

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.976/2015

PETITIONER : M/s. Ambuja Cements Limited, A Company registered under the Companies Act, 1956, having its Registered Office at P.O. Ambuja Nagar, 362715, Tq. Kodinar, Distt : Gir-Somnath (Gujarat), and Unit Maratha Cement Works, Site Address at Post Upparwahi, Tahsil-Korpana, District : Chandrapur- 442908, Maharashtra.

...VERSUS...

RESPONDENTS : 1. The State of Maharashtra, through its Ministry of Revenue and Forest, Mantralaya, Madam Cama Road, Mumbai-400 032.

2. Joint District Registrar-cum-Collector of Stamps, having its office at Administrative Building, First Floor, Chandrapur.

3. Sub Registrar, Tahsil Office premises, Rajura, District Chandrapur.

4. The Chief Controlling Revenue Authority, Maharashtra State, Pune. [Office of Inspector General of Registration], Ground Floor, New Administrative Building, Pune 411 001.

Mr. C.S. Kaptan, Senior Counsel with Shri Akshay Naik, Counsel for the petitioner

Mr. M. G. Bhangde, Senior Counsel with Mrs. Geeta Tiwari, AGP for the respondents

CORAM : AVINASH G. GHAROTE, J.
Date of reserving the order : 17/01/2020
Date of pronouncing the order : 04/06/2020

ORDER

1. I, had heard learned Senior Counsels for the respective parties at length and had closed the matter for judgment, whereupon the Counsel for parties having expressed their intention to file written notes of arguments in support of the oral submissions advanced the matter was kept for that purpose. Accordingly the respondents 1 to 3, have filed their written notes of arguments on 18/3/2020 and the petitioner has filed the same on 30/3/2020.

2. Certain events being material and admitted they are stated as under :

(a) On 19/01/2004 an application for renewal of a mining lease of land admeasuring 579.90 hectares, situate in Rajura Tehsil, granted for the purpose of extraction of major mineral (lime stone) was made by the petitioner to the State.

(b) On 14/9/2009 the Government of Maharashtra granted renewal of the lease w.e.f.

31/12/2004 for 20 years to the petitioner.

(c) On 24/12/2009 an application was made by the petitioner to R2/Collector – u/s 31 of Bombay Stamp Act for adjudication of the proper stamp duty payable upon the lease.

(d) On 30/1/2010 an order of adjudication was passed by the respondent no.2/Collector, whereby the proper stamp duty payable upon the lease was adjudicated to Rs.25,75,000/- which amount came to be deposited by the petitioner on 11/2/10 and the lease came to be executed on 16/2/2010.

(e) On 24/2/2010 the lease came to be registered in favour of the petitioner, which contained various clauses including one as to how royalty was to be paid.

(f) In an audit, objection was raised as to the quantum of stamp duty calculated and a higher amount was said to be chargeable.

(g) On 2/3/2012 a Show-cause-notice demanding Rs.43,83,915/- as deficit stamp duty was

issued to the petitioner as the stamp duty payable was claimed to be Rs.69,58,918/-.

(h) On 26/4/2012 a reply was given by the petitioner opposing the calculation and imposition of the stamp duty as demanded.

(i) On 7/5/2012 another notice was received by the petitioner containing a revised claim demanding deficit Rs.34,79,160/-.

(j) On 27/6/2012 a reply was given by the petitioner inter-alia contending amongst other statements that the Jt. Registrar had no authority to revise the amount.

(k) On 22/6/2012 the petitioner deposited Rs.34,79,160/- which was claimed to be the deficit, under protest to avoid any action.

(l) On 7/8/2012 the petitioner asked for a refund of the amount of so called deficit stamp duty paid on the mining lease.

(m) As the request for refund was not entertained, the petitioner filed Writ Petition

No.807/2013, in which vide judgment dt.17/7/2013, the petitioner was permitted to move the Chief Controlling Revenue Authority u/s 53 A of the Bombay Stamp Act, within a period of six weeks from the date of the judgment and the Chief Controlling Authority was directed to take necessary decision about adequacy of stamp duty as per law, within a further period of 3 months. The alleged deficit stamp duty paid by the petitioner was permitted to be retained by the respondent, with a direction to refund any such excess, if so found after determination by the Chief Controlling Authority.

(n) Before the Chief Controlling Authority, the petitioner filed its submissions which are annexed as Annex-J to the present petition.

(o) On 2/1/2015 the Chief Controlling Authority, Revenue/R-4, by the impugned judgment rendered a finding that the mining lease in favour of the petitioner, was chargeable with a stamp duty of Rs.1,54,19,100/- and taking into consideration the earlier amounts paid by the

petitioner on this count of Rs.25,75,000/- at the time of registration of the lease and Rs.34,79,160, totaling Rs.60,54,160/-, thus directed the petitioner to pay the deficit of Rs.93,64,940/-, being aggrieved by which the present petition has been filed.

3. The basic crux of the arguments as advanced by Shri C. S. Kaptan, learned Senior Counsel for the petitioner, to challenge the impugned judgment, are as under :

(a) Stamp Duty is chargeable on an Instrument and not on a transaction.

(b) In light of the language of Sec.27 of the Bombay Stamp Act (BSA hereinafter for the sake of brevity) and specifically the second proviso thereto, once the Collector, had determined the Stamp Duty chargeable on the instrument which was a mining lease in the initial stage itself, it was not permissible for the Collector, to embark upon any enquiry for re-determination of the stamp duty, so as to arrive at any deficit.

(c) At the time when the stamp duty was calculated the Collector, had all the material available to

him, and having once considered the same and determined the stamp duty, that was the end of the matter and the issue could not be reopened thereafter.

(d) Relying upon clause 31 of the lease, he submits that the royalty depends and varies on the quantity excavated every year and thus the anticipated royalty as determined by the Collector stamps on the date of execution of the lease cannot be varied thereafter based upon subsequent excavation done and the value thereof.

(e) Relying upon clause 9 of the lease in juxtaposition to Section 27 of the BSA, he submits that the stamp duty has to be determined as on the first date of execution of the lease and not otherwise.

(f) The 2nd proviso to section 9 directly relates to clause 9 of the lease and the stamp duty is not relatable to the quantity excavated.

(g) In light of the definition of market value as contained in Sec.2(na) of the BSA and Rule 4(6) of The Maharashtra Stamp (Determination of Market Value) Rules, the entire approach of the revenue was lopsided

and untenable in law. The stamp duty has been levied on the full amount instead of 50% as per Art 36(iii) of the BSA.

(h) The Government had accorded its sanction on 14/9/2009 and considering the rate of dead rent for various years the value came to Rs.60,54,156/- which has not been considered.

(i) The definitions as contained in Sec.2(d)-Chargeable, 2(g) conveyance, 2(i) executed/execution, 2nd proviso to sec.27, as well as the Article 25(b) of the BSA are heavily relied upon to buttress the above submissions.

(j) Reliance is placed upon (i) **Chief Controlling Revenue Authority / Reliance Industries Ltd. 2016(3) Mh.L.J. 436 (FB)** which holds that stamp is chargeable on instrument and not transaction and specifically on paras 18, 19 & 20, (ii) **N.S. and Company / State of Jharkhand 2002 CJ (Jhar) 965** (iii) **Steel Authority of India / Collector of Stamps 1986 MPLJ 200**, holding that Royalty being consideration for the lease, it is part of rent payable

under the lease. Mode of determining the value of subject matter where the same cannot be ascertained with precision at the date of execution of the instrument is provided in sec.26 of the Stamp Act, which applies in cases relating to payment of stamp duty on instruments renewing the mining leases.

