



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5635 OF 2005

Deepak Fertilizers And Petrochemicals

Corporation Limited, a company registered
under the Companies Act, 1956 having its
registered office Opposite Golf Course,
Shastri Nagar, Yerawada, Pune 411006

...Petitioner

Versus

1. The Chief Controlling Revenue Authority,

Maharashtra State, Pune having office at New
Administrative Office, Ground Floor, Opp.
Council Hall, Pune 411001

2. The Collector of Stamps, Raigad

having office near Alibag Police Station,
Alibag 402201

3. The City and Industrial Development Corporation

of Maharashtra Limited having its registered office at
Nirmal, 2nd Floor, Nariman Point, Mumbai 400021

...Respondents

.....

Mr. Tejas Gokhale a/w. Mr. Ranjit Shetty i/by Argus Partners, Advocate
for the Petitioner

Mr. G.S.Hegde, Senior Counsel, through Video Conferencing a/w. Ms.
P.M. Bhansali and Mr. Arafat Siddique, Advocate for the Respondent
No.3 CIDCO.

Ms. P.J. Gavhane, AGP, for the Respondents no. 1 and 2 – State.

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CORAM : ABHAY AHUJA, J.

RESERVED ON : 10th DECEMBER 2025PRONOUNCED ON: 18th DECEMBER 2025

JUDGMENT :

1. This Petition filed under Article 227 of the Constitution of India seeks direction to set-aside the Order dated 22nd June 2005 passed by the Chief Controlling Revenue Authority in Appeal No. 127 of 1998 whereby the Chief Controlling Revenue Authority had dismissed the appeal preferred by the Petitioner under Section 53 of the Bombay Stamp Act, 1958 now Maharashtra Stamp Act, 1958 (the “Stamp Act”) thereby confirming the Order dated 1st July 1998 passed by the Collector of Stamps which confirmed the Order dated 31st March 1998 whereby the Collector of Stamps has held that the Agreement dated 13th October 1995 executed between the Respondent No.3 City and Industrial Development Corporation of Maharashtra Limited (the “CIDCO”) and the Petitioner is liable to be treated as ‘lease’ for the purpose of assessment of stamp duty under the Stamp Act.

2. The background facts are that in and around 1991, Respondent No. 3 CIDCO published a scheme for the benefit of the industries and corporate offices established in Navi Mumbai for meeting its staff housing needs. The scheme provided for lease of developed residential plots for construction of staff housing in different townships in Navi Mumbai and accordingly Respondent No. 3 CIDCO invited tenders in respect of plots.

3. The Petitioner successfully bid for Plot No. 4 in Sector 9E at Kalamboli, Navi Mumbai admeasuring an area of 29,881.16 sq. mtrs. (the “said land”).

4. On or about 24th September, 1992 the Petitioner paid a sum of Rs. 3,73,51,450 (Rupees Three Crore Seventy Three Lakh Fifty One Thousand Four Hundred Fifty Only) to CIDCO being the full premium agreed to be paid by the Petitioner to the Respondent No. 3 CIDCO.

5. The Respondent No.3 CIDCO executed an agreement titled ‘Agreement To Lease’ dated 13th October 1995 (the “said Agreement”) in favour of the Petitioner. The said Agreement was executed on a stamp paper of Rs.20/- under Article 5(h) of Schedule I to the Stamp Act.

6. The Respondent No. 2 objected to the said Agreement vide Section 33 of the Stamp Act and by its notice dated 21st February, 1998 called upon the Petitioner to show cause as to why the stamp duty of Rs.26,14,695/- was not paid on the said Agreement as is payable as per Article 36(a)(4) and (C) of Schedule I of the Stamp Act and why the aforesaid amount should not be recovered from the Petitioner with 2%

interest on the said stamp duty charge from the date of executing of the document. The Respondent No.2 also sent a copy to the Respondent No. 3 CIDCO with a request to not grant any 'no objection certificate' or 'building completion certificate' until the said amount was paid by the Petitioner to the Respondent No.2.

7. The Petitioner replied to the said Notice by its letter dated 09th March 1998 stating that as per the said Agreement the Petitioner was a bare licensee in respect of the said land and sought four weeks time to send its detailed submissions.

8. On 10th March 1998, the Respondent No.2, passed an Order under Section 39 (1) (b) of the Stamp Act and ordered that the Petitioner should deposit the difference of amount of Rs, 26,14,695/- of the stamp duty and interest at the rate of 2 % per month on the said amount from 13th October 1995 till the said amount is deposited.

