# IN THE HIGH COURT OF BOMBAY AT GOA

## CIVIL APPLICATION (REVIEW) NO. 10 OF 2024
## IN
## WRIT PETITION NO.117 OF 2024

Shri. Gangadhar Narsingdas Agrawal … Applicants/ Petitioners

*Versus*

State of Goa & 2 Ors. … Respondents

Mr. Subodh S. Kantak, Senior Advocate with Mr. Preetam Talaulikar, Ms. Linette Rodrigues, Mr. Abhijeet Kamat, Mr Kher Simoes and Ms. Saicha Desai, Advocates for the Applicants/Petitioners.

Mr. V.R. Dhond, Senior Advocate with Ms. Maria Simone Judith Correia, Additional Government Advocate for Respondent Nos.1 to 3.

**CORAM : VALMIKI MENEZES & NIVEDITA P. MEHTA, JJ.**

**RESERVED ON : 28th MARCH, 2025.**

**PRONOUNCED ON : 4th APRIL, 2025.**

***ORDER:*** **(*Per Valmiki Menezes, J.*)**

**1.** The Original Petitioner in Writ Petition No. 117 of 2024 seeks review of this Court's Judgment dated

12.07.2024 by which the aforementioned petition was dismissed along with 19 other Writ Petitions bearing Nos. 206/2015, 208/2015, 207/2015, 348/2015, 264/2015, 335/2015, 231/2015, 334/2015, 370/2015, 350/2015, 361/2015, 351/2015, 243/2015, 262/2015, 263/2015, 240/2015, 352/2015, 346/2015 and 244/2015.

**2.** Heard learned Senior Advocate Mr. Subodh S. Kantak who appears with Mr. Preetam Talaulikar, Ms. Linette Rodrigues, Mr. Abhijeet Kamat, Mr Kher Simoes and Ms. Saicha Desai, Advocates for the Applicant and learned Senior Advocate Mr. V.R. Dhond who appears with Ms Maria Simone Judith Correia, Additional Government Advocate for Respondent Nos.1 to 3.

**3.** The following submissions were advanced by the learned Senior Advocate Mr. Subodh S. Kantak for the Applicant:

**a.** It is submitted that there is an error apparent on the face of the record whilst passing the judgment under review. It was submitted that the subject matter of Writ Petition No.117/2024 was a challenge thrown to impugned notification dated

01.12.2014 (Notification I) and notification dated 12.05.2015 (Notification II); in addition to relief clauses (A) and (B) seeking to quash the aforementioned notifications, relief clause (C) sought a declaration that the Mining Lease Deed dated 09.12.2014 was exempt from registration and a consequent writ of mandamus directing the Respondents to refund to the Petitioner the registration fee of Rs.2,75,00,000/- along with interest thereon from 07.01.2015 till the date of refund. It was further submitted that the Petitioner is the only party amongst all other Petitioners to have paid, in terms of newly inserted Section 3A of the Indian Stamp Act, as amended in 2012, registration fee of Rs.2.75 crores corresponding to 100% of the stamp duty payable on the transaction. Learned Senior Advocate submits that on a reading of contents of para 9, 94, 104 and 106 of the order sought to be reviewed, the Court has proceeded on the assumption that all parties had laid challenge, and it was dealing only with cases where the levy of registration fee was 5% of the stamp duty charged;

in other words, it is the submission of the learned Counsel that the Court has proceeded on the assumption that all matters were in challenge to the subsequent notification reducing the registration fee to 5% of the stamp duty chargeable on the mining lease.

**b.** It was further contended that the decision of this Court sought to be reviewed was based on the challenge to the second notification and the Court proceeded in total ignorance of the existence of relief clause (D) in the petition seeking a mandamus for the refund of registration fee of Rs.2.75 crores with interest which was paid by the Petitioner, who was the only party in the group of petitions disposed of, to have paid the same under the Notification I. The challenge to the first notification has therefore clearly not been considered by the Court while passing the impugned Judgment, which is a case of error apparent on the face of the record.

**c.** It was further contended that since the Court has rejected the Petitioner's contention on the aspect of tax and fee, considering that the fee was 5% of the stamp duty, the Court necessarily had to direct refund to the Petitioner of an amount of Rs.2,61,25,000/- as the only amount payable towards 5% of the stamp duty would be Rs.13,75,000/-. It was submitted that the relief sought in prayer clause (D) has escaped the attention of the Court whilst negating the challenge to the second notification. The Petitioners would have been entitled to the aforesaid refund, which the Court has failed to direct due to the error apparent in not considering the difference between the case of the Petitioner (who has paid @ 100%) and that of the other Petitioners (who have paid @ 5%).

**4.** Opposing the contentions raised by the Petitioners, learned Senior Advocate Mr. V.R. Dhond has made the following submissions:

**a.** The learned Senior Advocate submits that on a reading of para 3 of the Review Petition, the main ground of seeking a review appears to be that the Court has decided prayer clauses (A), (B) and (C) but has not considered prayer clause (D); the Petitioner therefore primarily contends that the decision sought to be reviewed is not correct, and hence, the review petition does not make out a case for review or specifically set out any ground for review, as non-consideration of a relief, cannot be considered as an error apparent, for review of an order.

**b.** It was submitted that reading of the Judgment would clearly bear out that the Court was fully aware, whilst taking a decision that there was a challenge to the first notification levying registration fee of 100% of the stamp duty chargeable to the transaction. It was further submitted that the Court has discussed the principle which formed the basis of charging the registration fee, has proceeded to uphold the three principles argued and accepted by the Court while considering the matter. The learned Counsel has made specific references to the narration of facts and submissions in the impugned Judgment in para 9, 11 and 38 thereof and has further referred to the contents of paras 103, 104, 106, 113 and 114 of the Judgment to contend that the contentions of the Petitioner in challenge to the first notification have been referred to, discussed and rejected in the impugned Judgment. It was therefore submitted that the Court was fully alive to the specific challenge to both notifications i.e. notification charging registration fee at 100% of the stamp duty and reduced registration fee at 5% of the stamp duty whilst rendering its Judgment. There is, therefore, no error apparent or a case made out for review.

