

(2018) 01 KAR CK 0028
In the Karnataka High Court
Case No : 10794 of 2011

SRI R PRAVEENCHANDRA & ANR

APPELLANT

Vs

STATE OF KARNATAKA & ORS

RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

[Karnataka Stamp Act, 1957](#), [Section 27](#),
[Section 46-A](#), [Section 45-A\(1\)](#),
[Section 45-A\(3\)](#) - Stamp where value of subject matter is indeterminate

Citation : (2018) 01 KAR CK 0028

Hon'ble Judges : A.S. Bopanna

Bench : Single Bench

Advocate : K N PHANINDRA, H.C.KAVITHA

Final Decision : Disposed off

Judgement

1. In both these petitions, the issue relates to the notices issued to the petitioners calling upon them to register the supplementary document and pay stamp duty on such document. Hence, both these petitions are taken up together and disposed of by this common order.

2. For the purpose of narration of facts, the case as arising in W.P.No.10794/2011 is taken note.

3. The petitioner's father had originally sought for grant of mining lease. Accordingly, the lease was granted to which the petitioner has succeeded.

The lease deed dated 15.01.2001 was executed for a period of twenty years which was accordingly registered after payment of the stamp duty as

required to be paid under The Karnataka Stamp Act, 1957. The petitioner has thereafter carried on the mining operations in the land, to which

reference has been made in the lease deed. While registering the document, the

estimated royalty payable was taken into consideration and the stamp duty was accordingly paid. However, since according to the respondents, through the Audit Enquiry No.19 dated 25.03.2009 as at Annexure "A2" since certain observations were made with regard to the increase in the payment of royalty due to the accelerated activity, the respondent No.3 issued a notice dated 03.01.2011 as at Annexure "A" and the communication dated 31.01.2011 as at Annexure "A1" was accordingly issued by the respondent No.4 to the petitioner. The petitioner in that light claiming to be aggrieved is before this Court in this petition. On similar facts, the notice at Annexure "A" and the communication at Annexure "A1" of even date is assailed in W.P.No.12822/2011.

4. The respondents have filed their objections statement. A reference is made to the provision as contained in Section 45-A(1) & (3) of the Karnataka Stamp Act, 1957 and also the proviso as contained in Section 27 of the Karnataka Stamp Act (hereinafter referred to as "the Act" for the sake of brevity), to contend that what has been collected is only the stamp duty on the estimated royalty as on the date of registration of the mining lease and as such, it is contended that on the accelerated activity and the higher royalty being paid a supplementary document is required to be executed so as to collect the additional stamp duty in respect of higher royalty that has accrued thereafter. In that view, action is sought to be justified.

5. In the above background, I have heard the learned Counsel for the petitioners and the learned High Court Government Pleader for the respondents and perused the petition papers. The reference as made by the learned Counsel for the petitioners as well as the learned High Court Government Pleader would indicate that the proviso to Section 27 of the Act, indicates that in respect of a lease of mine in which royalty is involved, it would be sufficient to have estimated such royalty or the value of such share for the purpose of stamp duty.

6. In view of the said proviso, at the time of registration the royalty payable has been estimated and the stamp duty has been paid. The present consideration has arisen since as already noticed, the mining activity was accelerated due to which production had increased and consequently the royalty payable was also higher than what had been estimated at the time of the

registration of the mining lease. Even if that be the position, the issue for consideration at this stage is that as to whether the communication as issued calling upon the petitioners to execute a supplementary document and pay the stamp duty would be justified. Though the contention has been raised by the learned Counsel for the petitioners that the provisions as contained in Section 45A(3) of the Act and in Section 46-A, the power in any event cannot be exercised beyond the period of two years and five years respectively as indicated therein, I am of the opinion that a detailed consideration on that aspect of the matter would not be necessary in these petitions, since firstly what is to be taken note is as to whether in the present circumstance even if the audit enquiry is taken into consideration, the communication as issued is justified. In that regard, it would be appropriate to take note of the Audit Enquiry No.19 dated 25.03.2009 which is at Annexure "A2" in W.P.No.10794/2011, the same reads as under:

As there was no provision in the Karnataka Stamp Act, 1957, to execute rectification deed to prevent the leakage of revenue on account of enhanced royalty due to revision of MP, rectification deeds had not been executed. Thus, absence of provision in the Karnataka Stamp Act, 1957, to execute rectification deeds, led to loss of revenue of Rs.50,46,758/- (stamp duty:Rs.44,52,863/- and registration fee:5,93,715/-) as detailed in the Annexure enclosed.

7. A perusal of the same itself would indicate that it has been noticed that as against the stamp duty that is provided under the Karnataka Stamp Act, if there is an increase in the production in the same and the royalty paid is on the higher side, there is no provision available in the Karnataka Stamp Act. It is in that view, such observation has been made and an examination in that regard is sought therein. In that view, when it has been noticed therein that there is no such provision available in the Karnataka Stamp Act, the correctness or otherwise of the notice issued and the communication addressed to the petitioners will have to be viewed from that stand point. If that aspect of the matter is kept in view, what is also to be taken note is that as rightly pointed out by the learned Counsel for the petitioners though there is an increase in production and the royalty paid is higher, subsequently, the production was increased after obtaining necessary

clearance from the Ministry of Environment & Forests and also after consideration by the State Level Environment Impact assessment authority in the consideration as made by them to provide for the enhancement of the iron ore production. Hence the nature of the investment made and the activity thereto relating to the project has also to be taken into consideration. Therefore, if that aspect of the matter is taken into consideration, there is a change in circumstance as against what had existed as on the date of the registration of the document on 15.01.2001 and therefore in that circumstance, if subsequently there is an increase in production due to which the royalty has been paid at a higher rate, that by itself cannot be taken as the basis to indicate that the royalty estimation has not been properly made at the time of the registration unless a provision to that effect is made in the Act. Even otherwise, the notice as also the communication which are impugned at Annexures "A" and "A2" is not to the effect that as on the date of registration of the mining lease, the estimation of the royalty had not been appropriately made. However, all that is conveyed therein is that subsequently there is an increase in production and therefore the royalty paid is on the higher side which cannot be made relatable to stamp duty. Hence, when there is no specific provision available to that effect in the Act, referring to the very proviso as contained in Section 27 of the Act, for a subsequent increase in royalty when at the time of registration of the document, an estimation has been made and the stamp duty has been collected, would not be justified.

8. Therefore, if all these aspects of the matter are kept in view, the notice dated 03.01.2011 and the communication dated 31.01.2011 as at

Annexures "A" and "A1" in both these petitions would not be sustainable. They are accordingly quashed.

Petitions are accordingly disposed of.