9. The Petitioner sent its Advocates' detailed submissions to the Respondent No.2 under cover of its letter dated 31st March, 1998 and referred to the various clauses of the said Agreement submitting that the Petitioner is a mere licensee of the said land and does not have in its favour a demise of the said land and sought a personal hearing.

10. On 06th April, 1999 the Petitioner received Order dated 24th March, 1998 whereby the Respondent No. 2 stated that on going through the instrument it was observed that essential elements of lease are contained in the said agreement and called upon the Petitioner to pay the deficit stamp duty within a period of one month failing which, action for recovery of the said amount as an arrears of land revenue would be initiated. The Petitioner again requested for withdrawal of the demand and a personal hearing before the Respondent No.2 vide its letter dated 24th April 1998.

11. On 19th May, 1998 the Petitioner was granted personal hearing and the submissions of the said hearing were recorded by the Petitioner by its Advocates' letter dated 08th June 1998.

12. On 17th June, 1998 the Respondent No.2 issued a Demand Notice terming the Petitioner as a Defaulter and required the Petitioner to pay the amount of Rs. 26,14,695/- along with penalty imposed in the order dated 14th March, 1998 (24th March 1998).

13. On 1st July 1998, the Respondent No.2 passed a detailed order holding that in view of amendments to the Bombay Stamp Act, 1958 and deletion of Explanation (III) to Article 36 the said

Agreement executed between the Petitioner and Respondent No.3 is a lease and passed the following order:-

- “a) The resubmission dated 08th June 1998 made by the Company through it's Solicitors is hereby rejected.*
- b) The order issued on 31st March 1998 is hereby remain unaltered.*
- c) As the time limit for appeal under Section 53(1A) of the Bombay Stamp Act, 1958 is elapsed the under Rule 5 of Maharashtra Realisation of Land Revenue Rules 1967 is issued on 17th June 1998 is in force.”*

14. Aggrieved by the said Order, the Petitioner on or about 13th August 1998 preferred an Appeal/Case No.127/98 under Section 53(1) (A) of the Stamp Act before the Respondent No.1.

15. By Order dated 1st October, 1999 Respondent No.1 allowed Appeal/Case No.127/98 and set aside the Order dated 01st July 1998 of Respondent No.2 and remanded the matter to Respondent No.2 for review on the basis of the provisions of concerned Law/Act/Rules and the reasons mentioned in judgment of the Hon'ble Supreme Court in ***State of Maharashtra v. Atur India Pvt Ltd***¹

16. Respondent No.2 passed an Order dated 08th December, 1999 distinguishing the judgments cited by the Petitioner and held that the

¹ 1994 (2) SCC 497

judgments of the Hon'ble Supreme Court do not apply to the facts of the present case and confirmed its earlier order dated 17th June 1998 (corrected by letter dated 13th December 1999 to Order dated 1st July 1998).

17. Being aggrieved by the said Order dated 08th December 1999 the Petitioner filed a fresh appeal before the Respondent No.1 Chief Controlling Revenue Authority on 01st February, 2000 however the said appeal was given the number of the old appeal viz. Appeal No. 127 of 1998. The Respondent No.1 thereafter on 22nd June 2005 passed the following Order:

- “1. Appeal dismissed. Order of the Collector of Stamp is hereby confirmed.*
- 2. Appellants to pay stamp duty under article 36 of schedule I of the Bombay Stamp Act, 1958 within 60 days of the receipt of certified copy, hereof, otherwise penalty as per the provisions of law.*
- 3. Collector of Stamp to certify document under section 41.”*

18. Aggrieved by the Judgment/Order of the Respondent No.2 Chief Controlling Revenue Authority dated 22nd June 2005 the Petitioner has filed this Petition under Article 227 of the Constitution of India, seeking the following reliefs:

*“(a) that Rule be issued, record and proceedings be called for;
 (b) that this Hon’ble Court be pleased to issue a Writ of Certiorari, or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, whereby this Hon’ble Court may be graciously pleased to call for the records and proceedings of the impugned Order dated 22nd June, 2005 passed by Respondent No.1 in Appeal No. 127 of 1998 confirming the Order dated 1st July, 1998 of Respondent No.2 in Case No. EVN/CIDCO/DFPCL/2438 and after examining the legality, validity and propriety of the same, be pleased to quash and set aside the said orders;
 (c) that pending the hearing and final disposal of the present Petition the said Order dated 22nd June, 2005 (Exhibit “A” hereto) be stayed and Respondent No.2 be restrained by an order and injunction of this Hon’ble Court from acting therein or taking any steps in the furtherance thereof;”*

19. In the Writ Petition Rule was issued on 14th September 2005 and interim relief had been granted in terms of prayer clause (c). On 26th September, 2025 time was sought to file reply on behalf of the Respondents, and accordingly three weeks time was granted to file reply and two weeks time was granted to file rejoinder.