**5.** We have gone through the record of Writ Petition No.117/2024 and have considered the rival submissions of the Counsel.

The first question that arises before us is whether it has escaped this Court's attention, whilst considering the scope of each of the petitions which were disposed by the impugned Judgments that one of the notifications under challenge was notification dated 01.12.2014. This notification issued in terms of powers conferred under Section 78 of the Registration Act amended the table of fees inserting Article IV A, prescribing registration fee for an instrument relating to grant of renewal of mining lease equivalent to the stamp duty payable on such instrument under the Stamp Act. It is the Applicant's contention that theirs was the only petition/case in which a party paid the full registration fee equivalent to the stamp duty payable on the transaction as the lease was executed on 09.12.2014 immediately after the aforementioned notification (dated 04.12.2014); the Petitioners contend that other Petitioners whose petitions were disposed of by the common Judgment, were matters which dealt with a challenge to the subsequent notification (Notification II) which was dated 12.05.2015, by which clause IV A of the Table of Fees in notification dated 01.12.2014 was substituted, now imposing a fee equivalent to 5% of the stamp duty payable on such instrument.

**6.** On going through the Judgment under review, and in order to address the contentions raised, we have made the following observations:

**a.** In para 7 of the Judgment, the Court specifically refers to notification dated 01.12.2014 (Notification I) by which the fees for registration of mining leases were levied at an amount equivalent to the stamp duty payable on the document. Then, in para 9 of the Judgment, this Court has specifically recorded that the registration fee was subsequently reduced to 5% of the stamp duty, thus making it clear, that the Court was aware of the first and second notification on the reduction of the registration fee from 100% to 5% of the stamp duty. Further, the Court clearly records that the challenge to the notifications, in the petitions was on the basis that the levy of registration fee on such leases was ultra vires the Indian Registration Act, on the basis that leases wherein the Government was a party are exempted from registration.

**b.** In para 10, this Court has recorded the three principal challenges in these petitions, the third plank of challenge being that the fee sought to be charged is not a fee as there is no element of quid pro quo involved in the transaction, hence the character of such fee is in the nature of a tax imposed without the authority of law. The Court then proceeded to analyse this submission first on the question of legislative competence and concluded in para 96 that the provisions of Section 78 of the Registration Act empowers the State Government to impose such fees, including by delegation. The argument was also analysed on the basis of Article 24 of the Constitution of India and on considering the case law on the subject, this Court has concluded that there was legislative competence to levy such fee.

**c.** This Court has then considered in paragraph 103 of its Judgment whether there was an element of quid pro quo in the nature of the transaction and whether there was any correlation or nexus between the amount sought to be charged as a fee and the service provided. This Court then concludes that even if the levy is to be held to be a fee, it holds that the services rendered from such fee may not be necessarily be directly in proportion to the quantum of fee charged nor is it necessary that the services rendered should be confined to the person from whom such fee is to be collected. It also holds that as long as there is availability of an indirect benefit

> and a general nexus is shown between the person bearing the burden of levy of the fee and the service rendered, it is enough to hold such levy to be valid.

**7.** A reading of the observations of this Court in the aforementioned paragraphs would undoubtedly lead to the conclusion that the Court was mindful of the specific challenges raised in the petition, including the challenge to Notification I and Notification II, which were both turned down based upon the principle referred to in the aforementioned paragraphs. A further reading of para 106 of the Judgment makes it clear that in none of the petitions, the question of legislative competence of the State to impose registration fee on mining leases was raised; the Court then clearly holds that the claim of the Petitioners that the impugned amendment levying 5% charges of stamp duty as registration fee is a tax levied without authority of law was specifically rejected. Merely because the Court refers to the impugned amendment notification levying 5% (Notification II) and does not refer to Notification I which imposed 100% of the stamp duty as registration charge, would make no difference, as all the claims in the petitions were rejected on the principles stated in the Judgment.

**8.** This is more so understood when one refers to the contents of para 114 and 115 of the Judgment where the Court makes specific reference to the initial registration fee of 100% (by Notification I) of the stamp duty which was ultimately reduced to 5% of the stamp duty (Notification II); after making reference to the two notifications, this Court noted that all Petitioners registered their mining leases under protest paying such registration fees, meaning thereby the protest was notwithstanding the payment at 5% as in the case of all other Petitioners, and 100% in the case of the present Petitioner. These contentions were then specifically rejected in paragraph 115 of the Judgment on a specific finding contained therein which is quoted below:

> "*Similarly, the contentions raised by the Petitioners that there is no quid pro quo to the fees charged by the Respondent needs to be rejected since such power is available with the Respondent to amend the schedule of fees and since there is no challenge raised to the legislative competence, it is not necessary that such services rendered should remain confined to the person from whom such fees is collected. Even the indirect benefit and the general nexus between the person bearing such burden of fees and the services rendered is enough to hold its validity.*"

**9.** In our opinion, the Court was mindful of challenge to both notifications raised by the Petitioner and to the relief sought of a direction for refund of the registration fee of Rs.2,75,00,000/- claimed by the Petitioner. The contentions raised by the Petitioner have been negated by the Court. There is, therefore, no error apparent on the face of the record for reasons stated above. The review application is dismissed.

**NIVEDITA P. MEHTA** **VALMIKI MENEZES, J.**





4th April, 2025