



W.P.No.40067 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	04.11.2022
Pronounced On	14.11.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.40067 of 2016

and

W.M.P.Nos.34111 & 34112 of 2016

M/s.APM Terminals India Private Limited,
Urimi Estate, 11th Floor, Tower A,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400 013
Rep. by its Authorized Signatory,
Mr.A.Samuel Ernest.

... Petitioner

Vs.

1.Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 28.

2.District Registrar,
Tuticorin, Melur.

3.Sub Registrar,
Tuticorin, Melur.

4.M/s.Hari & Co.,
4/29E, Madurai By Pass Road,
Tuticorin – 628 006.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned orders passed by the first respondent in Letter No.D.Dis.No.47045/P1/2016 dated 08.11.2016 and quash the same and consequently direct the second and third respondents to forthwith drop all further proceedings in relation to Document No.P16/2016 that was kept pending by the third respondent.

For Petitioner : Mr.P.Giridharan
For R1 to R3 : Mr.K.Tippusulthan
Government Advocate
For R4 : Mr.S.Vijayan

ORDER

The petitioner has challenged the impugned order dated 08.11.2016 bearing reference D.Dis.No.47045/P1/2016 passed by the first respondent Inspector General of Registration under Section 56(1) of the Indian Stamp Act, 1899.

2. By the impugned order dated 08.11.2016, the first respondent has rejected the revision petition filed by the petitioner against the order dated 29.09.2016 of the second respondent District Registrar, Tuticorin.



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3. By the aforesaid order dated 29.09.2016, the second respondent confirmed the order dated 09.08.2016 passed by the third respondent in his Proceedings No.37/2016 demanding a sum of Rs.94,88,880/- towards deficit stamp duty for registration of Agreement dated 07.04.2016.

4. It is specific case of the petitioner that the aforesaid Agreement dated 07.04.2016 was an Agreement to Lease and not a Lease Agreement and therefore, the petitioner was not liable to pay the aforesaid stamp duty.

5. The petitioner entered into an Agreement dated 07.04.2016 with the fourth respondent. Under the aforesaid Agreement, the petitioner undertook to take on lease the property, i.e. Container Freight Station (CFS), of the fourth respondent subject to certain conditions. The petitioner has however advanced a sum of Rs.94,34,000/- to the fourth respondent under aforesaid Agreement as refundable security deposit. The relevant Clauses reads as under:-



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3.SECURITY DEPOSIT

3.1 Simultaneously with the execution of this Agreement, the Party of the Second Part (*the petitioner*) has deposited a sum of Rs.94,50,000/- (Rupees Ninety Four Lacs Fifty Thousand only) as an interest free refundable security deposit (hereinafter referred to as the "Security Deposit") with the Party of the First Part (*the fourth respondent*).

3.2 The Security Deposit shall be held by the Party of the First Part (*the fourth respondent*) during the term of this Agreement, and upon the expiry of sooner termination of this Agreement should be dealt with in the manner as follows:

(a) Upon execution of the Lease Deed, the Security Deposit deposited hereunder shall continue to be retained with the Party of the First Part (*the fourth respondent*) and shall be deemed to have been received towards the security deposit payable by the Party of the Second Part (*the petitioner*) to the Party of the First Part (*the fourth respondent*) thereunder,

OR

(b) The Security Deposit shall be refunded by the Party of the First Part (*the fourth respondent*) to the Party of the Second Part (*the petitioner*) by electronic clearing system upon termination of this Agreement by either Party.

3.3 In the event the Party of the First Part (*the fourth respondent*) fails to refund the Security Deposit in accordance with Clause 3.2(b)



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hereinabove:

- (a) The Party of the Second Part (*the petitioner*) shall be entitled to recover from the Party of the First Part (*the fourth respondent*) and the Party of the First Part (*the fourth respondent*) shall be liable to pay to the Party of the Second Part (*the petitioner*) interest at the rate of 24% (Twenty Four percent) per annum from the due date of the refundable Security Deposit up to the date of full realization thereof; and
- (b) The Party of the First Part (*the fourth respondent*) shall neither be entitled to deal with the To be Leased Premises in any manner whatsoever by entering into any agreement with any third party nor shall the Party of the First Part (*the fourth respondent*) create any third party rights on the To be Leased Premises until the Security Deposit is refunded with accrued interest thereon.

