



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 284 of 2023

Date of Decision: 24.10.2024

Maxim Infrastructure & Real Estate
(Shillong) Pvt. Ltd.

... Petitioner(s)

- Versus -

1. State of Meghalaya,
Represented by Commissioner & Secretary,
Department of Urban Affairs, Shillong
Meghalaya.
2. Commissioner & Secretary,
Excise, Registration, Taxation and Stamp Department,
Represented by its Director,
Shillong, Meghalaya
3. The Sub Registrar,
Office of the Deputy Commissioner,
East Khasi Hills District, Shillong
Meghalaya.
4. The Inspector General of Registration &
Superintendent of Stamps, Government of
Meghalaya, Shillong.

.. Respondent(s)



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. S. Jindal, Adv. with
Mr. I. Kharmujai, Adv.
Ms. T. Pohlong, Adv.

For the Respondent(s) : Ms. S. Ain, GA with
Mr. E.R. Chyne, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

1. The brief facts of the case are that one H.M. Cements Limited (HMCL) had entered into a deed of agreement for the construction of a Five Star Hotel-cum-Commercial Complex, at the old Municipal office premises at Jail Road, Shillong, and the project was to be implemented on a Public Private Partnership (PPP) mode. The stamp duty and registration charges on the said deed of agreement was waived off by the State respondents, and as such no charges were paid



by HMCL. HMCL, then transferred the rights to another group company namely Maxim Infrastructure & Real Estate Pvt. Ltd. (MIREPL) which was approved by the State respondents. Thereafter, MIREPL entered into insolvency proceedings before the National Company Law Tribunal (NCLT) Guwahati Bench and pursuant to an order dated 25.10.2019, MIREPL was taken over by a new promoter as per the approved resolution plan and order of the NCLT. The Petitioner company, was then formed by the new promoter to take up the project and a fresh lease deed dated 19.10.2021 as required, was entered into between the Petitioner and the Respondent No. 1. It is the case of the petitioner that prior to entering into the lease deed, though repeated requests had been made for waiver of stamp duty and registration charges since the project was a PPP project, and that such waiver was given to HMCL, the said request was denied by the respondents, which compelled the petitioner to pay the stamp duty and registration charges under protest. A request was also made for refund but the same was also denied. Being aggrieved thereby, the petitioner is before this Court with the instant writ petition.



2. Mr. S. Jindal, learned counsel for the petitioner has submitted that it is crucial to note that the intention of the parties was to implement the project under the PPP mode and that the Meghalaya Public Private Partnership Policy, 2021 at clause 6.F.1, has clarified that the State Government would extend concessions on stamp duty for land transfers in PPP projects, and as such no stamp duty or registration charges were paid for the deed of agreements as per the PPP policy. The learned counsel further submits that the resolution plan submitted to the NCLT, which allowed the petitioner to take over the project was based on an understanding that the project would continue to be treated under the PPP mode, with all associated concessions and waivers being extended to the petitioner, and as such at the time of execution of the Lease Deed on 19.10.2021, the same was not immediately registered nor was stamp duty paid thereon. However, he submits on the Government's recalcitrance to allow the waiver, and on facing pressure from Marriot International, regarding the registration of the Lease Deed, the petitioner then registered the Lease Deed on 25.02.2022, paying Rs. 29,17,503/- towards stamp duty and registration charges. The petitioner he submits, then by letter dated



04.03.2022, requested a refund for the amount paid, which however met with the response vide letter dated 13.07.2022 issued by the respondent No. 4, that the stamp duty and registration costs could not be refunded because there is no provision for waiver under the PPP mode unless notified.