20. On 10th December, 2025, when the matter was called out for final hearing, the Counsel for the Respondents submitted that no reply has

been filed by the Respondents and this Court may proceed with the hearing of the matter.

21. I have heard Mr. Tejas Gokhale learned Counsel appearing for the Petitioner, Ms. P.J. Gavhane learned AGP appearing for the Respondents No.1 and 2 State and Mr. G.S. Hegde, learned Senior Counsel appearing for the Respondents No. 3 and with their able assistance I have perused the papers and proceedings.

22. Mr. Gokhale, learned Counsel appearing for the Petitioner has submitted that by the said Agreement, Respondent No. 3 CIDCO, granted a license and authority to the Petitioner, for a period of four years, only to enter upon the said land for the purpose of erection of a building or buildings for residential purposes. Mr. Gokhale has submitted that the said agreement provided that as soon as the town planning officer certified that the building and works had been erected in accordance with the terms thereof and if the Petitioner shall have observed all the stipulations and conditions therein, the CIDCO shall grant and the Licensee shall accept a lease of the said land and building erected thereon for the term of 60 years at the yearly rent of Rupees One Hundred Only. Mr. Gokhale had drawn this Court's attention to the

said Agreement at Exhibit B and submitted that the said Agreement in Clause 2 expressly records that nothing in the said Agreement shall be construed as demise in law of the said land so as to give the Petitioner any legal interest therein and the Petitioner only has a license to enter upon the said land for the purpose of performing the said Agreement. Mr. Gokhale had also referred to the form annexed to the said Agreement and submitted that the lease was to be prepared in accordance with this form with such modification and additions thereto as may be determined by the Corporation and the mere initials on a copy of the same annexed to this does not signify execution of lease as the form came to be initialed at the time of execution of the said Agreement To Lease which is only a license.

23. Mr. Gokhale has submitted that pursuant to the said Agreement although the Petitioner has entered upon the said land and carried out various operations and taken steps incidental there to as permitted by the said Agreement, provided to CIDCO various plans, lay outs, blue prints, proposals for the construction of residential complex on the said land, demarcated and fenced the said land and provided for security thereon, and expected approximately Rupees Three Crores, however, no lease deed as per the said Agreement had been entered into.

24. Relying upon the decision of this Court in the case of *Jasubhai Business Services Pvt Ltd.v. State of Maharashtra and Ors*² Mr. Gokhale has further submitted that an Agreement To Lease is merely an executory instrument binding the parties, to grant to accept a lease in the future. Mr. Gokhale has submitted that as an Agreement To Lease does not create a present demise it is not a lease and requires neither writing nor registration.

25. Mr. Gokhale has submitted that the said agreement does not create a present demise and therefore, is not chargeable with ad-valorem stamp duty which is required to be levied on a lease as contemplated by Article 36 of the Stamp Act.

26. Mr. Gokhale has submitted that the Respondent No.2 has failed to appreciate that the said Agreement is not an agreement of lease nor a present demise in the said land in favour of the Appellant. Mr. Gokhale has further submitted that the Respondent no. 2 has failed to appreciate the distinction between a lease and license and has failed to consider that the intention of the document was just to use and occupy the said premises on license basis. Mr. Gokhale has further submitted

²2011 SCC OnLine Bom 1638

that Respondent No.2 had erred in coming to the conclusion that the said Agreement is a lease and has overlooked the fact that the lease would be executed only after all the conditions are fulfilled by the Petitioner.