4. BANK GUARANTEES

- 4.1 Simultaneously with the execution of this Agreement and against the Party of the Second Part (*the petitioner*) depositing the Security Deposit with Hari & Co (*the fourth respondent*), Hari & Co (*the fourth respondent*) have furnished to the Party of the Second Part (*the petitioner*) a Bank Guarantee equal to the amount of the Security Deposit in the form hereto annexed as Annexure 6 issued by a Scheduled Bank in favour of the Party of the Second Part (*the fourth respondent*)



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(hereinafter referred to as the "Bank Guarantee for Security Deposit").

4.2 The Bank Guarantee for Security Deposit shall remain in full force, virtue and effect and shall be dealt with in the manner as follows:

(a) Upon execution of the Lease Deed, the Bank Guarantee for Security Deposit shall continue to be retained by the Party of the Second Part (*the petitioner*) and shall be deemed to have been received towards the Bank Guarantee for Security Deposit furnished by the Party of the First Part (*the fourth respondent*) to the Party of the Second Part (*the petitioner*) thereunder;

OR

(b) In the event this Agreement is terminated and the Party of the First Part (*the fourth respondent*) fails or refuses to refund the Security Deposit in accordance with Clause 3.2 (b) hereinabove, the Party of the Second Part (*the petitioner*) shall in its sole discretion have the right to invoke the Bank Guarantee for Security Deposit in addition to any other amounts for which the Bank Guarantee may be invoked pursuant to this Agreement.

4.3 The Party of the First Part (*the fourth respondent*) acknowledges and accepts that the Party of the Second Part (*the petitioner*) shall incur a Capital Expenditure for upgrading the To Be Leased Premises. As security for due performance of its obligations under this



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Agreement and the Lease Deed, the Party of the First Part (*the fourth respondent*) hereby agrees to furnish to the Party of the Second Part (*the petitioner*) bank guarantee(s) in the sum of Rs.18,00,00,000/- (Rupees Eighteen Crores only) in the following manner:

- (a) bank guarantee in the sum of Rs.3,00,00,000 Crores (Rupees Three Crores only) to be issued simultaneously against the execution of this Agreement; The Party of Second Part (*the petitioner*) acknowledges and confirms the receipt the bank guarantee in the sum of Rs.3,00,00,000 Crores.
- (b) bank guarantee(s) for the balance sum of Rs.15,00,00,000 Crores (Rupees Fifteen Crores only) shall be issued by the Party of First Part (*the fourth respondent*) in proportion to the payments that are made to the civil contractor. It is agreed by and between the Parties that the Party of the Second Part (*the petitioner*) shall provide to the Party of the First Part (*the fourth respondent*) a statement of expenditure that the civil contractor would provide for Upgradation Work from time to time. The Bank guarantee shall be issued one month prior to the date of making payments to civil contractor by the Party of the Second Part (*the petitioner*) in accordance with the annexure to the Lease Deed.

(hereinafter collectively referred to as "Bank Guarantees for Expenditure").



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- 4.4 Such Bank Guarantees for Expenditures shall be issued by any Scheduled Bank in favour of the Party of the Second Part (*the petitioner*) and shall be in the form annexed hereto as Annexure – 7.
- 4.5 The Bank Guarantees for Expenditures shall remain in full force, virtue and effect and shall be dealt with in the manner as follows:
- (a) Upon execution of the Lease Deed, the Bank Guarantees for Expenditures shall continue to be retained by the Party of the Second Part (*the petitioner*) and shall be deemed to have been received towards the Bank Guarantees for Expenditures furnished by the Party of the First Part (*the fourth respondent*) to the Party of the Second Part (*the petitioner*) thereunder:
 - (b) Upon termination of this Agreement by either Party, if the Party of the First Part (*the fourth respondent*) fails to reimburse the Capital Expenditure to the Party of the Second Part (*the petitioner*), or, if upon the receipt of the Outsourcing Permission or Novated Custodianship License or Novated Agreement with Central Government, the Party of the First Part (*the fourth respondent*) fails to execute the Lease Deed in accordance with the terms of this Agreement, then the Party of the Second Part (*the petitioner*) shall, without prejudice to its rights under this Agreement or in law, be entitled to invoke at its sole discretion the Bank Guarantee for Expenditure and recover therefrom the Capital Expenditure incurred by the Party of the Second Part (*the petitioner*) in respect of the To Be Leased



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Premises at the actual value of the Upgradation Work done. Simultaneously, with the Party of the Second Part (*the petitioner*) invoking the Bank Guarantees for Expenditure, the Party of the Second Part (*the petitioner*) shall intimate the Party of the First Part (*the fourth respondent*) in writing of such invocation.

