(2018) 05 RAJ CK 0127

In the Rajasthan High Court

Case No : Spl. Appl. Writ No. 174 of 2017

State of Rajasthan @APPELLANT@Hash Nvuoco Vistas Corporation Limited

Date of Decision : 14-05-2018

Acts Referred:
Indian Stamp Act, 1899 — Section 2, 2(10), 6
Rajasthan Stamps Law (Adaptation) Act, 1952 — Section 2, 3(vi), 47A, 47A(1), 47A(2), 47D

Citation : (2018) 05 RAJ CK 0127

Hon'ble Judges : GOPAL KRISHAN VYAS, J;RAMCHANDRA SINGH JHALA, J

Bench : Division Bench

Advocate : K.L. Thakur, Rihabh Tayal, M.S. Singhvi, Manish Shishodia

Final Decision : Dismissed

Judgement

G.K. Vyas, J.

Â The instant special appeal has been filed by the State of Rajasthan against the impugned judgment dated 04.07.2016 passed by learned Single Judge

in SBCWP No.2623/1996, whereby the learned Single Judge allowed the writ petition and quashed the order dated 12.03.1997 (Annex.18) passed by

the Collector (Stamps) Circle, Bhilwara and demand notice dated 13.03.1997 (Annex.19) and directed the State to return the duly registered document

dated 22.06.1997 to the respondent/writ-petitioner forthwith.Â

Â Succinctly stated, the facts of the case are that initially the writ petition was filed by GKW Ltd., a company incorporated under the provisions of the

Companies Act, 1956 with the averments that another company Graphite India Ltd. was having a mining lease for lime stone for the area of 9.98 Sq.

KM/s near village Sitaramji-Ka-Kheda, District Chittorgarh; the said company partially surrendered some portion of the leased area i.e. 3.96 Sq.

KM/s to the State Government and thereafter submitted an application for permission to transfer the retained area of 6.02 Sq. KM/s to the petitioner

Company.Â

Â The application filed by the company GKW Ltd. was accepted by the State Government and a sanction for transfer of mining lease in question was

issued. After issuance of the sanction, the statutory deed was executed on 22.06.1996 by Graphite India Ltd., GKW Ltd. and on behalf of the

Governor of Rajasthan and signed by the Mining Engineer in accordance with law. The statutory deed was presented before the Sub-Registrar,

Tehsil- Nimbahera, for registration and the Sub-Registrar issued notice u/s 47D of the Rajasthan Stamps Law (Adaptation) Act 1952 (Act of 1952) on

25.06.1996 inter-alia valuing the instrument at Rs.13,90,000/- and stamp duty of Rs.1,39,000/- was demanded along with registration charges of

Rs.4,500/-. The petitioner deposited the demanded deficient stamp duty of Rs.1,35,000/- along with registration charges of Rs.4,500/- on 26.06.1996

itself, however, despite payment of demanded duty, the registered document was not returned to the petitioner.Â

Â The writ petition was initially filed, on account of the SubRegistrar not returning the duly registered document and submissions were made that the

stamp duty initially paid by the petitioner under Article 35 of the Second Schedule was sufficient. Further submissions were made for questioning the

legality and validity of certain circulars directing the authorities under the Stamp Act to determine the value of the lease deeds in a particular

manner.Â

Â An interim was passed on 21.08.1996 staying the operation of those circulars which were under challenge in the writ petition.

In the meanwhile, the Sub Registrar referred the matter under Section 47A (1) of the Act of 1952 to the Collector (Stamps) Circle Bhilwara vide

communication dated 24.07.1996. The Collector (Stamps) issued notice u/s 47A (2) of the Act of 1952 to the respondent/writ-petitioner calling upon to

appear for determining of the correct market value of the land of instrument. The respondent/writ-petitioner appeared before the Collector (Stamps)

and filed an application averring therein that the duty paid has already been excess of the stamp duty applicable and Circulars have been stayed by the

court, therefore, the proceedings be dropped. Another notice was given on

06.03.1997, which was also answered but the respondent Collector in

absence of the petitioner passed an order dated 12.03.1997 (Annex.18) and valued the document as â??Conveyanceâ? and assess the value of the

land comprised in the lease deed at Rs.26,500/- per Bigha and valued the cost of the land at Rs.6,30,14,350/- and after deducting already paid duty and

imposed penalty of Rs.37,565/- and raised demand of Rs.62 lacs. After passing of the above order a demand notice dated 13.03.1997 was issued to

the respondent/petitioner. The petitioner amended the writ petition and challenged the validity of the order dated 12.03.1997 and demand notice dated

13.03.1997 and by an interim order dated 07.04.1997 passed in second stay petition, the operation of the order dated 12.03.1997 and demand notice

dated 13.03.1997 was stayed.

