*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.25072 OF 2007

% **26th July, 2018**

\# Kommineni Ravishankar Rao,
S/o Venkateswarlu, Aged 30 years,
Occ: Toll Gate Contractor,
R/o Pulipadu (Post), Gurajala (M)
Guntur District.

… Petitioner

AND

$ The District Registrar, Medak District at Sanga Reddy and another.

… Respondents

! Counsel for the Petitioner : Sri Kowturu Vinayakumar

^ Counsel for the 1st respondent : Learned Government Pleader for Revenue (TS)

^ Counsel for the 2nd respondent : Learned Government Pleader for R&B (TS)

< Gist:

> Head Note:

? Cases referred:
[1] (1977) 3 All ER
[2] ((1952) 1 AII ER
[3] (1950) A.C. 493
[4] AIR 2012 SC 3325=Manu/SC/0685/2012
[5] AIR 1959 Supreme Court 1262
[6] JT 2009 (13) sc 164=Manu/SC/1696/2009
[7] (1976) 3 SCC 512

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 25072 of 2007

ORDER:

This Writ Petition is filed challenging letter, dated 06.11.2007 addressed by respondent No.2-Executive Engineer (R&B), N.H. Division, Hyderabad, to petitioner with a request to remit stamp duty with respect to the execution of lease deeds for extension of lease periods i.e., from 01.04.2007 to 30.6.2007; 01.07.2007 to 30.09.2007 and 01.10.2007 to 31.12.2007 at Rs.3,86,250/- for each quarter.

2) The undisputed brief facts are that the petitioner became a successful bidder with respect to collection of toll on Minor Bridge at Km 502/4 of Pune-Hyderabad Section of NH-9, near Rudraram Village, Medak District, initially, for the period from 01.05.2006 to 31.03.2007 and in terms of the auction conditions, he entered a lease deed with respondent No.2 on 28.04.2006 on Rs.100/- worth stamp paper. However, his lease came to be extended on three occasions i.e., from 01.04.2007 to 30.06.2007; 01.07.2007 to 30.09.2007 and 01.10.2007 to 31.12.2007. While the matter stood thus, respondent No.1 – District Registrar, Medak District at Sanga Reddy, vide letters, dated 23.10.2007, requested respondent No.2 to pay stamp duty in terms of Article 31 (b) of Schedule-I-A of the Indian Stamp Act, 1899 (for short "the Act"), as applicable to the State of Andhra Pradesh. Thereupon, respondent No.2 addressed impugned letters to the petitioner to remit stamp duty.

3) Learned counsel for the petitioner contended that there cannot be any demand for payment of stamp duty with respect to the execution of lease deeds for extension of lease periods in connection with the collection of toll; that the lease was extended

for the convenience of the Department on account of non-completion of construction of BOT 4 laning work; that the stamp duty could not have been demanded @ 5% and the same is without any sanction of law; that the right to collect the toll cannot be termed as lease, as understood in common parlance, as there is no immovable property transferred in favour of the petitioner and that only permission is granted to the petitioner to collect toll. In the present case on hand, there is no agreement wherein the lessor has agreed to bear the stamp duty by express or implied terms; that the intention of the parties has to be gathered from the agreement / document in issue and mere use of the word 'lease' is not determinative of the transaction between the parties and every agreement where the word 'lease' is used need not and does not attract stamp duty. To support his contention he relied on the judgments reported in **Marchant *v* Charters**[1]; **Errington *v* Errington and Another**[2]; **H.E.Wijesuriya *v* Attorney-General for Ceylon**[3]; **Mangal Amusement Part (P) Ltd., and Another *v* State of Madhya Pradesh and Ors.,**[4]; **Associated Hotels of India Ltd., *v* R.N. Kapoor**[5]; **The New Bus Stand Shop Owners Assn. *v* Corporation of Kozhikode and Anr.**[6] and **Board of Revenue and Others *v* A.M. Ansari and Others**[7]. He would also further contend that by no stretch of imagination it can be said that right to collect toll would fall within the definition of lease as there is no transfer of property but there is only an authorization to collect

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[1] (1977) 3 All ER
[2] ((1952) 1 AII ER
[3] (1950) A.C. 493
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toll. Therefore, prays for setting aside the impugned demand as it is fallacious and illegal.