3. The learned counsel then contends that the Indian Stamp Act, 1899 read with the Registration (Meghalaya Amendment) Act, 2022, allows for such exemption on any instrument executed by or on behalf or in favour of the Government and that the State Government had inherent powers to reduce, remit or compound duties for any particular class or classes of instruments. The learned counsel has strenuously argued that there is no reasonable explanation of how circumstances have changed, inasmuch as, in the same project under the PPP mode while waiver had been accorded to HMCL, the same has not been extended to the petitioner who had but substituted or stepped into the shoes of HMCL. He further contends that the petitioner has been subjected to unequal treatment and the decision of the



respondents is arbitrary and mala fide. In support of his submissions, the learned counsel has placed reliance on the following decisions: -

- i) *Godavari Sugar Mills Vs. State of Maharashtra (2011) 2 SCC 439 (Para 8(ii) (iv) & (vi))***
- ii) *ABL International Vs. Expert Credit Guarantee Corporation (2004) 3 SCC 553 (Para 27)***
- iii) *Asia Foundation Vs. Trafalgar House Construction (1997) 1 SCC 738 (Para 9)***
- iv) *Faquir Chand Vs. Uppal Agencies (2008) 10 SCC 345 (Para 30)***
- v) *B.K. Muniraju Vs. State of Karnataka (2008) 4 SCC 451 (Para 18)***
- vi) *Madras Alumimum Co. Vs. Tamil Nadu Electricity Board (2023) 8 SCC 240 (Para 39 & 40)***
- vii) *SVK Infrastructures Vs. Delhi Tourism 2023 SCC OnLine Del 6460 (Paras 8 & 10)***
- viii) *M. Sudakar Vs. V. Manoharan (2011) 1 SCC 484 (Para 14)***
- ix) *Wolstenhome International Vs. Twin Stars Industrial 2001 SCC OnLine Bom 194 (Para 13)***

4. On behalf of the State respondents, Ms. S. Ain, learned GA has firstly submitted that the writ petition is not maintainable for



refund of stamp duty lawfully collected and that a mandamus can only be issued if the collection is illegal, and no claim of illegality has been raised by the petitioner. She further submits that claim for such refund can only be pursued through a suit and not by a writ petition, and that the petitioner has failed to demonstrate that the decision to charge the fees was arbitrary or irrational; and that further a writ for payment can only be issued to enforce statutory functions. It has also been contended by the learned counsel, that apart there being no violation of any fundamental or legal rights to justify the writ petition, the petitioner has already made the payment, and as such therefore no cause of action subsists after the rejection of the waiver request. She then submits that the petition is also barred by delay and laches as the payment was made on 25.02.2022, after the refusal of the waiver in February 2022, and that the petitioner has alternative remedy available under the Indian Stamp Act, and that the Lease Deed itself contains an arbitration clause at Article 15, thereof.

5. On another limb of submission, it has been submitted that the Meghalaya Public Private Partnership Policy (PPP) 2021 does not



grant automatic exemption, but there is a requirement of issuance of separate notifications by the Government, and that fiscal support is determined case by case which is discretionary, and that in the Policy itself, the same has been termed as a concession and not exemption. There being no concession agreement, she submits, the petitioner was therefore bound to pay the stamp duty as agreed under the Lease Deed. On other aspects of the matter, learned counsel has argued that the new Lease Deed dated 19.10.2021, was a fresh agreement with new terms distinct from the previous Deed, and that the new Lease Deed involved a settlement of Rs. 2,25,00,000/- as full and final payment for all previous arrears and demands, which therefore disallows any claim for fiscal support on further concessions. The learned counsel then concludes her submissions, by contending that the petitioner had expressly agreed to bear and pay the stamp duty and registration fees as provided at clause 21.1 of the new Lease Deed, and as such having agreed to the same, is estopped from seeking exemption from payment. The learned counsel in support of her arguments on the question of maintainability, and claim of refund has relied upon the following decisions :-