- (c) The Party of the Second Part (*the petitioner*) shall be entitled to invoke Bank Guarantee for the Expenditures incurred for the Upgradation Work and not for such other excess amounts in the Bank Guarantees for Expenditures furnished to them.

6. The period of the Agreement is 12 months from the date of entering into this Agreement. The petitioner desired to develop, operate and maintain Container Freight Station (CFS) of the fourth respondent. The petitioner was to obtain an/a (a) Outsourcing Permission or (b) Novated Custodianship License; or (c) Novated Agreement with Central Government, whichever was earlier in accordance with Clause 2.6.

7. As per Clause 2.2. (b), until the date the Outsourcing Permission or Novated Custodianship License or Novated Agreement with the Central Government was obtained, the fourth respondent was to continue



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to operate and maintain the Container Freight Station (CFS) from the leased premises.

8. However, as per Clause 2.2 (c)(i), the fourth respondent on the execution of the Agreement agreed to authorize the petitioner and its employees, contractors, workers or appointed entities for the Upgradation Work and to enter upon the leased premises and undertake the Upgradation Work to “build to suit” its requirements, at its own costs and expenses. The petitioner was to carry out the Upgradation Work in the leased premises simultaneously while allowing the fourth respondent to operate and maintain the Container Freight Station (CFS).

9. As per Clause 2.2 (c)(ii), it was agreed by and between the petitioner and the fourth respondent that the petitioner will aim to complete Upgradation Work within a period of 12 months from the date of execution of this Agreement (Upgradation Period) and that the petitioner was entitled to



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- i. Pre-pone the Upgradation Period in its sole discretion,
or
- ii. Post-pone the Upgradation Period at its sole discretion
and the petitioner was to notify the fourth respondent in
writing of such pre-ponement or postponement, as the
case may be.

10. It is the specific case of the petitioner that Agreement to take on lease the property of the fourth respondent was liable to be stamp duty in terms of Article 5(J) of the I Schedule to the Indian Stamp Act, 1899. On the other hand, the official respondents namely, first, second and third respondents, have taken a stand that the transaction covered by the subject Agreement entered into between the petitioner and the fourth respondent on 07.04.2016 was that of a lease agreement within the meaning of Section 105 of the Transfer of Property Act, 1882 and therefore liable to stamp duty in terms of Article 35(a) of the I Schedule to the Indian Stamp Act, 1899.

11. The learned counsel for the petitioner submits that the petitioner had paid a sum of Rs.50,00,000/- pursuant to the interim order



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of this Court dated 17.11.2016. Relevant portion of the interim order dated 17.11.2016 reads as under:-

2.In view of the above submission made by the learned senior counsel appearing for the petitioner, and also to safeguard the interest of the revenue, without prejudice to the contentions raised by the petitioner, there will be a direction to the petitioner to pay a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) of the demanded amount of Rs.96,30,000/- and for the balance amount, the petitioner is directed to execute a bank guarantee, initially for a period of two years and renewed periodically.

3.Upon payment of the said sum, the document shall be released with the seal “it is subject to the final result of the writ petition / final estimation of the total stamp duty and there will be a charge in respect of the property for the balance payable, if any, until final adjudication”.

12. The learned counsel for the petitioner has drawn attention to the few other Clauses from the aforesaid Agreement dated 07.04.2016. The learned counsel for the petitioner has placed reliance on the decision of this Court in **S.Raman Vs. Nithyakalyani Flush Doors Company Private Limited and Others**, dated 25.10.1994 in C.R.P.Nos.3424 of 1993 and 448 of 1994. A specific reference was made to the following



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paragraphs:-

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9. In Hemanta Kumari Debi v. Midnapur Zamindari Company, 37 M.L.J. 525 : A.I.R. 1919 P.C. 79 : 47 Cal. 485 : 46 L.A. 240: 17 A.L.J. 1117: 22 Bom L.R. 488: 24 C.W.N. 177: 27 M.L. T. 42: 1920 M.W.N. 66 : 53 I.C. 534, it was held thus:

The phrase “agreement for a lease” must relate to some document that creates a present and immediate interest in the land. An agreement that upon the happening of a contingent event at a date which is indeterminate and might be far distant, a lease would be granted does not satisfy the meaning of “agreement for a lease.” The same was followed in *Sir Mohamed Yusuf Ismail v. Secretary of State*, A.I.R. 1921 Bom. 200: I.L.R. 45 Bom. 8 : 22 Bom.L.R. 872: 57 I.C. 971 and it was held that “an agreement to lease immovable property that does not constitute a present demise of the property need not be registered.”

