

(1947) 12 CAL CK 0020
In the Calcutta High Court
Case No : Stamp Reference No. 4 of 1944

Standard Coal Company Ltd.

APPELLANT

Vs

Chief Controlling Revenue Authority

RESPONDENT

Date of Decision : 17-12-1947

Acts Referred:

Citation : (1947) 12 CAL CK 0020

Judgement

Mitter, J.—On November 3, 1900, one Jadab Lal Bandopadhyay executed a mining lease for nine hundred and ninety-nine years in respect of three hundred bighas of coal land in favour of one Alexander Fredrick Heilgers. The lease reserved royalty at the rate of six annas per top on all steam coal, rubble and coke and three annas per ton on coal dust. By a further indenture, dated May 23, 1903, the covenant relating to the minimum royalty as contained in that indenture of lease was modified. The right of the original lessee is now vested in the Standard Coal Company, Limited, hereafter called the company. The interest of the original lessor is now vested in a number of persons who are the first, second and third parties to the Memorandum of Agreement of the year 1943, which they proposed to execute in favour of the company, which is named as the fourth party to that instrument. The question before us relates to the stamp duty payable on this instrument.

2. The instrument recites a dispute between the lessors and the lessee regarding the royalty payable in respect of slack coal (which is a mixture of rubble and dust) and a further dispute between them regarding some damage said to have been caused by the lessee to the colliery. It purports to be an agreement between them in settlement of those disputes. By the instrument, the lessee undertakes to pay from July 1, 1938, for the remainder of the period of the mining lease of the year 1900 royalty on all coal,--steam, coke, rubble, slack and dust at the flat rate of five annas three pies per ton in lieu of the royalty reserved in "the "lease" executed on November 3, 1900. The lessee further agrees to pay and the lessors agree to accept Rs. 9,000 in full satisfaction of the latter"s claim for arrears of royalty on slack coal up to June 13, 1938. The instrument was sent

by the lessee's solicitors to the Collector of Stamps for adjudication of stamp duty payable. The Collector held that the instrument had to be stamped under Article 35 of Schedule I of the Indian Stamp Act. Accordingly, the Collector demanded a further sum of Rs. 2,504 as stamp duty. The instrument as sent to him had a one rupee stamp on it. He proceeded on the ground that, as a material term of the lease of the year 1900, namely, the term concerning royalty, was sought to be varied by the instrument, it amounted to a fresh lease. The lessee's solicitor did not agree with the Collector's adjudication. They maintained that the document required a stamp of Rs. 1 under Article 5(c) of Schedule I of the Act. They, accordingly, asked the Collector to make a Reference to the Chief Controlling Revenue Authority, Bengal, namely, the Board of Revenue, Bengal, u/s 56 of the Act, which the Collector ultimately did. The Board of Revenue upheld the Collector's decision; later on, it was asked to refer the matter to this Court u/s 57 of the Act, but refused to do so by an order made about November 28, 1943. The company thereafter moved this Court u/s 45 of the Specific Relief Act and a Rule nisi was issued. That Rule was heard in the presence of the Board of Revenue and was made absolute on May 15, 1944 and the Board of Revenue was directed to state a case for the opinion of this Court. In pursuance of this order the Board of Revenue has made the Reference to this Court u/s 57 of the Act.

3. The learned Standing Counsel, appearing for the Board of Revenue, took a preliminary objection before us, which was that the Reference was not competent, as there had already been an adjudication regarding the stamp duty payable by a competent authority. It is an anomalous position for a person, who has made the Reference, to urge at the hearing of the Reference that the Reference is not competent. But, apart from that, we hold that in view of the final order passed by this Court on the application made u/s 45 of the Special Relief Act, this objection cannot be urged now. We must consider the Reference on its merits.

4. The charging section is Section 3 of the Act. Clause (a) of that section is the clause which is material. The instrument before us purports to be a Memorandum of Agreement. It can be charged with the duty demanded by the Collector, only if it comes within Article 35 of Schedule I. Otherwise, it would be sufficiently stamped if a stamp of Rs. 1 is affixed.

5. Article 35 applies to an instrument which is a lease and for the purpose of that Article, a lease includes inter alia an "agreement to let." The phrase "agreement to let" covers only the case where the agreement amounts to an actual demise. As the letting in the case before us was by the Indenture of Lease made as far back as 1900, stamp duty payable under Article 35 cannot be claimed in respect of the instrument in question under the heading "agreement to let" occurring in that Article. Article 35 would be attracted, only if the instrument before us can be brought within the definition of the word "lease" as given in Section 2(16) of the Act. We are not concerned with the criticism to the effect that that definition,

strictly speaking, is not a definition at all, for it begins by saying that a lease is a lease. It seems to us that the legislature proceeded upon the assumption that the ordinary significance in law of that word being well known it required no further definition. It signifies in law the transfer by one (the landlord) to another (the tenant) of an interest in immovable property, the interest transferred being the right of exclusive enjoyment. Its real intention was to extend the definition for the purpose of stamp duty to instruments embodying transactions which could not otherwise be called leases. As a lease is generally created by an indenture, the definition says, in the first instance, that a document executed by, one party only, either the landlord or the tenant, would be regarded as a lease. Secondly, any writing on an application for a lease intended to signify that the application is granted would also be regarded as a lease. Clause (a), the first part of Clause (b) and Clause (d) of Section 2(16) do not, however, create any difficulty. They only enact that, whatever may be the form, the instrument or writing is to be taken as a lease, provided the effect thereof is to give another person (the tenant) the right of enjoyment in immovable property. Clause (c) however, makes an instrument, by which tolls of any description is let, to be a lease. This is a real and substantial extension of the word "lease," for the right to levy tolls, though it may concern the user of land or water, is not regarded in law as an interest in immovable property. Toll is an imposition for the privilege of using a bridge, road, ferry, market or may be for catching fish, cutting and appropriating trees for fuel, etc. An ijaradar of tolls does not acquire any interest in the land or water.

