(2011) 07 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5098 of 2004

Hindustan Petroleum Corporation Ltd. APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Advocates Act, 1961 — Section 22, 27
Constitution of India, 1950 — Article 14, 19, 19(1)(g), 246
Rajasthan Stamp Act, 1998 — Section 2(10), 2(16)
Registration Act, 1908 — Section 69
Stamp Act, 1899 — Section 2(16)(c), 3, 32, 64
Transfer of Property Act, 1882 — Section 105, 2(16), 54

Citation : (2012) 1 RLW 143

Hon'ble Judges : Arun Mishra, C.J;Kailash Chandra Joshi, J

Bench : Division Bench

Advocate : Lekh Raj Mehta with Ramit Mehta, Dalpat Raj Bhandari, M.C. Purohit, Vijay Bishnoi and Arun Bhansali, for the Appellant; G.S. Bapna, Advocate General with Sunil Beniwal, R.L. Jangid, A.A.G. with Anil Bachhawat, H.S. Bishnoi for State and Manish Patel, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Chandra Joshi, J.—In these writ petitions, common question arises for consideration as to the constitutional validity of Article 35 of the Second Schedule as inserted by Rajasthan Finance Act, 1997 in Rajasthan Stamp Law Adaptation Act, 1952. The provision of Article 35(a)(iii) as substituted by Rajasthan Act provides that a lease which purports to be for a term in excess of twenty years or perpetuity or where the term is not mentioned, the rate of the stamp duty payable shall be same as on conveyance as mentioned in Article 23, on the market value of the property which is the subject matter of the lease. In these cases, it is not disputed that leases were executed and demand of stamp duty was made in terms of Article 35(a)(iii) of Second Schedule of Rajasthan Stamp Act, 1952 (hereinafter referred to as ''the Act of 1952''). Following is the amended provision in Article 35 of Second Schedule of the Act of 1952-

35. Lease-including and under lease, or sub lease and any agreement to let, or sub let-

(a) Where, by such lease, the rent is fixed and no premium is paid or deliver.

(i) where the lease purports to be a term for less than one years, the same duty as on a Bond (No. 15) for the whole amount payable under such lease.

(ii) where the lease purports to be for a term of not less than one year but not more than twenty years; the same duty as on a conveyance (No. 23) for a consideration equal to the amount of value of the average rent of two years.

(iii) Where the lease purports to be for a term in excess of twenty years or perpetuity or where the term is not mentioned. The same duty as on a conveyance (No. 23) on the market value of the property which is the subject matter of the lease.

The validity has been questioned on the ground that the aforesaid provision is ultra vires of Article 14, 19(1)(g) of the Constitution. The lease only creates a limited right or an interest in enjoyment of the demised property for a definite period. A lease is not transfer of ownership and not a conveyance as defined in Section 2(10) of the Stamp Act. On the other hand, sale is transfer of ownership for a price and there is an absolute transfer of all rights in the property sold. Thus, the leases beyond 20 years could not have been compared with the conveyance for the purpose of levy stamp duty. The transaction which is to be subject matter of the stamp duty, lease deed has nothing to be with the market value of the property. Hence, market value could not have been made the basis of levying the stamp duty. The basis ought to have been rental method of valuation and levy of stamp duty could have been made only on the basis of rent reserved in the lease. The prescription of any other method or mode of valuation on the basis of conveyance is arbitrary and violative of Article 14 of the Constitution. There was no justification for providing separate basis for levying of stamp duty for the leases beyond 20 years or in perpetuity. Action is illegal and arbitrary. There is no rhyme or reason to levy the stamp duty at the rate prescribed for conveyance. Concept of market value is completely foreign to a lease and providing of such concept for computing stamp duty on lease for a period exceeding 20 years or on transfer of lease is per se illegal. As such, amendment made vide Act of 1997 is ultra vires.

2. The stand of the respondents in return is that as the deficit stamp duty is not made good, demand was rightly raised in accordance with the amended provision. Stamp duty has rightly been demanded on the basis of market value of the property on a lease beyond 20 years. There is no illegality in the amendment substituted in Article 35 of Second Schedule of the Act. Only the rates have been defined, the document is not being treated as a conveyance. For the purpose of specifying the rate of stamp duty chargeable, different criterion have been applied considering the period of leases which is permissible. It is a matter of fiscal policy in which the Government should have free play. The

provisions cannot be said to be illegal or arbitrary. Thus, there is no violation of provisions of Article 14 and 19 of the Constitution.