27. In support of his contentions, Mr. Gokhale has relied on the decision of a Single Bench in the case of *Jasubhai Business Services Pvt Ltd v. State of Maharashtra and Ors (supra)* which has been confirmed a Division Bench of this Court in appeal in the case of ***State of Maharashtra and Ors v. Jasubhai Business Services Pvt Ltd and connected Petitions***³ with respect to a similar agreement to lease by CIDCO. Mr. Gokhale has submitted that the Division Bench of this Court has held that a license creates no interest in a property and the indenture by granting a license to the licensee to enter upon the land, develop the same and construct buildings thereon and execute works of permanent nature are not in the nature of a lease and the same envisage lease deeds to be executed upon the licensee after complying with the obligations under the Indentures and reaching the stage where the right to have the lease executed is triggered. Mr. Gokhale has submitted that in the light of the aforesaid decisions, the order of the

³2020 (5) Mh.L.J

Respondent No. 2 be set-aside and the stamp duty of Rs. 26,14,695/- along with penalty imposed on the Agreement to Lease be quashed.

28. Mr. Hegde, learned Senior Counsel appearing for the Respondent No.3 CIDCO has also supported the contentions of the Petitioner and has submitted that the usual practice is that after the Agreement To Lease dated 13th October 1995 is entered into for a period of four years, thereafter, after the completion of the works stipulated in the Agreement To Lease the lease deed was to be entered into for 60 years. Mr. Hegde has submitted that there is no present demise upon the Petitioner by the said Agreement. Learned Senior Counsel has submitted that, therefore, the view taken by the Learned Single Judge of this Court in the case of *Jasubhai Business Services Pvt Ltd v. State of Maharashtra and Others with connected Petitions(supra)* as confirmed by the Division Bench in appeal would be the appropriate course of action to be followed.

29. On the other hand, Ms. Gavhane, learned AGP appearing for the Respondents No. 1 and 2 has opposed the submissions made on behalf of the Petitioner and has submitted that the Respondents have rightly assessed the stamp duty on the said Agreement and that there is no

infirmity with the Orders passed by the Respondents No. 1 and 2. Ms. Gavhane has referred to the Order dated 08th December, 1999 and submitted that the Respondent No. 2 has rightly held that the benefit which accrues after erection of the building goes to the Petitioner and not to the original owner, and since the building which is to be constructed by the Petitioner is for the use of the Petitioner himself and not the original owner the stamp duty has been rightly adjudicated. Ms. Gavhane, has submitted that the in the case of license there is a payment of compensation whereas in a lease, the lease rent and premium is paid. Ms. Gavhane has submitted that the said Agreement indicates that a premium of Rupees Three crore and odd amount is already paid on 24th September 1992 and thereafter the construction has taken place and after the construction of the residential premises further new documents are required to be executed and that, therefore, this is a clear Lease and not a license agreement.

30. Ms. Gavhane has also submitted that an undertaking in writing to pay or deliver rent is expressly included within the definition of a lease under the Transfer of Property Act, 1882 but it is to be treated as a lease for the purpose of Stamp Duty. Ms. Gavhane, has submitted that the Chief Controlling Revenue Authority in the

appeal by the Petitioner, the Respondent no.1 has considered the question whether the said Agreement is to be treated as license or a lease for the purpose of assessment of stamp duty and the learned AGP has referred to the findings of the Chief Controlling Revenue Authority in support. Ms. Gavhane has further submitted that the recitals of the said Agreement clearly point out that the Petitioner approached the Respondent No. 3 with the intention for the grant of Lease on 24th April, 1997. Ms. Gavhane has submitted that in clause (e) of the recitals of the said Agreement the corporation has acknowledged the sum of Rs. 3,73,51,450/- being the amount of full premium received by it from the Appellants against the lease and that therefore the said Agreement is a lease and has rightly been so adjudicated.

31. Ms. Gavhane has further submitted that the proposed draft of 'Lease Deed' containing all the terms and conditions of lease signed and sealed by the parties has been annexed to the said Agreement and also initialed by the parties which clearly indicates the intention of the parties was to execute lease and not license as contended by the Petitioner and that if the said Agreement was a mere license the question of entering into any further deed would not arise.

32. Ms. Gavhane has further submitted that the act of allowing to put a permanent structure on the land itself is evidence of its creation of interest in the property and unless it was to be a lease agreement, there would be no question of putting any conditions regarding further lease in a license agreement and this means that, the intention behind the said document was always to be a lease and not a license.

33. Ms Gavhane has submitted that therefore, that the Petitioner has failed to make out any ground whatsoever for the interference of the Hon'ble Court in its writ jurisdiction against the concurrent findings of the Respondents No.1 and 2 and that the Writ Petition be dismissed with costs.