6. We will now take up for consideration the second part of Clause (b), namely, the phrase "other undertaking in writing.... "to cultivate, occupy or deliver rent for immovable property." The phrase must mean an "accepted undertaking," such as a kabuliyat, which is an instrument executed by the tenant, wherein he undertakes to pay rent to another would have the effect of a demise and so would in substance though not in form be a lease only if the latter had accepted it. An accepted undertaking to cultivate or to occupy or to pay rent would thus be in substance, though not in form, a demise. By the acceptance, the owner impliedly agrees to demise and that implied agreement would amount to an actual demise. In our opinion, the words "undertaking, etc." occurring in that part of Clause (b) refers to the very first undertaking of the character mentioned therein. For the aforesaid reasons, our opinion is that an agreement by which rent or any other stipulation of an existing lease, other than an agreement by which the period of that lease is extended, would not come within the definition of the word "lease" as given in Section 2(16) of the Act. Where, however, the agreement extends the period of an existing lease, it would be regarded as a lease for the period by which the original period is extended, for, in effect, it would be a demise of the immovable property covering that period and stamp duty would have to be calculated in terms of Article 35, the period of the lease being taken to be the period beyond the period of the original lease and rent to be the rent made payable for that period and in the case of a mining lease

Section 26 of the Act must be kept in view.

7. We have already noted the fact that the word "lease" has been given an extended meaning for the purpose of stamp duty. Whether it would include a licence to occupy a piece of immovable property, that is to say, a case where the right of exclusive occupation has not been granted, is a question which we need not decide, for that question is not relevant to this Reference. One view is that an instrument conferring a licence to occupy a piece of land has not to be stamped under Article 35: *Board of Revenue v. South Indian Railway Company, Ltd.* (1924) ILR 48 Mad. 368. Another view is that such an instrument comes within the last part of Clause (b) of Section 2(16) of the Act: per Mukerji J. in *In the matter of Burmah Shell Oil Storage and Distributing Company of India, Limited* (1933) ILR All. 874. These decisions, however, were given in respect of a document by which the grant was first made. They are, therefore, not helpful for the decision of the reference we have before us. But the case of *In the matter of Rameshwar Prasad* (1924) ILR 47 All. 310 is closely analogous to the case before us. There, a mortgage instrument was executed, but thereafter the mortgagor executed an instrument in favour of the mortgagee, whereby the rate of interest was raised. It was held that stamp duty as required on a mortgage instrument could not be demanded on last mentioned instrument. It would be sufficiently stamped if stamp duty payable on a Memorandum of Agreement was paid.

8. If a material term of an existing lease is varied by a later instrument, no doubt a new contract comes into being. So in a sense, the later document may be said to have represented a new transaction, the terms and conditions of the earlier document, which have not been varied, being taken to have been incorporated in the later document. But this in a sense proceeds upon fiction. The cases, for instance, *Durga Prasad Singh v. Rajendra Narain Bagchi* (1909) ILR 37 Cal. 293 : affirmed in (1913) ILR 41 Cal. 493 : L.R. 40 IndAp 223; *Lalit Mohan Ghosh v. Gopali Chuck Coal Company, Ltd.* (1911) ILR 39 Cal. 284 and other cases, which have laid down that the later document has to be registered if a material term of an existing lease varied thereby had occurred in a lease which was compulsorily registrable under the Indian Registration Act, cannot, in our opinion, be legitimately used for the purpose of supporting the contention that an instrument which varies some material term of an existing lease has to be regarded as a fresh lease and so has to be stamped under Article 35, for, in the matter of a fiscal statute, a statute which imposes a financial burden on the subject, fictions or considerations in the nature of fictions have no place. Only the instrument, in respect of which adjudication of stamp duty is required, can be examined and no other instrument and its legal effect has to be considered on what appears on the face of it. Perhaps there may be an exception where fraud upon the statute is intended, but it is not necessary for us to consider that case. We are, accordingly, of opinion that the instrument before us does not require stamp duty under Article 35. A stamp duty of Rs. 1 under Article 5(c) is all that can be demanded. The view we are taking is not against any decision of this Court, which is binding on us. In the case of *Byjnath Dutt Jha v. Putsohee Dobain*

(1873) 20 W.R. (C.R.) 36, the observation to the effect that the document which the Defendant had put forward to show that the rent mentioned in the kabuliyat executed by him was never intended to be realised, but the rent mentioned in that document was what was to be paid, was not admissible in evidence on the ground that it did not bear the stamp required for a lease, is an obiter dictum, for the Court did not hold the document to be genuine. It disbelieved the whole of the evidence, including documentary evidence adduced by the Defendant in support of his plea which was that the contract was for payment of a much lesser amount of rent than what appeared in the kabuliyat.

9. Our answer to the Reference is that the instrument under consideration requires a stamp duty of Rs. 1 only under Article 5(c) of the Schedule I of the Stamp Act and not what is required under Article 35, as it is not a lease within the meaning of Section 2(16) of the Stamp Act.

10. The company will have the costs of this Reference. Certified for two counsel.

11. Let a copy of this judgment bearing the seal of this Court and over the signature of the Registrar be sent to the Chief Controlling Revenue Authority, Bengal.

Sharpe, J.

12. I agree.

Clough, J.

13. I agree.