10. In Maneklal Manilal, In re., A.I.R. 1928 Bom. 553: 30 Bom.L.R. 1396: 11 I.C. 758. I.L.R. 53 Bom. 1, which is a case under the Indian Stamp Act, a Division Bench of that High Court held that “an agreement to lease” is included in the word “lease” under the Stamp Act, but an agreement to lease must amount to an actual demise and not an agreement that in certain contingencies a lease will be granted. In that case it was further held thus:-

“When by means of a document a person agreed



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to lease property in which he had no present interest, and where the property to be leased is not actually in existence, the document does not amount to an agreement to lease but a simple agreement to which Article 35, Stamp Act will not apply.

XXX XXX XXX

Though the Stamp Act and the Registration Act are not strictly in pari materia, the two Acts may be read together.”

Their Lordships held that the definition in the Indian Stamp Act with regard to a composition deed might be accepted in considering the question under the Indian Registration Act. Their Lordships relied on the earlier decision of Privy Council referred to supra *Hemanta Kumari Debi v. Midnapur Zaminadari Company*, 37 M.L.J. 525: A.I.R. 1919 P.C. 79: 47 Cal. 485: 46 I.A. 240: 17 A.L.J. 1117: 22 Bom L.R. 488: 24 C.W.N. 177: 27 M.L.T. 42: 1920 M.W.N. 66: 53 I.C. 534 and held that it must be a document which effects an actual demise and operates as a lease in praesenti, and not an agreement that in certain contingencies a lease will be granted. Their Lordships further held that so far as the Indian Registration Act is concerned, there is consensus of opinion in the different High Courts as reflected in the decisions of different High Courts that an agreement to lease must be an actual demise. It was further held that if that view is accepted with regard to the Indian Registration Act, it can be applied in considering the question under the Indian Stamp Act also.

11. In *Trivenibai and another v. Smt.Lilabai*, A.I.R. 7959 S.C. 620, it is held as follows:



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"A document executed by laymen without legal assistance must be liberally construed without recourse to technical considerations. The heading of the document, though relevant, would not determine its character. It is true that an agreement would operate as a present demise although its terms may commence at a future date. Similarly it may amount to a present demise even though parties may contemplate to execute a more formal document in future. In considering the effect of the document the Court must enquire whether it contains unqualified and unconditional words of present demise and includes the essential terms of lease. Generally if rent is made payable under an agreement from the date of execution "or other specified date, it may be said to create a present demise. Another relevant test is the intention to deliver possession. If possession is given under an agreement and other terms of tenancy have been set out, then the agreement can be taken to be an agreement to lease. As in the construction of other documents, so in the construction of an agreement to lease, regard must be had to all the relevant and material terms: and an attempt must be made to reconcile the relevant terms if possible and not to treat any of them as idle surplusage."

Their Lordships of the Supreme Court did not distinguish the decision in *Narayanan Chetty v. Muthiah Servai*, I.L.R. 35 Mad. 63. It was held that in that case that the question about the constructions of the words 'agreement to lease' was not specifically



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argued before the Full Bench, and the main point considered was the effect of the provisions of Sec.49 of the Indian Registration Act. In that connection the argument had centred round the effect of the provisions of Cl.(h) of Sec.17 of the Registration Act and Sec.54 of the Transfer of Property Act. The Full Bench took the view that in enacting Sec.49 of the Act, the Legislature meant to indicate that the instrument should not be received in evidence even where the transaction sought to be proved did not amount to a transfer of interest in immovable property but only created an obligation to transfer the property. Their Lordships further said that since the scope of 'agreement to lease' was not decided in that case, the same was not of much help and need not be followed. The decision in I.L.R. 35 Mad. 63, was not followed by our own High Court in the decision reported in Swaminatha Mudaliar v. Ramaswami Mudaliar, 40 M.L.J. 161: A.I.R. 1921 Mad. 72: I.L.R. 44 Mad. 399: 13 L.W. 327: 1921 M.W.N. 145: 62 I.C. 354. In view of the decision of the Privy Council referred to supra.

