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MP-6936-2019

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 19th OF FEBRUARY, 2026MISC. PETITION No. 6936 of 2019*M/S JAI PRAKASH ASSOCIATED PVT. LTD.**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri R.S. Jaiswal, Senior Advocate with Ms. Anjali Upadhyay,
Advocate for petitioner.

Shri Ritwik Parashar, Government Advocate for respondents.
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ORDER

Per. Justice Pradeep Mittal

The petitioner has filed the present Miscellaneous Petition challenging the order dated 29.03.2016 (Annexure P/3) passed by the Collector, whereby the petitioner was directed to pay deficit stamp duty along with a penalty amounting to Rs.2,44,57,462/- (Rs.1,94,58,462/- towards deficit stamp duty and Rs.50,00,000/- as penalty). Against the said order, the petitioner preferred a revision before the Board of Revenue, however, the same was dismissed vide order dated 28.01.2019.

2. The facts of the case are that petitioner Company was granted a mining lease for extraction of limestone over an area of 150.028 hectares situated at Village Karmau, Tehsil Rampur Baghlan, District Rewa (Madhya



Pradesh), for a period of 30 years by the State Government of Madhya Pradesh for use in its cement manufacturing plant. A Mining Lease Agreement was executed on 09.10.2014. The petitioner required limestone as captive mining material for manufacturing cement and, due to urgent necessity, executed the agreement on a stamp paper of Rs. 1,000/-. The petitioner submitted the document before the Sub-Registrar, Rampur Baghelan, on 12.12.2014 for proper determination and payment of stamp duty and for registration. In compliance with Circular No. 1164 dated 21.05.2004 issued by the Inspector General, Madhya Pradesh, Bhopal, the Sub-Registrar, Rampur Baghelan, forwarded the document to the Registrar for correction and determination of stamp duty under Section 38(vi) of the Stamp Act, as amended by the Madhya Pradesh Stamp Duty Amendment Ordinance, 2014, published in the M.P. Gazette dated 16.09.2014 and effective from 16.09.2014. As per Article 38(vi), where a lease purports to be for a period of thirty years or more, or in perpetuity, or does not specify a definite period, stamp duty is payable at five percent (5%) of the amount of premium or money advanced or to be advanced as set forth in the deed, plus the average annual rent reserved, or the market value of the property, whichever is higher. As per the aforesaid provision, stamp duty was payable at 5% of the average annual rent reserved.

3. On 19.01.2015, proceedings were registered by the Collector of Stamps, Satna, under Section 40 read with Article 38(vi) of the Stamp Act. The Collector issued a letter dated 15.01.2015 to the Mining Officer, Satna, seeking information regarding the average annual royalty for the lease area



of 150.028 hectares. The Mining Officer, Satna, submitted a report dated 24.01.2015 stating that the average annual royalty, as per the approved mining plan, was Rs. 1,25,35,110/-. The Mining Officer also stated that the dead rent at Rs. 1,000/- per hectare per year for five years would amount to Rs. 6,04,000/-. However, it is settled that dead rent cannot be added to royalty, as royalty becomes payable when it exceeds the dead rent, and in such cases, dead rent is not payable separately. Based on the Mining Officer's report, the stamp duty at 5% of the average annual royalty of Rs. 1,25,35,110/- would amount to Rs. 6,26,755/-. However, the Collector wrongly added the dead rent and further multiplied the total annual amount by 30 years, determining the duty at 5% on Rs. 12,65,59,10/- $\times$ 30 years, and thereby calculated stamp duty at Rs. 1,94,58,462/- which also included dead rent and cess (Upkar). The said calculation is wholly erroneous. Under Article 38(vi), stamp duty is to be calculated on the average annual rent reserved. Royalty is equivalent to rent as per Section 26 of the Stamp Act, and dead rent cannot be added thereto. Therefore, stamp duty payable should be 5% of Rs. 1,25,35,110/-, i.e., Rs. 6,26,755/- only. The determination of duty on the entire 30-year lease period is illegal and contrary to law. The petitioner filed objections before the Collector of Stamps on 11.04.2016 stating that, as per the mining plan, total production for five years would be 5,96,910 metric tons, and the average annual production would be 1,19,382 metric tons. At the royalty rate of Rs. 80/- per metric ton, the annual royalty would amount to Rs. 95,50,560/-. Accordingly, 5% stamp duty under Article 38(vi) would be Rs. 4,77,528/-.