- i) ***Suganmal Vs. State of M.P. AIR 1965 SC 1740***
- ii) ***Union of India & Ors. Vs. Orient Enterprises & Anr. (1998) 3 SCC 501***
- iii) ***Burmah Construction Co. Vs. State of Orissa, AIR 1962 SC 1320*** reiterated in ***Godavari Sugar Mills Vs. State of Maharashtra (2011) 2 SCC 439***
- iv) ***Dhanyalakshmi Rice Mills Vs. Commr. of Civil Supplies (1976) 4 SCC 723***

6. Having heard the learned counsel for the parties, simply put, the grievance of the petitioner is only with the non-extension of the waiver on stamp duty and registration charges on the Lease Deed, while for the same project itself with the initial promoter, this concession had been extended. In this context, an examination of the earlier Deed of Agreement dated 25.06.2010, reflects that by a noting on the instrument itself dated 29.06.2010, fees had been exempted. Coming to the current Lease Deed dated 19.10.2021, it can be seen that at clause 1.1 thereof, the project is on the same plot of land i.e. Plot No. 34, Jail Road Ward, Shillong, as shown in the earlier agreement. Therefore, for all practical purposes, notwithstanding the exit of the first promoter, the subsequent NCLT proceedings, and the



entry of the present petitioner, the project as described in clause 1.2, of the earlier and present agreement, is with the same objective. This Court therefore is only to examine as to whether the denial of the waiver on registration charges and stamp duty by the State respondents in the second instance, can be said to be arbitrary or mala fide to warrant interference by this Court in exercise of powers under Article 226 of the Constitution of India.

7. In this backdrop therefore, a cursory scrutiny of the relevant Acts and Policy is necessary to be gone into. First while looking at the Indian Stamp Act, Section 9 thereof, has provided for the power to reduce, remit or compound duties, and for the sake of convenience Section 9(1) (a) and (b) are reproduced herein below:-

***“9. Power to reduce, remit or compound duties - [(1)]
The Government may, by rule or order published in the
Official Gazette-***

***(a) reduce or remit, whether prospectively or
retrospectively, in the whole or any part of the
territories under its administration, the duties with
which any instruments or any particular class of
instruments, or any of the instruments belonging to
such class, or any instruments when executed by or
in favour of any particular class of persons or by or***



in favour of any members of such class, are chargeable, and

(b) provide for the composition or consolidation of duties of policies of insurance and in the case of issues by any incorporated company or other body corporate or of transfers (where there is a single transferee, whether incorporated or not) of debentures, bonds or other marketable securities.”

8. Further in the Registration (Meghalaya Amendment) Act, 2022 a new section being 78A has been inserted after the existing section 78, which reads as follows:-

“78A. Power to reduce or remit fees. – The State Government may, if in its opinion it is necessary in the public interest so to do, by order published in the Official Gazette, reduce or remit the fees payable in respect of any of the matters enumerated in clauses (a) to (i) of Section 78, either generally or for any particular class of cases and in respect of persons generally or of any particular class or classes or persons, or in respect of any particular class or classes of instruments.”

9. The Meghalaya Public Private Partnership Policy (PPP) 2021, with regard to State Support at clause 6(vi) thereof, Fiscal Support at clause E (I)(a) and with regard to Foregoing of Revenue Streams at clause F (I), (II) has provided as hereinunder:-



“6 State Support

vi. Actual concessions/incentives and funding support under the Policy will be separately decided and notified by the Government from time to time.

E. Fiscal Support-

I. Incentive and Concessions

a) Government of Meghalaya will formulate sector specified policies wherever required for providing specific incentives & concessions as well as establish mechanism for tariff setting, pricing arbitration, safety, and operational standards etc.

F. Foregoing of Revenue Streams

Concessions covered under the above category are as follows:

- I. Concession on Stamp Duty on transfer of land***
- II. Concession on conversation charges on land”***

10. An overview of the above quoted provisions under the Stamp Act, the Meghalaya (Registration Amendment) Act, shows that any reduction, remission or compounding of Stamp duty by the Government can only be by way of a Gazette Notification. Further, the PPP Policy, 2021 in granting state support, fiscal support and concessions such as in the instant case, which involves concession on



Stamp duty also specifically provides that the concession is specific and as given in clause 6 (vi) under State Support, actual concessions are to be separately decided and notified by the Government. As such, what can be seen from the above noted quoted provisions is that for reduction, compounding or for any concession, the same has to be by due process, and cannot be claimed as a matter of right.