(k) In relation to the cross-objection as filed by the Revenue it is submitted that the same is not maintainable as there is no provision to file such cross-objections in Writ Petitions u/A 226/227 of the Constitution, though it is fairly submitted that the Bombay High Court Appellate side Rules Chapter VII Rule 28 which provides for rules applicable to Civil Appeals/applications to apply *mutatis mutandis* to Writ Petitions. That apart O.41 R.22 prescribes a limitation and the cross objection even if held to be permissible is beyond time and there being no application for condonation of delay the same cannot be entertained.

Learned Senior Counsel for the petitioner therefore submits that the impugned judgment is not tenable in law and the

same needs to be quashed and set aside and the matter needs to be remanded to the revenue to make proper calculation in light of what would be held in this judgment.

The written notes of arguments filed on behalf of the petitioner, reiterate the oral arguments advanced.

4. Per contra, the arguments of learned Senior Counsel Mr. M. G. Bhangde, for the revenue can be summarised as under :

(a) The Collector while passing order dt. 16/2/10 u/s 27 BSA correctly estimated the stamp duty payable under the agreement of lease at the time of its execution. The lease commenced on 31/12/04. Amount of royalty paid from 2004 – 2010 was known and available. Estimation is to be based on factors. Actual figures available for 6 years for estimating royalty which were known, were ignored rather suppressed by petitioner as they were not disclosed and the Collector not knowing actual facts incorrectly calculated the same, which came to be corrected upon the audit raising objection. There was a duty to disclose upon the petitioner, in which the petitioner failed.

(b) Application for adjudication of stamp duty was made by petitioner on 14/12/09. There are two Collectors. One is Collector of Stamps and the other is Collector of Revenue, who in fact has no knowledge as to determination of the stamp duty. The application was to the Collector Revenue, who had no knowledge in the matter. On date of execution of lease figures were available of royalty which the petitioner concealed. No candid disclosure was made. Royalty figures for the years 2004 – 2010 – were not mentioned in the application. Therefore there was a knowledgeable, intentional suppression of the facts which vitiated the initial determination giving a right to the revenue to redetermine.

(c) In Section 27, the 2nd proviso – clause (a) of the BSA, the expression “having regard to all the circumstances of the case, have estimated”, would include the fundamental circumstances of the lessee has worked and paid royalty and therefore was aware of the figures and thus had a duty to disclose. There was a

deliberate/intentional concealment for paying lesser stamp duty which would be a calculated fraud on public exchequer. Relying upon para 5 of the Cross objection he submits that royalty paid for earlier 5 years i.e. 2004-2009 was Rs.23,61,80,000/- and further relying on para 7 of Cross objection and the Chart therein it is submitted that the estimated/anticipated royalty was incorrectly calculated and therefore was required to be corrected.

(d) 2nd proviso to Section 27 of BSA cannot be considered as a stand alone provision or a complete code in itself – it is an exception and is required to be read with main part. Section 27 speaks about the situation where the value cannot be or could not have been ascertained. Last portion of Section 27 gives a window to redetermine. Excavation of material is proportional to anticipated royalty as nothing more is claimable under the document, so more excavation more royalty. Consequences are provided in main provision of Section 27. U/s 27 estimation is by parties not by Collector. Proviso added in Section 27 equally applicable to mining lease therefore if

there is excess then document shall be treated as insufficiently stamped.

(e) That Object of 2nd proviso to sec.27 BSA is that under mining lease both can claim, in as much as, the lessee can claim extraction and the Lessor – royalty and is to empower Government to claim royalty equal to actual value of mineral extracted. Any contrary position would entail in creating two classes of leases, one in which the value is determinable to pay *ad valorem* Stamp duty and the other in which the value is indeterminable to pay the stamp duty determined by the Collector, which is no reasonable classification as the object is to collect stamp duty on the basis of the value of the subject matter.

(f) He further relies upon clause 9 of the agreement of lease and submits that the stamp duty has not been paid even according to this clause. He submits that the Royalty for the purposes of stamp duty as per clause 9 was calculated at Rs.1,15,98,000/- per year and since the lease was for a period of 20 years the value would come to Rs.1,15,98,000/- x 20 years =

Rs.23,19,60,000/- upon which the stamp duty @ 3% would come to Rs.69,58,800/- as against which the stamp duty of only Rs.25,75,000/- was adjudicated on 30/1/2010 and paid on 11/2/2010 and therefore the deficit of Rs.34,79,160/- was rightly demanded which came to be deposited on 22/6/2012.

(g) He submits that the application u/s 31 of the BSA for adjudication of proper stamp was submitted to the Collector (Stamps), which did not go to the Collector (Revenue) and therefore there was a clear miscalculation in absence of any information, in arriving at the order dt.30/1/2010 determining the stamp duty payable, which was liable to correction as has been now done.

(h) He further submits that the order dt.30/1/2010 took into consideration the dead rent at the old rates which already stood revised as found in the agreement of lease which was not considered, as a result of which the same stood vitiated.

(i) He submitted that the power u/s 31 BSA was originally that of the Collector (Revenue) which stood

delegated to the Collector (Stamps) for determining the market value and assessing stamp duty payable thereupon.

(j) In so far as clause (b) to the 2nd proviso to sec.27 BSA it is submitted that the expression “and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease” relates to any excess excavation and royalty to that extent will be claimable and the petitioner is reading the word 'mineral', into clause (b) which is not permissible and the Government has a right to claim excess amount for excess excavation, which right is protected under the above expression and therefore the impugned order is correct and proper.

(k) In so far as the cross objection is concerned it is submitted that there is no law which bars the same. Reliance is placed upon **W.B. Vikas Sanstha / Diwakar 2013(2) Mh.L.J. 804, paras 44 to 51** thereof to contend that the provisions of C.P.C. are available for the purpose of filing of such cross objections, in light of which O.41

R.22 C.P.C. is clearly attracted and the cross-objections is maintainable. Reliance is also placed upon the affidavit dated 16/12/2019 explaining the delay.

(l) On the point of suppression and its effect learned Senior Counsel places reliance upon **Meghmala / G. Narasimha Reddy (2010) 8 SCC 383** and specifically paras 28 to 36.

(m) On the point of construction of a proviso he relies upon **Kerala State Road Transport Corporation / Baby PP. 2018)7 SCC 501** and specifically para 16 thereof and **C.W.S. (India) Ltd./CIT 1994supp (2) SCC 296** holding that literary construction may be the general rule in construing taxing enactments, it does not mean that it should be adopted even if it leads to a discriminatory or incongruous result. Interpretation of statutes cannot be a mechanical exercise. Object of all the rules of interpretation is to give effect to the object of the enactment having regard to the language used.

(n) Reliance is also placed on **K.M. Sharma / I.T. O (2002) 4 SCC 339** holding that an interpretation which

creates an unjust and discriminatory situation has to be avoided.

5. Learned Senior Counsel for the Revenue therefore submits that the impugned judgment by the respondent no.4, is required to be quashed and set aside with a direction to the Respondent no.4 to re-determine the Stamp Duty and penalties payable by the petitioner, in the manner as mentioned in the prayer in the cross-objection.

The written notes of arguments filed on behalf of the respondents reiterate the submissions made above.

