

**A CRITICAL NOTE ON THE POWERS OF THE SUB-COLLECTORS/R.D.Os.  
TO DETERMINE STAMP DUTY AND PENALTY ON UNSTAMPED  
OR UNDER-STAMPED DOCUMENTS – IMPACT OF THE DECISION  
BY V.V.S. RAO, J. IN THE CASE OF G. RAMESH V. R.D.O.,  
NALGONDA, 2006 (6) ALD 116**

*By*

**—V.V. MALLIKARJUNA RAO, L.L.B.,  
Advocate, Narsipatnam, Vizag, A.P.**

You might have noticed that in the above decision His Lordship held that there is no notification under Section 9(b) Stamp Act Section 76/Conferring Powers on Sub-Collector/RDOs or delegating to them the powers of District Collector to determine stamp duty and levying penalty on un-stamped documents filed into Courts. Since I have been practising for the last 57 years getting stamp duties and penalties levied by the Sub-Collector and since it is usual for all of us to file Petitions under Section 38(2) Stamp Act requesting the Court to send such documents to the Sub-Collector and since they are determining stamp duty and levying penalty and certifying the same by an endorsement on the said documents, I was taken aback on seeing this ruling. The said reported case arose in Nalgonda District. Of course I do not know about the notifications applicable to Telangana Area. But the trouble is the decision nowhere states that it is confined to Telangana Area but sounds as if that is the situation in the entire State of A.P. in Para 9 of the decision. His Lordship observed that “Neither the Government Pleader nor the Counsel for petitioners could produce any notification empowering the Sub-Collectors to determine the stamp duties and levying penalties” His Lordship further observed that “No such notification could be found in any of the Annotated Bare Acts or even in Commentaries on Stamp Act” and that “It was clearly admitted that no such notification was ever issued.” Therefore His Lordship held that the RDO has no such powers and that it is only the District Collector who can determine Stamp Duty and levy penalty.

Therefore I have herewith enclosed Xerox copies of pp.39, 40 and 41 of Stamp Act MLJ Publication of 1968, 3rd Edition (Annexure I) and Pp.953, 954 of AIR publication of Stamp Act 2nd Edition of 1951 (Annexure II) in which full text of the notifications conferring powers on Sub-Collector/RDOs are given. While the MLJ edition does not give all the notifications Nos. the AIR edition gives all these numbers. The MLJ edition further states that “In Madras and that part of Andhra Pradesh which formed part of Madras State, the RDOs are so empowered” when once the RDO is empowered as the District Collector under Section 38, he gets the power to deal with the same as per Section 40(1)(b) and (3) to determine the proper stamp payable and levy penalty and collect the same. The RDO as per Section 42 will have to endorse thereon a Certificate of his having determined the Proper stamp. Levying penalty and of certifying the same and the said Certificate is final for all purposes.

I therefore request the Learned Members of the Legal fraternity to examine the contents of this letter and point out to me if I am wrong anywhere. Also resist any attempt from any quarter a move to send documents to the District Collector by bringing to their notice these notifications as otherwise lot of inconvenience will be caused to us. It is unfortunate and deplorable that neither Counsel nor the Government Pleader could bring these notifications to the notice of His Lordship due to which alone the learned Judge had to make those observations.

It is deplorable that neither the publications of Annotated Bare Acts nor even the Commentaries placed before His Lordship published these notifications. This shows the poor quality of present day publications of even commentaries when compared with the publications of yesteryears. Even proper Index is not given in the present publications and it is the new entrants into the profession that are at a disadvantage. I think the time has come when we should agitate for a ban on publications of either commentaries or Bare Acts which do not publish all notifications.

There are several other instances where such errors had to be committed due to Counsel not bringing notifications to the notice of the Court. For example a Division Bench of our High Court in *Ashifaquddin and others v. Azizuddin and others* reported in 1978-1 APLJ 432(DB), held that civil Courts constituted under A.P. Civil Courts Act, 1972 have jurisdiction to try Civil Suits arising in Scheduled (Agency) Area where parties are non-tribals. Evidently because Section 4 of the A.P. Scheduled Areas Land Transfer Regulation 1 of 1959 states that a suit against member of a Scheduled Tribe should be filed only in an Agency Court, the Division Bench held that a suit between non-tribals can be filed and tried in civil Courts constituted under the A.P. Courts (Civil) Act, 1972. But here the fundamental error is the assumption that the said Civil Courts Act extended to the Agency. As per the present constitution (unlike the Government of India Act, 1935) an enactment either of the State Legislatures or of the Parliament will automatically extend to the Agency Areas unless the Governor issues a Notification under the Constitution Schedule V Para 5(1) stating that "It shall not apply to the Agency". In Para 25, the Bench observed that there is no notification of the Governor excluding the application of A.P. Civil Courts Act to the Agency and in Para 25 and in Para 46 it was observed that the absence of such a notification was admitted (evidently by Counsel).

For example, Narsipatnam Munsiff Court was constituted for six Mandals including Nathavaram Mandal which contains some Agency Villages. As per the Bench decision the Narsipatnam Munsiff Court should have jurisdiction over these Agency Villages also. But it cannot be so. In the above reported decision every one concerned overlooked Section 1(3) and the Notification thereunder Section 1 of the A.P. Civil Courts Act, 1972 states "It shall come into force in such area and on such date as the Government may, by notification appoint and they may appoint different dates for different areas....." and the Notification G.O. Ms. No.1573, dated 30-10-1972 published in A.P. Gazette Extraordinary dated 31-10-1972 says that "the entire Act comes into force in the entire State except in the Scheduled Areas with effect from 1-11-1972 which clearly shows that the entire discussion about absence of a notification under Constitution Schedule V Para V(1) excluding the application of the Civil Courts Act to Agency Areas was totally unnecessary. There are other instances also under other enactments on which I could not now readily lay my hand. The above DB ruling was followed in three or four subsequent reported rulings. I therefore humbly submit that fellow members of the Bar should keep themselves away of all notifications under various enactments and I call for an agitation to get a ban imposed on books which do not publish full text of all notifications issued thereunder.

