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WP No.106 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-03-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.106 of 2011

M/s.Dalmia Cement (Bharat) Limited,
Dalmiapuram,
Trichy District Represented by its
Senior General Manager-Legal .. Petitioner

VS.

1.State of Tamil Nadu,
Represented by the Secretary to Government,
Industries Department,
Secretariat,
Fort St. George,
Chennai-600 002.

2.The Commissioner and Director of Geology
and Mining,
Guindy,
Chennai-600 032.



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3.The District Collector,
Ariyalur District,
Ariyalur.

4.The District Registrar,
Registration Department,
Ariyalur.

5.The Union of India,
Represented by the Secretary to Government,
Ministry of Mines,
Shastri Bhavan,
New Delhi.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records of the third respondent comprised in his letter Rc.No.1749/G&M/2006 dated 16.10.2006 and Rc.No.1749/G&M/2006 dated 05.01.2007 and quash the same as arbitrary, illegal and ultra vires the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and The Indian Stamp Act as applicable to the State of Tamil Nadu and consequently direct the fourth respondent to compute the stamp duty for the purpose of execution of the mining lease deed only on the basis of dead rent.

For Petitioner : Mr.Rahul Balaji



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For Respondents-1 to 4 : Mr.T.Arunkumar,
Additional Government Pleader.

For Respondent-5 : Mr.A.Murugan,
Central Government Standing
Counsel.

ORDER

The relief sought for in the present writ petition is to call for the records of the third respondent comprised in his letter Rc.No.1749/G&M/2006 dated 16.10.2006 and Rc.No.1749/G&M/2006 dated 05.01.2007 and quash the same as arbitrary, illegal and ultra vires the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and The Indian Stamp Act as applicable to the State of Tamil Nadu and consequently direct the fourth respondent to compute the stamp duty for the purpose of execution of the mining lease deed only on the basis of dead rent.



2. The case of the petitioner-Company is that they are engaged in the business of manufacturing cement. The petitioner-Company requires limestone for the purpose of manufacturing cement, which is a mineral as defined in the Mines and Minerals (Development and Regulation) Act, 1957. Accordingly, the petitioner is required to take a mining lease as per the provisions of the Mines and Minerals Act for extracting limestone from limestone bearing land.

3. The fifth respondent is controlling the regulations of Mines and the development of mineral, which are vested in the first respondent and other respondents are public servants and authorities constituted under the Mines and Minerals Act, Stamp Act and Registration Act to discharge various functions under the Act.

4. The petitioner-Company established its first Cement Plant at Dalmiapuram, Lalgudi Taluk, Trichy District in the year 1939. The capacity of the petitioner's plant at Dalmiapuram in 2001 was around 12 lakhs per



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annum. The petitioner is having certain existing mining leases to mine limestone for the purpose of manufacturing cement. However, as reserves of the mineral in the existing mines were getting exhausted, the petitioner applied for a new mining lease in Periya Thirukonam Village for 44.70.5 Hectares on 18.06.2001 for a period of 30 years, keeping in view its requirement at that point of time. The entire land for which lease was applied is patta lands owned by the petitioner-Company. Pursuant to such an application, the Government through the second respondent in its proceedings Rc.No.14812/MM4/2003 dated 25.05.2005 was pleased to grant the petitioner a mining lease for a period of 30 years. The said order consisted of the usual conditions for grant of such leases. It was stipulated under the said Government Order that the period of mining lease shall take effect only from the date on which the executed lease deed is registered as per Rule 31(2) of the Mineral Concession Rules, 1960.

5. The petitioner received a communication bearing reference RC 1749/G&M/2006 dated 16.10.2006 wherein the third respondent called



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upon the petitioner to pay the stamp duty of Rs.220 lakhs (approximately) to enable execution of mining lease. The petitioner-Company submitted a representation dated 20.11.2006 raising objections that royalty payable cannot be taken into account for levy of stamp duty as dead rent has already been determined by the Government and secondly the royalty payable over lease period cannot be calculated by multiplying the annual extraction (as approved by Indian Bureau of Mines) by 30 (the number of years of mining lease) without taking into account the fact that total reserves of lime stone available in the mine, would get exhausted much earlier (as approved by Indian Bureau of Mines).