6. In reply Mr. Kaptan, learned Senior Counsel submits that it is an admitted position that the document of lease as well as its terms and conditions, the rates of royalty, the dead rent etc., was prepared by the State through the Collector/Mining officer and was not a document drafted by the petitioner and thus the claim of suppression was a factually incorrect one. He further submits that royalty and stamp duty are two different and separate things. He specifically relies upon clause 9 of the lease to support this submission. He further submits that the application u/s 31 BSA was duly accompanied by the proposed agreement of lease as prepared

by the State itself and thus there was no suppression whatsoever. He further submits that the 2nd proviso to sec.27 BSA if removed then the provision becomes redundant for a mining lease. It is submitted that it is a standalone provision, specifically inserted for a mining lease for the purpose of determining the stamp duty looking to the indeterminable nature of the quantity to be excavated. He further submits that the Application, accompanied by the proposed agreement of lease was submitted to the Competent Officer i.e. the Collector Stamps and there was no challenge to the amount determined by the Collector under clause 9 of the lease agreement which was based upon the material, all of which was available with the authorities and was in accordance with the requirements of Article 36 of the BSA. He therefore submits that the counter arguments were without any substance and the petition was required to be allowed in terms of the prayers therein.

7. Taking the question as to the maintainability of the cross objection in Writ Petition u/s Article 226/227, first, it is material to note that the The Bombay High Court Appellate Side Rules, 1960, ('Appellate Side Rules' for brevity hereinafter) in so far as they relate to laying down the procedure for filing of Writ

Petitions are concerned, do not anywhere stipulate the filing or consideration of any Cross-objection by the Court, while exercising its jurisdiction u/A 226 & 227 of the Constitution. Mr. Bhangde learned Senior Counsel relies upon the Language of Rule 28 of Chapter XVII of the Appellate Side Rules to contend that such a cross objection is indeed permissible to be filed and considered. It is therefore necessary to consider the language of Rule 28 of Chapter XVII of the 'Appellate Side Rules'. Rule 28 of Chapter XVII reads as under :

“28. Application of rules to Writ Petitions – Rules applicable to Civil Appeals and Applications, shall except otherwise provided in this Chapter apply mutatis mutandis , to Writ Petitions”.

The provisions as to filing of appeals and applications in the Appellate Side Rules is contained in Chapter IV, the Rules of which speak of cross-objections, specifically Rules 3, 5, 12, 16, 17, 19(ii), 25 & 26.

These however, have to be considered in light of the explanation inserted in Sec.141 of the C.P.C. by the amendment of 1976, which reads as under :

“Section 141- ‘Miscellaneous proceedings’

The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

'Explanation.- In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.'

8. It is axiomatic that the purpose of the Appellate Side Rules is to create a procedure in the matter of filing of appeals/applications/petitions in the High Court and not to create any substantive right of any nature in a party. Thus having regard to the nature and purpose of the Appellate Side Rules, read in conjunction with the explanation to Sec.141 of CPC, it would be obvious that what has been excluded by the legislature by inserting the explanation to Sec.141 CPC, cannot be sought to be included indirectly by relying upon the Appellate Side Rules as quoted above. Thus strictly speaking a Cross-objection would not be tenable in law in a Writ Petition under Articles 226 and 227 of the Constitution.

9. The matter can also be viewed with another angle. The powers under Articles 226 and 227 of the Constitution are powers

which do not admit of any restrictions, except in so far as the Constitution mandates. To hold that the Constitutional powers under Articles 226 and 227 of the Constitution would be governed in any manner by the procedural mandate/restrictions as contained in the CPC would be putting fetters upon them, which in my humble opinion, is impermissible in law. By no stretch of imagination can a Constitutional jurisdiction be fettered or limited by any procedural law, which is also clearly substantiated by the explanation to Section 141 of CPC by the amendment of 1976. Therefore to hold that the proceedings under Article 226 and/or 227 of the Constitution would be governed by the procedural law as laid down by CPC in light of the language of Rule 28 of Chapter XVII r/w the rules as contained in Chapter IV of the Appellate Side Rules, would be doing violence to the Constitutional mandate of the High Court, as conferred upon it, by the language of Articles 226 and 227, which is not permissible. Thus the filing of cross-objection by invoking the provisions of Order 41 Rule 22 CPC, in proceedings under Articles 226, 227 of the Constitution is clearly not permissible and the cross-objection as filed by the Revenue therefore would not be maintainable in law.

10. Mr. Bhangde, learned Senior Counsel has laid great stress upon **W.B. Vikas Sanstha (supra)** which has considered a number of judgments to hold that the principles of the Code of Civil Procedure would be permissible to be utilized in appropriate cases. It is however axiomatic to note that **W.B. Vikas Sanstha (supra)** was a case in which the learned Division Bench of this Court was exercising intra Court Appellate jurisdiction under clause 15 of the Letters patent, in exercise of which it has held :

“44. In the light of the aforesaid principles laid down by the Supreme Court there is no manner of doubt that in this intra-court appellate jurisdiction, we are entitled to go into the findings of facts and evidence, if the Learned Single Judge or the College Tribunal have recorded those findings contrary to the materials, pleadings and evidence on record. It is true that after amendment of 1977 to the Code of Civil Procedure by virtue of the provisions of section 141 of the Code of Civil Procedure it was made clear by the explanation thereto that the provisions of the Code of Civil Procedure will not apply to the proceedings under Article 226 of the Constitution of India. But even thereafter some of the provisions of Code of Civil Procedure were taken help of for applying the principles imbibed therein while exercising writ

jurisdiction.”

(emphasis supplied)

11. The learned Division Bench thereafter went on, to consider various judgments, invoking and applying the principles of res-judicata, O.1, Rule 9, O.22, O. 23 Rule 1 & 3, and held as under :

“49. In the light of the above scenario, in our opinion, we are inclined to hold that the provisions of Order 41, Rule 22, sub-rule (1) of the Code of Civil Procedure should be invoked in these cases for exercise of the appellate power for finding out the correctness of the findings recorded by the learned Single Judge as well as by the College Tribunal though Rajkumar Bhagat did not prefer any writ petition or appeal in this Court.”

(emphasis supplied)

12. A bare perusal of the judgment in **W.B. Vikas Sanstha (supra)** and specifically paras 44 and 49, would demonstrate that the Learned Division Bench of this Court was firstly : exercising its appellate jurisdiction under clause 15 of the Letters Patent and secondly : it has not laid down that the provisions of O.41 R.22(1) C.P.C. whereby a right is conferred upon the respondent to file cross-objections in an appeal are expressly applicable to proceedings under Articles 226 & 227 of the Constitution. It is one thing to say

that the principles as stated in the CPC can be applied to writ proceedings, which can be done in situations, such as addition/deletion of parties, bring legal heirs on record, abatement, etc. of like nature, but it is altogether a different matter to say that the rules which provide a legal right to a party/respondent to file a cross-objection, in an appeal, to be applicable and available to a respondent in a writ petition under Articles 226 & 227 of the Constitution, so as to enable such respondent to file a cross-objection, as a matter of right, that too in light of the express mandate of the explanation to Sec.141 C.P.C, which makes it inapplicable. Thus the judgment in **W.B. Vikas Sanstha (supra)** upon which reliance is placed by the learned Senior Counsel for the respondents, is clearly inapplicable in the present matter and is of no assistance to him.

13. That however does not mean that the High Court is in any way precluded, in an appropriate case from considering, any illegality brought to its notice either in the impugned order or otherwise by the respondent, while deciding a Writ Petition, if the circumstances so warrant, as the writ jurisdiction conferred by a constitutional mandate is always unfettered by any procedural laws,

which would always be subservient in nature to a Constitutional jurisdiction.

14. Coming to the merits of the matter, both the learned Senior Counsels are in agreement that the impugned judgment as passed by the respondent no.4, cannot be sustained in law. However, since extensive arguments have been advanced as to the applicability and scope of Sec.27 BSA and its 2nd proviso, it would be necessary to deal with the same, so that determination of the stamp duty, upon remand, would not raise any further issues and the matter can be finally put to rest.

