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**(2013) 05 AHC CK 0319**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 28386 of 2012

Rakesh Kumar — APPELLANT

Vs

Deputy Commissioner Stamp and Others — RESPONDENT

**Date of Decision :** 09-05-2013

**Acts Referred:**
Stamp Act, 1899 — Section 17, 3, 49, 49(d), 49(d)(2)

**Citation :** (2013) 6 ADJ 272 : (2013) 99 ALR 676 : (2013) 120 RD 103

**Hon'ble Judges :** Pankaj Mithal, J

**Bench :** Single Bench

**Advocate :** Ram Raj and Mohan Yadav, for the Appellant;

**Final Decision :** Allowed

# Judgement

Pankaj Mithal, J.—Petitioner has invoked the writ jurisdiction of this Court for quashing of the order dated 3.12.2010 passed by respondent No. 3, Additional District Magistrate (Finance and Revenue) and the appellate order thereto dated 19.8.2011 passed by the Deputy Commissioner (Stamp). The brief facts giving rise to this writ petition are that that the petitioner was granted mining lease on 23.5.1995 for a period of five years. The petitioner presented the aforesaid lease-deed for registration before the Sub-Registrar who referred the matter to the Assistant Commissioner (Stamp) for determination of the appropriate stamp duty. The Assistant Commissioner (Stamp) vide order dated 13.12.1995 determined the deficiency in stamp duty on the aforesaid lease-deed by Rs. 3,89,940/- and directed for payment of equivalent amount of penalty.

2. The aforesaid order was modified on 26.3.1996 and penalty was reduced to Rs. 160/- with the leave to the petitioner to deposit the deficiency in two instalments. First of Rs. 1 lac forthwith and the other of the remaining amount within a year.

3. Petitioner accordingly deposited a sum of Rs. 1 lac which was in addition to the stamp duty he had already affixed on the lease-deed but before he could

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deposit the balance amount, in the lease-deed itself was cancelled by the State Government vide order dated 2.7.1996.

4. On the lease-deed being cancelled the petitioner made an application on 21.12.1998 to the Additional District Magistrate (Finance and Revenue) to refund the stamp duty already paid by him and/or for returning the excess amount paid.

5. The Assistant Stamp Commissioner on the other hand, issued recovery against the petitioner to recover the balance stamp duty as was determined vide order dated 13.12.1995 and modified on 26.3.1996. The petitioner refused to pay the said amount as the lease-deed itself was cancelled and he was not allowed to operate it for the entire period of five years stipulated therein.

6. The recovery was challenged by the petitioner by means of Writ Petition No. 371 of 2005 in which initially stay of recovery was ordered but finally the writ petition was disposed of on 1.9.2010 with the direction to the Additional District Magistrate (Finance and Revenue) to pass appropriate orders on the petitioner''s application dated 21.12.1998 for refund of the stamp duty and till any decision is taken on the said application the recovery was directed to remain stayed.

7. In pursuance thereof, Additional District Magistrate (Finance and Revenue) dismissed the petitioner''s application dated 21.12.1998 for refund of stamp duty vide impugned order dated 3.12.2010 and the petitioner''s appeal against the same has been dismissed vide order dated 19.8.2011.

8. In short, petitioner is aggrieved by the rejection of his application dated 21.12.1998 by which he had demanded refund of stamp duty on the ground that the lease-deed was cancelled by the State Government.

9. Undisputedly, the lease-deed was executed on 23.5.1995 for a period of five years which was cancelled by the State Government on 2.7.1996. Therefore, the petitioner operated the mining lease from 23.5.1995 till 2.7.1996/11.7.1996 i.e. for a period of about one year and fifty days only.

10. The authorities rejected the application for refund of the stamp duty paid on the aforesaid lease-deed on the ground that the instrument/lease was for a period of five years and once it was executed the petitioner is liable to pay stamp duty. The period of operation of lease has no relevance for the payment of stamp duty.

11. Submission of learned counsel for the petitioner is that he is entitle to refund of the whole amount as the lease was held to be illegal and cancelled or alternatively he is liable for payment of stamp duty on lease for the period it was operational and any excess amount paid is liable to be refunded.

