (in the Magistrate's Court) to recover the penalties as fines.

The Petitioner has filed this application seeking to quash the P6(a), P7, P8(a), P8(b), P14(a), P14(b), P14(c), P20, P21 letters and the P10(a), P10(b), P10(c), P12(a), P12(b), P12(c), P15 notices by a writ of certiorari; to prevent the Respondents from taking legal action to recover the said penalties by a writ of prohibition; and to direct the 1<sup>st</sup> Respondent to consider P11(a), P11(b), P11(c), P18(a), P18(b), P18(c), P19 as proper appeals and to hold an inquiry into the matters reflected in the P6(a), P7, P8(a), P8(b), P14(a), P14(b), P14(c), P20, P21 letters and the P10(a), P10(b), P10(c), P12(a), P12(b), P12(c) notices 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 P11(a), P11(b), P11(c), P18(a), P18(b), P18(c) and P19, prior to the 1<sup>st</sup> Respondent taking steps to recover the penalties 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 P10(a), P10(b), P10(c) and P15 notices sent under section 57(1)(b) of the Financial Statutes of the Western Province 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 1<sup>st</sup> Respondent Commissioner within thirty days after the service of notice.

By the appeals marked P11(a), P11(b) and P11(c) dated 07.01.2016, the Petitioner appealed against the P10(a), P10(b) and P10(c) notices dated 08.12.2015, issued under section 57(1)(b) of the Financial Statute.

The Petitioner does not say when exactly she received these notices. Assuming the said notices dated 08.12.2015 had been received by the Petitioner on 09.12.2015, the appeals dated 07.01.2015 were filed within thirty days of the service of notice, as required by section 79(1) of the Financial Statute.

I hold that the appeals P11(a), P11(b) and P11(c) constitute valid appeals.

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 elaborately illustrated in chapters XXV and XXVI of the Financial Statute.

There cannot be any dispute that no inquiry contemplated in section 79 was held by the 1<sup>st</sup> Respondent in respect of the three appeals marked P11(a)-P11(c).

Without hearing and deciding on the said appeals, the 1<sup>st</sup> Respondent could not have sent the section 87 notice or instituted proceedings in the Magistrate’s Court to recover the relevant penalties.

However, the position regarding the appeals marked P18(a), P18(b) and P18(c) dated 08.12.2016 is different. These appeals were filed against the section 57(1)(b) notice dated 23.05.2016 marked P15. Clearly these three appeals, having been filed more than six months after the P15 notice, are out of time. These three appeals cannot be regarded as valid appeals. The appeal marked P19 dated 22.02.2017 also cannot be regarded as a valid appeal for the same reason.



For the aforesaid reasons I hold:

(a) Unless the appeals marked P11(a), P11(b) and P11(c) are heard and determined, the 1<sup>st</sup> Respondent cannot institute proceedings in the Magistrate's Court to recover the penalties as reflected in the notices marked P10(a), P10(b) and P10(c).

The Magistrate's Court proceedings instituted to recover the said penalties are null and void. I quash the said proceedings by way of a writ of certiorari.

(b) The 1<sup>st</sup> Respondent is directed by way of a writ of mandamus to hold an inquiry in respect of the P11(a), P11(b) and P11(c) appeals and make an appropriate Order in terms of the law.

(c) The appeals marked P18(a), P18(b) and P18(c) filed against the notice marked P15 are invalid.

The Magistrate's Court proceedings instituted to recover the penalties as reflected in the P15 notice can continue.

The application of the Petitioner is partly 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