15. The Full Bench in **C.C.R.A. Pune / R.I. Ltd. 2016 (3) Mh.L.J. 436**, held that stamp duty is charged on 'the instrument' and not on 'the transaction' effected by the instrument in the following words :

“19. Section 3 of the said Act is a charging section and provides for charging stamp duties. As quoted above, section 2 of the said Act defines terms “Conveyance”[2(g)], “Executed and Execution” [2(i)], 'Instrument' [2(l)] and settlement'[2(t)]. it is settled position of law that in terms of the scheme of the Act, stamp duty is charged on 'the instrument' and not on 'the transaction effected by 'the instrument'.”

16. The contention of Mr. Bhangde, learned Senior Counsel that section 27 of the BSA was not in consideration in or involved in the case **C.C.R.A. Pune** (supra) and therefore the judgment would not be attracted is clearly fallacious as the dictum, is clearly on a broader proposition of law, which encompasses, section 27 too, as the said section clearly deals with the larger proposition of an "instrument" and the method or manner in which such an instrument is chargeable with stamp duty.

17. It is thus trite that what is to be considered for charging stamp duty is the "instrument" and not the "transaction". The transaction, if worked out may ultimately result in, either a profit or loss to the party, to any extent which is indeterminate, however any extent of working of the transaction or for that matter benefit derived therefrom cannot form the basis for charging stamp duty in such cases. Thus, what has to be considered in such circumstances is the nature of the instrument, which in the present case is a lease for 20 years and the value of the same, for the purpose of stamp duty has to be determined based upon the estimated royalty as provided for in the 2nd proviso to Section 27 BSA. In the instant case the estimated royalty per year was already determined by the Collector

(Revenue) as is apparent from clause 9 of the agreement of renewal of the mining lease.

18. In the instant case that the instrument is a 'Renewal of Mining Lease Agreement', and is in Form K which is a standard Form under Rule 31 of the Mineral Concession Rules, 1960 cannot be disputed. The Document which is at Annexure -A, specifically speaks that the same in sum and substance is the First Renewal of Mining Lease, which renewal has been so permitted by the State in its department of Industries, Energy and Labour, vide order No.MMN-1004/CR 672/Ind-9 dated 14/9/2009 for limestone and shell minerals, which renewal is for a period of 20 years w.e.f. 31/12/2004. The order dated 14/9/2009, which is at record page 162 also states that in exercise of the powers conferred by sub-section (2) & (3) of section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 the Government of Maharashtra was pleased to sanction to the petitioner, the first renewal of mining lease. The application u/s 31 BSA made by the petitioner to the Collector (Stamps), Chandrapur, at record page 123, also states that the nature of the document/instrument was 'Renewal of mining lease agreement'. The affidavit filed by the

petitioner alongwith the application u/s 31 BSA dt.23/12/2009, by one Mr. N.L. Sharma Asst. Vice President of the petitioner at record page 133 also refers to the order dated 14/9/2009 and the sanction of the renewal of mining lease. Thus the nature of the document is clear and specific that it is an instrument of renewal of mining lease, and the stamp duty leviable upon which has to be in terms of Article 36 (iii) of the BSA. For the sake of ready reference Article 36(iii) of the BSA is quoted as under :

36. Lease, including under lease or sublease and any agreement to let or sub-let or any renewal of lease.	
Where such lease purports to be-	
(i) ---	
(ii) ---	
(iii) for a period exceeding ten years but not exceeding twenty-nine years, with a renewal clause contingent or otherwise.	The same duty as is leviable on a conveyance under clause (a), (b), or (c), as the case may be of article 25, on 50 per centum of the market

	value of the property. (emphasis supplied)
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19. Admittedly in the instant case the renewal lease agreement is of 20 years and therefore the same would be covered by Article 36(iii) of the BSA. Indeed the Chief Controlling Revenue Authority/R-4, in the impugned judgment has held so, and this position is not disputed by anyone. What is disputed by the petitioner and taken exception to is the finding rendered by the respondent no.4, that the stamp duty is required to be paid on the entire consideration and not on 50% of the market value and so also the mode and manner of calculating the market value and not applying Sec.27 of the BSA to the renewal lease.

20. In so far as the reason for not following the mandate of Article 36(iii) of the BSA for levying the duty on 50% of the market value is concerned, the reasonings thereof, are found in paras 5.1 to 5.6 of the impugned judgment. A perusal of the same clearly demonstrates that the only reason for holding that the stamp duty is payable on the entire market value so calculated by the Revenue, as stated in para 5.6 is as under :

“5.6 Non-Applicant's contention is that as per Article 25 read with 36 stamp duty is chargeable only on the 50% of market value of property as the lease period is 20 years.

The same is not accepted for the main reason that the article 36 provides for the percentage of market value to be taken for calculation depending on period of lease. In the present case, Government Department being party executing document, has determined amount of premium; therefore it does not warrant determination of market value in routine as required otherwise. Thus, the amount predetermined by parties being one of Government Department, the same is taken as market value and the said value as a whole needed to be considered.

Therefore, aforesaid contention of Non-Applicant is not accepted as the amount for levy of stamp duty has to be taken at full value of premium as it is the actual amount being paid. The 50% rule can be applied if the market value of property is calculated.”

21. The entire reasoning is as lopsided as it can be. On the one hand the respondent no.4 says that the market value is not calculated and therefore the 50% rule cannot be applied and on the other says that the stamp duty is to be levied on the full market value. That apart, there does not appear to be any distinction in Article 36 BSA in respect of a lease or its renewal being executed by

a Government Department and one executed by a private party, so as to enable the respondent no.4, to deviate from the rule of charging stamp duty on 50% of the market value. No discretion of whatsoever nature is vested in the Stamp Officer or its appellate Authority in not applying the dictum of Article 36(iii) BSA for determining the stamp duty upon the instrument, that too, on any so called basis of one executed by the Government and one executed by a private party. The language of Article 36 BSA does not permit such power or leeway in the Stamp Officer or his appellate authority. Thus once the nature of the Instrument is clear, and it is held that the Instrument falls within a particular Article, no discretion is vested in the Authorities to vary or change the manner of calculating the stamp duty as is enumerated in the Second Column against the relevant Article. The second Column of Article 36(iii) of the BSA does not depend in what mode or manner the market value is to be calculated. It simply speaks that the proper stamp duty leviable would be 50% on the market value and nothing else. Thus the respondent no.4, clearly erred in law in not applying the mandate of the second column of Article 36(iii) of the BSA on the basis that the document was one executed by the Government

and the impugned judgment is not sustainable on this count alone.

22. Much arguments were advanced by Mr. Bhangde learned Senior Counsel on the point of suppression of material and documents by the petitioner from the authorities due to which according to him, the authorities were misled in calculating the stamp duty as was done at the first instance. However, what has to be seen is that the document of renewal of lease is in Form K, which is prescribed under Rule 31 of the Mineral Concession Rules 1960 as were then applicable, and thus the petitioner has no say in the drafting of the document. That apart, the document obviously has been prepared by the Revenue Authorities and the calculations as to dead rent and royalty, have been made by the Authorities. Obviously these calculations are contained in the office file and have been approved by various officers of the State before the order dated 14/2/2009 granting the renewal w.e.f. 31/12/2004 was passed.

