

Rakesh Singare Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Jan-05-2009

Reported in : 2009(5)MPHT207

Judge : Prakash Shrivastava, J.

Appellant : Rakesh Singare

Respondent : State of Madhya Pradesh and ors.

Disposition : Petition dismissed

Judgement :

ORDER

Prakash Shrivastava, J.

1. This writ petition is directed against the circular dated 17-5-2005 issued from the office of the Registrar providing for calculation of stamp duty on the mining lease by auction sale and the order dated 5-7-2006 passed by the Incharge Officer (Mining Branch) Collectorate, Balaghat cancelling the mining lease for not getting the agreement registered and for not depositing the instalments.

2. The brief facts are that the sand quarry in Village Gaykhuri, Tehsil and District Balaghat in Khasra No. 152/1 area 7.80 acres was auctioned in favour of the petitioner. The agreement in the prescribed Form 18 under Rule 37(1) of the M.P.

Mining and Mineral Rules, 1961 was executed for grant of quarry lease in favour of the petitioner for the period of 2 years from 1-4-2005 to 31-3-2007 on payment of Rs. 5,04,000/- as contract amount and also payment of Rs. 12,600/- as advance money and Rs. 63,000/- as security. The case of the petitioner is that he was asked to submit Non Judicial Stamp papers of Rs. 20,140/- for lease agreement which he deposited on 26-3-2005 with the respondent Nos. 2 and 3. On 31-3-2005 he deposited the security amount of Rs. 75,600/- and thereafter he again deposited Rs. 63,000/-. The lease deed dated 6-8-2005 (Annexure P-1) was drafted and signed. Thereafter on 7-12-2005 a show-cause notice was issued to the petitioner alleging violation of the conditions of agreement on the ground that the petitioner did not get the lease deed registered and did not pay the instalments of 1-7-2005 and 1-10-2005 and also did not file the monthly return. The petitioner submitted the reply that he was ready to get the agreement registered for one year for which he had submitted the stamps but he was being asked to get the agreement registered for two years for which he was not agreeable. Another show-cause notice dated 16-3-2006 was served upon the petitioner to get the lease deed registered within a week and produce the registration receipt failing which the sanction of the mining would be cancelled and the mine will be reaucted. Petitioner filed reply dated 22-3-2006. There was a dispute as to which article of Stamp Act will be attracted in the matter for payment of stamp duty. The respondents passed the order dated 5-7-2006 cancelling the lease deed on the ground that the petitioner did not get the lease deed registered and did not pay the instalment. Aggrieved with this, the petitioner has filed the present writ petition.

3. Learned Counsel appearing for the petitioner submitted since under the lease, the rent was fixed and no premium was payable, therefore, he had deposited the stamp papers as required by Article 35(a)(ii) of the Indian Stamp Act. He further submitted that since the respondents did not act upon the lease deed and did not supply the royalty book, therefore, he could not pay the instalment.

4. Learned Counsel appearing for the respondents submitted that under the lease deed premium was payable by the petitioner, therefore, Article 35(a)(ii) will not be attracted and he would be required to pay the stamp duty at the prescribed rate of

8% in terms of the circular of the Registrar dated 17-5-2005. He further submitted that by the impugned order dated 5-7-2006 the lease of the petitioner has been cancelled, therefore, proper remedy for him is to file an appeal under Rule 13-A of the M.P. Mining and Mineral Rules, 1961.

5. The objection relating to availability of alternate remedy needs to be considered first. In the present matter, not only the order dated 5-7-2006 against which the appeal is provided in Rule 13-A is under challenge but the circular of the Registrar Stamps dated 17-5-2005 is also under challenge. The issue whether contract amount payable is premium or rent is also involved. Therefore, it would not be proper to dismiss the writ petition on the ground of availability of alternate remedy.

6. Now the question that arises for consideration is as to whether the amount of Rs. 5,04,000/- payable by the petitioner as contract amount under the lease was in the nature of premium or rent. The applicability of Article 35(a)(ii) of the Stamp Act will depend upon the answer to this question.