34. In the decision of *Jasubhai Business Services Pvt Ltd v. State of Maharashtra and Others with connected Petitions(supra)* this Court in the case of a similar Agreement To Lease by CIDCO, the Respondent No. 3 herein, relying on the judgment of the Hon'ble Supreme Court in the case of *State of Maharashtra v. Atur India Pvt Ltd (supra)* held that as the Agreement To Lease did not create a present demise and therefore the Agreement to Lease was not chargeable with *ad-valorem* stamp duty which is required to be levied on the lease as contemplated

by Article 36 of the Stamp Act. Paragraphs 49 and 50 of the said decision are relevant and are usefully quoted as under:

“49. In the facts of the present case one of the parties to the instrument is CIDCO which is instrumentality of the State and has pointed out that every person who desires to become lessee of CIDCO in future is directed to make an application in the prescribed form by filing up tenders and successful tenderer or bidder is expected to sign the agreements in the prescribed form. Since CIDCO which is instrumentality of the State is one of the parties to the instrument in question and since in the facts of this case both the parties are ad-idem that the instruments do not create immediate/present demise, it is not possible to hold that the agreements in question are camouflage as contended by Mr. Sonpal. Since the instrumentality of the State of Maharashtra has prepared the agreements in printed format, which have to be signed by every bidder, in the facts of this case, it is not possible to hold that the agreement is a camouflage. The agreement is titled as Agreement To Lease. However the Petitioners; have been referred to as licensee in the agreements. What is created in favour of the Petitioners; is merely a license with an Agreement to create lease in further dependent upon the contingencies as indicated in the agreement. The contingency is to properly construct a building within stipulated time and if this is not done, option is left with CIDCO either to pardon the default and extend time or to

resume the land. Though possession has been handed over to the Petitioners; , the said handing over of the possession is not of legal possession and in law CIDCO continues to be in exclusive possession of the property. Possession handed over to the Petitioners; is merely that of licensees. In my opinion agreements in the present case are Agreements To Lease without creation of present demise coupled with immediate license to enter the land and carry on construction. In the peculiar facts of this case where one of the party is CIDCO, I am inclined to take a view that the document in question does not create a present demise and therefore, is not chargeable with ad volorum stamp duty which is required to be levied on the Lease as contemplated by Article 36. I must not be taken to have laid down a wider proposition that in order case if a document is styled as Agreement To Lease or Agreement To Let or Agreement For Lease, it is not chargeable with stamp duty. In case of instruments which are executed between two private parties, it would be permissible for the concerned authorities under Bombay Stamp Act, 1958 to consider as to whether the agreement is being used as camouflage so as to avoid immediate payment of stamp duty or with a view to evade from the liability of payment of stamp duty. Merely on account of the fact that here both the parties to the agreement are ad-idem that the agreements in question do not create present demise in favour of the Petitioners;, I am inclined to take view that the agreements do not in fact create a present demise in favour

of the Petitioners;, Petitioners; do not get any enforceable right as against the Respondents. And CIDCO continues to be having the legal possession. In my opinion the agreements in the present case do not create right in favour of the Petitioners;, to exclude CIDCO from the legal and physical possession of the lands in question. In my opinion CIDCO continues to have legal possession of the lands with a right to resume the land and right to exclude thePetitioners; from the possession of the property since the possession of thePetitioners; is only that of licensees. The status of the parties would change only after the actual execution of the lease-deed or only after contingency as contemplated in the agreements is fulfilled.

50. Obviously, for these reasons, it would have to be held that in the present case the authorities under the Bombay Stamp Act, 1958 were not justified in levying the ad-volorum stamp duty. It is necessary to clarify that the moment the contingency which is incorporated in the agreement happens or takes place namely the moment Petitioners; or any of them complete the construction within the stipulated time, agreements in question would become chargeable with the stamp duty according to the rates specified at the relevant time when fresh lease deed is executed. Agreement itself contemplates that the parties enter in to a lease-deed in the format annexed to the agreements.”