23. It is material to note that Rule 22(3) of the Mineral Concession Rules 1960, provides for the grant or renewal of a mining lease and filing of an application for that purpose. It also provides that such an application for renewal of a mining lease shall be accompanied by, amongst other things, a valid clearance

certificate, in the form prescribed by the State Government of payment of mining dues, such as royalty or dead rent and surface rent payable under the Act or the rules made thereunder, from that Government or any officer authority authorised by that Government in this behalf. Rule 24-A (6) provides for disposal of such an application for renewal within a statutory period. Sub-rule 9 of Rule 24-A, provides that if an application for first renewal is made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon. Rule 31 of the Rules of 1960, specifically mandates that where, on an application for the grant of a mining lease, an order has been made for the grant of such lease, a lease deed in Form K or in a form as near thereto as circumstances of each case may require.

24. Thus the relevant information as required by the Statute was a *sine qua non* to be accompanied with the application for renewal of lease and it is nobody's case that such information was not supplied by the petitioner along with the application for renewal of the mining lease in as much as the application was accompanied

by the copy of the agreement of renewal of mining lease on which the stamp duty was to be assessed. It is quite another thing altogether that the authorities sat over the application for years together from 31/12/2004, the date on which admittedly it was made till 16/2/2010, when the renewal of mining lease was executed. It is axiomatic to note that there are no insertions in the document and neither are there any contentions to that effect and it is a document which is clear and precise. Even clause 9, which speaks of the anticipated Royalty per year for the purpose of stamp duty is a printed clause. It is obvious that all through this time i.e. from 31/12/2004 till 16/2/2010, the petitioner had continued to operate the mining lease in light of the mandate of Rule 24-A (9) of the Rules of 1960 and continued to pay Royalty to the State, which was accepted by it, as it is nobody's case that there was any dispute as to the rate of royalty or that it was not paid for the aforesaid period between the date of the application and the date of execution of the renewed lease. Thus all information as was required and necessary for determining the Stamp duty was clearly within the knowledge of the concerned authorities who had drafted the document of renewal of mining lease. Not only that, the insertion of

clause 9 in the document, specifically attributes knowledge to the authorities as to the mode and manner of determination of the value of the instrument, for the purposes of stamp duty, which is the sole reason why clause 9 was inserted. For the sake of ready reference clause 9 of the renewal of mining lease is quoted as under :

“9. For the purposes of stamp duty the anticipated royalty for the demised land is Rs.1,15,98,000/- per year. Stamp duty shall be paid as per the consideration of revision by Government of Maharashtra”.

25. This would clearly indicate that the Mining Officer who had executed the document on behalf of the Governor of Maharashtra, was clearly aware that the document was required to be stamped as per the provisions of the BSA and specifically of Section 27 thereof, as the use of the words 'anticipated royalty', used in clause 9 quoted above would indicate, which in fact, is what is contemplated by the second proviso to Sec.27 BSA. Thus having in fact, actually determined the 'anticipated royalty', as indicated in clause 9 of the document of renewal of mining lease, it cannot be said that the State Authorities were oblivious of the information required to so determine the same or were kept in the dark therefor

by the petitioner, by not supplying any documents, much less any material documents. This is more so as the State continued to receive the Royalty upon the quantity extracted at the rate as indicated in the agreement of renewal, even before the date of sanction of the renewal or the execution of the agreement and was thus aware of all the necessary information and documents in this regard. Thus it is obvious that the plea raised on behalf of the State now, that there was suppression of material information and documents by the petitioner in the matter of determining the Stamp duty is clearly without any merits whatsoever.

26. That apart it is material to note that an application for adjudication of the proper stamp duty payable upon the document of renewal of mining lease as contemplated by Sec.31 of the BSA was filed on 24/12/2009, whereupon the Collector Stamps by his order dt. 30/1/2010 determined that the proper stamp duty payable was Rs.25,75,000/- on the value determined by State which was of Rs.8,58,25,200/- .

In this regard sec.31 of the BSA being relevant is reproduced below :

“CHAPTER III. ADJUDICATION AS TO STAMPS.**31. Adjudication as to proper stamps.**

(1) When an instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, by one of the parties to the instrument and such person] applies to have the opinion of that officer as to the duty (if any) with which or the Article of Schedule I under which it is chargeable and pays a fee of one hundred rupees in case not involving stamp duty on ad valorem basis, and one rupee for every Rs. 1,000 or part thereof, subject to a minimum of five rupees and maximum of twenty-five rupees in cases involving stamp duty on ad valorem basis, the Collector shall determine the duty (if any) with which, or the Article of Schedule I under which in his judgment, the instrument is chargeable.

(2) For this purpose the Collector may require to be furnished with a true copy or an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon such application until such true copy or abstract and evidence have been furnished accordingly :

Provided that—

(a) no evidence furnished in pursuance of this section

shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable ; and

(b) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

(3) Where the Collector acting under sub-sections (1) and (2) is not the Collector of the District and if he has reason to believe that the market value of the property, which is the subject matter of the instrument, received by him for adjudication, has not been truly set forth therein, he shall, for the purpose of assessing the stamp duty, determine the true market value of such property, as laid down in the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995.

(4) When an instrument is brought to the Collector for adjudication,—

(i) within one month of execution or first execution of such instrument in the State ; or

(ii) if, such instrument is executed or first executed, out of the State, within three months from the date of first receipt of such instrument in this State, the person liable to pay the stamp duty under section

30 shall pay the same within sixty days from the date of service of the notice of demand in respect of the stamp duty adjudicated by the Collector. If such person fails to pay the stamp duty so demanded within the said period, he shall be liable to pay a penalty at the rate of two per cent., of the deficient portion of the stamp duty, for every month or part thereof, from the date of execution of such instrument, or as the case may be, date of the first receipt of such instrument in the State] :

Provided that, in no case, the amount of the penalty shall exceed four times the deficient portion of the stamp duty.”

27. A perusal of sub-section (2) of Section 31, will demonstrate that where in case the Collector is satisfied that the information furnished with the application is insufficient for the purpose of adjudicating the proper stamp duty upon the instrument, he may require additional documents/evidence as he may deem necessary for this purpose and may even refuse to proceed upon such application until such true copy or abstract and evidence have been furnished accordingly. It is not the case of the Revenue that the Collector (Stamps) had asked for additional information/documents from the petitioner and the same was not furnished. It is further

pertinent to note that Sub-section (1) of Section 31, speaks of placing the document on which stamp duty is to be adjudged along with the application u/s 31 (1). The requirement of any additional information/document/evidence, if any, would only arise thereafter, that too, when the Collector, so requires, if he finds that the information as available to him, is insufficient to adjudge the proper stamp duty payable on the instrument, and not otherwise. Thus except for furnishing the instrument upon which the stamp duty is to be adjudged, along with the application u/s 31(1) of the BSA, the Statute does not cast any obligation upon the person submitting such application. It is only when the information contained in the application and the instrument annexed thereto, is found to be unsatisfactory by the Collector (Stamps)/Adjudicating Authority, then he may call for additional documents/evidence as deemed fit by him. Thus there was no obligation upon the petitioners, to place on record anything else, apart from the instrument, upon which the proper stamp duty was sought to be adjudged. Thus when in law, there is no obligation, to supply material/documents/data, the question of any suppression does not arise at all.

28. The reliance by Mr. Bhangde, Learned Senior Counsel,

for the respondents, in support of his contention of suppression upon **Meghmala / G. Narasimha Reddy (2010) 8 SCC 383**, is clearly misplaced, as in the instant case there was no duty/obligation upon the petitioners to place on record any material or data, regarding the Royalty paid for the preceding years along with the application u/s 31 of the BSA.

29. In fact the insertion of clause 9, in the instrument, itself was indicative of the fact that the Collector (Revenue) was aware as to the requirement of determination of the estimated Royalty in light of the provisions of Sec.27 of the BSA, for the purpose of determining the Stamp duty and had in fact determined the same as is evident from a bare perusal of clause 9.