7. Section 105 of the Transfer of Property Act defines 'lease' and also 'premium' and 'rent'. When the interest of the lessor in immovable property is parted with for a price, the price paid is 'premium'. Such a payment can be made in instalments also. As against this, periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of 'rent'. Section 105 of the Transfer of Property Act provides as under:

105. 'Lease' defined.--A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

'Lessor', 'lessee', 'premium' and 'rent' defined.--The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

8. Supreme Court in the matter of Commissioner of Income-tax, Assam v. The Panbari Tea Co. Ltd. reported in : AIR 1965 SC 1871 has considered the distinction between the premium and the rent and after referring to : AIR 1943 PC 153 : : AIR 1957 SC 729 and AIR 1961 SC 732 has held that:

3. The distinction between premium and rent was brought out by the Judicial Committee in Kamakshya Narain Singh v. Commr. of Income-tax B. and O. (1943) 11 ITR 513 at p. 519 : AIR 1943 PC 153 at p. 156 thus:

It (salami) is a single payment made for the acquisition of the right of the lessees to enjoy the benefits granted to them by the lease. That general right may properly be regarded as a capital asset, and the money paid to purchase it may properly be held to be a payment on capital account. But the royalties are on a different footing.

It is true that in that case the leases were granted for 999 years; but, though it was one of the circumstances, it was not a decisive factor in the Judicial Committee coming to the conclusion that the salami paid under the leases was a capital asset. This Court in Member for the Board of Agriculture Income-tax, Assam v. Sindhurani Chaudhurani : (1957) 32 ITR 169 : (S) AIR 1957 SC 729 defined 'salami' as follows:

The indicia of salami are (1) its single non-recurring character, and (2) payment prior to the creation of the tenancy. It is the consideration paid by the tenant for being let into possession and can be neither rent nor revenue but is a capital receipt in the hands of the landlord. 'It is true that in that case the payment was paid in a single sum, but that was not a conclusive test, for salami can be paid in a single payment or by instalments. The real test is whether the said amount paid in a lump sum or in instalments is the consideration paid by the tenant for being let into possession. This Court again in Chintamani Saran Nath Sah Deo v. Commr. of Income-tax, Bihar and Orissa : 1961-41 ITR 506 at p. 510 : AIR 1961 SC 732 at p. 735 considered all the relevant decisions on the subject in the context of licences granted to the assessee to prospect for bauxite in some cases for 6 months and in others for a year or two and observed:

The definition of salami was a general one, in that it was a consideration paid by a tenant for being let into possession for the purpose of creating a new tenancy. Applying that test this Court held in that case that under the said licences there was a grant of right to a portion of the capital of the licensor in the shape of a general right to the capital asset.

(1) In view of these three decisions it is not necessary to multiply citations.

5. Under Section 105 of the Transfer of Property Act, a lease of immovable property is a transfer of a right to enjoy the property made for a certain time, express or implied or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent. The section, therefore, brings out the distinction between a price paid for a transfer of a right to enjoy the property and the rent to be paid periodically to the lessor. When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt. There may be circumstances where the parties may camouflage the real nature of the transaction by using clever phraseology. In some cases, the so-called premium is in fact advance rent and in others rent is deferred price. It is not the form but the substance of the transaction that matters. The nomenclature used may not be decisive or conclusive but it helps the Court, having regard to the other circumstances, to ascertain the intention of the parties.

9. Thus, when the interest of the lessor in immovable property is parted for the price, the price paid is premium but the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent.

10. Full Bench of the Allahabad High Court in the matter of Gajey Pal Singh and Anr v. The Board of Revenue, U.P. at Allahabad reported in : AIR 1977 Allahabad 79 (FB), has considered the same and has held:

13. In view of the pronouncement of the Supreme Court, the legal position is quite clear. When the interest of the lessor is parted with for a price, the price paid is premium and the periodical payments for continuous enjoyment of the benefits under the lease are in the nature of rent.