(emphasis supplied)

35. It is also pertinent to refer to the decision of the Hon'ble Supreme Court in the case of *State of Maharashtra v. Atur India Pvt Ltd* (*supra*) which has also been relied upon by this Court in *Jasubhai Business Services Pvt Ltd v. State of Maharashtra and Others* (*supra*). Paragraphs 24, 27 and 29 of the said decision are relevant and are quoted as under:-

"24. The facts mentioned above are clearly indicative of an agreement to lease and not an agreement of lease. The distinction between the two may be seen first with reference to English law. Woodfall in Law of Landlord and Tenant, Volume I, 28th Edition, 1978 at page 127 states as under: A contract for a lease is an agreement enforceable in law whereby one party agrees to grant and another to take a lease. The expressions "contract for lease" and "agreement for lease" is to be preferred as being more definite, agreement frequently means one of many stipulations in a contract. A contract for a lease is to be distinguished from a lease, because a lease is actually a conveyance of an estate in land, whereas a contract for a lease is merely an agreement that such a conveyance shall be entered into at a future date." (Emphasis supplied) In contradistinction to this, in the case of a lease, there must be a words of demise. On this Woodfall states at page 184 as under:

The usual words by which a lease is made are "demise" and "let"; but any words which amount to a grant are sufficient to make a lease. Whatever words are sufficient to explain the

intent of the parties, that the one shall divest himself of the possession and the other come into it, for any determinate time, whether they run in the form of a licence, covenant or agreement, are sufficient, and will in construction of law amount to a lease for years as effectually as if the most proper and pertinent words had been used for that purpose; for if the words used are sufficient to prove a lease of land, in whatsoever form they are introduced, the law calls in the intent of the parties, and moulds and governs the words accordingly.

25. *Hill & Redman in Law of Landlord and Tenant, 17th Edn., Vol.I at page 100 dealing with this aspect of the matter states...*

26. *A useful reference may be made to Green vs. Bowes – Lyon (1960) 1 All.ER 301, (1960) 1 WLR 176. This ruling clearly brings out the distinction between an agreement to lease and a Lease.....*

27. *We will now turn to Indian Law. Mulla in "The Transfer of Property Act" (7th Edition) at page 674 dealing with agreement to lease states as under:*

“An agreement to lease may effect an actual demise in which case it is a lease. On the other hand the agreement to lease may be a merely executory instrument binding the parties, the one, to grant, and the other, to accept a lease in the future. As to such an executory agreement the law in England differs from that in India. An agreement to lease not creating a present demise is not a lease and requires neither writing nor registration.”

As to an executory agreement to lease, it was at one time supposed that an intending lessee, who had taken possession under an agreement to lease capable of specific performance, was in the same position as if the lease had been executed as registered. These cases have, however, been rendered absolute by the decisions of the Privy Council that the equity in Walsh V. Lonsdale does not apply in India.

29. Examining in the light of above, we hold that the notice of the appellant dated 30.11.1970, the offer of the respondent dated 15.12.1970 and the acceptance of the Collector of the tender of respondent for lease dated 1.1.1971 would merely constitute an agreement to lease. Clause 13 clearly contemplates that the licensee will be put in possession of plot on his executing the agreement to lease. Therefore, it is clear that by the respondent accepting the offer on 15.12.1970, the relationship of lessor and lessee between the appellant and the respondent had not come to be established. Further as pointed out earlier there was no actual demise on the date of the accepting of tender. Therefore, it is only an agreement to lease. It will not fall under Section 2(n) of the Act in which case, it is not an instrument chargeable to duty and the question of impounding does not arise. Much less, there could be a demand for stamp duty.

(emphasis supplied)

36. The decision of the Single Judge of this Court in the case of *Jasubhai Business Services Pvt Ltd v. State of Maharashtra and Others*

(*supra*) as submitted above has been upheld by a Division Bench of this Court in the case of *State of Maharashtra and Others v Jasubhai Business Services Pvt Ltd (supra)* where it has been held that a cardinal distinction and important feature of a leasehold right is right to possess and enjoy the demised immovable property to the exclusion of the lessor and that no right, title or interest passes under an Agreement to Lease. Paragraphs 24, 25, 32 and 33 of the said decision are relevant and are reproduced as under:

“24. Thus, a license only makes an action lawful which without it would be unlawful but does not transfer any interest in favour of the Licensee in respect of the property. A license is therefore treated as a privilege to do something in a property, otherwise not permissible. A cardinal distinction and important feature of a leasehold right is right to possess and enjoy the demised immovable property to the exclusion of the lessor.