3. Learned counsel appearing on behalf of the petitioners submitted that considering the Entry 63 of the State List-II in Seventh Schedule of the Constitution, State is competent to determine the stamp duty subject to Entry 91 of List-I i.e. Union List. The market value of the property has no co-relation with the transfer of the right in the lease deed. Thus, making such a provision for levy of the stamp duty is beyond legislative competence. Conveyance is totally different from lease deed. With respect to leases also, different basis for charging stamp duty have been provided in Article 35 which is discriminatory. Yearly rent could have been the basis for levying the stamp duty not the market value of the property. Consequently provision is arbitrary and ultra vires.

4. Attention has been drawn to the provision of Section 2(10) and Section 2(16) of the Rajasthan Stamp Act which relates to ''conveyance'' and ''lease''. Conveyance and lease deed are two different and independent transaction. These could not have been combined for the purpose of levying the stamp duty. It was also submitted that sale is defined u/s 54 of the Transfer of Property Act. The transaction is not of sale. The provision made under the Finance Act, 1997 was for fiscal year. It has to be treated as temporary provision for the year in question for which the Finance Act was enacted. Thus, it should be held by this Court that amendment made in the year 1997 has lost the efficacy on the lapse of the Financial year.

5. Mr. G.S. Bapna, learned Advocate General, Mr. R.L. Jangid, learned Addl. Advocate General with Mr. Anil Bachhawat and Mr. Sunil Beniwal, appearing on behalf of the State has submitted that the document in question has been treated to be lease within the meaning of Article 35 and only the rate of stamp duty as that on conveyance has been provided which is permissible. It was also submitted by learned counsel appearing on behalf of the respondent - State that the provision could not be said to be illegal or arbitrary or violative of rights under Article 19(1)(g) of the Constitution. Government has right under Article 19(1)(g) of the Constitution. Government has right to fix the basis for levying of the stamp duty on leases beyond 20 years or in perpetuity which has been done in the instant cases. The leases beyond 20 years or in perpetuity, right to enjoy the property is for a longer duration, value of property is virtually realised in such leases. Thus, market value is to be considered as the criteria for the purpose of determination of stamp duty. It was also submitted that value of the property can be determined on the basis of annual usufruct. When lease is in perpetuity or for more than 20 years, the enjoyment of property is for a very long duration. Thus, the basis of same rate as that of conveyance has been adopted which is rationale behind it as property enjoyed for a longer duration, therefore, market value could have been the basis to reliase stamp duty. Even in the cases of conveyance, market value of the property is the basis not the value shown in the deed of conveyance. Thus, it is open for the Legislature to provide for a basis for

determination of the levy of stamp duty and rate which has been done by substituting the provision made in Article 35 of Second Schedule of the Act.

6. The question for consideration is whether by virtue of amendment made in the year 1997 in Article 35(a)(iii) of Second Schedule of the Act, lease has been treated as conveyance. We are of the considered opinion that it is not so. Lease remains lease. Market value is the basis for determination of the stamp duty chargeable on the lease which purports to be for a term in excess of twenty years or in perpetuity or where the term is not mentioned. The stamp duty at the prescribed rate has to be charged as on a conveyance at the market value of the property which is the subject matter of the lease by which the nature of the document is not being changed from lease to conveyance. Only for the purpose of determination of providing basis of stamp duty to be reliased on a lease for more than 20 years or in perpetuity or where the term is not mentioned, market value is relevant and 11% is the rate fixed on the market value of the property. In such cases of lease for longer duration or in perpetuity, enjoyment of property is for a longer period. For leases for short duration, the annual rental method is the basis which has been adopted by the Government.

7. Similar question came up for consideration in Smt. Ramkishori Gupta Vs. The State of Madhya Pradesh and Others, . Amendment was made in Section 47A and other provisions. Prior to amendment of Section 47A, Entry 23 of Schedule-1, the amount or value of the consideration for conveyance as set forth in the deed of conveyance constituted the basis for determining the stamp duty payable. The basis after the amendment is the market value of the property which is the subject matter of the conveyance. The Division Bench of M.P. High Court held that in exercise of powers conferred on it by Entry 63 of List II and Entry 44 of List III, it was open to the State Legislature not only to make an amendment in the Act in regard to the rates of stamp duty but also in regard to the mode of compensation of stamp duty. In other words, it was open to the State Legislature to lay down that the basis for computing stamp duty shall not be the amount or value of the consideration for the conveyance as set forth therein but it shall be the market value of the property which is the subject matter of conveyance. It was also laid down that entries in the list must be read in its widest amplitude and the legislature must be held to have power not only to legislate with respect to the subject matter of the entry but also to make ancillary or incidental provision in aid of the main topic of legislation. It was open to the legislation to make amendment in the Act in regard to rates of stamp duty and with regard to mode of computation of stamp duty. In Smt. Ram Kishori (supra), it has been laid down thus,-