12. In *Sudesh Kumar v. Moot Chand*, A.I.R. 1969 Raj. 22, also, it was held that unless there is a present demise, an agreement to lease will not amount to a lease proper stamp duty need be paid only as if it is an agreement.

13. In *Mrs.Birender Amarjit Singh v. General Marketing and Manufacturing Company Limited*, Calcutta, A.I.R. 1976 Del. 15, it was held that a document to be treated as a lease must satisfy the test of immediate and present demise in respect of the property covered by it and an agreement to lease is no exception and this test would apply to determine not only the liability of a document to stamp but also to its



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registrability.

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13. It is submitted that the Agreement entered into between the petitioner and the fourth respondent is mere arrangement to build and operate during the period of the Agreement. The parties' to the Agreement have secured each others interest. It is submitted that the possession of premise has not been given to the petitioner for enjoyment and therefore there is no demise of the subject property and lease deed was to be executed between the parties only subject to the satisfaction of certain conditions stipulated in the Agreement.

14. The learned counsel for the petitioner has further placed reliance on the decision of the Karnataka High Court in the case of **K.Amarnath Vs. Smt.Puttammal**, ILR 1999 KAR 4634 : 1998 SCC OnLine Kar 383 . A reference is made to Paragraph No.19 which reads as under:-

19. At this juncture let me digress to consider the vexed question as to whether lease agreements and tenancy agreements require registration and whether they



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are liable to Stamp duty under Article 30 or the residuary clause of Article 5.

19.1. If an agreement or deed of lease relate to a 'present demise', that is, grants or creates a lease (to 'demise' is to create an estate by way of lease) either from that date or from the future date, it requires Stamp duty as per Article 30 and requires to be compulsorily registered, irrespective of the period of lease being more than or less than one year. On the other hand, an Agreement merely agreeing to grant or create a lease in future, subject to fulfilment of some conditions or happening of some contingencies will be a simple agreement (liable to Stamp duty under the residuary clause in article 5) which does not require registration. The following illustrations will demonstrate the difference: (a) If the instrument (be it a deed of lease or agreement of lease) confirms, grants or creates a lease, either from any past date or from that date or from a future date, it will be an instrument requiring Stamp duty under Article 30 and requiring registration. Thus an instrument executed on 1.1.1999 stating that the lease is for a term of 5 years from 1.12.1998 or from 1.1.1999 or from 1.2.1999 is a present demise; (b) If the instrument records an agreement to grant a lease in future subject to a contingency or contingencies, then it is a mere agreement which does not require Stamp duty under Article 30 of the Stamp Act, or registration. An instrument which records an agreement to construct a building and then grant a lease by executing a separate deed will be a mere agreement which can be stamped under the residuary clause of Article 5 and may not require registration.

19.2. There is also a prevalent practice of Rent Notes, Rental Agreements or 'Baaige Karars' being executed by the tenant in favour of the landlord merely agreeing to pay the rents, to which the landlord is not a signatory. Such documents are not lease deeds or lease



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agreements as there is no 'transfer' of any right of enjoyment by the Lessor/landlord under the instrument. To be termed as a 'Lease', necessarily there should be an act of transfer by the Landlord/Lessor. Such documents emanating from the tenant, cannot and do not create a lease and the tenant cannot claim any right thereunder nor enforce the terms thereof. They may however be evidence of nature of possession and the rent. Such documents need not be stamped as Lease under Article 30 nor will they require registration unless they fall under the extended definition of that term in Section 2(7) of the Registration Act, 1908.

19.3. To avoid the prevalent confusion and uncertainty in regard to Stamp Duty in these matters and to encourage parties to execute proper deeds relating to leases and register them, the Legislature/Government may consider a more practical, logical and reasonable structure of Stamp duty regarding leases and lease agreements. While logic need not be a hallmark of taxing statutes, apparent inconsistencies may be pointed out for rectification in the interests of revenue, to encourage public to enter into lease deeds and pay Stamp duty instead of resorting to oral agreements coupled with delivery of possession. One area where the anomaly is glaring is the prescription of same Stamp duty on the amount paid as premium and advance/deposit. As noticed above, a premium is the consideration or price for the lease which is non-refundable. On the other hand, payment of an advance/deposit relating to a lease is refundable on termination of the lease. The nature of the two payments are completely different.