30. That apart, the Collector (Stamps) in the present case, did not find the information insufficient to adjudicate the proper stamp duty payable on the instrument as is evident from the order dated 30/1/2010 as passed by him u/s 31 BSA.

31. In support of his plea of suppression, a submission was canvassed by Mr. Bhangde, learned Senior Counsel for the respondents, that the Collector (Revenue) and the Collector (Stamps) are two different persons/authorities and thus any

information available to the Collector (Revenue), would not be available to the Collector (Stamps) and therefore it was the obligation of the petitioner to have furnished the Royalty figures for the preceding years along with the application u/s 31(1) of the BSA. The contention is clearly misconceived for two reasons : The first is that the Collector (Revenue) is the head of the District Administration and all powers even for determination of Stamp clearly vest in him. It would be material to note that Sec.31(1) BSA speaks of making the application for adjudication of proper stamp duty to the 'Collector'. Sec.2(f) BSA defines 'Collector', to mean as under :

“(f) ‘**Collector**’ means the Chief Officer in charge of the revenue administration of a district, and includes any officer whom the State Government may, by notification in the Official Gazette, appoint in this behalf ; and on whom any or all the powers of the Collector under this Act are conferred by the same notification or any other like notification.”

32. Thus, the BSA does not make any distinction between the Collector (Revenue) and Collector (Stamps). The Collector (Revenue) being the Chief Officer in charge of the revenue administration of a district, is the Collector of the District. In fact the

Collector (Stamps) is an officer upon whom the powers of the Collector under the BSA have been conferred by notification, due to which, in so far as the determination of stamp duty is concerned, the Collector (Stamps) merely acts as a delegate of the Collector (Revenue) and not as an independent authority. Though the authority is delegated, it does not mean that the person delegating the authority, is divested of the powers in that regard, altogether, rather, he only refrains from the exercise of such powers, in view of the delegation and nothing else. In fact it can also be said that once the Collector (Revenue) who is the original Authority under the Statute, has determined, the anticipated royalty, as reflected from clause 9 of the agreement of renewal of mining lease, the Collector (Stamps) being his delegate, would be bound by such determination. The Second, is that the Statute does not create any obligation upon the petitioner to furnish any such figures, along with the application u/s 31 BSA.

33. The distinction sought to be made by Mr. Bhangde, learned Senior Counsel for the Revenue, based upon the designation, is thus clearly not borne out by the Statute. Thus the plea of suppression as raised by the learned Senior Counsel for the

Revenue, on all these counts does not hold any water.

34. Insofar as the applicability of Sec.27 BSA it has to be determined upon the nature of the Instrument and whether the market value as defined in Sec.2(na) BSA is capable of being determined. In the instant case, the instrument is an agreement of renewal of mining lease for a period of 20 years. The Dead Rent or rates of Royalty payable for the entire period of the renewal is mentioned in page 3 as well as in PART V of the document. Either the Dead Rent or Royalty, whichever is higher is to be paid. It is however, pertinent to note that the royalty is not a fixed amount but is based upon per tonne of material excavated. The rates of dead rent are fixed per hectare per annum, which would indicate the lowest value. Thus when the lease was executed, what was determinable was the dead rent, the period and the area. However under the terms of the renewed lease, what is payable is dead rent or royalty, whichever is higher. Thus though the rate of dead rent is fixed however, the same would become payable only when the royalty charged, which is based upon the quantity of material excavated, falls below the dead rent fixed and not otherwise. Whenever the Royalty exceeds the dead rent, it is the royalty which

is payable and not the dead rent. In this light of the matter, the amount payable under the instrument, is clearly indeterminate, as required by Sec.27 BSA. The reliance placed by Mr. C. S. Kaptan Learned Senior Counsel for the petitioner, upon *Steel Authority of India* (supra) is not seriously disputed by Mr. Bhangde, Learned Senior Counsel for the respondents. *Steel Authority of India* (supra) in fact considers a similar issue as to the applicability of sec.26 of the Indian Stamp Act, 1899 as amended in its application to the State of Madhya Pradesh and the stamp duty chargeable on an instrument renewing the mining lease in form K prescribed in accordance with Rule 31 of the Mineral Concession Rules, 1960. Sec.26 of the Indian Stamp Act, 1899 as amended in its application to the State of Madhya Pradesh, except for certain variations, which are not germane to the present dispute, is similarly worded to Sec.27 BSA, which can be demonstrated as under :

Indian Stamp Act as applicable to Madhya Pradesh	Bombay Stamp Act
26. Stamp where value of subject-matter is indeterminate.	27. Stamp where value of subject-matter is indeterminate.-
Where the amount or value of the subject-matter of any	Where the amount or value of subject-matter of any

instrument chargeable with ad valorem duty cannot be or (in the case of an instrument executed before the commencement of this Act) could not have been ascertained at the date of its execution, or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient:	instrument chargeable with <i>ad valorem</i> duty cannot be, or in the case of an instrument executed before the commencement of this Act could not have been ascertained at the date of its execution or, first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient, <i>and the instrument shall be deemed to be insufficiently stamped as respects the excess amount and the provisions of section 34 shall accordingly apply in relation to the admission of the instrument in evidence;</i> Provided that, for the purpose of application of section 34 to such an instrument, it shall be
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	sufficient if the deficiency in the duty is paid, and thereupon no penalty shall be levied.
Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp-duty,-	<u>Provided that, in the case of the lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent, it shall be sufficient to have estimated such royalty or the value of such share, for the purpose of stamp duty,-</u>
(a) when the lease has been granted by/or on behalf of the Government at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the Government under the lease, or,	(a) when the lease has been granted by or on behalf of the Government at such amount or value as the Collector may, having regard to all the circumstances of the case, have estimated as likely to be payable by way of royalty or share to the Government under the lease, or,
(b) when the lease has been granted by any other person, at twenty thousand rupees a year;	(b) when the lease has been granted by any other person, at twenty thousand rupees a year;

and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease: Provided also that, where proceedings have been taken in respect of an instrument under section 31 or 41, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.	and the whole amount of such royalty or share, whatever it may be, shall be claimable under such lease: <i>Provided also that, where proceedings have been taken in respect of instrument under section 31 or 40, the amount certified by the Collector shall be deemed to be the stamp actually used at the date of execution.</i>
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35. The **Court in Steel Authority of India** (supra) had held thus :

“5. It would be useful to refer to the definition of "lease" in section 2(16) of the Stamp Act wherein an inclusive definition is given stating that it means a lease of immovable property. The expression "lease" used in the Stamp Act has, therefore to be understood as defined in section 105 of the Transfer of Property Act in Chapter V relating to leases of immovable property. The definition of "lease" in section 105 of the Transfer of Property Act shows that it is a transfer of a right to enjoy such property in consideration of a price paid and that the consideration

given by the lessee to the lessor under the lease, called by whatever name, is the "rent". It is therefore, obvious that the royally payable under the mining lease by the lessee to the lessor is the "rent" or at least a part of the rent payable under the mining lease. The primary contention on behalf of the petitioners that royalty is not "rent" or a part thereof is clearly untenable. This view is fully supported by the decisions in *Low & Co. v. Jyoti Prasad*: : A.I.R. 1931 P.C. 299) and *Tarkeshwar Sio Thakur Jiu v. B.D. Dey & Co.* : A.I.R. 1979 S.C. 1669).