6. The petitioner subsequently addressed a communication dated 10.01.2010 to the Minister of Mines, Government of Tamil Nadu, requesting for treatment to the petitioner at par with other cement manufacturers. Thereafter, the petitioner also issued another letter dated 23.02.2010 to the first respondent and a further letter dated 16.08.2010 and a final letter dated 27.09.2010 were also made to the first respondent. The



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first respondent however finally negated all the requests of the petitioner vide impugned order G.O.Ms.No.146/Industries/MMA2 dated 13.10.2010.

It is from the said Government Order issued by the first respondent that the petitioner also learnt about the fourth respondent's proceedings in Rc.No.1749/G&M/2006 dated 05.01.2007. Hence the petitioner is constrained to challenge the said proceedings of the fourth respondent in Rc.1749/G&M/2006 dated 16.10.2006 and 05.01.2007 as unconstitutional and ultra vires the provisions of the Mines and Minerals (Development and Regulation) Act and the Rules framed thereunder as well as the Indian Stamp Act, as applicable to the State of Tamil Nadu.

7. According to the learned counsel for the petitioner the land bearing the mineral in question is the petitioner's own patta land and hence there is no question of lease of the surface by the State Government in favour of the petitioner herein and in fact the surface rent as added by the third respondent in his correspondence dated 16.10.2006 in Rc No.1749/G&M/2006 also was not includable. It is stated that the only right acquired



by the petitioner by virtue of the mining lease is to win the mineral lying in the petitioner's own land. Therefore, the question of payment of any amount in the nature of royalty or otherwise for the mineral cannot be termed as 'rent'. In the circumstance, the royalty amount that is payable by the petitioner towards extraction of mineral cannot be taken into account while computing the stamp duty. If royalty amount has to be included while computing the stamp duty, it is only the dead rent, which is relatable to the mining lease and which is determined by the first respondent as per the guidelines provided by the Mines and Minerals (Development and Regulation) Act and the Rules framed thereunder could be taken into consideration for such computation of stamp duty. The total royalty payable at the commencement is indeterminate and since the quantity that would actually be extracted would not be known.

8. To substantiate this submission, the learned counsel for the petitioner placed reliance on Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 and further stated that this Court



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in the case of **India Cements Limited** was pleased to grant an interim injunction in WMP No.32191 of 2005 in WP No.29364 of 2005 on 14.09.2005 restraining the District Collector, Perambalur from demanding stamp duty calculated on the anticipated royalty for the lease period. Similar interim order was also granted in WMP Nos.7243 and 7244 of 2006 in WP No.6706 of 2006 by this Court on 18.03.2006. The learned counsel also placed reliance upon Sections 9, 9A of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 and Article 35 Schedule I of the Indian Stamp Act.

9. The petitioner states that in so far as the execution of lease deed in respect of the lands referred to above, the same has to be executed and registered shortly on or before 12.01.2011 as stipulated by the first respondent in the impugned order. The petitioner further states that the petitioner has to pay the stamp duty only based on the dead rent and not on annual royalty payable. If the petitioner is required to pay the stamp duty at this point of time, it would cause grave prejudice and hardship to the



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petitioner, since the difference of stamp duty between the stamp duty paid based on the dead rent and the stamp duty paid based on the annual royalty payable would be enormous and disproportionate and would virtually cripple quarrying operations in the site. If such exorbitant amounts are to be demanded as stamp duty without any legal basis, it would not be possible even to undertake the quarrying operations. It is stated that the petitioner is in urgent need of this mining lease as the production in the new Unit as well as in the expanded capacity has already begun.