4. Aggrieved by the order dated 29.03.2016, the petitioner preferred a Revision under Section 56(4) of the Stamp Act before the Board of Revenue, Gwalior, on the ground that the order was contrary to Article 38(vi) of Schedule 1(A) of the Indian Stamp (Madhya Pradesh Amendment) Ordinance, 2014, later substituted by the Madhya Pradesh Amendment Act. Subsequently, by the Indian Stamp (Madhya Pradesh Amendment) Act, 2015 (w.e.f. 14.01.2016), Article 38 was amended and a special provision for mining leases was introduced. Under Article 38(b), stamp duty on a mining lease is payable at 0.75% of the whole amount payable or determinable under the lease. As the lease is for 30 years, the total royalty payable would be Rs. 1,25,35,110/- $\times$ 30 = Rs. 37,60,53,300/-. Stamp duty at 0.75% of the total amount would be Rs. 28,20,399/-. It is submitted by the learned counsel for the petitioner that the Collector and the Board of Revenue failed to properly consider the legal provisions and submissions of the petitioner and dismissed the Revision, upholding the order of the Collector.

5. Submission of learned counsel for respondent is that the M.P. Stamp Duty Amendment Ordinance, 2014, published in the M.P. Gazette on 16.09.2014 the amendment prescribing 5% duty came into force on 16.09.2014 and was applicable at the time of execution of the mining lease. The amendment introducing 0.75% duty came into force on 14.01.2016 and cannot be applied retrospectively to a lease executed prior to that date. The Collector of Stamps rightly took into consideration all amounts payable under the lease while calculating the stamp duty. As per Explanation 3 to the relevant provision, any consideration in the form of premium or money



advanced, by whatever name called, is to be treated as consideration for the purpose of calculation of duty. Under the M.P. Upkar Adhiniyam, 1982, Upkar is leviable on instruments such as sale deeds, gift deeds, and leases exceeding 30 years. Therefore, the Collector has rightly included the applicable Upkar while determining the total duty. Section 40 empowers the Collector to impose a penalty up to ten times the deficient stamp duty, in addition to the deficit amount. The penalty imposed in the present case is within the statutory limits and is lawful. Section 26 of the Indian Stamp Act, 1899 provides that, in the case of a mining lease, stamp duty is to be determined on the basis of the estimated royalty at the time of execution of the lease deed. Accordingly, the Collector is required to ascertain the proper stamp duty payable on the leased document at the time of its execution.

6. Before proceeding with the dispute, the relevant provision should also be included in the notice; therefore, it is useful to reproduce the provision.

“Section 40 of the Indian Stamp Act, 1899 (Collector’s Power to Stamp Instrument Impounded):

Section 40(1): When the Collector impounds any instrument under Section 33, or receives an instrument sent to him under Section 38(2), and if he is of the opinion that such instrument is chargeable with duty and is not duly stamped, he shall require payment of the proper duty or the deficient portion thereof, together with:

A penalty of five rupees; or

If he thinks fit, a penalty not exceeding ten times the amount of the proper duty or deficient portion thereof Article 38(vi) of Schedule 1-A of the Indian Stamp Act, 1899 (as amended by the Madhya Pradesh Amendment Ordinance/Act, 2014 w.e.f. 16.09.2014):

Where the lease purports to be for a period of thirty years or more, or in perpetuity, or does not purport to be for a definite period, stamp duty shall be payable at five percent (5%) of the amount of premium or money advanced or to be advanced as set forth in the



deed, plus the average annual rent reserved, or of the market value of the property, whichever is higher.”

7. From the provisions of the MMDR Act, it is clear that the lessee is required to pay either royalty or dead rent, whichever is higher.

8. Section 26 of the Indian Stamp Act, 1899 provides that stamp duty on a mining lease is to be determined on the basis of the estimated royalty at the time of execution of the lease deed. Stamp duty is payable according to the law in force on the date of execution of the instrument. The dispute essentially relates to the correct method of calculation of stamp duty and the legality of adding dead rent, Upkar, and penalty. The validity of the impugned orders depends upon whether the Collector correctly applied Article 38(vi) and Section 40 of the Stamp Act in determining the duty and penalty.

9. Learned counsel for the petitioner submits that the impugned orders passed by the Collector (Annexure P/3) and the Board of Revenue (Annexure P/5) are illegal, arbitrary, and contrary to the provisions of the Stamp Act, and are therefore liable to be set aside. It is further submitted that the determination of stamp duty @ 5% on the whole amount of royalty payable is totally wrong. It should have been multiplied by 0.75%. It is further submitted that the Revenue Authorities failed to see that as per order of the Collector, the average annual royalty was Rs. 1,25,35,110/- and the dead rent and Upkar which was added to determine the annual royalty at Rs. 1,25,35,110/-. The dead rent and Upkar are distinct and different from royalty.

