
(2004) 10 MP CK 0054
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2132 of 2002

Smt. Padma and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 11-10-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)
Stamp Act, 1899 — Article 33, 35, 9

Citation : (2004) ILR (MP) 1025 : (2005) 3 MPHT 198

Hon'ble Judges : R.V. Raveendran, C.J.;N.K. Mody, J

Bench : Division Bench

Advocate : Imtiyaz Hussain, for the Appellant; R.S. Jha, Dy. A.G. for the Respondent Nos. 1, 2 and 4 and V.K. Shukla, for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, C.J.—The Harda Municipal Council (third respondent) auctioned the lease hold rights (for a period of 30 years) in regard to certain shops owned by it. According to the terms of auction, the Lessees will have to pay the agreed premium and a monthly rent (the rent had to be increased by 25% every three years). The petitioners were the successful bidders in regard to various shops. The third respondent sent communications dated 25-1-2000 to each of the petitioners requiring them to get their lease deeds registered. The petitioners had to pay stamp duty under Article 35 (a) (v) and 35 (c) of Schedule I-A of the Stamp Act at conveyance rate in regard to five times the average annual rent and in regard to the premium/advance. The petitioners gave a representation dated 10-9-2001 to the State Government seeking exemption from payment of stamp duty u/s 9 of the Indian Stamp Act, 1899 (as amended in Madhya Pradesh, for short "the Act"). Such exemption was not granted. The petitioners, therefore, filed this petition for a declaration that Article 35 (a) (v) and 35 (c) of Schedule I-A of the Act, when applied together, to a lease transaction, is arbitrary and, therefore, unconstitutional. In the alternative, they sought a

direction to the State Government to exempt or reduce the stamp duty in regard to their lease deeds by exercising power u/s 9 of the Act. They also sought a direction to third respondent to deliver possession of their shops forthwith, which they did not press during arguments.

2. Articles 35 (a) (v) and 35 (c) of Schedule I-A of the Act, referred to in the writ petition were in force from 1-4-1997 till 12-8-2002. the entire Schedule I-A to the Act was substituted in Madhya Pradesh with effect from 13-8-2002. Article 33 (a) (v) and 33 (c) of the current Schedule I-A (which is in effect from 13-8-2002) corresponds to Article 35 (a) (v) and 35 (c) of Schedule I-A which was in force when the writ petition was filed. As an instrument has to be stamped as per the law in force as on the date of execution and as the lease deeds are yet to be executed, what will be applicable will be Article 33 (a) (v) and 33 (c) of Schedule I-A, now in force. There is no material difference between the earlier Article 35 and present Article 33 in so far as Clause (a) (v) and Clause (c) are concerned. We extract below the relevant portions of Article 33 for ready reference :-

Description of Instruments Proper Stamp-duty 33. Lease.- Including an under-lease or sub-lease and any agreement to let or sub-let or renewal of lease :-
(a) whereby such lease the rent is fixed and no premium is paid or delivered-
(i) where the lease The same duty as a Bond purports to be for a term (No. 12) for the whole less than one year; amount payable or deliverable under such lease. (ii) where the lease The same duty as a Bond purports to be for a (No. 12) for the amount of terms of not less than average annual rent one year but not more reserved. than five years; (iii) where the lease The same duty as a purports to be for a term Conveyance (No. 22) for a exceeding five years but market value equal to the not exceeding ten years; amount or value of one and half times the average annual rent reserved. (iv) where the lease The same duty as a purports to be for a term Conveyance (No. 22) for a exceeding ten years but market value equal to three not exceeding twenty times the amount or value years; of the average annual rent reserved. (v) where the lease The same duty as a purports to be a for a Conveyance (No. 22) for a term exceeding twenty market value equal to five years but not exceeding times the amount or value thirty years. of the average annual rent reserved. (vi) where the lease The same duty as a purports to be for a term Conveyance (No. 22) on exceeding thirty years or amount equal to the in perpetuity or does not market value of the purport to be for a property. definite period. **** **
**** ** (c) Where the lease is The same duty as a granted for a fine or Conveyance (No. 22) for a premium or for money market value equal to the advanced or to be amount or value of such advanced in addition to fine or premium or advance rent fixed. as setforth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance has been paid or delivered : Provided that where the lease purports to be for a term exceeding thirty years or in perpetuity or does not purport to be for a definite period, the duty on such lease shall be chargeable as a conveyance (No. 22) on the market value of the property leased :