19.4 Let me illustrate by reference to a lease of a premises (for a term of one year) which may fetch a market rent of Rs. 1,000/- per month, under different modes adopted by landlords and tenants:



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- (i) Rs. 12,000/- is paid as premium for the lease of one year, without any rent, the said premium being non-refundable;
- (ii) Rs. 6,000/- is paid as premium (non-refundable) with a provision for payment of rent of Rs. 500/- per month;
- (iii) Rs. 1,000/- per month is paid as rent;
- (iv) Rs. 25,000/- is paid as refundable advance/deposit and rent of Rs. 750/- per month is provided;
- (v) Rs. 1,00,000/- is paid as refundable deposit, without any rent.

While the third and fourth modes are the most prevalent modes, the fifth mode is also becoming popular among middle class landlords and tenants as it avoids the hassle of monthly payments, defaults and arrears. It will be seen that the return to the landlord from any of the five modes will approximately be the same, that is about Rs. 1,000/- per month. But the Stamp duty varies enormously. The details are as below:

Sl. No.	Mode	Return per month	Stamp duty
(i)	Full Premium (Rs. 10,000/-)	(Rs. 1,000/- premium)	as Rs. 1,000/-
(ii)	Part Premium (Rs. 6,000/-) part (Rs. 500/- pm)	(Rs. 500/- rent premium, 500/- as rent)	as Rs. 900/- Rs.
(iii)	Full rent (Rs. 1,000/- pm)	(Rs. 1,000/- as rent)	Rs. 600/-
(iv)	Part refundable advance	(Rs. 250/- interest Rs. 750/-)	as Rs. 2,950/-



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- 25,000/-) part rent as rent
(Rs. 750/- pm)
- (v) Full refundable Rs. 1,000/- as Rs. 10,000/
advance (Rs. interest
1,00,000/-)

In fact the Stamp duty on a sale of a property for Rs. 1,00,000/- and lease of the same property for one year with a refundable advance of Rs. 1,00,000/- is the same. The anomaly of same Stamp duty on premium (non-refundable consideration for the lease) and advance (refundable deposit) requires to be rectified. Be that as it may.

15. It is submitted that the property was under the control of the fourth respondent Container Freight Station (CFS) for being operated and was given for development of infrastructure and to operate at a later point of time subject to the approval in terms of Clause 9 of the Agreement. Relevant Clause reads as under:-

9. TERMINATION:

9.1 Termination by the Party of the First Part (*the fourth respondent*):

- (a) The Party of the First Part (*the fourth respondent*) shall not be entitled to terminate the Agreement, save and except upon the occurrence of any of the following



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events:-

- (i) if the Party of the Second Part (*the petitioner*) commits a significant breach of any of the provisions of this Agreement, then, the Party of the First Part (*the fourth respondent*) shall be entitled to terminate this Agreement by serving a notice upon the Party of the Second Part (*the petitioner*), if upon serving a 90 (ninety) days prior notice in writing upon the Party of the Second Part (*the petitioner*) notifying them of such breach, the Party of the Second Part (*the petitioner*) fails to rectify such breach; or
- (ii) if the Party of the Second Part (*the petitioner*) is declared insolvent or there is an attachment order upon its property(ies), or if the Party of the Second Part (*the petitioner*) makes an assignment for the benefit of its creditors or enters a composition with its creditors, then, the Party of the First Part (*the fourth respondent*) shall be entitled to terminate this Agreement by giving 90 (ninety) days prior notice in writing to the Party of the Second Part (*the petitioner*); or
- (iii) if a Force Majeure Event continues for more than 90 (ninety) days as set out in clause 7.4, the Party of the First Part (*the fourth respondent*) shall be entitled to forthwith terminate this Agreement by giving a written notice to the Party of the Second Part (*the petitioner*).

Within 15 (fifteen) days of such termination, the Party of the First Part (*the fourth respondent*) shall:

- (i) refund the Security Deposit to the Party of the Second Part (*the petitioner*). In the event, the Party



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of the First Part (*the fourth respondent*) fails to refund the Security Deposit to the Party of the Second Part (*the petitioner*) within 15 (fifteen) days of termination, then without prejudice to the rights of the Party of the Second Part (*the petitioner*) under this Agreement or in law, the Party of the Second Part (*the petitioner*) shall be entitled to invoke the Bank Guarantee for Security Deposit and

(ii) reimburse the Capital Expenditure of the Upgradation Work to the Party of the Second Part (*the petitioner*). In the event, the Party of the First Part (*the fourth respondent*) fails to reimburse the Capital Expenditure of the Upgradation Work to the Party of the Second Part (*the petitioner*) within 15 (fifteen) days of termination, then without prejudice to the rights of the Party of the Second Part (*the petitioner*) under this Agreement or in law, the Party of the Second Part (*the petitioner*) shall be entitled to invoke the Bank Guarantee for Expenditures.