10. Learned counsel for the petitioner further submitted that the



Collector wrongly imposed a penalty of Rs. 50 lakhs, which is contrary to the provisions of Section 40 of the Indian Stamp Act. As per the aforesaid provision, only a penalty of Rs. 5/- ought to have been imposed. It was contended that the mining lease is neither transferable nor saleable and has no market value; therefore, the stamp duty should be determined on the basis of the annual royalty, which is equivalent to the royalty payable on the average annual production.

11. It is further argued that no reasons were assigned by the Collector or the Board of Revenue for imposing a penalty of Rs. 50 lakhs, especially when the petitioner himself had presented the mining lease for determination of duty, leaving no occasion to take a contrary view. The question of imposing a penalty at ten times the deficient portion of the stamp duty, or whether such amount exceeds or falls short of Rs. 5/-, does not arise for consideration in the present case.

12. It is also submitted by the learned counsel for the petitioner that the learned Collector ought to have considered that the stamp duty payable is to be determined in accordance with the law existing on the date of execution of the mining lease, i.e., 09.10.2014. As per the law applicable on that date, the duty payable amounted to Rs. 6,26,255/-. Taxing statutes cannot be applied retrospectively.

13. It is also submitted that the revenue authorities were under confusion and determined the duty by applying the amended provisions of Act 38(b), which came into force on 14.01.2016. Even then, they committed an error by multiplying the total royalty for 30 years by five, whereas, as per



the relevant provision, it ought to have been calculated at 0.75 percent.

14. Learned counsel for the petitioner submitted that the authorities failed to consider that the petitioner himself had produced the instrument for registration and for determination of stamp duty. Pursuant thereto, the Sub-Registrar referred the matter to the Collector for determination of the stamp duty payable on the said mining lease instrument. Thus, the petitioner acted bona fide, and there was no false statement, mala fide intention, or material suppression of facts in order to circumvent the provisions of the Stamp Act or to avoid payment of the actual stamp duty payable.

15. It is further argued that under these circumstances, there was no justification for the Collector to impose a penalty of Rs. 50 lakhs, nor for the Board of Revenue to affirm the same. The impugned order is wholly illegal, arbitrary, and in violation of the provisions of the Stamp Act, as the Board of Revenue and Respondent No. 2 failed to apply their judicial mind while adjudicating and determining the stamp duty.

16. Learned counsel for the petitioner submits that the Revenue Authorities ought to have appreciated that the determination of stamp duty and imposition of penalty are matters specifically governed by statutory provisions. Consequently, it was wholly beyond their jurisdiction to adopt any method for determination of duty that is not provided under the law.

17. He further submits that the order passed by Respondent No. 2 is in contravention of Article 38(vi) of Schedule 1(k) of the Indian Stamp (Madhya Pradesh Amendment) Ordinance, 2014. The orders passed by the authorities are devoid of substance and are ex facie contrary to the provisions



enacted by the legislature as well as the law settled by the Courts.

Heard the learned counsel for the parties at length.

18. The core issue is that how the stamp duty be calculated on document, either according to the law and rule which was prevailing at the time of execution of document or when it was submitted for registration or at the time when the order is passed by registrar of stamp. In our view stamp duty is primarily imposed on the execution of the document (on the date it is signed), rather than solely on the date it is submitted for registration. However, it is required to be paid before or at the time of registration. Stamp duty must be paid before the document is executed, on the date of execution, or on the next working day. Execution means the date on which the parties sign. Under Section 23 of the Registration Act, 1908, a document must be presented for registration within four months from the date of its execution. Failure to submit within prescribe period, late payment of stamp duty attracts a penalty, if a document is submitted for registration significantly later than its execution, the Sub-Registrar might assess the duty based on the market value of the property at the time of submission. Therefore, it is clear from the relevant law and rules that stamp duty is to be determined with reference to the date of execution of the document, and not on the date when the document is impounded or when an order is subsequently passed by the Registrar of Stamps.

19. In the case of **Virtual Soft Systems Ltd. v. CIT**, (2007) 9 SCC 665, the Hon'ble Supreme Court has laid emphasis on analysing the nature of the amendment to understand its true scope and meaning and a mere



statement describing the nature of the legislation is not sufficient to categorize the legislation as declaratory or clarificatory. It is necessary to understand the scope and ambit of an act and its retrospective operation as detailed in the case of **Sree Sankaracharya University of Sanskrit Vs. Doctor Manu** (2023 INSC 539), wherein 4 principles have been laid down by placing reliance on **CIT v. Podar Cement Pvt. Ltd.** (1997)226 ITR 625 (SC); **Allied Motors Pvt. Ltd. v. CIT** (1997)224 ITR 677(SC); **Bihta Cooperative Development Cane Marketing Union Ltd. v. Bank of Bihar** AIR 1967 SC 389; **Virtual Soft Systems Ltd. v. CIT**, (2007) 9 SCC 665; **Union of India v. Martin Lottery Agencies Ltd.** (2009) 12 SCC 209, as under:-

