

(2013) 11 AP CK 0006

Andhra Pradesh High Court

Case No: Writ Petition Nos. 23710, 25723, 25821 and 25826 of 2008

Jagga Reddy

APPELLANT

Vs

The Government of Andhra
Pradesh

RESPONDENT

Date of Decision: Nov. 19, 2013

Citation: (2014) 4 ALD 718

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Naveen Rao, J.

In these writ petitions, petitioners challenge the orders revising the Stamp duty and demanding registration fee on the lease agreements entered into by the petitioners with the Assistant Director of Mines and Geology- 4th respondent in WP Nos. 25723, 25826 and 30914 2008 and 2nd respondent in W.P. No. 23710 of 2008. For the sake of convenience, the facts in Writ Petition No. 25723 of 2008 are considered. The Convener of Mahaboobnagar District Level Sand Committee published notification No. 3594/SAND/06, dated 11.06.2007 inviting the sealed tenders/public auction for leasing out the right of quarrying for the sand at various places in the district as notified (Ex. P-2 at page No. 13 of the paper book). Petitioner participated for Ankilla and Veeranagar villages of Koilasagar Project, Koilkonda Mandal, Mahaboobnagar District (Item 8 of the notification). Auctions were conducted on 28.06.2007. Petitioner stood as highest bidder. By proceedings dated 05.07.2007, District Collector confirmed the auction in favour of petitioner; petitioner was asked to deposit Rs. 5,65,200/- towards stamps and an additional amount towards security deposit. Consequent to depositing of the above amounts, an agreement was entered on 18.07.2007. The agreement prescribes the lease period up to 31.03.2009. Lease amount for the first year was Rs. 1,57,00,000/- and for the second year 20% of the above amount was added as lease amount. The first period was from 15.07.2007 to 31.03.2008 and the second period was from 01.04.2008 to 31.03.2009. Towards

second year lease period, petitioner paid an amount of Rs. 1,88,40,000/- and accordingly permission was granted to the petitioner by the proceedings No. 241/Sand/2008, dated 27.05.2008.

2. The Assistant Director of Mines and Geology served notice dated 16.10.2008 on the petitioner alleging that there was short levy of stamp duty and registration fees and called upon the petitioner to pay the difference of levy of stamp duty and registration fee on security deposit. The amount quantified is Rs. 9,33,850/- towards short levy of stamp duty and Rs. 55,705/- towards difference of registration fees. Challenging the impugned proceedings of Assistant Director of Mines and Geology, dated 16.10.2008, this writ petition is instituted. It is contended that the amount assessed in the impugned notice is based on the assumption that the stamp duty payable on the lease agreement is 5%. Petitioner avers that petitioner is entitled to pay only 2% of the stamp duty on lease amount and not 5% and no amount is payable as registration charges on security deposit as the same has to be refunded after completion of the period of lease.

3. 4th respondent filed counter-affidavit. It is averred that on conduct of audit in the office of 4th respondent by the Special Audit Party of the Office of Accountant General, vide letter No. AG/(C&RA) SRA (HQ)/Review party No. 1/2008/135, dated 19.11.2008 it was pointed out that there was short levy and realization of stamp duty and registration fees. It is averred that Vigilance and Enforcement Department recorded in their appraisal report that as per the rates of stamp duty prevailing up to 31.07.2005, the stamp duty chargeable is 5% and that as per clause (d) to Section 17(i) of Registration Act, 1908, all leases are compulsorily registrable documents with effect from 01.04.1999 and registration fee at the rate of 0.5% on the bid amount should be collected, whereas far less amount was collected. The Director of Mines and Geology vide Memo No. 39515/Vg/07, dated 04.12.2007 has brought to the notice of the deponent the same. It is thus averred that the impugned notice was validly issued.

4. This Court by order dated 25.11.2008, granted interim stay of all further proceedings in pursuant to the notice No. 2453/AG/Sand/08, dated 16.10.2008, on condition that the petitioner deposits stamp duty in accordance with Article 31(a)(ii) of Schedule I-A of the Act. Praying to vacate the interim order, W.V.M.P. No. 256 of 2009 is filed by the respondents.