#### *Annexure - I*

The power to appoint "Collectors" under the Indian Stamp Act has been delegated to the Board of Revenue.—G.O. 2911, Separate Revenue, dated 6-10-1914.

The following officers have been appointed to be Collectors in respect of the powers conferred under section of the Indian Stamp Act, 1899, noted against them, within the limits of their respective jurisdictions :—

<i>Officers</i>	<i>Sections</i>
(1) All Sub-Collectors, Head Assistant Collectors, Deputy Collectors in charge of divisions and Assistant Collectors who are First-class Magistrates in charge of divisions;	16, 18, 31, 32 38, 42, 48, 49, 52 to 56, 61 and 73.
(2) All Tahsildars, Deputy Tahsildars in independent charge, the Assistant Tahsildar of Trichinopoly and the Assistant Tahsildar of Madras;	18, 49 and 52 to 55;
(3) All Registering Officers appointed under the Indian Registration Act, 1908;	16;
(4) All District Registrars;	.. Sections 38(2), 40, 42, 48 and 56 in regard to instruments presented to or impounded by them or officers subordinate to them.
(5) Revenue Divisional Officers :	.. Section 37 read with Rule 18 of the Government of India Stamp Rules.
– B.P. Nos.320, 9-12-1899; 162/1534-R., Mis., 18-8-1905; 268/1716-R. Mis., 18-11-1908; 215-R. Mis., 9-2-1916; 1097-R. Mis., 17-8-1918; 65/1259-R., Mis., 20-9-1918; 4-R, Press (Mis.), 12-4-1932; 337 Mis., 22-11-1932; and B.P.3-R., Press, 13-4-1935.	

The Personal Assistants to the District Collector of Vizagapattam, East Godavari, Tanjore, Madura, Salem and Malabar – whether these Personal Assistants are Sub-Collectors, passed Assistant Collectors or Deputy Collectors—have been appointed to be Collectors within the limits of their respective districts, subject in each case to the general control of the District Collector.—B.P. 186-R., Mis., (Stamps), 23-7-1934 and B.P. Mis. 569, 25-2-1939.

In exercise of the powers conferred by Section 76-A of the Indian Stamp Act, 1899 (Central Act II of 1899), as applied to the States of Banganapalle and Pudukkottal in Revenue Department Notification No.1138, dated the 16th November, 1948, published in the Extraordinary Issue of Part I of the Fort St. George Gazette, dated the 16th November 1948, and No.677, dated the 5th August, 1948, published in the Extraordinary Issue of Part I of the Fort St.

George Gazette, dated the 6th August 1948, His Excellency the Governor of Madras hereby delegates to the Board of Revenue all the powers conferred on the Provincial Government by Section 74 of the said Act.

This notification shall be deemed to have come into force on the 1st December 1948 in the case of Banganpalle State and on the 12th August 1948 in the case of Pudukkottai State.—G.O. Ms. 1295, Revenue (No. 833), dated 13-5-1949.

#### *Annexure – II*

In Madras and that portion of Andhra Pradesh which previously formed part of Madras the following officers have been appointed to be Collectors in respect of the powers conferred under section of the Indian Stamp Act, 1899, noted against them, within the limits of their respective jurisdictions :—

Officers	Sections
(1) All Sub-Collectors, Head Assistant Collectors, Deputy Collectors in charge of divisions and Assistant Collectors who are First-Class Magistrates in charge of divisions;	16, 18, 31, 32, 38, 42, 48, 49, 52 to 56, 61 and 73.
(2) All Tahsildars, Deputy Tahsildars in independent charge, the Assistant Tahsildar of Tiruchirappalli and the Assistant Tahsildar of Madras.	18, 48, 49 and 52 to 55;
(3) All Registering Officers appointed under the Indian Registration Act, 1908;	16;
(4) All District Registrars;	31, 32, 38(2), 40, 41, 48 and 56 in regard to instruments presented to or impounded by them or officers subordinate to them.
(5) Revenue Divisional Officers. Government of India Stamp Rules.	37 read with Rule 18 of the
(6) The Assistant Registrar of Joint Stock Companies, Madras City and the Personal Assistant to the Inspector-General of Registration.	31, 32, 38(2), 40, 41, 42, 48 and 56.

The Personal Assistants to the District Collectors of East Godavari, West Godavari, Krishna, Guntur, Kurnool, Madras, Chingleput, North Arcot, South Arcot, Tanjore, Tiruchirappalli, Madurai, Ramanathapuram, Tirunelveli, Coimbatore and Malabar—whether these Personal Assistants are Sub-Collectors, passed Assistant Collectors, or Deputy Collectors have been appointed to be Collectors within the limits of their respective districts, subject in each case to the general control of the District Collector. (See Madras Stamp Manual).

**PRACTICE OF SUB-COLLECTORS/R.D.OS. REFERRING UNSTAMPED OR UNDER STAMPED DOCUMENTS FOR LEVY OF STAMP DUTY AND PENALTY, TO THE CONCERNED M.R.OS./TAHSILDARS TO INDICATE THE MARKET VALUE OF THE PROPERTY AND THEN LEVYING THE SAME ON ITS BASIS – UNWARRANTED**

*By*

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Gudur (Nellore Dist.), A.P.

It is common knowledge that unstamped or under stamped documents are sent to the Sub-Collectors/R.D.Os. for levy of stamp duty and penalty thereon. The document is