10. Per contra, the learned Additional Government Pleader appearing on behalf of the respondents 1 to 4, submitted that during the first year of lease, the trend or the course of mining the mineral cannot be predicted by the Government and the payment of royalty is a condition precedent for the removal of the mineral. Dead rent fixed is the minimum royalty, which the Government intends to realise from the Lessee and for that purpose only, for the first year, the dead rent is collected and if the production of the mineral exceeds the value of the mineral in the first year,



the Lessee would have to pay the different between the dead rent and the royalty. After that every year, the payment of royalty should be taken into account. If dead rent is taken as basis for calculating the stamp duty, the removal of more mineral by the Lessee would not reflect in the stamp value of the lease deed executed and in order to avoid loss of revenue to the Government, the anticipated royalty from the demised land has been taken for fixing the stamp duty as per the General Provisions 9 of Part IX of Form-K of Mineral Concession Rules, 1960. The anticipated royalty is arrived based on the quantity of mineral proposed to be mined in the first five years of lease period as indicated in the Approved Mining Plan. Therefore, the contention of the petitioner-Company that the royalty payable cannot be taken into account for fixing the stamp duty as dead rent as already been determined by the Government is not correct.

11. It is further submitted by the learned Additional Government Pleader appearing on behalf of the respondents 1 to 4, that the stamp duty is variable with regard to the period of lease only i.e., 1% on the



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total amount of rent, premium, fine etc., in the case of mining leases granted for a period of less than 30 years and 4% in the case of mining leases granted for a period of 30 years as per Article 35(a) and 35(b) of the Indian Stamp (Tamil Nadu Amendment) Act, 2004.

12. The learned Additional Government Pleader placed reliance on Article 35(b) of the Indian Stamp (Tamil Nadu Amendment) Act, 2004, which stipulates where the period of lease is 30 years and above and upto 99 years, four rupees for every Rs.100/- or part thereof of the amount of rent, fine, premium or advance, if any, payable will be taken into account for computation of stamp duty. In the instant case, mining lease was granted in favour of the petitioner-Company for mining limestone over an extent of 44.70.5 Hectares of patta lands in Alanthuraiyarkattalai and Periyathirukkonam villages in Ariyalur Taluk in Perambalur District for a period of 30 years and therefore royalty, surface rent and security deposit payable were taken into account for computing the stamp duty. The stamp duty was computed by the third respondent in the following manner:-

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- 1) The average production of Limestone per annum as per the Approved Mining Plan : 4,08,600 M.T
- 2) The total production of Limestone for 30 years 408600×30 : 1,22,58,000 M.T.
- 3) The total royalty payable for 30 years of lease period $[1,22,58,000 \times 45 \text{ (Rate of royalty Rs.45/- per Metric Tonne)}]$ Rs.55,16,10,000/-
- 4) Surface rent for 30 years Rs. 3,315/-
- 5) Security Deposit Rs. 10,000/-

Total amount payable Rs.55,16,23,315/-
=====

and it is further submitted that the stamp duty was properly levied under Article 35.

13. The learned Additional Government Pleader appearing on behalf of respondents 1 to 4 relied on sub-section (1) of Section 9, which states that the holder of a mining lease shall pay royalty in respect of any mineral removed or consumed by him from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral. As per the proviso to sub-section (1) of Section 9A of the Act, where the holder



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of mining lease becomes liable, under Section 9, to pay royalty for any mineral removed or consumed from the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area whichever is greater. The General provisions 9 of Part-IX of Form-K of Mineral Concession Rules, 1960 stipulates that for the purpose of stamp duty, the anticipated royalty from the demised land has to be taken. In respect of patta lands, the surface rights are vested with the pattadars and the mineral rights are vested with the Government and therefore royalty is payable at the rate fixed in the Second Schedule of Mines and Minerals (Development and Regulations) Act, 1957.

14. It was contended on behalf of the respondents 1 to 4 that as per Rule 32 of Mineral Concession Rules, 1960, an applicant for a mining lease shall, before the deed is executed, deposit a sum of Rs.10,000/- as security for the due observance of the terms and conditions of the lease. Surface rent is fixed at such rates as the land revenue and other cesses assessable on the land. Therefore, royalty, surface rent and security deposit



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payable in respect of the patta lands granted under mining lease were taken into account for computation of stamp duty and it was worked out by the third respondent as Rs.2,20,64,960/- and therefore, the stamp duty was fixed in accordance with the provisions of Article 35(b) of the Indian Stamp (Tamil Nadu Amendment) Act, 2004.

15. The short issue that arises for consideration in the present writ petition is as to whether the respondents were right in adding the annual royalty payable while determining the lease amount to calculate the stamp duty payable, or whether it should only be based on the dead rent, as contended by the Petitioner ?