5. Similarly, in W.P. No. 25826 of 2008 lease amount for the period from 28.6.2008 to 31.3.2009 was 18,18,181-81 and vide impugned letter No. 1283/Sand-AG Audit/2008 dated 13.10.2008 petitioner was informed that he has paid only 3% stamp duty instead of 5% stamp duty and requested to pay the differential stamp duty and registration fee. This Court by order dated 26.11.2008, granted interim direction to process the document presented by the petitioner on condition of payment of stamp duty in accordance with Article 31(a)(ii) of Schedule I-A of the Act. Praying to vacate the interim order, W.V.M.P. No. 94 of 2009 is filed by the respondents.

6. In W.P. No. 25821 of 2008 lease amount for the for the period from 28.6.2008 to 31.3.2009 was Rs. 1,51,00,000/- and vide impugned letter No. 1283/Sand-AG Audit/2008 dated 13.10.2008 petitioner was informed that he has paid only 3% stamp duty instead of 5% stamp duty and requested to pay the differential stamp duty and registration fee. This Court by order dated 26.11.2008, granted interim direction to process the document presented by the petitioner on condition of payment of stamp duty in accordance with Article 31(a)(ii) of Schedule I-A of the Act. Praying to vacate the interim order, W.V.M.P. No. 85 of 2009 is filed by the respondents.

7. In W.P. No. 23710 of 2008 lease amount for the first year was Rs. 2,31,50,000/- and for the second year was Rs. 2,77,80,000/- and vide impugned letter No. 7832/Q/Sand/07 dated 1.2.2008 petitioner was directed to pay the deficit stamp duty of Rs. 9,26,000/-. This Court by order dated 31.10.2008, granted interim direction to process the document presented by the petitioner on condition of payment of stamp duty in accordance with Article 31(a)(ii) of Schedule I-A of the Act.

8. Heard Smt. N. Shobha and Sri B. Vijaysen Reddy, learned counsel for the petitioners and Sri J. Kanakaiah, learned Government Pleader for Revenue and Sri R. Vinod Reddy, learned Government Pleader for Mines and Geology. Learned counsels for petitioners and learned Government Pleader requested for disposal of writ petitions.

9. Smt. N. Shobha, Learned counsel for the petitioner in W.P. No. 25723 of 2008, submits that notice impugned herein is silent on the reasons for demanding higher amount towards stamp duty and registration fees on security deposit and therefore the notice impugned in the writ petition is liable to be set aside on that sole ground.

10. Learned counsel further contends that erroneously respondents have applied wrong provision and demanded higher amount, whereas petitioner is not entitled to pay higher amount as demanded by the respondents. Learned counsel submits that petitioner is governed by Article 31(a)(ii) of Schedule I-A to Indian Stamp Act. Learned counsel further submits that auction amount is seigniorage fee for the period notified for quarrying sand and same is governed by Schedule I of Rule 10.

11. Learned counsel for the petitioner contended that petitioners are not required to pay registration fees towards Security Deposit amount, as same has to be repaid after the lease period.

12. Learned counsel relied on the decision of this Court reported in [Uppalapati Durga Prasad Vs. Executive Engineer \(R and B\) N.H. Division, Srikakulam and others,](#) wherein it was held as under:

6. ...The "lease" within the meaning of Stamp Act has much wider meaning than the "lease" defined in Transfer of Property Act and the definition of "lease" in Transfer of Property Act and the definition of "lease in Transfer of Property Act cannot be

imported into definition as it is in the Stamp Act. May be recourse could be taken to the Transfer of Property Act if the "lease" had not been denned (sic -defined) in Stamp Act. As the "lease" has been defined in the Stamp Act, there is no need for us to go to the Transfer of Property Act. In this context there is settled law that, when the word begins with "includes" it must be given an exhaustive meaning. Besides this, "instrument" has also been defined under Sub-section (14) of Section 2 and "instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited extended, extinguished or recorded. Therefore, the document by which the right to collect the toll has been given to the petitioners is an "instrument" within sub-section (14) of S. 2 and therefore all instruments by which tolls of any description are let are leases within the meaning of Stamp Act.