6. Section 26 of the Stamp Act applies when the value of the subject-matter is indeterminate and ad valorem duty is chargeable on the instrument. The amount of royalty payable under a mining lease cannot, therefore, be ascertained at the date of its execution. Royalty is payable where it is higher than the dead rent according to the terms of the lease itself and, as already indicated, royally being consideration for the lease, it is rent or at least a part of the rent payable under the lease. These characteristics of an instrument of mining lease being beyond controversy and royalty being the "rent" or part of the rent in the case of a mining lease, section 26 of the Stamp Act including the proviso therein is clearly attracted and it cannot be said that the rent is fixed by such lease so as to apply Article 35(a) alone and exclude the applicability of section 26. The proviso in section 26 is enacted specifically for mining leases under which

royalty is to be paid and if the petitioners contention is accepted, it would not only be contrary to the settled meaning and concept of royalty payable under a mining lease but it would also render this part of section 26 as a legislative exercise in futility. Clause (a) of the Proviso also provides for calculating the amount or value of the subject-matter on the basis of estimated royalty likely to be payable under the lease. The mode of determining the value of subject-matter in such cases where the same cannot be ascertained with precision at the date of the execution of the instrument has also been provided in section 26. It cannot, therefore, be doubted that section 26 of the Stamp Act clearly applies.”

36. The facts in the present case as well as the language of the Statutory provisions in the present matter are very similar to the provisions of Section 26 of the Indian Stamp Act as applicable to the State of Madhya Pradesh as enumerated above and therefore the dictum in **Steel Authority of India** (supra) applies with full force in the present case and thus the applicability of Sec.27 BSA to the instrument in question cannot be doubted. Indeed Mr. Bhangde, Learned Senior Counsel, does not seriously dispute applicability of section 27 BSA to the instrument in question. What is disputed by him, is the correctness of the estimate, i.e. the quantum of estimated

royalty arrived at, by the Collector (Revenue). That also may not perhaps be open to challenge by the respondents, in light of the language of the third proviso, to Sec.27 BSA which states that where proceedings have been taken in respect of an instrument under section 31 or 40, the amount certified by the Collector shall be deemed to be the stamp duty actually used at the date of execution. In the present case the proceedings u/s 31 BSA were duly taken up and the Collector (stamps) had duly certified the amount of stamp duty. That apart, even the Revenue, had not challenged the order as passed by the Collector (Stamps) u/s 31 BSA at the relevant time and it was only due to an audit objection that the present controversy has arisen.

37. The situation also came up for consideration in **N.S. Company** (supra) relied upon by the Learned Senior Counsel for the petitioner, in which while considering Sec.26 of the Indian Stamp Act in relation to renewal of a mining lease, it was held as under :

“4. From perusal of the aforesaid provision it is manifest that in case of the mining lease in which royalty or a share of the produce is received as the rent or part of the rent then such royalty or the value of such share shall be taken into consideration for the purpose of stamp duty. It further provides that if the

lease has been granted by or on behalf of the Government at such amount or value as the Collector may have estimated as likely to be payable by way of royalty or share to the Government shall be taken into consideration for the purpose of stamp duty. It is, therefore, clear that section 26 or any other provisions of the Stamp Act does not contemplate of a situation of calculation of stamp duty on the basis of value of 1/10th paid up royalty for the past 10 years. The Government of Bihar, Department of Mines vide their circular dated 11.11.1996 rightly issued direction to all the officers of the Mines department to calculate the valuation for the purpose of stamp duty on the basis of average of the royalty received in one year or dead rent whichever is higher. As a matter of fact , the direction of the respondent in the impugned letter for calculation of stamp duty on the basis of valuation of 1/10/ of royalty paid during the last 10 years is unknown to law. ”

38. It is thus clear that royalty paid for in the past can never form the basis for calculation of the value of the lease or its renewal and it is only the estimated royalty as contemplated by the 2nd proviso to Section 27 BSA which can form the basis for arriving at the stamp duty payable on a mining lease or its renewal.

39. The estimated Royalty, has to be calculated by the Collector (Revenue), which has already been done, as is reflected in clause 9 of the agreement of renewal of mining lease, which does not appear to have been disputed by the Collector (stamps) and has also been accepted by the Respondent no.4, as is apparent from the perusal of para 5.7 and 5.9 of the impugned judgment. So apparently there is no dispute as to the estimated Royalty as determined by the Collector (Revenue). The question is the entire mode of calculation of the market value of the lease as has been done by the respondents. The impugned judgment in Serial No. (i) of the Table in para 5.10, comes to the figure of Rs.38,74,00,000/- as the consideration as per clause 9 on page no.22 of the document for the first 5 years, which is clearly beyond comprehension, as having accepted the estimated royalty as calculated by the Collector (Revenue) in clause 9 as Rs. 1,15,98,000/- the amount for the period of 5 years by a plain multiplication would come to $\text{Rs.}1,15,98,000/- \times 5 = \text{Rs.}5,79,90,000/-$, as against which how the figure of Rs.38,74,00,000/- has been arrived at, is clearly not discernible. Similar is the position regarding the calculations for the consideration for the next period of 15 years, as mentioned in Serial

No. (ii) of the table in para 5.10 of the impugned judgment which would be Rs.1,15,98,000/- x 15 = Rs.17,39,70,000/- (Rupees Seventeen Crores thirty nine lakhs and seventy thousand only) whereas the figure as mentioned in column 3 as against serial no.(ii) is Rs.51,39,70,000/- (Rupees Fifty one Crores Thirty nine lakhs and seventy thousand only) and the stamp duty has been calculated @3% on this entire amount i.e. Rs.38,74,00,000/- + Rs.51,39,70,000/- = Rs.90,13,70,000/- (Rupees Ninety Crores Thirteen lakhs and seventy thousand only) as against the accepted figure of anticipated royalty as calculated by the Collector (Revenue) of Rs.1,15,98,000/- x 20 years = Rs.23,19,60,000/- (Rupees Twenty Three Crores Nineteen lakhs and sixty thousand only) as appearing from the impugned judgment itself and that too on 100 % of the value, which was impermissible in light of the mandate of Article 36(iii) of BSA.

40. The further contention of Mr. Bhangde Learned Senior Counsel for the respondents is that the agreement of lease having been signed on 16/2/2010, it was open for the Collector (Stamps) to take into consideration the Royalty paid by the petitioner for the period 2004-2009, is clearly fallacious, as by virtue of the provisions

of Sub-rule 9 of Rule 24-A, of the Mineral Concession Rules 1960, as it is nobody's case that the application for first renewal was not made within the time referred to in sub-rule (8) and therefore the period of that lease was deemed to have been extended by a further period till the State Government passed orders thereon. Even otherwise if the contention of the respondents is accepted that would lead to a fresh stamp duty being calculated every year, based upon the quantity excavated each year and the royalty paid thereon, which is clearly not the intention of Sec.27 BSA or its second proviso. In fact, such an interpretation if accepted would lead to a chaotic situation.

41. The record further demonstrates that the calculations made by the Authorities under the BSA, as to the proper market value of the renewed lease and the stamp duty payable thereupon, itself was contradictory. Whereas, the order of adjudication u/s 31 BSA dt.30/1/2020, determined the consideration as Rs.8,58,25,200/- and the stamp duty payable as Rs.25,75,000/-, the audit objection claimed the stamp duty payable to be Rs.69,58,918/- and considering the earlier amount paid a deficit of Rs.43,83,915/- was demanded, which was subsequently reduced to Rs.34,79,160/-

which in itself demonstrates that the auditors themselves were not sure as to what was the correct value and the stamp duty payable. There is nothing on record as to how and in what manner and based upon what material, the auditors first arrived at the stamp duty payable as Rs.69,58,918/- and on what basis the so called deficit was thereafter reduced to Rs.34,79,160/-. No calculation whatsoever in this regard have been placed on record to ascertain the rationality of such demands.

