(2015) 09 KAR CK 0324

In the Karnataka High Court

Case No : Writ Petition No. 23983/2013 (GM-ST/RN)

Juniper Networks India Pvt. Ltd. APPELLANT

Vs

The Inspector General of Registration and Commissioner of Stamps and Chef Revenue Controlling Authority and Others RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : AIR 2015 Kar 179 : (2015) 4 AKR 675

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : A. Murali, Advocate for J. Sagar Assts., for the Appellant; E.S. Indiresh, HCGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J—The petitioner is before this Court assailing the order dated 10.05.2013 and the order dated 29.07.2011 which are impugned at Annexures-A and B to the petition. The petitioner is also seeking that a mandamus be issued to the first respondent to return the lease deed to the Sub-Registrar to register the same without requiring the petitioner to pay any additional stamp duty.

2. Learned counsel for the petitioner at this stage would point out that the petitioner has subsequently paid the additional stamp duty that had been demanded under protest and the registration had been completed. In that light, the second prayer in its present form does not survive for consideration. But it is submitted that a consideration be made with regard to the refund of the additional stamp duty that had been paid by the petitioner under protest to secure registration.

3. The petitioner had entered into an agreement to lease on 05.04.2005 with M/s. Dynasty Properties Private Limited. The said M/s. Dynasty Properties Private Limited were carrying out the development of a project named Embassy Prime in the land bearing Plot No. 66/2, Embassy Business Park, C.V. Raman Nagar,

Bengaluru - 560 075. As per the said agreement, the lease was proposed after the third and fourth floors of Wing B of the building were constructed. The agreement also provided for the nature of the facilities to be provided in the building and in that light, the property in question was to be taken on lease. As per the case of the petitioner, there was certain dispute between the parties viz, M/s. Embassy Construction and Development Private Limited and the owners of the land which resulted in arbitration proceedings before the Hon''ble Arbitrator. The award therein was passed on 19.11.2008. In that light, M/s. Dynasty Properties Private Limited who had derived the right in respect of the property had entered into the sale transaction with M/s. Carbon Specialities Limited. In view of the said development, the petitioner was to be the lessee under M/s. Carbon Specialities Limited. However, in view of the earlier understanding both M/s. Carbon Specialities Limited and M/s. Dynasty Properties Private Limited have executed a lease deed dated 13.08.2009 in favour of the petitioner. The said document was presented for registration. However, at that point, the Registering Authority on taking note of the Clause contained in the agreement referring to the agreement to lease dated 05.04.2005 had kept the registration pending since additional stamp duty was required to be paid by considering the lease period in terms of the date indicated therein with respect to the agreement to lease dated 05.04.2005. The petitioner claiming to be aggrieved by such action had preferred the appeal and the revision petition. The Appellate Authority and the Revisional Authority have upheld the action of the Registering Authority in demanding the additional stamp duty in terms of Article 30 of Schedule to Karnataka Stamp Act. It is in that view, the impugned orders have been passed by the Appellate as well as the Revisional Authority with which the petitioner claims to be aggrieved and is before this Court.

4. The respondents have filed their objection statement and have sought to justify their action. Essentially, the contentions urged in the objection statement are similar to the reasons assigned by the Appellate as well as the Revisional Authority to justify their action.

5. Though elaborate arguments have been addressed, the main aspect which arises for consideration in the instant petition is as to whether the demise of the premises to the lessee from the lessor is to be taken into consideration from 01.01.2009 i.e., the day on which the petitioner had become the lessee under the lease deed dated 13.08.2009 which had been registered or does the earlier agreement has any relevance for that purpose. In that light, the issue is also as to whether the Registering Authority, Appellate Authority and the Revisional Authority were justified in taking note of the agreement to lease referred to in the said document and in that view, whether the demise could have been taken into consideration from 05.04.2005 for the purpose of reckoning the period of lease for determining the stamp duty in respect of the document ?

6. Before adverting to the facts in issue, it would be appropriate to take note of the legal position enunciated by this Court in the case of K. Amarnath Vs. Smt.

Puttamma, (1999) ILR (Kar) 4634 : (2000) 4 KarLJ 55 with particular reference to para 19 wherein it has been held as hereunder:

"19. At this juncture let me digress to consider the vexed question as to whether lease agreements and tenancy agreements require registration and whether they are liable to Stamp duty under Article 30 or the residuary clause of Article 5.

