(2012) 11 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1463 of 1999

Smt. Nirmal Malik APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 9

Citation : AIR 2013 Raj 132

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Ajeet Kumar Sharma and V.K. Sharma, for the Appellant; Nalin G. Narain, Deputy Government Counsel and Zakir Hussain, Addl. Govt. Counsel, for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner Smt. Nirmal Malik against order dated 17-8-1998 of the Collector (Stamps) Ajmer in case No. 564/1998, whereby the Collector (Stamps), Ajmer, accepted reference made by Sub Registrar, Ajmer, and held that the document of transfer deed in favour of petitioner involved transfer of physical possession and exchange of rights and came within definition of conveyance, and held the value of the lease to be Rs. 2,25,01,500/- and found stamp duty of Rs. 22,50,150/-, registration fee of Rs. 25,000/- and penalty of Rs. 1,00,000/- payable by petitioner and after deducting already paid stamp duty and registration fee by petitioner, a sum of Rs. 22,46,800/- was found due to be paid by petitioner towards stamps duty, Rs. 24,665/- towards registration fee and penalty of Rs. 1,00,000/-; thus, a total sum of Rs. 23,71,465/- was found recoverable from petitioner. Briefly stated facts of the case are that a mining lease for minerals i.e. mica, feldspar and quartz near village Nareli, Tehsil and District Ajmer for an area of 45.58 hectares was granted by mining department of the Government of Rajasthan in favour of one Arvind Kumar Garg, proprietor of Arvind Minerals, Ajmer, for a period of 20 years commencing from registration of lease-deed. A lease-deed dated 4-8-1983 also came to be executed between the Government of Rajasthan and said Shri

Arvind Kumar Garg. On payment of stamp duty of Rs. 293/-, the mining lease was registered in the model form prescribed under the Mineral Concession Rules, 1960, before the Sub Registrar, Ajmer. Said Shri Arvind Kumar Garg, on account of his illness and inability to supervise the mining operations, submitted an application as per provisions of the Rules of 1960 for transfer of aforesaid mining lease in favour of petitioner for remaining term of lease. Thereafter, petitioner was called upon by the Mining Engineer, Ajmer to submit stamps of Rs. 3350/- for the purpose of registration of aforesaid deed. Stamps were duly submitted by petitioner to mining Engineer, Ajmer, who, vide letter dated 2-3-1998, forwarded the transfer deed dated 27-1-1998 along with stamps of Rs. 3350/- and called upon the petitioner to submit supplementary agreement for registration. According to petitioner, yearly dead rent of mining lease granted in favour of original lessee was Rs. 8740.80 and lease was granted/transferred in favour of petitioner on payment of same yearly dead rent along with security amount of Rs. 2000/- for remaining term of lease of twenty years commencing with effect from 1-10-1983. According to petitioner, the stamp duty payable on the aforesaid document was required to be calculated on yearly dead rent of two years and security amount paid by petitioner coupled with any amount paid by him to transferor Arvind Kumar Garg towards preliminary expenses/improvements. A sum of Rs. 13,000/- was said to have been paid by petitioner to Arvind Kumar Garg towards expenditure incurred by him on development of the area and the Mining Engineer had calculated the stamp duty payable by petitioner with reference to yearly dead rent, security amount and expenditure of Rs. 13,000/-. Thus, the transfer deed was to be registered on valuation of Rs. 32,481/- and payable stamp duty at the rate of 10% was Rs. 3,248/-, as against which the stamp duty of Rs. 3350/- was actually paid by the petitioner. The transfer-deed was earlier registered with the Sub Registrar. The Collector (Stamps), Ajmer City, however, valuing the mining lease at Rs. 1,20,31,125/-, called upon petitioner to pay stamp duty of Rs. 12,03,125/-. Aggrieved thereby, petitioner submitted a detailed representation to Inspector General, Registration and Stamps Department, Ajmer, on whose behalf the Collector (Stamps), Ajmer, was acting and a request was made to Collector (Stamps) Ajmer to treat said representation as reply to notice given in present case. The Collector (Stamps) Ajmer, vide order dated 17-8-1998, accepted reference made by Sub Registrar, Ajmer, and held that document of transfer deed in favour of petitioner involved transfer of physical possession and exchange of rights and such transaction came within the definition of conveyance. It further held that value of lease is Rs. 2,25,01,500/- and found stamp duty of Rs. 2,25,050/-, registration fee Rs. 25,000/- and penalty Rs. 1,00,000/- payable, and after deducting already paid amount of stamp duty and registration fee, a sum of Rs. 22,46,800/- towards stamp duty, Rs. 24,665/- towards registration fee and Rs. 1,00,000/- towards penalty, total amounting to Rs. 23,71,465/- was found recoverable from petitioner. Aggrieved thereby, petitioner has preferred this writ petition.