42. Further the stamp-duty in the impugned judgment was enhanced to Rs.1,54,19,100/- and considering the deposits made earlier a deficit of Rs.93,64,940/- was demanded, which again is clearly unjustified in light of the nature of calculation made by the respondent no.4, as discussed above. In so far as the circular dt.5/9/1992 is concerned the impugned judgment does not demonstrate that the same has even been considered by the respondent no.4. Thus, the entire calculations made by the respondents as to the market value and the stamp duty leviable are clearly incomprehensible. When the respondent nos.2 to 4 who are responsible officers of the State and have been entrusted with the duty to determine the market value and the stamp duty to be

imposed upon an instrument are themselves not lucid and clear in their calculations, then one shudders to think about the continued fate of the common man who is required to approach them u/s 31 BSA. It is sufficient to state that the approach and attitude of the officers ought not to be, to fill the coffers of the State, but to correctly determine the stamp duty payable upon the instrument. In the present case it is clearly apparent that there has been an abject failure of the respondents nos.2 to 4 in performing the duty cast upon them in the matter of determining the proper and correct stamp duty leviable upon the instrument in question.

43. The further contention of Mr. Bhangde, Learned Senior Counsel that the object of the 2nd proviso to Sec.27 BSA is that under a mining lease both can claim, i.e. the lessee can claim excavation and the lessor can claim royalty, and any contrary position would entail in creating two classes of leases, one in which the value is determinable to pay ad-valorem Stamp duty and the other in which the value is indeterminable to pay the stamp duty determined by the Collector, which is no reasonable classification as the object is to collect stamp duty on the basis of the value of the subject matter, is clearly without any merits as it is specifically for dealing with

mining leases, in which the value is indeterminable, that the second proviso has been enacted. That apart in the present petition no challenge is raised as to the virus of Sec.27 BSA or any of its proviso, though a passing reference is made in para 11 of the cross-objection, however, such a challenge, if properly made, may be entertained by the Division Bench of this Court, which is having jurisdiction to entertain one, but certainly cannot be entertained by this Court.

44. So also the reliance on **K.M. Sharma** (supra) by Mr. Bhangde Learned Senior Counsel for the respondents holding that an interpretation which creates an unjust and discriminatory situation has to be avoided, is clearly misplaced, as the 2nd Proviso to Sec.27 BSA, specifically caters to cases mining leases, where the value is indeterminable.

45. The further contention by Mr. Bhangde Learned Senior Counsel is that the 2nd proviso to Sec.27 BSA , in using the expression '*and the whole amount of such royalty or share, whatever it may be, shall be claimable, under such lease*', relates to any excess excavation and royalty to that extent will be claimable and the State has right to claim excess amount for excess excavation, is a contention, which is covered by the terms of the

lease, which fixes the royalty upon the quantity excavated. However as this amount is uncertain, the need to determine the anticipated/estimated royalty as per the 2nd proviso to Sec.27 BSA for the purposes of Stamp duty arises, for which the quantity actually excavated every year cannot be considered. As has been indicated above, if such a mode was permitted, there never would be any finality to the value and a separate stamp duty, based upon the value of the quantity excavated every year would have to be determined, each year which is not the legislative intent behind the enactment of Section 27 BSA and its provisos, rather it is to avoid such a situation, and specifically cater to a situation, where the market value was indeterminable, in the case of a mining lease that the 2nd proviso was enacted. Moreover, the doctrine of relate back, will clearly be applicable in such a case as though the agreement of mining lease was executed on 16/2/2010 and registered on 24/2/2010, the same was with effect from 31/12/2004 and was continued by virtue of the Statutory mandate as contained in sub-clause 9 of Rule 24-A of the Mineral Concession Rules, 1960, and even otherwise, the renewal of mining lease would be deemed to have commenced w.e.f. 31/12/2004 as per the document itself. Thus the

question of any excess excavation every year and its value, has no relation or nexus with the calculation of the estimated value of the mining lease or its renewal as per the 2nd proviso to Sec.27 BSA as both are two different things and cannot be equated in any manner whatsoever.

46. As regards the contention of learned Senior Counsel Mr. Bhangde, for the revenue that the order of adjudication u/s 31 BSA took into consideration the old rates of dead rent as against the revised rates, nothing has been placed on record as to what were the old rates of dead rent, when, and what were the new revised rates of dead rent and since when they were applicable. The Order u/s 31 BSA as placed on record, does not depict any rates or calculations apart from which in light of the applicability of the doctrine of relate back, it is doubtful whether any subsequent revision of dead rent, consequent to the date of commencement of renewal of the mining lease could be considered in determining the estimated royalty and consequently the stamp duty.

47. As to the construing of a proviso, reliance has been placed by Mr. Bhangde learned Senior Counsel for the Revenue on **KSRTC/ Baby** (supra) which holds that Interpretation, which creates

an unjust and discriminatory situation, has to be avoided. He also places reliance upon **C.W.S. (India) Limited** (supra) which holds that “while we agree that literary construction may be the general rule while construing taxing enactments, it does not mean that it should be adopted even if leads to a discriminatory or incongruous result. Interpretation of Statutes cannot be a mechanical exercise. Object of all the rules of interpretation is to give effect to the object of the enactment having regard to the language used.” There cannot be any quarrel with the above propositions of law as laid down by the Hon'ble Apex Court. However what is material to note is that whereas Sec. 27 BSA deals with a general provision, which considers all such cases where the amount of value or the subject matter of any instrument chargeable with ad valorem duty cannot be or could not have been ascertained, the 2nd proviso to Sec.27 BSA specifically deals with the case of a lease of a mine in which royalty or a share of the produce is received as the rent or part of the rent and thus could be said to be a stand alone provision, enacted specifically to provide for cases of mining leases as contented by learned Senior Counsel Mr. Kaptan for the petitioner and thus there does not appear to be any incongruity or any discriminatory

situation in the language of the 2nd proviso to Sec.27 BSA vis-a-vis Sec. 27 BSA itself. Thus the dictum in KSRTC / Baby as well as C.W.S. (India) Limited (supra) are of no assistance to Mr. Bhangde learned Senior Counsel for the respondents.

48. Mr. Kaptan Learned Senior Counsel for the petitioner, has urged that once the Collector had determined the Stamp Duty chargeable on the instrument, it was not permissible for the Collector to embark upon an enquiry for re-determination of the stamp duty, so as to arrive at any deficit. This however is not the case in the present matter as the objection as to deficit was raised not by the Collector (stamps) but by the Accountant General II in audit, which is a totally different authority altogether.

49. Much has been said about the contrary stand of the respondent nos.2 and 4 in passing the order u/s 31 BSA and the impugned judgment and they supporting each other, at a subsequent point of time, which is reflected from the submissions on affidavit as filed by the respondent no.2, on record. The facts on record clearly demonstrate that, the authority of the respondent no.2 which had passed the initial order u/s 31 of BSA, has since turned around and instead of justifying the order as passed u/s 31

BSA is trying to justify the impugned judgment. This clearly indicates a change in stand, which ought not to be permitted and reflects adversely upon the independent character of the authorities. However, since they have not been made parties in person, I, do not feel it proper to go into these allegations which tantamount to collusion in supporting the order passed by the respondent no.4, in their absence in their personal capacity to defend themselves.

50. Thus, for all the reasons as stated above the impugned judgment as passed by the respondent no.4, is clearly not sustainable in law. The same is therefore quashed and set aside and the matter is remanded back to the respondent no.4, to calculate the correct market value and the correct stamp duty, in light of what is stated in this judgment, which should be done within six months from the date of this order.

JUDGE