9.2 Termination by the Party of the Second Part (*the petitioner*):

(a) The Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement at any time during the Application Period by giving six months written notice to the Party of the First Part (*the fourth respondent*). Upon such termination the Party of the First Part (*the fourth respondent*) shall reimburse the Capital Expenditure of the Upgradation Work to the Party of the Second Part (*the petitioner*). In the event, the Party of the First Part (*the fourth respondent*) fails to reimburse the Capital Expenditure of the Upgradation Work to the Party of the Second Part (*the*



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petitioner) within 15 (fifteen) days of termination, then without prejudice to the rights of the Party of the Second Part (*the petitioner*) under this Agreement or in law, the Party of the Second Part (*the petitioner*) shall be entitled to invoke the Bank Guarantee for Expenditures.

- (b) Notwithstanding the provisions of clause 9.2(a) above, upon the occurrence of the following events, the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement by serving such notice as stipulated herein:
- (i) if any of the Party of the First Part (*the fourth respondent*) commits a breach of any of the provisions of this Agreement, then the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement by serving a notice upon the Party of the First Part (*the fourth respondent*), if after serving a 30 (thirty) days prior written notice upon the Party of the First Part (*the fourth respondent*) notifying them of such breach, the Party of the First Part (*the fourth respondent*) fails to rectify such breach; or
- (ii) If any of the Party of the First Part (*the fourth respondent*) commits a breach of any of the provisions of the Sanction Letters, Memorandum of Deposit of Title Deeds – 1, Memorandum of Deposit of Title Deeds – 2, then the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement by serving a notice upon the Party of the First Part (*the fourth respondent*), if after serving a 30 (thirty) days prior written notice upon the Party of the First Part (*the fourth respondent*) notifying them of such breach, the Party of the First Part fails to rectify such breach; or



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- (iii)if it is found that the title of any of the Party of the First Part (*the fourth respondent*) to the To Be Leased Premises is not clear and marketable or is in any manner encumbered or if there is any lacunae in the title of the Party of the First Part (*the fourth respondent*) to the To Be Leased Premises, the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement by giving 30 (thirty) days prior written notice to the Party of the First Part (*the fourth respondent*); or
- (iv)if any of the Party of the First Part (*the fourth respondent*) is declared insolvent or there is an attachment order upon its property(ies), or if the Party of the First Part (*the fourth respondent*) makes an assignment for the benefit of its creditors or enters a composition with its creditors, then, the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement by giving 30 (thirty) days prior written notice to The Party of the First Part (*the fourth respondent*); or
- (v)if the To Be Leased Premises or any part or portion thereof becomes unsuitable for operating as a CFS due to any change in law, rule or regulation, the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement by giving 30 (thirty) days prior written notice to the Party of the First Part (*the fourth respondent*); or
- (vi)if the Party of the Second Part (*the petitioner*) is unable to obtain either of the Outsourcing Permission or the Novated Custodianship License or Novated Agreement with Central Government or any governmental approval / Licences within 12 (twelve) months from the date the Party of the First



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Part (*the fourth respondent*) furnishing a Bank Guarantee for Expenditure referred to in Clause 2.6, then the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement after the expiry of 12 Months by giving 30 (thirty) days prior notice in writing to the Party of the First Part (*the fourth respondent*) subject to Clause 2.2 (c) (ii):

(vii)if a Force Majeure Event continues for more than 30 (thirty) days in accordance with clause 7.4, then the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement with immediate effect by giving the Party of the First Part (*the fourth respondent*) notice in writing; or

(viii)if any one of the Party of the First Part (*the fourth respondent*) sells, assigns and /or otherwise transfers their right in the To be Leased Premises or any part or portion thereof to any person(s), other than to the Party of the Second Part (*the petitioner*) in accordance with clause 3.3 (b), the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement by giving 30 (thirty) days prior notice in writing to the Party of the First Part (*the fourth respondent*);

(ix)if any of the Party of the First Part (*the fourth respondent*) commits a breach of clause 8 the Party of the Second Part (*the petitioner*) shall be entitled to terminate this Agreement with immediate effect by giving the Party of the First Part (*the fourth respondent*) notice in writing.