Entry No. 23 in Schedule 1 to the Act which deals with conveyance prior to its amendment by M.P. Act No. 8 of 1975 inter alia provides the mode of calculation of stamp duty treating "the amount of value of the consideration for such conveyance as set forth therein." After its amendment by M.P. Act No. 8 of 1975, it inter alia provides "23. Conveyance, not being a transfer charged or exempted under No. 62 where the market value of the property which is the subject matter of conveyance does not exceed...." It is thus apparent that prior to amendment of Entry No. 23 aforesaid by M.P. Act No. 8 of 1975 the amount or value of the consideration for such conveyance as set forth in the deed of conveyance constituted the basis for determining the stamp duty payable. The basis after the amendment is the market value of the property which is the subject matter of conveyance.

While dealing with the rule of interpretation of legislative entries, it was held by the Supreme Court in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, that in the matter of construing entries in the lists given in Schedule 7 of the Constitution certain rules of interpretation are now well settled. The power to legislate is given to the appropriate Legislatures by Art. 246 of the Constitution. The entries in the three Lists are only Legislative heads or fields of legislation, they demarcate the area over which the appropriate Legislatures can operate. It is also settled that widest amplitude should be given to the language of the entries. But some of the entries in the different lists or in the same list may overlap and sometimes may also appear to be in direct conflict with each other. It is then the duty of the Court to reconcile the entries and bring about harmony between them. The underlying principle in such cases is that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Constitution and operating in the same field, when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning. Thus, every attempt should be made to harmonize the apparently conflicting entries not only of different Lists but also of the same List and to reject that construction which will rob one of the entries of its entire content and make it nugatory. In a very recent decision in Kasturi Lal Harilal Vs. State of U.P. and Others, its was held by the Supreme Court that it is now well settled that an entry in a legislative List must be read in its widest amplitude and the legislature must be held to have power not only to legislate with respect to the subject matter of the entry but also to make ancillary or incidental provision in aid of the main topic of legislation. The scope of Entry 63 of List II and Entry 44 of List III came up for consideration squarely before the Supreme Court in the case of The Bar Council of Uttar Pradesh Vs. The State of U.P. and Another, .

On a conspectus of these authorities it is, therefore, apparent that in the exercise of powers conferred on it by Entry 63 of List II and Entry 44 of List III, it was open to the State Legislature not only to make an amendment in the Act in regard to the rates of stamp duty but also in regard to the mode of computation of stamp duty. In other words, it was open to the State Legislature to lay down that the basis for computing stamp duty shall not be the amount or value of the consideration for the conveyance as set forth therein but it shall be the market value of the property which is the subject matter of conveyance.

8. The submission raised by learned counsel appearing on behalf of the

petitioners cannot be accepted on the ground that basis for computation of stamp duty should have been the consideration mentioned in the lease deed itself i.e. on yearly rent. It is open to the State Legislature to enact a provision with respect to rate and also the basis for computing the stamp duty as per entry 63 of List II of Seventh Schedule which is read thus;-

63. Rates of stamp duty, in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

9. The lease is defined in Section 2(16) of the Act whereas conveyance has been defined in Section 2(10) of the Act. As document admittedly has been treated to be a lease, market value of property could have been adopted for levy of stamp duty with respect to leases beyond 20 years or in perpetuity as defined in Section 2(16) and we find that there is no arbitrariness in the same. The provision of Art. 35(a)(iii) cannot be said to be violative of Article 14. The provision cannot be said to be imposing any restriction on the right to carry on occupation, trade or business of leasing out of the property. It is open to the Government while dealing with the fiscal matters to prescribe the rates on which such levy has to be made and also the basis for realization of the rate so fixed. The provision cannot be said to be unreasonable or putting any fetter on the rights enshrined under Article 19(1)(g) of the Constitution.