3. The petitioners point out that the stamp duty payable on a lease for a term exceeding 30 years or a lease in perpetuity, is the same as the stamp duty on a conveyance (sale) irrespective of the rent or the premium/advance. On the other hand in regard to a lease for 30 years, stamp duty is payable at conveyance rate on five times the average annual rent plus the premium. They submit that a lease for a term exceeding 30 years or a lease in perpetuity involves a "bigger" or "larger" transfer than a lease for a term of 30 years. They contend that the stamp duty payable on a lease for a term of 30 years should necessarily be less than the stamp duty payable for a lease for a term exceeding of 30 years or lease in perpetuity, as otherwise the provision relating to stamp duty will be absurd the arbitrary. But according to them, the stamp duty payable under Article 33 (a) (v) and 33 (c) in regard to a lease for a term of 30 years, is more than the stamp duty payable under Article 33 (a) (vi) and the proviso to Article 33 (c) in regard to a lease for a term exceeding 30 years or a lease in perpetuity. This according to them is arbitrary and, therefore, unconstitutional.

4. The petitioners also contend that stamp duty required to be paid on their lease for a term of 30 years under Article 33 (a) (v) read with Article 33 (c) is more than the stamp duty that is to be paid on a conveyance (sale) under Article 22 of Schedule I-A. They submit that a "lease hold right" is a "smaller" or "lesser" right when compared to "absolute ownership" and therefore less valuable than an absolute ownership. They therefore contend that the stamp duty on a lease should always be less than the stamp duty on a sale (conveyance); and if the stamp duty on a lease becomes more than the stamp duty on a sale/conveyance, then the provisions prescribing such duty become arbitrary and, therefore, unconstitutional.

5. The petitioners explained their contentions with reference to the following illustration:-

The market value of a shop is Rs. 3,00,000/-. A lease of the said shop is granted for 30 years, on a premium of Rs. 1,50,000/- and a rent of Rs. 1,000/- per month with an increase of 25% once in three years over the previous rent. The stamp duty on a conveyance (sale), the stamp duty on lease for more than 30 years and a stamp duty on a lease for 30 years will be as follows :-

(a) For sale: Stamp duty at 8% on Rs. 3,00,000/- (Under Article 22) Rs. 24,000/- (b) for Lease for a period of more than 30 years or lease in perpetuity: Stamp duty at 8% on the market value of Rs. 3,00,000/- irrespective of the quantum of rent or premium {under Article 33 (a) (vi) and proviso to 33 (c)} Rs. 24,000/- (c) For a Lease for thirty years : (i) at 8% on the premium of Rs. 1,50,000/- {under Article 33 (c)} Rs. 12,000/- (ii) at 8% on five times the average annual rent of Rs. 33,250/- (Rs. 1,66,250/-) under Article 33 (a)(v) Rs. 13,300/- Stamp duty on a lease for 30 _____ years (i) + (ii) Rs. 25,300/- _____

Thus, according to petitioners, the stamp duty on a lease for 30 years, is more

than the stamp duty on a lease for a term exceeding 30 years or lease in perpetuity or sale. They, therefore, contend that Article 33 (a) (v) and Article 33 (c) requiring payment of stamp duty at the rate applicable to conveyance in regard to the premium amount plus five times the average annual rent is excessive, oppressive, illogical unreasonable and arbitrary.

6. The alternative contention of the petitioners is that as the leases are granted by a statutory Authority (a Municipal Council), the State Government should have exempted or reduced the stamp duty on lease deeds executed by such local Authorities by issuing a Notification u/s 9 of the Act. Reliance is placed on two Notifications which exempt or reduce the stamp duty in respect of certain deeds executed by Housing Board and other Authorities. It is submitted that when remission is granted in regard to deeds executed by other Statutory Authorities like Housing Board, there is no reason to refuse remission in regard to deeds executed by Local Authorities like Municipal Councils. It is contended that failure to extend them, the benefit u/s 9, amounts to hostile discrimination, violative of Article 14 of the Constitution.

7. On the contentions urged, the following two points arise for consideration :-

(a) Whether Article 33 (a) (v) and Article 33 (c) of Schedule I-A of Indian Stamp Act, 1899 as in force in Madhya Pradesh is unconstitutional when applied conjointly in regard to a lease.

(b) Whether the Stamp Duty payable on the lease deeds in favour of the petitioners should be exempted or reduced by the State Government u/s 9 of the Act.

Re : Point (a) :

8. We may first refer to the principles bearing upon a challenge to statutory provisions relating to taxation.

8.1. In State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., , the Supreme Court made it clear that a law made by a Legislature can be struck down only on tow grounds, namely:- (i) lack of Legislative competence and (ii) violation of any fundamental rights guaranteed in Part III of the Constitution or of any or other constitutional provision. It observed thus :-

"There is no third ground. If an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/ equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment can not be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of

the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court can not sit in judgment over their wisdom. An enactment can not be struck down by applying the principle of proportionality. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable unnecessary or unwarranted."