16. The fulcrum of the arguments of the learned counsel for the petitioner revolves around similar issue dealt in the judgment of the Andhra Pradesh High Court in **The Associated Cement Cos. Ltd. vs. Government of A.P. and another [1981 SCC On Line AP 78]**, wherein it was held as follows:



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“17. The next Question is on what basis should the stamp-fee be calculated? It is stated by Mr. K. Srinivasa Murthy that in this case, the respondents calculated the stamp-fee payable under Art. 31(a)(iv) of Schedule I-A of the Act, which provides that in case of a lease for period exceeding 10 years but not exceeding 20 years, the stamp-duty payable is the same as or “conveyance” for a consideration equal to twice the amount or value of the average annual rent reserved. His complaint is that the authorities to the average royalty paid by the lessee for the previous years, i.e., during the period covered by the original lease, and adopted the same for this purpose. I am of the opinion that the complaint is justified. The basis of calculation must be the same, whether the lease-deed is executed for the first time, or whether it is executed by way of renewal. Now, because the present case is a case of renewal, the authorities are taking an average of the previous years as the basis for calculation. But, this basis cannot apply where the lease is being executed for the first time. There must be a uniform principle in all such cases. In the case of a fresh lease, no one can say — at the time of the execution of the lease-deed — whether the lessee would in



fact remove and/or consume the mineral: and even if he does, in what quantity? In other words, the royalty payable by him in future is unascertainable. The only definite and ascertainable basis in such a case, however, is the annual dead-rent prescribed by Section 9-A, read with Third Schedule to the Act. That is the minimum amount which has to be paid by the lessee during the subsistence of the lease, irrespective of the fact whether he removes and/or consumes the mineral and pays any royalty thereon, or not.

18. For the above reasons, the writ petition is allowed in part. It is declared that while the lease-deed executed by the petitioner in Form-K in this case amounts to a 'lease' as defined in clause (16) of Section 2 of the Indian Stamp Act and is accordingly liable to stamp duty, the stamp-duty has to be calculated with reference to Art. 31(a)(iv) of Schedule I-A to the Act, taking the annual dead-rent as the average annual rent reserved under the lease-deed. In the circumstances of the case, there shall be no order as to costs. Advocate's Rs. 250/-”

17. Before dealing with the judgment, it will be more



appropriate to take note of the relevant provisions of the Stamp Act
hereunder:

Section 2 (16)-

(16)“Lease” means a lease of immovable property, and includes also—

(a) a patta;

(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immovable property;

(c) any instrument by which tolls of any description are let;

(d) any writing on an application for a lease intended to signify that the application is granted;

Section 26-

26. Stamp where value of subject-matter is indeterminate.—Where the amount or value of the 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 of 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:

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,—

(a) when the lease has been granted by or only 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, 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.

Article 35 (a) and (b) -

35. Lease, including an under-lease or sub-lease and any agreement to let or sub-let-

<i>(a) where the period of lease is below thirty years.</i>	<i>One rupee for every Rs.100 or part thereof of the amount of rent, fine, premium or advance, if any, payable ;</i>
<i>(b) where the period of lease is thirty years and above and upto ninety-nine years.</i>	<i>Four rupees for every Rs.100 or part thereof of the amount of rent, fine, premium or advance, if any, payable;</i>

18. A careful reading of the definition of the term ‘lease’ as provided under the Stamp Act, shows that it has two parts. The first part is applicable to any lease with respect to an immovable property. The second part is applicable to various kinds of instruments by which the right is conferred upon the lessee for a specified period in respect of the immovable property. Since it is an inclusive definition, it has to be widely interpreted.



19. The important provision that is directly relevant for the purposes of this case is Section 26 of the Stamp Act. More particularly, the Proviso to this Section, since it directly deals with lease of a mine. This Proviso was inserted through Act 15 of 1904. Section 26 of the Stamp Act, applies when the value of the subject matter is indeterminate and in such cases, *ad valorem* duty is chargeable. According to the learned counsel for the petitioner, the royalty payable under a mining lease cannot be ascertained on the date of the execution of the lease deed. That apart, Section 9-A of the Act, only talks about the lessee being liable to pay either the royalty or the dead rent, whichever is higher and since the dead rent alone is the determinative factor as on the date of the execution of the lease deed, the same should be included in the rent and the stamp duty should be ascertained accordingly.