13. Learned counsel further contended that provisions of Transfer of Property Act, 1882, have no application to Indian Stamp Act and therefore contends that decision of this Court in W.P. No. 14627 of 2008, dated 05.07.2012 has no application.

14. Learned counsel also relied on the Full Bench decision of High Court of Karnataka reported in [The Chief Controlling Authority Vs. Texas Instruments India Limited](#), in support of her contention that no stamp duty can be collected on security deposit.

15. Sri B. Vijaysen Reddy, learned counsel for the petitioners in remaining 3 writ petitions, reiterates the submissions made by learned counsel Smt. N. Shobha.

16. Learned Government Pleader for Revenue submits that cost admitted is based on the quantity of sand, which can be quarried during the lease period. Learned Government Pleader relied on the provision of Section 105 of the Transfer of Property Act. Learned Government Pleader submits that "price" is called "premium" and therefore the "price" of the lease has to be treated for the purpose of assessment of payment of stamp duty. It is further contended that sand is "property" and this "property is given on "lease" on a "premium" and on this "premium", which is "price" the stamp duty has to be paid on the admitted lease amount. As per Article 31(vi)(b) of Schedule 1-A of Indian Stamp Act, stamp duty leviable is 5% of total amount whereas petitioners paid only 2%/3%.

17. Learned Government Pleader fairly submits that Government has taken decision not to collect stamp duty on security deposit. The amount determined in the notice impugned is the amount, due and payable by the petitioner.

18. In support of his contentions, learned Government Pleader for Revenue relied on the following decisions:

[Associated Cement Company Ltd. Vs. The Government of Andhra Pradesh](#), , [Pradeep Oil Corporation Vs. Municipal Corporation of Delhi and Another](#), , [P. Dilli Babu Reddy and Vice- President, A.P. Working Journalists Federation \(APWJF\) Vs. The Government of Andhra Pradesh and Tirumala Tirupati Devasthanams](#), , [P. Venkata Rao Vs.](#)

Government of Andhra Pradesh and Others, .

19. Learned Government Pleader, further submits that the petitioners have to pay registration fee on security deposit amount also as per clause (d) of Section 17(1) of Indian Registration Act, since all lease documents have to be compulsorily registered and amounts payable on the entire value of the documents including security deposit is chargeable.

20. Learned Government Pleader further contends that it is mandatory for the petitioners to pay Registration fee on the security deposit and such an amount which is collected as Registration fee can not be refunded and only security deposit which is collected could be refunded on successful completion of the lease period.

21. Learned Government Pleader for Mines and Geology submits that on the admitted facts, there is no dispute on facts and it is clear that petitioners have paid less stamp duty. It is further contended that in pursuant to the notice issued, which is impugned in the writ petition, no explanation is submitted by the petitioners and the writ petitions are not maintainable against show-cause notice. The impugned notice was issued by competent authority in valid exercise of power. Learned Government Pleader further submits that "price" paid is "premium" and "lease amount" is "price". In support of his contention, learned Government pleader relied on the decision of the Hon"ble Supreme Court reported in [Commissioner of Income Tax, Assam etc. Vs. The Panbari Tea Co. Ltd.,](#) .

22. The issues that arise for consideration in these writ petitions are:

(a) whether the petitioners are liable to pay 5% of the lease amount as stamp duty as claimed by Government or 2% only as claimed by petitioners.

(b) On the security deposit whether the petitioners are liable to pay Registration fee?

23. Petitioners rely on Article 31(a)(ii), whereas the Government relies on the provision in Article 31(a)(vi)(b) in support of their respective contentions. It is useful to extract Article 31(a) (ii) & (vi) (b) of Schedule 1-A of Stamps Act and Section 105 of Transfer of Property Act. The provisions read as under:

105. Lease defined:--

A lease of immoveable 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.

24. In Commissioner of income tax (supra), the short question for consideration was whether the amount described as premium in the lease deed is really rent and therefore the revenue receipt. Considering the scope of Section 10 of the Transfer of Property Act, the Supreme Court held as under:

5. ...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 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.