2. Shri Ajeet Kumar Sharma, learned senior Advocate for petitioner, has argued

that order dated 17-8-1998 of the Collector (Stamps), Ajmer, is wholly arbitrary, illegal and unreasonable as well as contrary to the provisions of the Indian Stamps Act and the Rajasthan Stamp Law (Adaptation) Act, 1952. The Collector (Stamps) has seriously erred in determining the stamp duty on the basis of market value of total area in respect of which the mining lease had been transferred from original lessee Arvind Kumar Garg to petitioner by the Mines Department. All minerals vest in the State Government and by granting a mining lease, State Government only confers a right upon lessee to mine and excavate minerals on payment of dead rent and royalty, whichever is greater, in terms of Sections 9 and 9A of the Mines and Minerals (Development and Regulation) Act, 1957. The basis of calculation of stamp duty for registration of the mining lease deed is the amount of dead rent or royalty, whichever is greater, payable for a period of two years plus (+) the amount of security and the respondents originally calculated the stamp duty on this basis only. In the case of transfer of mining lease from original lessee/transferor (herein Arvind Kumar Garg) to transferee, the value of leased property and the basis of calculation of stamp duty for the purpose of registration, cannot be different and cannot be changed as is sought to be done by the Collector (Stamps) in this case. At the best, value of improvements/expenditure incurred by original lessee, can also be added to the value determined and even this amount had been taken into consideration by the Mining Department and petitioner, while submitting transfer of deed for registration and for the purpose of calculation of stamp duty. It is contended that grant of mining lease or its transfer to petitioner by Mining Department of the State Government, petitioner is neither put in actual physical possession of leased area nor he is allowed to carry on mining operations over the entire area, which comprised of roads, building, enclosed court or garden attached to a dwelling house etc., over which no mining operations, in any manner, can be undertaken. Grant of mining lease does not destroy the surface rights of the tenants for the purpose of mining except after payment of compensation.

3. It was argued that bare perusal of statutory conditions contained in Rule 37 of the Rules of 1960 upon which the mining lease could be transferred, would go to show that original lessee was not entitled to charge or expect from the transferee any premium in addition to the amount spent by him in obtaining lease and, for conducting all or any of operations referred to in Rule 30 in or over the land leased to him. Article 63 of Second Schedule of the Act of 1952 has been misconstrued and misapplied in the case of petitioner by the Collector (Stamps), Ajmer. Two departments of the Government viz. Department of Registration and Stamps and Department of Mines cannot be allowed to work at cross purposes.

4. Shri Ajeet Kumar Sharma, learned Senior Counsel for petitioner, referred to Article 33 of Second Schedule of the Act of 1952 to argue that in the case of lease including own lease or sub lease, where such lease purports to be for a period of one year but not more than twenty years, same duty, as on conveyance No. 21 form considered equal to the amount for value of average rent of two years, would be payable. Article 33 of Second Schedule of the Act of 1998, which

was analogous to Article 35 of Second Schedule of the Act of 1998, also provides for a similar provision in Clause 35-A(2) that where lease purports to be for a term for not less than twenty years for which the same duty as payable on the conveyance 23 can be considered equal to the amount of average to the twenty years was held to be payable.

5. In this connection, Shri Ajeet Kumar Sharma, learned senior counsel for petitioner, has also referred to Notification of the State Government dated 29-3-2001, whereby the Government, in exercise of its powers conferred by sub-section (1) of the Section 9 of the Rajasthan Stamp Law (Adaptation) Act, 1952, has directed that in case of execution of new lease of query license and mining lease and renewal, the stamp duty should be charged at the rate of 11% of the total amount of dead rent, security amount, transfer fee and other miscellaneous expenses.

6. Shri Ajeet Kumar Sharma, learned senior counsel argued that the government has now itself realized that charging of stamp duty on the value of entire mining lease, would not be just and proper.