20. To deal with this contention made by the learned counsel for the petitioner, this Court has to see if the royalty payable by the lessee is an indeterminate factor. For that purpose, certain provisions under the Act



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must be taken note of and ultimately, the answer must be given on the effect of the Proviso to Section 26 of the Stamp Act.

21. Royalties in respect of mining leases is dealt with under Section 9 of the Act. For proper appreciation, Sub Sections (1) and (2) of Section 9 is extracted hereunder:

“9. Royalties in respect of mining leases.-(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any 1[mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee] from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any 1[mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee] from the leased area at the rate for the time being specified in the



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Second Schedule in respect of that mineral.”

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22. Insofar as dead rent is concerned, it is dealt with under Section 9A of the Act. For proper appreciation, Sub Section (1) of Section 9A, is extracted hereunder:

“1[9A. Dead rent to be paid by the lessee.-(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, shall notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate, as may be specified, for the time being, in the Third Schedule, for all the areas included in the instrument of lease:

Provided that where the holder of such mining lease becomes liable, under section 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub- lessee from the leased area, he shall be liable to pay either such royalty, or the dead rent in respect of that area, whichever is greater.”



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23. For the sake of completion of facts, the right to collect surface right compensation is traceable to Section 24A of the Act read with Rule 72 of the Mineral Concession Rules and insofar as surface rent is concerned, the right is traceable under Rule 27 of the Mineral Concession Rules.

24. Insofar as the royalty is concerned, a mining plan is prepared by the lessee and it is submitted and the same is considered at the time of granting approval and based on the same, the amount is also fixed. It is therefore clear that the royalty payable has been determined and the question of payment of dead rent will arise only where the operation is stalled or the operation did not take place in its full swing due to various factors and as a result of the same, the dead rent that is fixed in the sanction order is higher than the royalty payable. This is exactly what has been provided for under Section 9A of the Act.



25. It will also be relevant to take note of Form K under the Mineral Concession Rules, which deals with the form of a lease and the terms and conditions to be incorporated in a lease. Part IX of Form K, which stipulates that for the purpose of stamp duty, the anticipated royalty from the demised land has to be taken and therefore royalty payable was taken into account for the computation of stamp duty besides the surface rent and the security deposit as per the provisions of Article 35(b) of the Indian Stamp (Tamil Nadu Amendment) Act, 2004. It is therefore clear that anticipated royalty is taken as the basis for the determination of the stamp duty. This means that there is a statutory backing for including royalty in the rent while determining the stamp duty payable. It will not be out of place to state that the petitioner was always paying the stamp duty based on the rent determined adding anticipated royalty and this is the first time, the petitioner has chosen to question this basis and is claiming that only the dead rent must be included in the rent.

26. To properly appreciate Form K which has been taken note



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of by this Court, while determining the total lease amount is extracted

hereunder:

FORM-K
RULE 31 OF MINERAL CONCESSION RULES, 1960
MINING LEASE DEED
GRANT OF MINING LEASE SANCTIONED IN
G.O. (3D) NO.103 – INDUSTRIES (MMA-2) DEPARTMENT
DATED : 17.10.2005

Anticipated Royalty for 30 years	20,69,33,400.00
Annual Compensation for Poramboke lands for 30 years	41,97,150.00
Security Deposit	10,000.00
Surface Rent for 30 years	34,110.00
Total (in Rs.)=	21,11,74,660.00

27. On a conspectus of the above discussion, this Court can safely come to the conclusion that payment of royalty under Section 9 of the Act as per the rate fixed in the sanction order is the rule and payment of dead rent under Section 9A is an exception. The payment of dead rent has been kept as a contingency to meet a situation where the operation is kept

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idle or the operation was not able to be carried out for the entire period due to various reasons. Under such circumstances, where the royalty payable works out to less than the dead rent itself, the dead rent becomes payable under Section 9A of the Act. Hence, an exception or a contingency provided under the Act, can never form the basis for determining the rent for the purposes of payment of stamp duty.