11. Coming to the Lease Deed dated 19.10.2021 executed between the parties, though the same may be with regard to the same project and plot of land in question, an examination of the recitals reveals that apart from the petitioner being aware as to the circumstances and outstanding amounts payable, the lease was entered into on the agreement for payment of Rs. 2.25 Crores for settlement of all past outstanding dues by the petitioner, and at clause 21.1 of the new Lease Deed, the petitioner had specifically agreed to bear the necessary Stamp duty for registration. Article 21 thereof, of the said Lease Deed is reproduced hereinbelow:-



“ARTICLE-21 STAMP DUTY

21.1 The Stamp duty and registration fee on this Deed shall be borne and paid by the Leasee.”

12. The Lease Deed at Article 15 thereof, has also provided for arbitration in the event there is a dispute or differences or questions relating to, or arising out of the agreement. The parties therefore, are bound by the recitals of the Lease Deed and any right or obligation will necessarily emanate from the Deed itself. Furthermore, there being no express provision contained in the Lease Deed allowing the exemption or concession as claimed by the petitioner, and the same having been executed as a fresh Lease agreement, though the terms and conditions may be somewhat similar, in the considered view of this Court no recourse or reliance can be placed on the old Lease Deed to seek the relief as claimed before a writ court. This observation is made as the claim of the petitioner alleging arbitrary action on the part of the respondents, in the fact and circumstances of the case is not present, and it cannot be held that the amount had been collected illegally by the respondents, as for exemption of Stamp duty, or for any



concession to be made, the same has to be done in accordance with law and policy as provided.

13. Another aspect that cannot be overlooked is that the petitioner has already paid the Stamp duty, and as such the instant writ petition has been reduced to one seeking a mandamus for refund which will be permissible or entertainable only if the petitioner can make out a case that the said amount has been collected illegally. As held in the case of ***Union of India & Ors. vs. Orient Enterprises & Anr. (1998) 3 SCC 501***, praying for the issue of a writ of mandamus is not ordinarily maintainable for the simple reason that a claim for such refund can always be made in a suit against the authority and that no petition will be normally entertained for the purpose of merely ordering refund of money of which the petitioner claims a right. It is further noted that though in an appropriate case as held in the case of ***ABL International Ltd. & Anr vs. Export Credit Guarantee Corporation*** (supra) that a writ petition involving a consequential relief of monetary claim is also maintainable, in the instant case however, the amount claimed cannot



be said to be consequential to warrant the issuance of a writ of mandamus.

14. Without further discussing the decisions as placed by the learned counsels or dwelling on other facts, the impugned orders cannot be said to be arbitrary and/or the rights of the petitioner violated in any manner to warrant interference under Article 226 of the Constitution. Any dispute or difference that the petitioner may harbour against the respondents as to any claim, is clearly in the realm of civil law and in the instant case with an arbitration clause being present in the Lease Deed itself, the petitioner has ample alternate remedy which may be availed of.

15. However, before parting with the records, it is observed that though on the position of law, no relief will be permissible to the writ petitioner in the instant proceedings, then again, considering the circumstances and situation of the case, as the stamp duty payable is for the same project, wherein the State had deemed it fit to exempt the earlier entity from such payment, it is provided that the dismissal of



the instant petition will not debar the State respondents from considering the matter afresh.

16. In the light of the foregoing discussions, and in the circumstances of the case, the instant petition is not entertained and is accordingly disposed.

JUDGE

Meghalaya
24.10.2024
"V. Lyndem PS"