(2009) 08 KL CK 0027

In the High Court Of Kerala

Case No : Writ Petition (C) No. 23947 of 2005

Mohammed, K. and Others	APPELLANT
Vs	
Calicut Corporation and Others	RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Constitution of India, 1950 — Article 33
Kerala Municipalities Act, 1994 — Section 215
Kerala Stamp Act, 1959 — Section 105, 2(1)

Citation : (2009) 08 KL CK 0027

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : C.P. Mohammed Nias, P.K. Aboobacker, D. Somasundaram, G. Sreekumar, Cibi Thomas, Grashious Kuriakose, Celine Joseh, C.P. Peethambaran, Alexander Joseph, Siby Mathew, Philip Mathew Vettickattu, M.P. Madhavankutty, Santosh Mathew and Sathish Ninan, for the Appellant; P.V. Kunhikrishnan, K.D. Babu, S.C., V. Manu, Government Pleader, Philip, T. Varghese and Thomas, T. Varghese, K.B. Mohandas, S.C., Thrissur Corporation, Lellulal, T.G., P.V. Surendranath, P.V. Dipu, Joe Joseph Kochikunnel, V.M. Kurien, Murali Purushothaman, Deepu Lal Mohan, P.M. Benzir, G.G. Manoj, P.V. Surendranath and S. Subash Chand, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—These writ petitions raise the question as to the stamp duty to be paid under the Kerala Stamp Act, 1959 for documents under which persons come into occupation of rooms belonging to Local Self-Government Institutions. The question raised is as to whether such transactions would be lease as defined in Section 2(i) of that Act for levy of stamp duty or whether they are transactions of a different nature, to fall under the residuary clause. The Petitioners argued that the transaction could only be licence and not lease and it has to be so understood in law.

2. It is not as if that this question is arising for decision for the first time before this Court. In Anandan v. Deputy Director of Panchayats 2000 (1) KLT 1 and in Abdulrahiman v. Tirur Municipality 2001 (2) KLT 716, it has been clearly stated

that the nomenclature of the transaction does not by itself decide the matter. It is also laid down in Mohandas Nayak v. Kumbala Grama Panchayat 2007 (4) KLT 367 that such transactions are lease for the purpose of the Stamp Act. These decisions are relied on by the learned Government Pleader on behalf of the State, the beneficiary of the levy.

3. Section 215 of the Kerala Municipality Act, 1994 apparently shows that the manner in which an LSGI can farm out the right to occupy its building is by creating a licence. Adverting to the rules framed under the Municipality Act, it can be seen that the terms lease, licence, rent etc. are used to denote the modus of the transaction and the liability for payment etc.

4. Section 2(i) of the Stamp Act defines lease. It uses the legislative devices "means" and "includes". The earlier part provides that lease means lease of immovable property. Therefore, leases as defined in the Transfer of Property Act, fall under that limb of the definition of lease in Section 2(i) of the Stamp Act The next limb, which enlarges the scope of the definition, brings in the various transactions enumerated in Clauses (i) to (viii) of Section 2(i) also within the sweep of the term ''lease'' for the purpose of the Stamp Act. Among these, are agreements or other undertakings in writing, executed by the renters of abkari and opium farms; any instrument by which tolls of any description are let and different other instruments as are referred to therein. An agreement or other undertaking in writing to cultivate or to pay or deliver rent for immovable property is also lease for the purpose of Section 2(i) of the Stamp Act Contextually, more particularly, it provides that an agreement or other undertaking in writing to occupy immovable property is also a lease. This can be seen from Clause (iii) of Section 2(i) of the Stamp Act. If one were to recall the nice jurisprudential distinctions between possession, occupation, squatting etc.; they are different shades of maneuvering over the corpus and the quality depends on the animus, reckonable in jurisprudence, more particularly relatable to property law. Marayapattom, Kanapattom etc., which also are brought under the definition of lease in the Stamp Act, would not carry with them all incidentals as are understood in the Transfer of Property Act as elements or incidents of lease as defined in Section 105 of that Act. In this view of the matter, the transactions entered into by the Petitioners and the LSGIs are those, under which, the Petitioners have got their respective rights to occupy an immovable property, say, a room, rooms or building of LSGI for his/her commercial or other purpose. Such occupation, even if it does not amount to possession by a lessee in terms of the Transfer of Property Act, is an occupation sufficient enough to bring the transaction within the purview of the term ''lease'' u/s 2(i) of the Stamp Act, by virtue of the extensive limb of that definition clause.

For the aforesaid reasons, these writ petitions are ordered answering that transactions entered into by the Petitioners with the different LSGIs would be chargeable with stamp duty payable for a lease and therefore, chargeable under Article 33 Clause (2) as laid down in Mohandas Nayak''s case (supra), subject to such classification as to rates, depending upon the terms of the respective transactions. All impugned orders imposing stamp duty shall be revised in terms of what is stated above.