8.2. In *A.B. Abdul Kadir and Others Vs. State of Kerala*, , the Supreme Court held :-

"To some extent every tax imposes an economic impediment to the activity taxed as compared with others not taxed, but that fact by itself would not make it unreasonable. It is well settled that when power is conferred upon the Legislature to levy tax, that power must be widely construed; it must include the power to impose a tax and select the articles or commodities for the exercise of such power; it must likewise include the power to fix the rate...."

8.3. In *Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others*, , the Supreme Court held :-

"There is no dispute that even a fiscal legislation is subject to Article 14 of the Constitution. But it is well settled that a Legislature in order to tax some, need not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation can not be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is possible to hold that the said items belonging to distinct and separate groups and that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity. As observed by this Court in *Khandige Sham Bhat v. Agricultural Income Tax Officer* (AIR 1963 SC 591), in respect of taxation laws, the power of Legislature to classify goods, things or persons are necessarily wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways. The Courts lean more readily in favour of upholding the constitutionality of a taxing law in view of the complexities involved in the social and economic life of the community."

8.4. We may next refer to the principles relating to interpretation of fiscal statutes. In *Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd.*, , the Supreme Court observed :-

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions and assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it can not imply anything, which is not expressed; it can not import provisions in the statutes so as to supply any assumed deficiency."

In the field of taxation, hardship or equity or logic has no role to play in determining liability to tax. Therefore, there can be no question of "equitable construction" of a taxing statute. It is for the Legislature to determine the rate of tax or duty - Kapil Mohan Vs. The Commissioner of Income Tax, Delhi, and Commissioner of Income Tax, Bombay Vs. Gwalior Rayon Silk Manufacturing Co. Ltd., . If there is any genuine hardship, it is for the Legislature to provide relief by amending the law and not for the Courts to hold that the law is bad because the duty or tax is excessive. Stamp Act is purely a fiscal statute with the sole object of securing revenue. The validity of Articles 33 (a) (v) and 33 (c) shall have to be examined keeping in view the aforesaid principles.

9. The State Legislature has the power to make law in respect of "Rates of stamp duty in respect of documents" (other than Bills of Exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts) under Entry 63 of the State List. The attack is not on the ground of lack of legislative competence. Articles 33 (a) (v) and 33 (c) are challenged only on the ground that when combined together, the stamp duty is very high and therefore unreasonable and arbitrary. The Legislature has, as noticed above, the freedom not only in regard to the transactions to be subjected to duty, but also as regards the manner of taxation and rate of tax. So long as a tax or duty is not confiscatory or expropriatory in nature, it can not be challenged merely on the ground of being excessive. Therefore, the challenge to the validity of Article 33 (a) (v) and 33 (c) is liable to be rejected.

10. We will next consider the contention that the requirement to pay stamp duty on the premium/advance as also on five times the average annual rent is arbitrary and unreasonable, if such duty is more than the duty on a lease for more than 30 years or on a conveyance. It is true that a lease for a term exceeding 30 years is a larger transfer than a lease for a term of 30 years. It is also true that a transfer of an "absolute ownership" under a sale involves transfer of a bigger bundle of rights than the transfer of a lease hold right. For leases upto 30 years, the Legislature has prescribed stamp duty in a graded manner depending on the period of lease. The stamp duty on lease for ten years is more than a lease for five years; the stamp duty on a lease for 20 years is more than the stamp duty on a lease for ten years; and stamp duty on a lease for 30 years is more than the stamp duty for a lease for 20 years. The stamp duty on a lease for a term exceeding 30 years or lease in perpetuity is intended to be the maximum, that is equal to the stamp duty on a conveyance. But in a given case, the consideration for the lease and the formula prescribed for calculating the stamp duty, may result in the stamp duty payable on a shorter lease being more than the stamp duty on a longer lease. This is because the stamp duty payable depends on the premium/advance and the rent, which the lessee agrees to pay in regard to leases upto a term of 30 years. On the other hand in regard to leases exceeding a term of 30 years, the quantum of rent and premium becomes irrelevant as such lease is equated to a conveyance for purposes of levy of stamp duty. The illustration given by the petitioners (referred