7. On the other hand, learned Additional Government Counsel appearing on behalf of the respondents denied that the stamp duty payable on the document dated 27-1-1998 was required to be calculated on yearly dead rent for two years. Second Schedule attached to the Act clearly prescribes the rate of stamp duty to be paid on different kinds of instruments. According to Article 63 of the Second Schedule, an instrument by which transfer of lease by way of assignment and not by way of under lease is undertaken the stamp duty shall be "same duty as on a conveyance for a consideration equal to the amount of the market value of the property". Article 23 deals with conveyance, according to which if the conveyance relates to immovable property, then the stamp duty chargeable is 10% of the market value of the property. The instrument submitted by the petitioner for registration is squarely covered by Article 63 of Second Schedule and according to Article 63 the Collector (Stamps) was justified in treating the instrument to be one for conveyancing for an immovable property and the respondent was justified in demanding 10% of the market value of the immovable property in accordance with Article 23 of the Second Schedule. It is submitted that the value of the land area for which mining lease was granted is relevant for the purpose of calculation of stamp duty. For the purpose of the Act, if a lease is being transferred then the chargeable stamp duty has to be in accordance with Article 63 of the Second Schedule and ipso facto in accordance with Article 23 of the Second Schedule. The basis of calculation was clearly in accordance with Article 63 read with Article 23 of the Second Schedule. Any reference to the Mines and Minerals Act and Minor Minerals Concession Rules is absolutely irrelevant for the purpose of charging of stamp duty. It is therefore prayed that the writ petition be dismissed.

8. Having heard learned counsel for the parties and perused the material on record. I have given my anxious consideration to rival submissions.

9. Entry 35 of the Second Schedule of the Rajasthan Stamp Law (Adaptation) Act, 1952, as amended with effect from 16-11-1992 inter alia provides for proper stamp duty where by lease including and under lease, or sub-lease and any agreement to let or sublet, the rent is fixed and no premium is paid or delivered. It further provides that the proper stamp duty where the lease purports to be for a term of not less than twenty years, is the same duty as on a conveyance for a consideration equal to the amount or value of the average rent of two years; and, proper stamp duty where the lease purports to be for a term in excess of twenty years or in perpetuity or where the term is not mentioned, is the same duty as on a conveyance on the market value of the property which is the subject matter of the lease. According to that entry, if the lease was executed for a term in excess of 20 years or where the term is not mentioned, only then stamp duty would be the same duty as on a conveyance on the market value of the property which is the subject matter of the lease.

10. Admittedly, in the present case the original lease itself was granted in favour of Arvind Kumar Garg, proprietor of Arvind Minerals, Ajmer, for a period of 20 years and lease was executed on 4-8-1983. Subsequently, however, sanction for transfer of lease in favour of petitioner was issued by the Director, Mines and Geology Department, Udaipur, vide order dated 22-9-1997 and deed for transfer of mining lease in the form prescribed under Rule 37 of the Rules of 1960 came to be executed amongst the transferor Arvind Kumar Garg and the transferee-petitioner and the Governor of the State of Rajasthan vide agreement of transfer dated 27-1-1998. By that time, fifteen years had already gone by, thus the remaining lease period was only five years or thereabout. Thus, the stamp duty, that was payable, was to be counted on the basis of yearly dead rent for two years and the security amount paid by the petitioner coupled with any amount paid by petitioner to transferor towards preliminary expenses/improvements, if any. Such amount was disclosed before the Mining Department to be Rs. 13,000/-. Learned senior counsel for petitioner is therefore justified in contending that yearly dead rent for two years would be Rs. 17,481.60 (8740 x 2), the amount of security would be Rs. 2,000/-, the amount of expenditure on improvements agreed to be paid by petitioner to transferor would be Rs. 13,000/-; thus, a total amount of Rs. 32,481.60 would form the basis for calculation of stamp duty at the rate of 10% which would come to Rs. 3,248/- and the stamp duty actually paid by the petitioner is Rs. 3,350/-. Even the Rajasthan Stamp Law (Adaptation) Act, 1952, in its Entry No. 35, makes it clear that the proper stamp duty where the lease purports to be for a term of not less than twenty years, is the same duty as on a conveyance for a consideration equal to the amount or value of the average rent of two years.

11. The Government itself has now seen the reason of the argument of the petitioner by issuing Notification dated 29-3-2001 whereby the stamp duty has been ordered to be charged at the rate of 11% with reference to the amount of dead rent, security amount, transfer fee and miscellaneous expenses in both the cases i.e. in the case of grant/renewal of mining lease and transfer of mining

lease. Consequently, writ petition is allowed in the terms indicated above and order dated 17-8-1998 passed by Collector (Stamps) Ajmer in case No. 564/1998, is set aside. This also disposes of stay application.