Â During pendency of the writ petition, the cement division of the petitioner GKW Ltd. was converted into a separate new company GKW Cement

Ltd. as per scheme of arrangement sanctioned by Calcutta High Court. Whereafter, the said GKW Cement Ltd. became 100% subsidiary of M/s

Lafarge India, another company incorporated under the provisions of the Companies Act, 1956 and thereafter the name of the company GKW

Cement Ltd. was changed to Lafarge Rajasthan Cement Ltd. and whereafter, an application was filed for brining on record said aspect and

amendment in the cause title for Lafarge Rajasthan Cement Ltd. to prosecute the present writ petition, in which judgment is delivered.Â

Â The writ petition was finally heard by the learned Single Judge and while considering the judgment in the case of State of Rajasthan Vs. Bhilwara

Spinning Ltd. reported in AIR 2001 (Raj.) 184, held that in view of ignorance of the definition of Conveyance as contained in Section 2 (10) of the

Stamp Act, 1899 (Act of 1899), the finding recorded by the Collector (Stamps) is vitiated and based on finding itself, the order impugned cannot be

sustained and deserves to be set aside. The learned Single Judge while deciding the case considered the judgment cited by learned

Additional Advocate General in the case of Hasmukh Jain & Anr. Vs. State of Maharashtra & Ors. reported in (1999) 5 SCC 725. The judgment

passed by learned Single Judge dated 04.07.2016 is under challenge in this appeal.Â

Â During pendency of this appeal, an application (IA No.5231/2017) was filed with a prayer that the respondent company wants to substitute its name

as â??Nuvoco Vistas

Corporation Limitedâ? instead of â??M/s Lafarage Rajasthan Cement Ltd.â?, as its name has been changed in accordance with provisions of law.

The said application was allowed on 01.12.2017 and amended cause title filed along with application was taken on record.Â

Â Mr. K.L. Thakur, learned Addl. Advocate General vehemently argued that the learned Single Judge has failed to consider the fact that the

document upon which the stamp duty is determined by the Collector, has rightly been considered as â??Conveyanceâ? because as per document a

right has been created in favour of person/entity to whom such property under the document is passed on. The argument of learned Additional

Advocate General is that the document in question falls under the definition of â??Conveyanceâ? in view of the fact that Articles pertaining to lease

and transfer of lease by way of assignment are indicated in Second Schedule of the Act of 1952. It is also argued that in view of Section 6, the

document which can carry higher stamp duty has to be charged, therefore, no error was committed by the Collector

(Stamps) in considering the document in question as â??Conveyanceâ? and to determine the value of the land in question for the purpose of stamp

duty.

Â It is further argued that the respondent/writ-petitioner has failed to controvert the said position, therefore, the document has rightly been considered

as â??Conveyanceâ? so as to assess the stamp duty upon market value under Section 47A. The learned Single Judge committed a gross error in

setting aside the order dated 12.03.1997 passed by the Collector (Stamps), Circle Bhilwara, therefore, this appeal may kindly be allowed, the judgment

impugned may be quashed and order impugned dated 12.03.1997 may kindly be restored.Â

Â Per contra, learned counsel appearing on behalf of respondent/writ-petitioner, Mr. M.S. Singhvi, Sr. Advocate assisted by Mr. Manish Shishodia,

submits that action of the Collector (Stamps) is wholly without jurisdiction and determination of value of the document in question by the Collector

(Stamps) is ex-facie illegal because the applicable Article for demand of stamp duty is Article 35 of the Second Schedule of the Act of 1952, which deals with lease and the duty indicated therein w.e.f. 16.11.1992, has been the stamp duty as a Conveyance for consideration equal to amount or value

of the land, which would be paid or delivered for total period of the lease, subject to maximum period of two years. According to the learned counsel

for the respondent/writpetitioner, the stamp duty was rightly calculated and paid in terms of said entry, however, the Sub-Registrar demanded stamp

duty in term of Article 63 of the Second Schedule, which pertains to transfer of the lease by way of assignment and not by way of under lease,

wherein the duty prescribed was the stamp duty as on Conveyance for consideration equal to amount of consideration of transfer, which duty though

no applicable, was paid by the respondent/writ-petitioner.Â

Â According to learned counsel for the respondent/writpetitioner determination made by the Collector (Stamps) based on the market value of the

property by treating the same as Conveyance under Article 63 is ex-facie baseless because as per definition of Conveyance as contained in Section 2