28. The Division Bench of the Madhya Pradesh High Court had an occasion to deal with the similar issue in **Steel Authority of India Ltd. Bhilai vs. Collector of Stamps, Bilaspur [1985 SCC on line MP 153]**. The issue that was taken up for consideration by the Madhya Pradesh High Court is extracted hereunder:

“3. All these cases relate to renewal of mining leases and the question is of the stamp duty payable on the instruments renewing the mining leases. For the purpose of computation of stamp duty on these instruments, the respondents have demanded duty on the amount of royalty paid during the last three years under the mining lease



which is to be renewed in accordance with section 26 of the Stamp Act. The petitioners contend that section 26 has no application and by virtue of Article 35 alone stamp duty is payable only on the amount of annual dead rent fixed by the lease and the royalty required to be paid thereunder cannot be taken into account for the purpose of payment of stamp duty. The petitioners' contention is that the annual dead rent fixed under the lease deed indicates that “rent is fixed” by the lease and therefore clause (a) of Article 35 alone applies, whereas section 26 applies only to a case where the value of subject-matter is indeterminate. The question is whether this contention is correct.”

27. The above issue was answered as follows:

“4....The actual controversy between the parties is really to the applicability of the proviso in section 26 relating to mining leases. Admittedly, royalty is payable under the mining lease and effect of the relevant statutory provisions read along with Part V of the instrument of lease in Form K is that the lessee is “liable to pay either such royally or the dead rent in respect of that area, whichever is higher.” This obviously is the consideration for the lease or, in other words, “rent” due thereunder from the lessee to the



lessor. Dead rent is to be paid in respect of the area within the mining lease and royalty is paid on the quantity of mineral extracted and removed according to the prescribed rates. Where no excavation and removal of the mineral is done, dead rent alone is payable; but in case of excavation and removal of the mineral royalty is to be paid. It is clear that the higher of the two amounts is to be paid as consideration or in other words, “rent” under the lease. The meaning of “royalty” is well settled. “Royalty” in the present context means the payment made “to the owner of minerals for the right of working the same on every ton or other weight raised.” Royalty is a payment to the lessor proportionate to the amount of the mineral worked; it is paid in addition to dead rent and surface rent : and is a normal feature of mining leases. This is the meaning, of “royalty” stated in Surajdin Laxman v. State of M.P.(1960) M.P.L.J. 39) and B.B. Saha v. State Govt. of M.P., Bhopal (1969 M.P.L.J. 128) on the basis of references mentioned therein.

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 royalty 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. 1979 P.C. 299) and Tarkeshwar S/o Thakur Jiu v. B.D. Dey & Co. : ((1979) 3 SCC 106 : 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



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where it is higher than the dead rent according to the terms of the lease itself and as already indicated, royalty 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.”

29. This Court is in complete agreement with the findings of the Division Bench of the Madhya Pradesh High Court.

30. It is also important to take note of the subsequent judgment of the Andhra Pradesh in **Shri Bhogeshwara Cement & Mineral Industries Limited vs. Govt. of A.P. [1987 SCC OnLine AP 369]**. The judgment that was relied upon by the learned counsel for the petitioner was dealt with in this case and it was held as follows:

“6. Thus, it is clear that where the value of the subject-matter is indeterminate and such a subject-matter is in respect of a lease granted by or on behalf of the Government, then such amount or the valuation would be taken by the Collector having regard to all the circumstances of the case and the Collector has to estimate the amount which is likely to be payable (obviously in future) by way of royalty or a share to the Government and the whole of such royalty or share which shall be claimable



under such lease shall be the valuation for the purpose of stamp duty.