10. Learned counsel appearing on behalf of the petitioners have referred to the decision in State of Rajasthan Vs. Bhilwara Spinners Ltd. and Others, in which question arose before Division Bench of this Court was with respect to levy of the stamp duty on the lease deed which was executed in 1968, the supplementary lease was executed in 1983, thus the Division Bench of this Court has laid down that instrument is a lease deed and stamp duty is chargeable under Article 35(a)(iii) of Rajasthan Stamp Law (Adaptation) Act on the consideration equal to amount of average annual rent reserved at that time unamended provision was applicable in which the basis was average annual rent reserved which provision has now been substituted with respect to lease for more than 20 years or in perpetuity or where the term is not mentioned with the market value of the property. In view of amendment in provision, this decision is of no help to the petitioners.

11. Reliance has also been placed on a decision of this Court in Narender Singh Solanki vs. State of Rajasthan & Ors. (1991 (1) WLC 337) wherein the Court has dealt with the scope of power of Inspector General of Registration with reference to Section 32 of the Indian Stamp Act, 1899 - Rajasthan Stamp Law (Adaptation) Act, 1952 read with Section 69 of Registration Act, 1908. Circular issued by Inspector General directing registration to be effected on valuation of 20% more than that of previous year was held to be ultra vires, arbitrary, unreasonable and mala fide. Circular was quashed. Decision is of no help as in the instant case as the provision has been made in the statute itself, question in instant case is that of competence of legislature not of Inspector General to issue circular. In our considered opinion, it is open to the State Government to prescribe not only the

rate but also to prescribe the criteria/basis for levy of such stamp duty within the parameter of entry 63 List II of Seventh Schedule of the Constitution.

12. Reliance has also been placed on decision of the Apex Court in State of Rajasthan and Others Vs. Basant Nahata, wherein validity of Section 22A as inserted by Rajasthan Amendment Act 16 of 1976 came up for consideration before the Apex Court. Under the said provision, State Govt. was authorised to issue notifications regarding registering officers empowered to refuse to register documents to which such notifications apply. Notification was issued on 1.4.1999 which was amended by notification dated 22.4.1999 declaring that any power of attorney authorising the attorney to transfer any immovable property for a term in excess of six months or irrevocable or where the term is not mentioned would be opposed to public policy. Certain documents were specified by notification dated 26.3.1999 but later on amending notification dated 22.4.1999 was issued exempting such power of attorney executed in favour of brother or sister or son or daughter or father or mother or husband of wife or grandson or granddaughter. The Apex Court held Section 22A to be unconstitutional and consequently the notifications issued thereunder were also quashed. The Apex Court has laid down that said provision was vitiated by reason of delegation of essential legislative function to executive and delegation of power being unguided, uncontrolled and vague, Public policy not capable of being given any precise meaning and words opposed to public policy being vague and uncertain, do not provide any guideline and depend upon nature of transaction.

13. The decision in Basant Nahata (supra) is not attracted in the instant case as no legislative function has been delegated to the executives. Legislation itself has made a specific provision by substituting the basis for levy of stamp duty in Article 35(a)(iii) of the Stamp Act. The provision cannot be said to be unguided, uncontrolled or couched in-vague manner.

14. Reliance has also been placed by learned counsel for the petitioners on a decision of the Apex Court in Himalaya House Co. Ltd., Bombay Vs. The Chief Controlling Revenue Authority, wherein it is held that Revenue must have regard only to what the parties to the instruments have elected to state the consideration to be, or that it can also consider the value of the consideration as disclosed upon an examination of the terms of the instrument as a whole. A close reading of the aforesaid decision indicates that the Apex Court has laid down that as per Section 27, the parties to a document are required to set forth in the document fully and truly the consideration if any and all other facts and circumstances affecting the changeability of that document with the duty or the amount of the duty with which it is chargeable. But a failure to comply with the requirements of that section is merely punishable u/s 64 of the Stamp Act. Their Lordships also observed that no provision in the Stamp Act empowers the Revenue to make an independent inquiry of the value of the property conveyed for determining the duty chargeable. At the same time, the Apex Court has left the question open whether for the purpose of Article 23, the value of

consideration must be taken to be one as set forth in the conveyance deed, revenue must have regard only to what the parties to the instruments have elected to state the consideration to be, or that it can also consider the value of the consideration as disclosed upon an examination of the terms of the instrument as a whole. In the instant case, the decision is of no assistance as the question raised in Himalya House Co. Ltd. was totally different.