25. Tested on the anvil of the definition of a lease and a license in the Transfer of Property Act, 1882 and the Indian Easement act, 1882, a perusal of the two Indentures would show that the respondent No. 1 were given a right under the Indentures to occupy the parcel of the land referred to in the two Indentures and after obtaining sanction from the competent authorities and the grantor to construct buildings and expressly recorded in the Indentures is that no interest would be treated as having been transferred to the respondent No. 1. The Indentures clearly record that upon

fulfillment of the obligations under the Indentures after completing the building and other works, duly certified by the Town Planning Authority, a lease would be executed qua the land the buildings for a term of 60 years. The format of the lease has been agreed upon and forms part of the Indentures. Thus, the Indentures in question are a license and not a lease as per the definition of lease under the Transfer of Property Act and license under the Indian Easement Act.

32. Suffice it to state in response to the argument, that a license creates no interest in a property. Thus the Indentures in question by granting a license to the respondent No.1, to enter upon the land, develop the same and construct buildings thereon and execute works of a permanent nature are not in the nature of a Lessee. The Indentures recognize that the Corporation can transfer interest in the land only by way of a lease and as so specifically it is stipulated in the indentures, with the format of the lease to be executed, in future pre-agreed.

33. For the reasons above recorded, we concur with the view taken by the learned Single Judge that the Indentures are a license and is not a lease. They envisage lease deeds to be executed upon the respondent No. 1 complying with the obligations under the Indentures and reaching the stage where the right to have the lease executed is triggered. In conformity with its caption: 'Agreement to Lease', the Indenture is license with features of Agreement to Lease. It is not an Agreement for Lease. The distinctions between the two is that in an Agreement for Lease the transaction is completed and possessory interest is transferred in favour of the lessee to the exclusion of the lessor and an Agreement to Lease requires an

Agreement for Lease to be executed. No right, title or interest passes under an Agreement to Lease.”

(emphasis supplied)

37. The crux of the matter in this Petition is whether the said Agreement To Lease in question is in fact a License or Lease Agreement. Before dwelling upon this question, it would be pertinent to refer to the Agreement to Lease dated 13th October, 1995 that has been entered into between the Petitioner and the Respondent No. 3 CIDCO.

38. Clauses, 1, 2, 4, 7 and 8 of the Agreement To lease dated 13th October 1995 are reproduced as under:

Grant of Licence:

1. During the period of four years from the date hereof the Licensee shall have license and authority only to enter upon the said land for the purpose of erecting a building or buildings for residential quarters for the use of the employees of the Licensee and for no other purpose and until the grant of lease as provided hereinafter, the licensee shall be deemed to be a mere Licensee of the said land at the same rent and subject to the same terms including the liability for payment of service charges to the Corporation as if the lease has been actually executed. The Licensee shall not transfer in any manner the quarters to be erected on the said land and quarters shall only be permitted to be occupied and used a residential quarters by the employees of the licensee.

Not a demise

2. Nothing in these presents contained shall be construed as demise in law of the said land hereby agreed to be demised or any part thereof so as to give to the Licensee any legal interest therein until the lease hereby provided shall be executed and registered but the Licensee shall only have a licence to enter upon the said land for the purpose of performing this Agreement.

Power to Terminate Agreement

4. Should the Town Planning Officer not approved of the plans, elevations, sections, specifications and details whether originally submitted within the time hereinbefore stipulated, the Managing Director may by notice in writing to the Licensee, revoke the licence and re-enter upon the said land and thereupon the license shall come to an end.

Grant of Lease

7. As soon as the Town Planning Officer has certified that the building and works have been erected in accordance with the terms hereof and if the Licensee shall have observed all the stipulations and conditions hereinbefore contained, the Corporation will grant and the Licensee will accept a lease (which shall be executed by the parties in duplicate) of the said land and the building erected thereon for the term of 60 years from the date hereof at the yearly rent of Rupees One hundred only.

Form of Lease

8. The lease shall be prepared in duplicate in accordance with

the annexed form of lease with such modifications and additions thereto as may be determined by Corporation and all costs, charges and expenses of and incidental to the execution of this Agreement and its duplicate shall be borne and paid by the Licensee wholly and exclusively.

