(2007) 09 KL CK 0014

In the High Court Of Kerala

Case No : Writ Petition No. 13919 of 2007

K. Mohandas Nayak and Others		APPELLANT
	Vs	
Kumbala Grama Panchayat		RESPONDENT

Date of Decision : 07-09-2007

Acts Referred:
Kerala Stamp Act, 1959 — Section 33

Citation : AIR 2008 Ker 5 : (2008) 1 KarLJ 509 : (2008) 1 KLJ 509

Hon'ble Judges : K.M. Joseph, J

Bench : Single Bench

Advocate : P. Narayanan, for the Appellant; Bechu Kurian Thomas, for the Respondent

Final Decision : Allowed

Judgement

K.M. Joseph, J.—Petitioners are aggrieved by the insistence by the respondent Panchayat to execute an agreement on stamp paper by calculating the amount of stamp duty at five per cent of the total amount of rent for the period of three years. Case of the petitioners is that they are conducting business for several years and they have been called upon as part of renewal of the licences, to execute agreement on stamp paper at five per cent for the entire period of the licence. According to them, they are licensees and, therefore, they contend that they need not execute agreement for the exorbitant amount demanded by the Panchayat. Instead, they would contend that the stamp paper need only be for Rs. 50/-. Alternatively, it is their case that even if it is a lease, the demand made by the Panchayat is unsustainable, in view of Article 33 of the Schedule to the Kerala Stamp Act. Article 33 of the Schedule in so far as it is pertinent, is extracted below:

33. Lease--including an underlease or sub-lease and any agreement to let or sublet-

(a) Where by such lease the rent is fixed and no premium is paid or delivered-

(i) where the lease purports The same duty as a to be for a term of less than one Bottomry Bond (No. year: 14) for the whole amount payable or deliverable under such lease. (ii) where the lease purports The same duty as a to be for a term of not less than Bottomry Bond (No. one year but not more than 5 14) for the amount or years: value of the average annual rent reserved.

2. Learned Counsel for the petitioners would point out that proceeding on the basis that it is a lease, as the lease is for a period of less than five years, the provision which is applicable is Clause (2) already extracted. He would submit that the petitioners are liable to pay only duty at five per cent for the amount or the value of the average annual rent received. Per contra, it is the case of the respondent Panchayat that as the lease is for a period of three years, five per cent is to be calculated on the rent payable for the entire period of three years and it is not sufficient if the annual rent alone is reckoned for computation of the stamp duty payable.

3. Clause (1) of Section 33 deals with the lease which is for a term of less than one year. Both, in respect of Clauses (1) and (2), the duty payable is as in the case of a bottomry bond.

4. In Anandan v. Dy. Director of Panchayats 2000 (1) KLT 1 a Division Bench of this Court proceeded to hold that the right to collect and remove sand is a profit a prendre. It attracts duty at five per cent as it is to be regarded as a right created in the immovable property. In Abdulrahiman v. Tirur Municipality 2001 (2) KLT 716 a learned single Judge of this Court held as follows:

A reading of Ext. P1 clearly shows that even though the word ''licence'' is used in the agreement, possession of the rooms in question is transferred to the petitioners for the period of the agreement exclusively, even though Municipality can enter into the rooms with notice periodically for inspection and carrying out the repairs. It is not a case where the petitioners were given right to enter and do something for a particular time. It is also not an agreement to collect and remove something. Here the rooms were given to the petitioners on monthly rent and they are in exclusive possession and even though the word licence is used, it is actually a lease. Nomenclature in the agreement may not be decisive in all respects when the agreement is construed as a whole.

5. Of course in Sulaiman v. State of Kerala 2003 (3) KLT 133 a learned single Judge of this Court distinguished the aforesaid two decisions and held as follows:

Both of those decisions deal with the collection of river sand and also lease of shop rooms. In other words, they relate to transfer of right in immovable property. Therefore, they cannot have any application to the facts of the present case.

That was a case where the Panchayat farmed out the right to collect fee from the users of its public market and the question was whether in respect of such an agreement, the agreement should be on stamp paper worth Rs. 50/- or at five per cent of the amount.

6. Learned Counsel for the respondent Panchayat invited my attention to Circular dated 17-10-2000 wherein it is directed that agreement has to be executed on stamp paper having a value of five per cent of the amount of the annual rent. It is contended on their behalf that in the facts of this case, as the period of the lease is three years, five per cent must be calculated on the basis of the annual rent for the entire period of three years.

7. I am inclined to hold that the petitioners are liable to stamp duty on the basis that they are lessees. I respectfully follow the judgment. His Lordship Justice J.B. Koshy in Abdulrahiman v. Tirur Municipality 2001 (2) KLT 716. The same effect follows from the Circular which I have referred to.

8. As regards the quantum of stamp duty, I am of the view that the stamp duty need be paid under Article 33, Clause (2) on the average annual rent. The interpretation sought to be placed by counsel for respondent that Article 33 provides for levy of stamp duty on the amount and, therefore, the amount would include the rent payable for the entire period of three years cannot be accepted. As rightly pointed out by the learned Counsel for the petitioners, the said provision contemplates payment of rent either in cash or in kind. Thus, the words "Annual Average Rent" qualify not only the word "value", but also limits the word "amount". Any other interpretation would produce the anomalous result of stamp duty being payable differently in cases where rent is pavable in cash and rent is payable in kind.

9. I do not see any basis for discriminating between a lessee who pays the amount in cash and the lessee who pays the amount in kind. In both cases, the stamp duty should be quantified on the basis of the annual average rent. Therefore, I am of the view that the petitioners are liable to execute agreement on stamp paper for the amount representing the annual average rent. I direct the respondent to allow the petitioners to execute agreements by remitting the requisite stamp duty for the average annual rent. The Writ Petition is allowed as above.