15. Reliance has also been placed on decision of the Apex Court in The Bar Council of Uttar Pradesh Vs. The State of U.P. and Another, wherein challenge was to the constitutional validity of the provision made with respect to imposition of stamp duty on the certificate of enrollment u/s 22 of Advocates Act Various entries came up for consideration. The Apex Court has observed that the power to legislate in regard to persons entitled to practice before the Supreme Court and the High Courts is altogether excluded from Entry 26 in List III, and is made the exclusive field for Parliament. The Parliament has the exclusive power under Entry 77 and Entry 78 in List I to prescribe, inter alia, the qualifications and conditions on the fulfillment of which persons would be entitled to practice before the Supreme Court or the High Courts. The prescription of fee falls under Entry 96 of that List. Entry 44 of List III enables legislation with regard to its levy but the rates of the stamp duty can be prescribed by the Parliament only with regard to instruments falling within Entry 96 of List I and by the State Legislature under Entry 63 of List II.

16. In the instant case, Entry 63 of List II of Seventh Schedule of Constitution is attracted and not the other lists, List I or III. Thus, in our considered opinion, State Legislature has the competence not only to prescribe the rate but the basis also. The decision rather counters the submission espoused by the petitioners.

17. Reliance has also been placed on a decision of the Apex Court in Bidhannagar (Salt Lake) Welfare Association Vs. Central Valuation Board and Others, in which general valuation prepared without giving opportunity of hearing to residents by appointing Surveyor in view of proviso to Section 9 (as added by Amendment Act of 1994) and exorbitant increase in tax on public ranging from 39.5 times to 1.4 times was held to be violative of Article 14 being arbitrary. The Apex Court considered the study and held that such an unscientific study may produce a disastrous result and such exorbitant increase in the tax on the public was held to be arbitrary and violative of Article 14 of the Constitution. Excess increase in the tax burden on the public is surely not for the public welfare. The Apex Court has laid down thus,-

18. The result of such an unscientific study may produce a disastrous result and in fact from the pattern of increase in demands by the Bidhangar Municipality it appears that the increase in the valuation ranges from 3954%, i.e. 39.5 times to 137%, i.e., 1.4 times. Such exorbitant increase in the tax on the public is, in our opinion, itself indicative of arbitrariness, and hence, violative of Article 14 of the Constitution. In a democracy, the people are supreme, and all authorities must function for the public welfare. Excessive increase in the tax burden on the public

is surely not for the public welfare. Also, in the aforementioned context, in our opinion, the very method applied by the Municipality and the Central Valuation Board must be held to be arbitrary in nature and hence violative of the Constitution. In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , it was held that arbitrariness may be violative of Article 14 of the Constitution.

18. However the instant case is not a case based on unscientific study nor it can be said that there is excessive increase of stamp duty burden, increase is not shown to be arbitrary. It is open to the Legislature to fix rates and basis and legislate provision in question.

19. Reference has also been made on a decision of the Apex Court in Satheedevi Vs. Prasanna and Another, in which the Apex Court has laid down the rule of interpretation of Statutes that words used in material provisions of Statute must be interpreted in their plain grammatical meaning. Question of giving effect to policy or object of Act can legitimately arise only when such words are capable of two constructions. It is not for the court to rewrite, recast or reframe legislation because it has no power to do so. Court cannot correct defect or supply omission in a Statute. The Apex Court has further observed in the context of Kerala Court - Fees and Suit Valuation Act - Section 40 and Section 7 with respect to levy of the court fees, that value of property for which document was executed, and not, its market value, is relevant for purpose of Court fee. The Apex Court has noted the difference in various provisions and has observed that if the provision of Section 7(1) is considered, there is a clear departure from the one contained in Section 7 read with Ss. 25, 27, 29, 30, 37, 38, 45 and 48 which provide for payment of court fee on the market value of the property. In that sense, Section 40 contains a special rule. The Apex Court has held that in view of Section 40(1)of the said Act, in a suit filed for cancellation of a document which creates any right, title or interest in immovable property, the Court fees is required to be computed on the value of the property for which the document was executed and not on the basis of market value which was not relevant for the purpose of payment of Court fees.

20. In the instant case, applying the aforesaid rule of interpretation, the language of Article 35 is clear, the basis of market value as well as the rate are clear and that is similar to that of conveyance. Such a provision could have been enacted. Thus, we are not inclined to strike down the same. We cannot do rewriting, recast or reframing of the legislation, the courts have no power to do as laid down in the aforesaid decision.