7. It is undoubtedly true that my learned brother Jeevan Reddy J, in a well-considered judgment has referred to the effect of the lease under the Act and the stamp duty payable thereon and held that what was estimated in the lease deed would be the stamp duty. But unfortunately, proviso (a) to Sec. 26 has not been brought to the notice of my learned brother. As a result, he did not have the occasion to consider the effect thereof. When the statute has prescribed the estimate and gives the power to the Collector to make the estimate of the likely royalty payable during the period of lease and having been correctly estimated by the Collector then the question would be whether this could give a go-bye to it, and merely fall back upon the main part of Sec. 26 of the Act, and Sec. 9A of the Act as estimated by the lessee? In my respectful view, we have to give effect to the legislative animation. The Legislative animation is adumbrated and is discernible in proviso (a) to Sec. 26 of the Stamp Act. It is not the case the petitioner that what was estimated by the Collector is not correct method and the stamp duty payable therein is incorrect. Thus considered I



hold that by operation of proviso (a) to Sec. 26 of the Stamp Act what was estimated by the Collector is perfectly correct. It may be true that the petitioner may not likely to gain the entire advantage of the estimated quantum or he may get much more than what was estimated. But the question is whether the estimate is legally correct or not. The estimate made by the Collector is based on the material relating to the lease granted to the petitioner and the quantum likely to fetch to the petitioner. Sri Gururaj, the learned counsel, has relied upon illustration (a) to Sec. 26 of the Stamp Act given by the learned author Sanjiv Row in his 'Stamp Act', 1979 edition, at pages 199-200, which is thus:

“(a) There was a lease deed for 10 years, which was unstamped but registered, and it recited that the lessee should plant 50,000 casuarina trees worth Rs. 1000/- on the land. It was further provided that, at the end of the period, the trees were to be felled and the parties were to share equally in the expenses of felling the trees and the sale proceeds. The question arose whether this section applied to the case. Abdur Rahim, J, observed that the cases, intended to be covered by Sec. 26, were like those of the produce of mines, expressly mentioned in the Sec., where what would be



realised was altogether uncertain not merely the market value but also the quantity of the article, bargained for. But Srinivasa Iyyengar, J., observed that where no duty was payable, assuming the parties were right that the lease was exempted from duty under Article 35, there was no question of any ad valorem duty payable on the instrument.”

8. In my view, that illustration is not of material help to the petitioner for the reason that those are the cases where leases relate to private individuals. But with regard to the leases granted by the Government, the proviso squarely covers the field. Accordingly, the above illustration is of little assistance to the petitioner.”

31. The above judgment has virtually held that the judgment of the other learned Single Judge in **The Associated Cement Companies Ltd.**, referred supra, is *per incuriam*. This is in view of the fact that the earlier judgment was rendered without considering the effect of the Proviso to Section 26 of the Stamp Act. The above judgement is the complete answer for the effect of the Proviso to Section 26 of the Stamp Act and I respectfully concur with the same. While reaching the above conclusion,



the learned Single Judge of the Andhra Pradesh High Court has rightly held that the estimate made by the Collector while fixing the royalty is based on the material relating to the lease granted to the petitioner and the quantum that is likely to be fetched to the petitioner. This is entirely based on the mining plan that is submitted by the petitioner and such determination does not take place on the basis of any assumptions and surmises.

32. In view of the above discussion, this Court does not find any illegality in the stamp duty that was fixed based on the total lease amount calculated under Form K. The amount that was determined is perfectly in line with the Proviso to Section 26 of the Stamp Act.

33. Article 35 provides for the payment of stamp duty and Article 35(a) will apply to the Stamp Duty payable in the present writ petition. The amount that was determined by the District Collector in the present writ petition is perfectly in order and there is no ground to interfere with the same. This Court holds that it is only the royalty that must be



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included in the rent amount and not the dead rent, as contended by the petitioner.

34. In the result, the present writ petition is dismissed and it is open to the respondents to insist for the payment of the stamp duty as determined in the impugned communications that were put to challenge in the present writ petition and the petitioner is bound to pay the same. The Lease Deed shall be registered on payment of such stamp duty by the petitioner. However, there shall be no order as to costs.

10-03-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

Svn

To

1.The Secretary to Government,
State of Tamil Nadu,
Industries Department,
Secretariat,

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Fort St. George,
Chennai-600 002.

WEB COPY

- 2.The Commissioner and Director of Geology
and Mining,
Guindy,
Chennai-600 032.
- 3.The District Collector,
Ariyalur District,
Ariyalur.
- 4.The District Registrar,
Registration Department,
Ariyalur.
- 5.The Secretary to Government,
Union of India,
Ministry of Mines,
Shastri Bhavan,
New Delhi.

S.M.SUBRAMANIAM, J.

Svn



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