- “(1) if a statute is curative/clarificatory of the previous law the said law can operate retrospectively;*
- (2) for a subsequent law to be deemed as clarificatory, there is a need for the previous/pre-amended law to be vague/ambiguous;*
- (3) the explanation or clarification shall not expand or alter the scope of the original position;*
- (4) No court is bound by the statement in the statute describing a provision as a clarification/explanation and the court must proceed to analyse the nature of said provision in order to come to the conclusion as to whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.”*

20. In the case of **Sree Sankaracharya University of Sanskrit and Others v. Dr. Manu and another** passed on 16.05.2023 in Civil Appeal No. 3752 of 2023, the Supreme Court once again elucidated the principle governing amendment vis-à-vis clarification. It has been observed that if any subsequent order is passed clarifying the position of the previous Order, then the subsequent Order may be made applicable retrospectively. Whereas, if the subsequent order is a modification/amendment of the previous order its



application has to be prospective as ‘retrospective application thereof would result in withdrawal of vested right...’

21. The lease deed was executed on 09.10.2014 and was presented for registration on 12.12.2014. The order directing payment of stamp duty was passed on 29.03.2016. It is clear that when the document was presented, the law governing payment of stamp duty on lease deeds was the M.P. Stamp Duty (Amendment) Ordinance, 2014, published in the M.P. Gazette on 16.09.2014. The amendment prescribing stamp duty at 5% came into force on 16.09.2014. The subsequent amendment introducing stamp duty at 0.75% came into force only on 14.01.2016. Therefore, the later amendment cannot be applied retrospectively to a lease deed executed prior to that date. The Collector committed an error in applying the amendment that came into force on 14.01.2016.

22. We are of the considered opinion that there is difference between royalty and dead-rent. Royalty is a kind of rent which the lessor of a mine charges from the lessee, the charge varying with the quantity of minerals etc. reduced during each year. Dead rent is thus a kind of mineral rent of royalty with this difference that the rent called royalty is a varying charge based on the value of the product and the rent called dead-rent is a minimum annual payment which is usually not enforce if the amount is payables annual royalty is more than the amount of dead rent fixed for the year. Royalty in the sense is therefore genus and dead rent is species.

23. In a catena of judgments, including the decision of the Rajasthan High Court in **Chhoga Ram Mundoliya v. State of Rajasthan and Others**,



reported as 1992 SCC OnLine Raj 612, and the judgment of the Karnataka High Court dated 20.07.1990 in W.P. No. 38462 of 1989 (**M/s Jyoti Brothers v. State of Karnataka and Others**), it was held that when the holder of a mining lease becomes liable to pay royalty on minerals removed or consumed from the leased area, he is required to pay either the royalty or the dead rent, whichever is higher.

24. While calculating the annual rent, the Collector also added the dead rent to the royalty, which is contrary to law. It is well settled that either royalty or dead rent, whichever is higher, is to be levied. This means that both cannot be levied simultaneously on the same lease. Therefore, in calculating the annual rent, the Collector committed an error by taking the dead rent into consideration along with the royalty.

25. Thirdly, the Collector added Upkar under the M.P. Upkar Adhiniyam, 1982. Upkar is leviable on instruments such as sale deeds, gift deeds, and leases exceeding 30 years. A lease deed does not fall within the definition of a sale deed or a gift deed. Further, the period of the disputed lease does not exceed 30 years. Therefore, the imposition of Upkar in the present case is contrary to law.

26. The average annual royalty of Rs. 1,25,35,110/- was not in dispute. According to the M.P. Stamp Duty (Amendment) Ordinance, 2014, published in the M.P. Gazette on 16.09.2014, the amendment prescribing 5% stamp duty applied to the annual rent and not to thirty times the annual rent. Therefore, the stamp duty payable ought to have been Rs. $1,25,35,110 \times 5\%$ = Rs. 6,26,755/- only. The lease deed was executed on a stamp of Rs. 100/-.



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The Collector wrongly calculated the stamp duty, and consequently, the penalty imposed by the Collector is also erroneous.

27. In view of the above, the order imposing stamp duty along with penalty is found to be erroneous. Hence, the petition is allowed and the impugned orders dated 29.03.2016 (Annexure P/3) and order dated 28.01.2019 (Annexure P/5) passed by both the authorities are set aside. The Collector/Registrar of Stamps is directed to register the lease deed on payment of stamp duty at Rs. 6,26,775/- only, without imposing any penalty or Upkar.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

MSP