21. Reliance has also been placed on a decision of this Court in Bajaj Hindustan Limited and Others Vs. State of Rajasthan and Others, wherein Division Bench of this Court considered the provision of Section 3 of the Stamp Act as applicable to Rajasthan and observed that determination and evaluation of properties mentioned in sale deeds submitted for registration, valuation is to be made on basis of what was sought to be really conveyed through deeds presented only to be looked into and no fishing exploration is to be made as to what other articles/

items were sought to be conveyed without there being any specific mention thereof in documents. In our opinion, the provision in question in the instant case is altogether different. Consequently, the said ratio is not attracted in the instant case.

22. Shri G.S. Bapna, learned Advocate General has relied upon decision in Khandige Sham Bhat and Others Vs. The Agricultural Income Tax Officer, . The Apex Court has observed that taxation statute shall not also be arbitrary and oppressive, but at the same time the Court cannot, for obvious reasons, meticulously scrutinize the impact of its burden on different persons or interests. Where there is more than one method of assessing tax and the Legislature selects one out of them, the Court will not be justified to strike down the law on the ground that the Legislature should have adopted another method which, in the opinion of the Court, is more reasonable, unless it is convinced that the method adopted is capricious fanciful, arbitrary or clearly unjust.

23. The criteria prescribed by substituting the provision of Article 35(a)(iii) is not shown to be capricious, fanciful, arbitrary or unjust. Thus, in the instant case, we are not inclined to make any interference to strike down the provision in question.

24. Reliance has also been placed on a decision of Apex Court in Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, in which the Apex Court has laid down that a court can declare a statute to be unconstitutional only when there can be no manner of doubt that it is flagrantly unconstitutional, and there is no way of avoiding such decision. Full and free play must be permitted to that wide margin of considerations which address themselves only to the practical judgment of a legislative body.

25. The Apex Court in P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, has laid down that the question whether the measure of a tax or a fee should be ad valorem or ad quantum is again a matter of fiscal policy.

26. We are not inclined to make any interference. It is settled proposition of law that in the matter of fiscal policy, the basis and rate for levying of stamp duty are prescribed in questioned provision and in such provision for levying of stamp duty, the Court has to be reluctant to make an interference. We find no arbitrariness nor the provision can be termed to be capricious, illegal.

27. Reliance has also been placed on decision of the Apex Court in Avinder Singh and Others Vs. State of Punjab and Others, in which the Apex Court has observed that State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. The Court has to be practical and has permitted a very wide latitude in classification for taxation. In our opinion, the classification made under Article 35 for longer duration leases beyond 20 years or in perpetuity cannot be said to be arbitrary or unreasonable. The Apex Court in Avinder Singh (supra) has laid down thus,-

28. In R.V. Infrastructure Engineers Pvt. Ltd. Vs. State of M.P. and Others, , the

decision of J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another, came up for consideration before the High Court of Madhya Pradesh. A Division Bench has observed thus,-

Learned senior counsel has also submitted that the instrument should be liable to the stamp duty in fact only then it can be imposed not otherwise. Under the law stamp duty cannot be imposed on a transaction which is not a lease. He has also relied upon decision of Apex Court in J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another, wherein Entry 54 in List 2 of 7th Schedule of the Constitution came for consideration which confers on the State authority to enact a law with respect to tax on sale of goods. Considering what is the extent of that authority?, there must be infact a sale as recognized by law, it is only then that a tax could be imposed. But, if the transaction sought to be taxed is not a sale, a law which seeks to tax it, treating it as a sale will be ultra vires. There is no dispute with the aforesaid proposition. In the instant case, the transaction has been found to be a lease, thus, there is no question of Schedule 1-A Entry 33 as amended in MP being ultra vires as the transaction is covered within the ambit of lease as defined in Section 105 of T.P. Act read with Section 2(16)(c) of Indian Stamp Act.

29. In the instant case also, we have found that transaction is a lease. There is no dispute that transaction is that of lease, only rate and basis has been prescribed under Article 35 of the lease in question on the basis of market value of the property and the rate of stamp duty is that of conveyance, which is permissible.

30. The submission that amendment was for year 1997 is misconceived. We find that provision is not confined for fiscal year 1997. Amendment was not for temporary duration. Submission is baseless and stated simply to be rejected.

31. We find no legislative incompetence in the provision of Article 35(a)(iii) of the Second Schedule of the Rajasthan Stamp Act which has been substituted in 1997 neither it is arbitrary. In view of the aforesaid, we find that the provision as substituted by Rajasthan Stamp Act, 1952 in Article 35(a)(iii) is intra vires. The writ petitions being devoid of merits, deserve dismissal. They are hereby dismissed. Stay applications are also dismissed. Parties to bear their own costs.