(Emphasis supplied)

25. In Pradeep Oil Corporation (cited supra), one of the issues fell for consideration was whether an agreement for oil storage tank together with pump house, chowkidar cabins, switch room, residential rooms and verandah for storing oil decanted from the railway tankers, which bring petroleum products to the site at which they are decanted would amount to lease or license? On review of the case law on the subject, the Supreme Court is pleased to delineate the following principles:

32. In view of the aforesaid well settled legal position, whether a particular document will constitute "lease" or "license" would inter alia depend upon certain factors which can be summarized as follows:--

(a) whether a document creates a license or lease, the substance of the document must be preferred to the form;

(b) the real test is the intention of the parties - whether they intended to create a lease or a license;

(c) if the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a license; and

(d) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.

26. In Associated Cement Company (cited supra), the Division Bench of this Court held mining leases held by petitioners in respect of major mineral (limestone), are leases of immovable property.

27. Following the earlier judgments of this Court in Associated Cement Company Limited (cited supra), the Division Bench of this Court in Uppalapati Durga Prasad (cited supra), held that agreement under which the licensee is permitted to collect tailgate tax for a "premium" is "lease". This Court held the meaning of "lease" in Indian Stamp Act is wider than the meaning given in Transfer of Property Act.

28. In [Sri Tarkeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co. and Others](#), the Supreme Court considered the scope of Section 105 of Transfer of Property Act. Litigation arose on account of the termination of licence granted for the purpose of raising and taking sand out of the land in issue. Supreme Court held as under:

35. A right to carry on mining operations in land to extract a specified mineral and to remove and appropriate that mineral, is a "right to enjoy immovable property" within the meaning of Section 105; more so, when -as in the instant case - it is coupled with a right to be in its exclusive khas possession for a specified period. The "right to enjoy immovable property" spoken of in Section 105, means the right to enjoy the property in the manner in which that property can be enjoyed. If the subject matter of the lease is mineral land or a sand mine, as in the case before us, it can only be enjoyed and occupied by the lessee by working it, as indicated in Section 108, Transfer of Property Act, which regulates the rights and liabilities of lessors and lessees of immovable property.

39. ...In short, stripped of the form in which it is draped, the Agreement (Ex. I), in substance and in fact, is a "lease" in the accepted legal sense of the term and not a "license" as defined in Section 52 of the Indian Easements Act.

29. Petitioners were granted sand lease for the period from 17.07.2007 to 31.03.2009 (W.P. No. 25723 of 2008); from 28.6.2008 to 31.3.2009 (W.P. No. 25826 of 2008 and W.P. No. 25821 of 2008); and from 29.9.2007 to 31.3.2009 (W.P. No. 23710 of 2008). The agreement entered into by the petitioners vested in them the right to enjoy property with exclusive possession and the document expressly states that it is a lease. The lease is granted on payment of annual premium paid in advance. The agreement entered into by the petitioners with. Government require petitioners to pay a fixed sum for first year and payment of an additional amount of 20% on the first year amount for the period of one year ending on 31.03.2009. On close scrutiny of the terms of lease granted to the petitioners, it is clear that the provision in Article 31(vi)(b) of Schedule I-A of Indian Stamp Act is attracted and therefore the petitioners are liable to pay 5% of the premium (lease amount) as stamp duty. This is a statutory mandate requiring strict compliance.

30. As per Section 17(1)(d) of Registration Act, all leases are compulsorily registrable and security deposit is part of lease agreement and therefore petitioners are liable to pay registration fee on security deposit also.

31. In view of the statutory mandate imposed by the Indian Stamp Act, 1899 and Indian Registration Act, 1908 merely because a wrong calculation was made by an

employee of the State, State Cannot be deprived of quantum of amount due as per the said mandate. The petitioners being parties to lease agreements are equally bound by the statutory mandate and cannot seek to eschew from liability to pay higher stamp duty and payment of Registration fee on security deposit by relying on a wrong assessment made by an employee of the State. Therefore the petitioners have to pay difference of amount as determined in the impugned notices.

32. I, therefore see no error in the demand made by the respondents demanding payment of differential amount of stamp duty and registration fee leviable on security deposit. The Writ Petitions are accordingly dismissed. In consequence, the Miscellaneous Petitions, if any, pending in these Writ Petitions, shall stand dismissed. No order as to costs.