Upon such termination, the Party of the First Part (*the fourth respondent*) shall:



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- (i) refund the Security Deposit to the Party of the Second Part (*the petitioner*). In the event, the Party of the First Part (*the fourth respondent*) fails to refund the Security Deposit to the Party of the Second Part (*the petitioner*) within 15 (fifteen) days of termination, then without prejudice to the rights of the Party of the Second Part (*the petitioner*) under this Agreement or in law, the Party of the Second Part (*the petitioner*) shall be entitled to invoke the Bank Guarantee for Security Deposit with 24% (Twenty Four) interest on delayed payment and
- (ii) reimburse the Capital Expenditure of the Upgradation Work to the Party of the Second Part (*the petitioner*). In the event, the Party of the First Part (*the fourth respondent*) fails to reimburse the Capital Expenditure of the Upgradation Work to the Party of the Second Part within 15 (fifteen) days of termination, then without prejudice to the rights of the Party of the Second Part (*the petitioner*) under this Agreement or in law, the Party of the Second Part (*the petitioner*) shall be entitled to invoke the Bank Guarantees for Expenditures.

16. It is submitted that the second and third respondents are not justified in demanding stamp duty on the aforesaid Agreement for lease.

17. That apart, the learned counsel for the petitioner further submits that the project could not be proceeded in view of the pending



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proposals and therefore the petitioner has also exited from the Agreement. It is further submitted that the impugned order of the first respondent has referred to the Annexure to the Memorandum / Agreement which is approved list of properties to be entered for the period of 12 months for Agreement of Lease. Therefore, the learned counsel for the petitioner submits that the impugned order is not sustainable and prays for allowing this Writ Petition.

18. The learned counsel for the fourth respondent submits, on instruction submits that they support to the case of the petitioner and that there is nothing more to state.

19. The learned Government Advocate for the first to third respondents submits that the impugned order of the first respondent is well reasoned and requires no interference. It is submitted that the impugned order has correctly come to the conclusion and therefore the petitioner was required to pay the stamp duty for the Agreement entered into between the petitioner and the fourth respondent. It is therefore prayed for dismissal of the present Writ Petition.



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20. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the first to third respondents and the learned counsel for the fourth respondent. I have perused the orders passed by the third, second and first respondents.

21. The third respondent, vide order dated 09.08.2016, has concluded that the petitioner has entered into a lease based on the Annexures attached to the Agreement dated 07.04.2016. The second respondent by an order dated 29.09.2016 has confirmed the same which in turn was re-affirmed by the first respondent vide impugned order dated 08.11.2016 bearing reference D.Dis.No.47045/P1/2016.

22. In my view, there is a transfer of possession in favour of the petitioner for a period of 12 months under the Agreement as the employees, contractors, workers of the petitioner were allowed to access the premises for Upgradation work. Therefore, there is a lease for a



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period of 12 months. Subject to the petitioner obtaining required permissions as stipulated in Clause 2.6 of the Agreement, a fresh deed of lease was to be signed and executed between them.

23. The fact that the petitioner has advanced a sum of Rs.94,50,000/- itself makes it clear that the Agreement was intended to be a lease initially for a period of 12 Months to be extended by the petitioner for a longer period at its option. However, the demand of stamp duty on the security deposit appears to be incorrect. The income that would inure under the Agreement to the fourth respondent would be the interest or its equivalent on the Security Deposit given by the petitioner as no rent was being charged separately.

24. That apart, certain Upgradation works were under the Agreement. Therefore, the value of the Upgradation would also form part of the lease rendered which remains hidden under the Agreement. Therefore, there has to be a proper valuation for payment of stamp duty by treating the Agreement as a Lease Deed.



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25. For the above reasons, I am inclined to quash the impugned order and remit the case back to the third respondent to pass a fresh order on merits and in accordance with law by re-quantifying the stamp duty, if any, payable by the petitioner, within a period of three months from the date of receipt of a copy of this order.

26. This Writ Petition stands disposed of with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

14.11.2022

Internet : Yes/No
Index : Yes / No
Jen

To

1. Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 28.

2. District Registrar,
Tuticorin, Melur.

3. Sub Registrar,
Tuticorin, Melur.



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C.SARAVANAN, J.

Jen

Pre-Delivery Order
in
W.P.No.40067 of 2016 and
W.M.P.Nos.34111
& 34112 of 2016



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14.11.2022