16. If the lease is for a premium and not for rent, the applicability of Article 35(a)(ii) is completely ousted. Now the question is whether the case would be governed by Article 35(b) or (c); (c) contemplates a case where the lease is granted for a fine or premium, or for money advanced in addition to rent reserved. In the instant case, there is no reservation of rent. In view of our finding that the lease in the instant case was not for rent, but for premium and unless there is a premium in addition to rent, Article 35(c) would not be attracted the only alternative now left is of the applicability of Section 35(b). The conditions of Article 35(b) are fully satisfied in this case. The lease in the instant case was granted for a premium or for money advance, and there being no reservation of rent, this Article would be fully applicable in the instant case.

Full Bench of the Madras High Court has also considered the distinction between the premium and rent in the matter of Chief Controlling Revenue Authority, Madras, Referring Authority v. S.M. Abdul Jammal and Anr reported in AIR 1970 Mad 288, in Paragraph 3 by holding that:

The price paid or promised, or money, a share of crops, service or any other thing of value to be rendered periodically or on specified occasions would both form part of the consideration for the lease, but the distinction between a premium and a rent, in the context, lies in the fact that premium is one paid in consideration of the conveyance implied in the lease and is quantified in lump, whether it is paid outright or by instalments over a period or promised to be paid at a certain time. But, a rent, while it is also in consideration of a lease, is in lieu of the enjoyment which the lessee has and particularly as consideration there for. The further feature of rent is, it is payable as and when it accrues unlike a premium the liability for which arises at the time the contract is entered into.

11. Referring to the judgment of the Full Bench of Allahabad High Court in the matter of Gajey Pal Singh and another (supra), Registrar Stamps, Madhya

Pradesh issued the circular stating that the amount received as consideration for lease given on the basis of the auction sale as premium whether received in lump sum or in instalment, therefore, on such lease stamp duty will be payable at the rate of 8% of premium.

12. So far as the correctness of circular dated 17-5-2005 (Annexure P-7) is concerned, it is found that the said circular has been issued by the Registrar Stamps on the basis of the view taken by different High Courts and there is no illegality in the circular and accordingly the challenge to that circular is rejected.

13. Now the nature of amount of Rs. 5,04,000/- payable by the petitioner under the lease is to be ascertained in the light of the aforesaid legal principles which have been settled by the different High Courts. Under the lease deed dated 6th August, 2005 amount of Rs. 5,04,000/- was payable as contract amount which the petitioner had agreed to pay at the rate of Rs. 2,52,000/- per year and which was payable in eight instalments by the petitioner as prescribed in Paragraph 5 of the lease deed. The petitioner was granted the right to extract 8400 cubic meter of sand in lieu of the payment of fixed auction amount of Rs. 5,04,000. The aforesaid amount payable by the petitioner is a premium and not a rent since on payment of the amount of Rs. 5,04,000/- the lessor is parting right to extract fixed quantity of mineral for a fixed period of time and on expiry of that fixed period transfer of right also comes to an end. It is not a periodical payment for enjoyment of the benefits under the lease though it is payable in instalments, therefore, it cannot be held to be rent. The amount has been mentioned in lump sum though payable in instalments. Premium can also be payable in instalments in consideration of the conveyance implied in the lease and it is quantified in lump sum though may not be payable outright. Therefore, the respondents rightly demanded from the petitioner to pay the stamp duty for the registration of the lease deed (Annexure P-1) as per the provisions of the law in accordance with the impugned circular and the argument of the petitioner that the stamp duty is payable under Article 35(a)(ii) which is the provisions relating to the lease where by such lease, rent is fixed and no premium is paid or delivered cannot be accepted.

14. Since the petitioner did not get the lease registered and did not pay the instalments, therefore, no error has been committed by the respondents in cancelling the lease of the petitioner by order dated 5-7-2006.

15. In view of the aforesaid, I find no merit in the writ petition and the writ petition is accordingly dismissed. No orders as to costs.

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