12. Learned Standing Counsel has submitted that stamp duty is payable on the execution of the instrument. Its subsequent cancellation is not material so as to entitle refund rather petitioner is liable to pay the balance stamp duty. The lease-deed was for a period of five years. Therefore, stamp duty as per Article 35(a)

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(iii) of Schedule 1-B of the Indian Stamp Act, 1899 (hereinafter referred to as the ''Act'') is payable which is applicable to leases exceeding term of five years. It shall not be payable by treating the lease to be of any lesser period.

13. There appears to be no quarrel that in view of Section 3 read with Section 17 of the Act stamp duty is chargeable as soon as an instrument is executed i.e. a lease-deed in the present case. There is also no difference in opinion that the lease-deed was for a period of five years. It is therefore chargeable to stamp duty under Article 35(a)(iii) of Schedule 1-B of the Act and cancellation of the lease-deed before its expiry does not affects its chargeability. But the issue herein is different. It arises on account of Section 49 of the Act which permits allowance for spoiled stamps in certain contingencies such as where the instrument executed is subsequently found unfit due to some mistake or error.

14. Thus, the point for consideration is whether in view of cancellation of the lease by the State Government any allowance or refund is permissible in view of Section 49(d) of the Act.

15. Section 49 of the Act provides that the Collector may, on application made within the period prescribed, on being satisfied, may make allowance for spoiled stamps in the cases mentioned therein which include stamp used on an instrument executed by any party which afterwards is found to be void in law or unfit by reason of any error or mistake therein for the purpose originally intended. The relevant portion of Section 49 of the Act is quoted below:

49. Allowances for spoiled stamps.--Subject to such rules as may be made by the State Government as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in Section 50, and if he is satisfied as to the facts, make allowance for impressed stamp spoiled in the case hereinafter mentioned, namely:

(a) ...........

(b) ...........

(c) ...........

(d) the stamp used for an instrument executed by any party thereto which--

(1) has been afterwards found to be absolutely void in law from the beginning;

(2) has been afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended;

(3) .......

..............

..............

(8) ......

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16. The above provision stipulates that the Collector on an application and on being satisfied that the stamp used for an instrument executed on it being found to be void or unfit, by reason of any error or mistake may make an order for return of the stamp duty. The lease in question has been cancelled by the State Government vide order dated 2.7.1996 not on account of any mistake of the petitioner but for the reason that it was in violation of some order of the High Court. Thus, frustrating the purpose of making the lease in favour of the petitioner. The lease, as such, was found to be unfit for the reason of mistake committed by the State Government in granting the same.

17. Accordingly, as the instrument of lease after execution has been found unfit for the purpose it was executed by reason of mistake on part of the State Government in executing it, the petitioner became entitle in law for consideration of his application for allowance on spoiled stamps as per the provisions of Section 49 of the Act.

18. The case of the petitioner is covered by clause (d)(2) of Section 49 of the Act. The authorities below have not considered the application of the petitioner in the light of provisions of Section 49(d)(2) of the Act.

19. In a case for refund of stamp duty u/s 49 of the Act on the ground that after entering into a transaction to purchase a flat and payment of sale consideration and stamp duty the transferor having failed to deliver possession as the tenant declined to vacate, the Bombay High Court in Sanman Trade Impex Pvt. Ltd. Vs. State of Maharashtra and Others, , accepted the claim and directed for the refund of stamp duty as the instrument stood frustrated. In view of the aforesaid facts and circumstances, the impugned orders dated 3.12.2010 passed by respondent No. 3, Additional District Magistrate (Finance and Revenue) and dated 19.8.2011 passed by the Deputy Commissioner (Stamp) are quashed. The writ petition is allowed with the direction to the Additional Collector (Finance and Revenue) to reconsider the petitioner''s application dated 21.12.1998 keeping in mind the provisions of Section 49(d)(2) of the Indian Stamp Act, 1899 and to pass appropriate order thereon within a period of three months from the date of production of a certified copy of this order.

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