

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.16436 of 2002

ORDER:

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This writ petition is filed assailing the notice in Lr.No.3620/G1/2003 dated 28.7.2003 issued by the District Registrar, Registration and Stamps Department, Ranga Reddy district, 1st respondent herein.

By virtue of the above said notice dated 28.7.2003, the District Registrar, 1st respondent herein directed the petitioner herein to pay a sum of Rs.4,59,807/- towards the alleged evaded stamp duty saying that the Regional Vigilance and Enforcement Department, Hyderabad detected (43) unregistered lease deeds executed by the private building owners in favour of the writ petitioner for erection of towers etc., and that the stamp duty worked out being Rs.4,59,807/- under Article 31(a), (ii), (iii) and (iv) of Schedule-1A of Indian Stamp Act, 1899.

The factual matrix that arises for consideration of this Court for adjudication of the issue involved in the present writ petition is as infra:

It is the case of the writ petitioner that it is a company and a licensee offering Cellular Services within the State of Andhra Pradesh. For the purpose of providing the said service, it entered into either lease deeds or licence deeds with various owners for properties depending upon the requirement. The petitioner company received the proceedings in Rc.No.1118/RV&EO-HR/MRO 2002 dated 14.2.2003 from the Superintendent of Police, Regional Vigilance and Enforcement Officer, Hyderabad Rural, Hyderabad asking it to furnish details as to the number of towers erected or installed on private buildings, names and addresses of those private building owners

where towers are erected and about the agreements entered into with owners of the building etc. On receipt of the said proceedings, the writ petitioner herein vide letter dated 27.2.2003 furnished the said information. It is the further case of the writ petitioner that it did not receive any notice whatsoever either from the Superintendent of Police, the Regional Vigilance and Enforcement Officer, Hyderabad Rural, Hyderabad or from the District Registrar, 1st respondent herein and that the District Registrar, 1st respondent herein issued the impugned proceedings vide notice dated 28.7.2003 straightaway asking the petitioner to pay the alleged deficit stamp duty of Rs.4,59,807/-.

No counter affidavit is filed by the respondents herein

Heard Sri Ghanta Rama Rao, learned counsel appearing for writ petitioner and also the learned Government Pleader for Revenue and perused the material available on record.

Now the point for adjudication is whether the impugned notice in Lr.No.3620/G1/2003 dated 28.7.2003 is sustainable and tenable and whether the same is in conformity with the relevant provisions of law?

It is contended by Sri Ghanta Rama Rao, learned counsel for writ petitioner that the notice impugned in the present writ petition is in total violation of the principles of natural justice and opposed to very spirit and object of the provisions of Section 41-A of the Indian Stamp Act, 1899.

At this juncture, it is relevant to extract Section 41-A of Indian Stamp Act, 1899, which stipulates as follows:

“41-A. Recovery of Stamp Duty not levied or short levied:-

(1) Whereafter the commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1986, any instrument chargeable with duty has not been duly stamped and registered by any

Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a notice on the person by whom the duty was payable requiring him to show cause why (the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.)

Provided that where the non-payment was by reason of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the Collector may within ten years from the date of registration serve a notice on such person to show cause why (the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.)

(2) The Collector or any officer specially authorized by him in this behalf shall, after considering the representation if any, made by the person on whom notice is served under sub-section (1), determine by an order, (the amount of duty and the penalty) due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount as determined. On payment of the (amount) the Collector shall add a certificate under Section 42.

(3) Any person aggrieved by an order under sub-section (2) may prefer an appeal before the (Chief Controlling Revenue Authority) Andhra Pradesh, Hyderabad within three months from the date of such order.

(4) Any (amount) payable under this section shall be recovered as an arrear of land revenue)."

Per contra, the learned Government Pleader has opposed the writ petition by strenuously contending that the 1st respondent herein issued the impugned notice dated 28.7.2003 strictly in conformity with the relevant provisions of Indian Stamp Act and that the present writ petition is not maintainable in view of availability of alternative remedy of appeal under Section 41-A(3) of the Indian Stamp Act before the Chief Controlling Revenue Authority.

As per the provisions of Section 41-A(1), it is mandatory and

imperative on the part of the authorities to issue show cause notice. In the instant case, as evident from the material available on record, the 1st respondent herein failed to adhere to the said provisions of law and did not issue any show cause notice to the writ petitioner. It is a settled and well established proposition of law that any action by the authorities, which has civil consequences should necessarily be preceded by a show cause notice and opportunity of being heard. Fastening the petitioner with liability without being preceded by any show cause notice undoubtedly tantamounts to violation of not only the mandatory provisions of Section 41-A of Indian Stamp Act, but also the principles of natural justice.

In the instant case, the District Registrar, 1st respondent herein issued the impugned notice in total violation of the statutory mandate as stipulated under Section 41-A of the Indian Stamp Act and also in violation of the principles of natural justice. In view of the said reason, the contention of the learned Government Pleader with regard to availability of alternative remedy of appeal is also untenable and liable to be rejected.

For the reasons recorded supra, the impugned notice dated 28.7.2003 issued by the District Registrar, 1st respondent herein is neither sustainable nor tenable in the eye of law and I deem it apposite to set aside the same.

Accordingly, the writ petition is allowed, setting aside the notice in Lr.No.3620/G1/2003 dated 28.7.2003 issued by the District Registrar, 1st respondent herein. This order, however, does not preclude the respondents from proceeding in accordance with law, after giving notice and opportunity to the writ petitioner herein. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 21.6.2013
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