

MANU/BH/0058/1944

Equivalent Citation: AIR1945Pat96

**IN THE HIGH COURT OF PATNA  
SPECIAL BENCH**

Decided On: 26.01.1944

Appellants:**In Re: Payanda Khan**

**Hon'ble Judges/Coram:**

*Saiyid Fazl Ali, C.J., Herbert Ribton Meredith and Chatterji, J.*

**JUDGMENT**

**Saiyid Fazl Ali, C.J.**

1. This is a reference made to this Court by the Revenue Commissioner of Orissa under Section 57, Stamp Act, in the following circumstances: In 1939 the Chief Minister of Orissa while touring in Koraput district noticed that a number of Kabulis were lending money at an exorbitant rate of interest, and to quote the words of the Collector of the district he was told by the Chief Minister that "their activities needed to be curtailed." Therefore the Collector instructed his Sub-divisional Officers and the Taluk Officers or Tahsildars to make certain enquiries and in pursuance of his instruction the Tahsildar of Jeypore summoned certain Kabulis to produce their chittas and one of them Payanda Khan of Kotapad produced a volume of documents which were found to be in the nature of mortgages of immovable property bearing only one anna stamp each. The Tahsildar submitted the entire volume to the Sub-divisional Officer and solicited his instructions in the matter. The Sub-divisional Officer was of opinion that the documents should be impounded under Section 33 of the Act and though the Tahsildar was himself doubtful as to whether he had jurisdiction to impound them, he eventually proceeded to do so and transmitted the book through the Sub-divisional Officer to the Collector who passed an order to the effect that a deficit stamp duty of Rs. 46/11 together with a penalty of Rs. 780, be realised from Payanda Khan. Payanda Khan thereupon appealed to the Revenue Commissioner who being in doubt whether the Tahsildar could be held to have been acting in the performance of his functions when the documents came up before him has referred this case to the High Court under Section 57, Stamp Act.

2. Section 33, Clause (1) under which the documents were impounded provides that 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. The question to be considered is whether the documents were produced or came before the Tahsildar in the performance of his functions and whether he had jurisdiction to impound them. The learned Revenue Commissioner in dealing with this question has referred only to two Acts under which it might be possible to argue that the documents were produced or came before the Tahsildar in the performance of his functions, these being Madras Act 3 of 1869 (Madras Revenue Summons Act) and Madras Act 5 of 1893 (Madras Revenue Enquiries Act). The latter Act, as pointed out by him, gives power to Government by order to confer upon an officer deputed to make an enquiry the power to summon

any person for the purpose of the enquiry. The Revenue Commissioner rightly points out that this Act does not apply to the present case because there is no specific formal order of Government investing the Tahsildar with such power. Thus upon the statement of the case as found in the reference the only question to be decided is whether the case falls under the Madras Act 3 of 1869 which was an Act promulgated

to empower the revenue officers to summon persons to attend at their kutoheries for the settlement of matters connected with the revenue administration.

**3.** The Preamble of the Act refers to the necessity for the enactment which is stated in these words:

Whereas it is found that the revenue administration of the country is retarded because the revenue officers, namely, the Collectors .... Tahasildars and Deputy Tahasildars are not made competent, by express provision of law, to issue summons for the attendance of persons or the production of documents, in certain cases in which it is their duty to hold investigation etc.

**4 .** Then follows the first section which provides that certain revenue officers including the Tahasildars.

shall have power to summon all persons resident within the district, whose evidence may appear to them necessary for the investigation of any matter in which they are authorised to hold an enquiry and also to require the production of any document relevant to the matter under enquiry which may be in the possession or under the control of such person.

**5.** Reading this provision along with the Preamble, it seems to me to be clear that the tahsildar could be held to have been acting under this Act only if the documents were relevant to an enquiry which the tehsildar was authorised to hold and which it was his duty to hold in connexion with the settlement of matters connected with the revenue administration. The tahasildar himself has stated in his report dated 18th July 1939 that the impounded documents were produced before him in response to a notice issued "for the purpose of some information to be furnished to higher authorities." It is not at all clear whether the Chief Minister had given any definite instructions to the District Magistrate but from the letter of the District Magistrate to the Sub-Divisional Officer dated 10th June 1939 it appears that he" (the District Magistrate) wanted that

enquiries should be made as to whether the Kabulis were advancing money to the backward hill tribes and as many instances as possible were to be gathered giving details of transactions which are known to have taken place so as to enable him to submit proposal to Government to deal with the evil.

**6.** Again after these documents were produced before the tahasildar it was at one stage, suggested to him that preventive action might be taken under the Criminal Procedure Code against Payanda Khan and in his letter which the Sub-Divisional Officer wrote to the tahasildar on 8th December 1939 he said that the bonds referred to by the tahasildar had "come to the notice of the Magistrate in the discharge of his duties." Thus, upon the materials before us, it is not at all clear whether the tahsildar was acting as a revenue officer or as a Magistrate in holding the enquiry and at one stage it was conceded before us that the summons had not been issued against

Payanda Khan for the settlement of any matter connected with the revenue administration. It is therefore difficult to hold that the case comes within Madras Act 8 of 1869. Now if the tahsildar was not authorised by that Act to order the production of the documents I cannot think of any other provision of law by which he can be said to have been authorised to take that step. The enquiry which he was holding was certainly not a judicial proceeding. It was an enquiry directed by the Collector for the purpose of obtaining certain information which might have been collected by a private person also and probably neither the tahsildar nor the officers superior to him knew what would be the final step to be taken on the completion of the enquiry. In such circumstances I am unable to hold that the tahsildar was acting in the discharge of his functions when he ordered the production of documents or that he had power to compel Payanda Khan \*to produce the document or to proceed against him when he refused to produce them. In my opinion the documents were not produced nor did they come up before the tahsildar in the performance of his functions and they could not be legally impounded.

**7.** The learned Government Pleader of Orissa suggested that the tahsildar had authority to act in the matter under Section 49, Government of India Act, read with Sections 48 and 50. These sections have not even a remote bearing upon the matter before us and need not be discussed. The parties in the course of their arguments also referred to the cases in King-Emperor v. Balu Kuppayyan 25 Mad. 525, Sashi Mohan v. Kumud Kumar AIR 1918 Cal 1026, Ujjal Singh Sundar Singh v. Ahmad Yar Khan A.I.R. 1936 Lah. 985, In re Narayandas Nathuram MANU/NA/0083/1942 : A.I.R. 1943 Nag. 97 and Thakur Das v. Emperor AIR 1932 Lah 495. Most of these cases are interesting enough as providing specific instances in which the officer who impounded the document was held to be not acting in the performance of his functions, but otherwise they are of no great help in deciding this case. In my opinion, however, the case in 25 Mad. 5251 in which some documents were held to have been legally impounded requires to be specifically dealt with. In that case upon a complaint having been made against a person for having committed an offence under Section 64 (c), Stamp Act of 1899, the Magistrate concerned issued a search warrant under which certain documents were seized and impounded under Section 38 (2) of the Act.

**8.** A question then arose whether the action of the Magistrate in impounding the document was illegal and whether the document had come before him in the performance of his function within the meaning of Section 33 (2). It was held by the High Court that the word "comes" is sufficiently wide to include production of documents under a search warrant issued by a Magistrate. This case can be easily distinguished from the present case, because there the Magistrate had legal authority to issue a search warrant and could compel the party to produce the document.

**Chatterji, J.**

**9.** I agree.

**Herbert Ribton Meredith, J.**

**10.** I agree.

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