39. A perusal of the aforesaid Clauses clearly indicate that what the Respondent No. 3 CIDCO had granted to the Petitioner is a license for a period of 4 years from the date of the said Agreement viz. from 13th October, 1995 to enter upon the said plots for the purpose of erecting a building or buildings and executing works thereon for residential quarters for the use of the employees of the Respondent No.3 and that until the grant of lease, the licensee viz. the Petitioner shall be deemed to be a mere licensee of the said land. Clause 2 confirms this. Clause 2 titled 'Not to Demise', clearly provides that nothing in these presents shall be construed as a demise in law of the said land hereby agreed to be demised, so as to give to the licensee any legal interest therein until the lease hereby provided shall be executed and registered but the licensee viz. the Petitioner shall only have a license to enter upon the said land for the purpose of performing the said agreement. As submitted above, the annexed form of lease is a form of an actual lease which would be granted by the Respondent No.3 CIDCO to the

Petitioner of the said land and the building erected thereon for the term of 60 years from the date of the said Agreement as soon as the Town Planning Officer has certified that the building and works have been erected in accordance with the terms of the said Agreement and if the licensee shall have observed all the stipulations and conditions as contained in the said Agreement.

40. Agreement to lease, it is settled, is not a lease creating a demise or a right or interest favour of the Petitioner. Even the entire agreement refers to the Petitioner as licensee only. The said Agreement to lease does not create a present demise and is therefore not chargeable with stamp duty along with penalty and interest under Article 36 of Schedule I of the Stamp Act. The Petitioner was a mere licensee with no right or interest or demise in the said land. It cannot, therefore, be said that since vide the said Agreement the intention of the parties was to enter into a lease or the term license used in the said agreement is used so as to avoid immediate payment of stamp duty. The said agreement does not create a present demise in favour of the Petitioner and the status of the Petitioner as licensee would only change only after the actual execution of the lease deed which would be executed only

after the works as contemplated in the agreement are fulfilled and therefore the said agreement cannot be termed as a lease.

41. In the present case, the Respondents No.1 and 2 have not considered the aforesaid and have relied upon the draft form of the lease deed annexed to the said Agreement. I agree with Mr. Gokhale that mere initials on a copy of the same annexed to this Petition does not signify execution of lease as the form came to be initialed at the time of execution of the said Agreement To Lease which is only a license. It is also pertinent to note that the draft as annexed although signed by parties, however has blanks in some clauses and the same was only to be executed subject to fulfillment of the provisions of clause 7 of the said Agreement.

42. The Respondent No.1 has sought to distinguish the judgment of the Hon'ble Supreme Court in the case of *State of Maharashtra v. Atur India Pvt Ld (supra)* on the basis that the document referred to in the case was adjudged on the basis of Explanation III under Article 36 then applicable which stated that "*An agreement of lease shall not be chargeable as a lease unless there is an immediate and present demise.*" and since the same was deleted with effect from 1st September

1995 the judgment does not apply. In my view, the Chief Controlling Revenue Authority has failed to appreciate that the deletion of the Explanation III would have no consequence. The explanation that has been deleted merely stated the legal position as always existed. If parties enter into an agreement to let and from a holistic reading of the agreement or other surrounding circumstances that there was immediate and present demise made under an agreement, then irrespective of the explanation, the instrument would be chargeable with stamp duty, however, if the nomenclature describes the agreement as 'agreement to let' or 'agreement to lease' or 'agreement for lease' but there is no present demise, the document will not be chargeable with stamp duty.

43. The aforesaid decisions of the Hon'ble Supreme Court and this Court make it unequivocally clear that an Agreement To lease which does not create a present demise cannot be termed as a lease and is considered a license only and cannot be chargeable to stamp duty as a lease.

44. The Decision of a Division Bench of this Court in *State of Maharashtra and Ors v. Jasubhai Business Services Pvt Ltd and*

connected Petitions (supra) confirming the view of a Single Judge of this Court in the case of a similar agreement to lease with CIDCO, the Respondent No.3 herein as well as noted above supports the above view.

45. Ergo, the Agreement to Lease dated 13th October 1995 is not a lease and the Respondents No. 1 and 2 were not justified in assessing the Agreement to Lease as a lease and levy stamp duty of Rs. 26,14,695/- along with interest and impose penalty on the Petitioner.

46. Accordingly, the Judgment and Order of the Chief Controlling Revenue Authority, Pune dated 22nd June 2005 requires interference and deserves to be set aside and is hereby set aside and consequently the Order dated 1st July 1998 passed by the Collector of Stamps, Raigad Alibaug and the demand notice dated 17th June 1998 are also quashed and set aside.

47. Rule is made absolute. Writ Petition accordingly stands allowed and disposed as above.

(ABHAY AHUJA, J.)

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