to in Para 5 above) however is misleading proceeds on an erroneous assumption. It assumes that a shop of a market value of Rs. 3,00,000/-, will fetch a premium of Rs. 1,50,000/- and a monthly rent of Rs. 1,000/- plus 25% increase (compounded) every three years. But, if a lessee chooses to offer a high rent and premium for reasons best known to himself, he can not balk at paying stamp duty thereon. There are several circumstances where the lessee may chose to pay high rent or premium than the property deserves. For example, if a shop is situated in a premium Bazaar area and there is competition to secure the lease of such shop, to ensure that he gets the lease, a lessee may offer a higher premium and higher rent. Similarly, if the owner of a shop is unwilling to sell it, but some is keen to occupy the premises, he may offer to take a lease on a high rent and premium. A person who is willing to pay a high rent and high premium, either keeping the potential of a premises, or the likely rise in the value of the premises, or to defeat the competition or to secure an advantage, can not have a grievance when it comes to payment of stamp duty on the lease, which is linked to the rent and the premium/advance. Therefore, a possibility of stamp duty on a lease for a term of 30 years being more than the stamp duty on a lease exceeding 30 years, is not a ground to hold that Article 33 (a) (v) and 33 (c) are arbitrary and violative of Article 14 of the Constitution of India.

Re: Point (b):

11. Section 9 of the Act enables the State Government (either by a Rule or Order published in the Gazette), to exempt or reduce, whether prospectively or retrospectively, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable.

12. The petitioners invited our attention to the following Notifications issued by the State Government u/s 9 of the Act granting exemption and reduction in stamp duty :-

(i) Notification dated 11-8-1997 exempting the stamp duty in respect of the deed of lease/conveyance relating to house No. HIG-52 Koha-Fiza, Bhopal executed by the State Housing Board in favour of Shri Naresh Mehta.

(ii) Notification dated 5-12-1997 exempting/reducing the stamp duty payable on sale deeds executed by the State Housing Board, Vikas Pradhikaran, Primary Co-operative Housing Societies, and M.P. Co-operative Housing Federation Ltd., in relation to houses/apartments constructed under Self Financing Scheme, by 100%, 50% and 25% respectively for Economically Weaker Sections, Low Income Group and Middle Income Group.

The contention of petitioners is that the State having granted relief in regard to deeds executed by certain authorities like Housing Board, ought to extend the benefit exemption even in regard to deeds executed by local Authorities (Municipal Councils) and failure to do so amounts to hostile discrimination.

13. The State has sought to justify the first Notification by stating that Naresh Mehta is an eminent Poet and writer and, therefore falls under a separate and distinct category. The second Notification is sought to be justified by stating that it relates to exemption of duty payable by persons belonging to weaker sections and reduction of duty payable by persons belonging to Low Income and Middle Income Groups for whom houses are constructed by certain Authorities under Self-Financing Schemes. It is contended that the person or persons to whom the benefit of exemption or reduction is granted form a distinct and separate class by themselves and such classification for granting exemption or reduction is based on an intelligible differentia. It is submitted that petitioners who are lessees taking commercial leases from local authorities form a different class and do not fit into the class who have been extended the benefit of exemption/reduction.

14. Where a statute vests a discretionary power in an Authority, the exercise of such discretion by the Authority would not be interfered with by Courts, unless it is established that such exercise is malafide or for extraneous consideration or arbitrary. Any classification based on a valid principle which is rational and non-discriminatory, is not arbitrary. A classification may be reasonable even though a single individual is treated as a class by himself if there are some special circumstances or reasons applicable to him, which are not applicable to others. A classification in favour of a defined class of persons based on income, or on a class of building (that is residential as contrasted from non-residential) or on a combination of income of transferee and the nature of the building is also valid. A classification which extends relief from tax/duty to poorer sections seeking to have a roof over their head or to eminent persons who have rendered service to Society, can not be termed as irrational. The petitioners are businessmen taking leases for commercial purposes from a Municipal Council. They can not obviously claim to fall in the category of "eminent writers/Poets" or "low-income Group Citizens" taking houses under self-finance Schemes framed by Authorities having the object of providing housing. The non-grant of relief to petitioners is not a case of unreasonable exclusion, while extending a benefit to similarly situated group of persons. Whether lessees of commercial shops constructed by Municipalities should also be given exemption from duty or reduction in duty or not, is a matter for the State to consider. Therefore, the question of this Court directing the State to consider and grant exemption/reduction does not arise. We are satisfied that the refusal to extend relief to petitioners, but granting relief in the two cases pointed out by petitioners, pass the twin tests of Article 14 and does not amount to hostile discrimination. The classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out; and the differentia has a rational relation to the object sought to be achieved by the statutory provision, that is give exemption from stamp duty to the needy and deserving. The alternative prayer (seeking a direction to the State to grant exemption or reduction in duty) is also, therefore, rejected.

15. In view of our answer to the two questions, the petitioners are not entitled to

any relief. The writ petition has no merit and it is, therefore, dismissed.