4) On the other hand, learned Government Pleader submits that the petitioner is bound to follow the contractual terms, under which, he agreed to pay the required stamp duty.

5) At the outset, it is not necessary for this Court to elaborately deal with various judgments cited by the learned counsel for the petitioner for disposal of the controversy in the present case. It may be noted that 'lease' as defined under the Transfer of Property Act is different from the lease defined under the Stamp Act. The definition of lease under the Transfer of Property Act and the Stamp Act may be noticed for better appreciation.

Lease under Transfer of Property Act	Lease under Stamp Act
Section 105: A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. *Lessor, lessee, premium and rent defined :* The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.	Section 2 (16) —Lease". —―lease‖ means a lease of immovable property, and includes also— (a) a patta; (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immovable property; (c) any instrument by which tolls of any description are let; (d) any writing on an application for a lease intended to signify that the application is granted;

6) It will also be useful to notice Section 31(b) of Schedule – I-A of the Act as applicable to State of Andhra Pradesh.

Description of Instrument	Proper stamp duty
31(b) where the lease is granted for a fine or premium, or for money advanced and where no rent is reserved.	The same duty as a Conveyance (No.20) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

7) It may be stated that none of the judgments deal with the controversy as arising in the present case. Some of the judgments cited by the learned counsel basically deal with lease of immovable property squarely falling under the definition of lease in T.P. Act or analogous Acts dealing with immovable property.

8) In the case on hand, the issue is with respect to the instrument executed authorizing the petitioner for collection of toll. It is to be noted that there are three documents under issue, which are almost identical. For the purpose of the appreciation the document executed on Rs.100/- Non-Judicial Stamp paper, on 09.04.2007, between the petitioner and the 2nd respondent may be examined.

> "EXTENSION OF LEASE PERIOD.
>
> Extension of lease deed for collection of toll fees for the bridge at Km 502/4 of Pune – Hyderabad Section of NH 9 near Rudraram village in Medak Dist. For the period from 01.10.2007 to 31.12.2007 during the year 2007-08. This lease deed is extended on 28th day of September, 2007.
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> This lease deed is made this 28.09.2007 day of September 2007 before the Governor of A.P. represented by the Executive Engineer (R&B), N.H. Division, Hyderabad on one part and SriKommineni Ravi Shanker Rao R/o Pullipadu Post, Guruzala Mandal of Guntur District, Pin 522415 lease on the other part during the period from 01.10.2007 to 31.12.2007 as per Chief Engineer (R&B), National Highways, A.P., Hyderabad Memo No.1501/NH III-7/TA-IV/AEE1/99, Dt.17.09.2007 with the same terms and conditions of the Original lease deed dated 28th day of September, 2007.
>
> Executive Engineer (R&B)
> N.H. Division, Hyderabad."

9) Originally a lease deed dated 28.04.2006 was executed between the parties, under which the right to collect toll was granted to the petitioner for a period of 11 months and the amount of lease payable was fixed at Rs.25.75 lakhs per month. The lease was extended further from 01.04.2007 to September 2007. The

impugned demand is with respect to the extended period of lease. In the instrument, under which extension has been granted it has been clearly set out a lease has been granted for a further period on same terms and conditions as in original lease deed dated 28.04.2006. Though the document also can be termed as an agreement the fact remains that the said agreement is with respect to granting of right to the petitioner for collection of toll falling squarely within the definition of lease in the Stamp Act in Section 2(16). As the word lease is defined independently there is no requirement for one to look into the definition of lease under the Stamp Act or the word lease as understood in common parlance.

10) The transaction of extension of right to collect toll squarely falling within the definition the argument of the learned counsel the instrument / extension agreement does not require to be stamped cannot be accepted.

11) In the light of the aforesaid statutory provisions, which empower the authorities to collect stamp duty on instruments of lease squarely falling within the definition of lease under sub section 16 of Section 2 of the Act, this Court finds no merit in the Writ Petition, which is accordingly dismissed. No costs.

12) This Court places on record its appreciation for the efforts made by Sri Md. Gayasuddin, learned counsel appearing on behalf of Sri Kowturi Vinay Kumar, learned counsel for the petitioner, in this regard.

13) Consequently, the miscellaneous applications, if any, shall stand closed.

CHALLA KODANDA RAM, J

26th July, 2018.

Note: LR copy to be marked.
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