(2002) 09 JH CK 0054

In the Jharkhand High Court

Case No : C.W.J.C. No. 1910 of 2001

N.S. and Company APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Stamp Act, 1899 — Section 26, 3

Citation : (2002) 09 JH CK 0054

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Pd., S.K. Ughal, Tapas Kabiraj and K. Choubey, for the Appellant; Shamim Akhtar, S.C.-II, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—The petitioner is aggrieved by the letter dated 17.4.2001 issued under the signature of Assistant Mining Officer, Pakur, whereby he has directed the petitioner to put the valuation of the mining lease on the basis of 1/10th of the total royalty paid during the past 10 years.

2. The petitioner, a partnership firm, applied for renewal of its mining lease in relation to Block 2-A, 3 situated in Malpahari in the district of Pakur measuring an area of 8.05 acres. The application for renewal of the lease of the petitioner was processed on the basis of certain terms and conditions which was communicated vide impugned letter dated 7.4.2001. The respondent No. 4 while communicating the order of Dy. Commissioner for renewal of the lease directed the petitioner to deposit stamp duty calculated on the basis of value of assets at 1/10th of paid up royalty paid during the last 10 years is wholly, illegal and without jurisdiction.

3. Mr. P.K. Prasad, learned counsel appearing on behalf of the petitioner assailed the impugned demand as being contrary to provisions of the Stamp Act. Learned counsel submitted that nowhere in the Stamp Act there is any provision of

calculation of stamp duty on the basis of value of 1/10th of paid up royalty paid for the past 10 years. Learned counsel drawn my attention to Annexure-3 which is a copy of circular dated 11.11.1996, issued by Department of Mines and Geology, Government of Bihar, clarifying that the valuation of stamp duty will be calculated on the basis of average of the royalty received in one year or Pead Rent whichever is higher.

4. The Indian Stamp Act, 1899 deals with the stamp duty payable on the instrument. Section 3 is enabling provision which deals with ascertainment of stamp duty. Section 26 which is the relevant provision for the instant case reads as under :--

"26. Stamp where value of subject-matter is indeterminate.--When the amount or value of the subject- matter of any instrument chargeable with ad valorem duty cannot be, or (in the case of an instrument executed before the commencement of this Act) could not have been, ascertained at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient :

Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp duty,--

(a) when the lease has been granted by or on behalf of the Government at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to payable by way of royalty or share to the Government under the lease, or,

(b) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease :

Provided also that, where proceedings have been taken in respect of an instrument u/s 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution."

5. From perusal of the aforesaid provision it is manifest that in case of the mining lease in which royalty or a share of the produce is received as the rent or part of the rent then such royalty of the value of such share shall he taken into consideration for the purpose of stamp duty. It further provides that if the lease has been granted by or on behalf of the Government as such amount or value as the Collector may have estimated as likely to be payable by way of royalty or share to the Government shall be taken into consideration for the purpose of stamp duty. It is, therefore, clear that Section 26 or any other provisions of the

Stamp Act does not contemplate of a situation of calculation of stamp duty on the basis of value of 1/10th paid up royalty for the past 10 years. The Government of Bihar, Department of Mines vide their circular dated 11.11.1996 rightly issued direction to all the officers of the Mines Department to calculate the valuation for the purpose of stamp duty on the basis of average of the royalty received in one year or dead rent whichever is higher. As a matter of fact, the direction of the respondent in the impugned letter for calculation of stamp duty on the basis of valuation of 1/10th royalty paid during the last 10 years in unknown to law.

6. Mr. Shamini Akhtar learned standing counsel rightly and very fairly contended that in case of Government mining lease royalty shall be paid on the basis of stamp duty but there is no provision of charging stamp duty on the basis of 1/10th of the total royalty paid during the past 10 years.

7. Taking into consideration the entire facts of the case and the law discussed hereinabove there is no doubt in my mind in holding the impugned letter dated 17.4.2001 so far it relates to the direction for payment of royalty on the basis of 1/10th of the total royalty paid during the past 10 years as illegal and without jurisdiction. This writ application, is, therefore, allowed and the direction for payment of stamp duty in the manner aforesaid in the impugned latter is quashed.