19.1. If an agreement or deed of lease relates to a ''present demise'', that is, grants or creates a lease (to ''demise'' is to create an estate by way of lease) either from that date or from the future date, it requires Stamp duty as per Article 30 and requires to be compulsorily registered, irrespective of the period of lease being more than or less than one year. On the other hand, an agreement merely agreeing to grant or create a lease in future, subject to fulfilment of some conditions or happening of some contingencies will be a simple agreement (liable to Stamp duty under the residuary clause in Article 5) which does not require registration. The following illustrations will demonstrate the difference: (a) If the instrument (be it a deed of lease or agreement of lease) confirms, grants or creates a lease, either from any past date or from that date or from a future date, it will be an instrument requiring Stamp duty under Article 30 and requiring registration. Thus, an instrument executed on 1-1-1999 stating that the lease is for a term of 5 years from 1-12-1998 or from 1-1-1999 or from 1-2-1999 is a present demise; (b) If the instrument records an agreement to want a lease in future subject to a contingency or contingencies, then it is a mere agreement which does not require Stamp duty under Article 30 of the Stamp Act, or registration. An instrument which records an agreement to construct a building and then grant a lease by executing a separate deed will be a mere agreement which can be stamped under the residuary clause of Article 5 and may not require registration."

(emphasis supplied)

7. The circumstance mentioned in para 19(b) of the extracted portion would be relevant to be taken in the present situation to come to the conclusion as to whether the agreement to grant lease would also be taken into consideration for the purpose of computation of the period to calculate stamp duty, if subsequently the demise is made on a day other than the date of the agreement to lease. If the said legal position is taken into consideration and the instant facts are perused, in the light of the reasons assigned by the Appellate as well as the Revisional Authority to arrive at their conclusion, it is no doubt true that at Clause -5 of the agreement to lease dated 05.04.2005, it is indicated that the lessor shall put the lessee in possession of the premises on signing of the agreement to lease. However, a composite consideration of all the clauses in the said agreement would disclose that as on the said date, the construction had not been completed and the agreement also provided for the nature of the facilities to be provided in the construction and the premises that would be demised in favour of the petitioner herein subsequent thereto. In that regard, the services to be provided as on the date of handing over of the possession to the petitioner is

contained in Annexure-B to the said agreement. If the contents of Annexure-B therein is taken into consideration, it would indicate that as on the said date, the building was not ready for occupation and the mere indication in Clause 5 cannot be the sole basis to arrive at the conclusion that the possession of the premises was handed over to the petitioner and the demise is to be considered from 05.04.2005 viz, the date on which the agreement to lease was entered.

8. If that be the position, in that light, if the subsequent developments are also taken into consideration, the dispute between the parties had not been resolved nor the rights adjudicated till the Hon''ble Arbitrator had passed the award dated 19.11.2008. In my opinion, the said date becomes more relevant in the circumstance as it intervenes the date of the agreement and the subsequent lease deed which was entered into on 13.08.2009. Further, a detailed reference to the lease deed dated 13.08.2009 would disclose that what is referred to therein is only with regard to the agreement to lease that had been entered into on 05.04.2005 and not to reckon the possession or demise from that date. Hence, there is no specific indication in the said document to show that the possession was handed over to the petitioner on 05.04.2005. In that light, the Clauses contained in the document to indicate the Rent Commencement Date and also the period of lease as contained in Clause-6 would disclose that the period of lease referred to therein is from 01.01.2009 to 05.04.2011 and from 06.04.2011 to 31.12.2013.

9. If that be the position, except for the agreement to lease having been signed on 05.04.2005, there is no other indication in the document that either the lease has been commenced on the said date or that the petitioner was put in possession of the premises on any date prior to 01.01.2009 under the lease deed dated 13.08.2009. In that background, the basis on which the authorities have proceeded to compute the length of the lease period from 05.04.2005 would not be justified, more particularly keeping in view the position of law as enunciated by this Court which has been referred to above.

10. The only manner in which the respondents could have proceeded in the matter was by arriving at a factual determination with regard to the date of possession with reference to the demise and in that light, to come to the conclusion as to whether the stamp duty was to be levied from the date of possession or from the date of the instrument. Since such consideration has not been made in the orders impugned herein, the same would not be justified.

11. Accordingly, the order dated 10.05.2013 and the order dated 29.07.2011 stand quashed. A direction is issued to the respondents to refund the additional stamp duty that had been paid by the petitioner under protest. If at all any action is required based on the observation with regard to the date of possession or the date of the instrument, the respondents would have the liberty of issuing fresh notice to the petitioner, provide opportunity to put forth all the contentions and thereafter arrive at a decision in accordance with law. In that regard, all the contentions are left open.

In terms of the above, the petition stands disposed of.