(10) of the Indian Stamp Act, 1899, by this very langue execution of instruments which are otherwise specifically provided by Schedule 1st and lease

is specifically provided for in the Schedule, duty could not have been determined by treating the instrument as a

Conveyance, therefore, the determination made by the Collector (Stamps), is ex-facie illegal, which has rightly been set aside by the learned Single

Judge.Â

Â After hearing the learned counsel for the parties, it emerges from the facts that initially a mining lease for lime stone for the 9.98 Sq. KM/s near

Village Sitaramji Ka Kheda, District Chittorgarh was issued in favour of respondent/writ-petitioner and out of said area 3.96 Sq. KMs leased area was

surrendered to the State Government and thereafter an application was made by the writ-petitioner/respondent for transfer of mining lease and the

said application was accepted by the State vide Annex.1 dated 28.03.1996.Â

Â In the Stamp Act, 1899, the â??Conveyance? has been defined under Section 2 (10) of the Act, which reads as under;Â

Â â??2 (10)- Conveyance- â??Conveyanceâ? includes a conveyance on sale and every instrument by which properly, whether movable or

immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I.â??

Â Upon plain reading of the above definition, it is obvious that Conveyance include the instrument, by which the sale has taken place and every

instrument, by which property whether movable or immovable, is transferred inter vivos, and the definition further stipulates and rather excludes those

transfers which are otherwise specifically provided for by Schedule-I of the Act of 1899.

Â Upon consideration of aforesaid definition, there is no doubt that there is specific provision in the Act of 1899 that if any of the transfer which is

specifically provided for by Schedule-I, the same would not be termed as Conveyance and the stamp there on would be governed by their respective

entries in the Schedule and not as Conveyance. The Act of 1952 which was enacted to consolidate and amend the law relating to stamp in Rajasthan

provided under Section 2 of the Act of 1952 as amended from time to time, shall apply to whole of the State of Rajasthan. The Section 3 (vi) of the

Act of 1952 provides for adaptation. Section 3 (vi) of the Act of 1952 reads as under:Â

Â â??3 (vi)- references in the Indian Act to Schedule I shall be construed as reference to the Second Schedule of the Rajasthan Stamp Law

(Adaptation) Act, 1952 (Rajasthan Act VII ofÂ 1952).â??

Â From a bare perusal of aforesaid provision it is obvious that in the definition of Conveyance in the Act of 1899, instead of Schedule-I, Schedule-II of

the Adaptation Act 1952 has to be read, therefore, if the instrument in question falls in any of the specific entry in Schedule-II of the Adaptation Act,

1952 the same cannot be termed as â??Conveyance?.Â

Â The aforesaid provisions were considered by the Division Bench of this Court in the case of State of Rajasthan Vs. Bhilwara Spinning Ltd. (supra),

and following findings were given in paragraphs 18, 19 and 45, which reads thus:-

Â â??(18). We have carefully considered the rival contentions and perused the record. At the outset we would invite our attention to definition of

conveyance as given in the Indian Stamps Act, 1899 and adopted in the Stale of Rajasthan, which reads as under:-

(10) ""Conveyance"" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos

and which is not otherwise specifically provided for by Schedule I.

(19). An analysis of the aforesaid provision makes it clear; (1) it applies to transfer to properties whether movable or immovable; (2) that such transfer

has to be made inter-vivos and not by operation of law; (3) it expressly includes conveyance of transfer of properly sale or other transfer of property

and excludes such transfer which are specifically provided for by Schedule-1. Â xxx

Â (45)Â Sec. 2(xiv) excludes from the purview of conveyance any transfer of immovable property which is not otherwise specifically provided for by

schedule I. Lease is mode of transfer specifically provided under Art. 35 of Schedule I of the Indian Stamp Act and transfer of lease by way of

assignment vide Art. 63 of the Schedule I of Indian Stamp Act. Thus whether it be a lease or assignment of lease, it cannot be an instrument of

conveyance.â??

Â In view of express provision of law and above adjudication made by the Division Bench of this Court in the case of Bhilwara Spinning Ltd. (supra)

by this Court, we are in full agreement with the conclusion arrived at by the learned Single Judge that the instrument in question is a lease-deed, falls

under the second Schedule of the Act of 1952, therefore, no interference is called for in the finding of learned Single Judge that order of Collector

(Stamps), Circle Bhilwara, is illegal.Â

Â Accordingly, the instant special appeal being devoid of any force is hereby dismissed.Â