In the High Court of Judicature at Madras

Reserved on **06.3.2025**	Delivered on : **13.3.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.2700 of 2024
& WMP.No.2979 of 2024

M/s.Premier Granites, rep.
by its Managing Partner
Mr.M.Viknesh Kumar ...Petitioner

Vs

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Assistant Director,
Department of Geology &
Mining, Collectorate,
Krishnagiri.

3.The Sub-Registrar,
Kaveripattinam,
Krishnagiri. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Manamus to call for the records of the impugned order in Na.Ka.285/2023 dated 09.10.2023 on the file of the 3rd respondent, quash the same as arbitrary and illegal and direct the 3rd respondent to register the supplementary lease deed dated 23.9.2023 entered between the petitioner and the 1st respondent.

For Petitioner : Mr.Srinath Sridevan, SC for Mr.P.S.Prabu

For Respondents : Mr.B.Vijay, AGP

ORDER

This writ petition has been filed by the petitioner challenging the proceedings of the third respondent dated 09.10.2023 and for a consequential direction to the third respondent to register the supplementary lease deed dated 23.9.2023 entered into between the petitioner and the first respondent.

2. When the matter came up for hearing on 18.2.2025, this Court passed the following order :

> *"This Writ Petition has been filed challenging the impugned proceedings of the third respondent dated 23.09.2023 and for a direction to the third respondent to register the Supplementary Lease Deed dated 23.09.2023 entered between the petitioner and the first respondent.*

2. The case of the petitioner is that, originally M/s. C.R.T. Granite Park represented by its sole proprietor, C.R.Tamilvanan applied to the first respondent for granting mining lease. The application was processed and mining lease was granted for a period of 20 years from 23.11.2020 to 22.11.2040. Mining Lease Deed dated 23.11.2020 was executed by the first respondent in favour of the said M/s. C.R.T. Granite Park and this document was registered as Document No.5023/2020 on the file of the third respondent. While registering the document, the stamp duty was paid in line with Article 23(a) and the necessary registration fee has also been paid.

3. The said M/s. C.R.T. Granite Park filed an application dated 11.08.2022 under Rule 36F of the Tamilnadu Minor Mineral Concession Rules, 1959 before the first respondent seeking for transfer of the quarry lease to the petitioner for the remaining period of the quarry lease. The Government accepted the proposal for transfer. A communication dated 23.09.2023 was issued by the first respondent to the third respondent and relevant portion is extracted herein under: -

'5. The Supplementary lease deed has been executed on 23.09.2023 and the same is herewith enclosed. I request you to register the said supplementary lease deed at the cost of the lessee/transferee M/s. Premier Granites. Further, it

is informed that it is only the name transfer of lease and no additional amount had been remitted to the Government.'

4. The petitioner approached the third respondent along with the Supplementary Lease Deed dated 23.09.2023. The third respondent refused to entertain the Supplementary Lease Deed and demanded the payment of stamp duty under Article 23(a) of the Stamp Act, by considering the same to be a fresh lease granted in favour of the petitioner. Accordingly, the impugned proceedings dated 09.10.2023 came to be issued by the third respondent and the relevant portion is extracted hereunder: -

"மேற்படி 5023/2020 ஆவணத்தில் குறிப்பிட்டுள்ள (M/s.Permier Granites) கல்குவாரியை திரு.தமிழ்வாணன் என்பவரிடமிருந்து திரு.A.விக்னேஷ்குமார் என்பவருக்கு பரிமாற்றம் செய்யவுள்ள நிலையில் மேற்கண்ட ஒரு புதிய குத்தகை ஆவணமாக மட்டுமே பதிவு செய்ய இயலும். எனவெ 20 வருடத்திற்கான குத்தகை ரூ.28,38,80,768/- மற்றும் முன் பணம் ரூ.40,000/- மதிப்பீட்டு தொகை ரூ.10,.320/-க்கான முத்திரைத்தீர்வை ரூ.28,40,000/- மற்றும் பதிவுக் கட்டணம் ரூ.40,000/- ஆக ரூ.28,80,000/- கட்டணம் செலுத்தினால் மட்டுமே ஆவணம் பதிவுக்கு ஏற்கப்படும் என்பதை தெரிவித்துக் கொள்கிறேன்."

5. Aggrieved by the proceedings of the third respondent, the present writ petition has been filed before this Court.

6. Separate counter affidavits have been *filed by the first respondent and the third respondent.*

7. On carefully reading the counter affidavit filed by the first respondent, it has been made clear that no additional amount was remitted in favour of the Government and whatever instructions they have issued through communication dated 23.09.2023 has been reiterated.

8. Insofar as the counter affidavit filed by the third respondent, the third respondent has come up with a completely new case and has justified the levy of the stamp duty by placing reliance upon Article 63 which deals with transfer of lease.

9. Learned Senior Counsel appearing on behalf of the petitioner submitted that the demand made under Article 35(a) is unsustainable since the lease in question is neither a fresh lease nor a sub lease. Learned Senior Counsel further submitted that on a demurrer, if the stand taken by the third respondent in the counter affidavit is to be considered, the levy of stamp duty under Article 63 can be the same duty as a conveyance for a market value equal to the amount of the consideration for the transfer. Learned Senior Counsel submitted that there was absolutely no consideration for the transfer which was made very clear by the first respondent. Therefore, such levy *cannot be justified even under Article 63.*

10. Learned Additional Government Pleader appearing on behalf of the second respondent submitted that even if the levy is not sustainable under Article 35(a), it can always be sustained under Article 63 and therefore, the levy of stamp duty cannot be questioned.

11. It must be borne in mind that during the pendency of this writ petition, an interim order was passed on 28.01.2025 wherein the petitioner was permitted to pay the entire amount without prejudice to his right in the present writ petition and accordingly, the stamp duty was paid along with registration fee and the lease deed has been registered.

12. The impugned proceedings of the third respondent can be tested only on the basis of the reasons that has been assigned in the impugned proceedings dated 09.10.2023. The proceedings makes it clear that the third respondent has considered the Lease Deed as a fresh lease and accordingly has invoked Article 35(a). The third respondent has to either stand or fall based on the reasons assigned in the impugned order and such reasons can neither be modified nor improved by way of filing a counter. The law on this issue is now too well settled and this Court does not want to burden this order by citing all those judgments.

13. When the above was brought to the

notice of the learned Additional Government Pleader, the learned Additional Government Pleader seeks for some time to take instructions.

14. Post this Writ Petition under the caption 'part-heard cases' on 21.02.2025."

3. The case was again listed on 21.2.2025 and after hearing the learned Special Government Pleader, this Court passed the following order :

"Pursuant to the earlier order passed on 18.02.2025, the matter was listed for hearing today and this Court heard Mr.B.Vijay, learned Special Government Pleader appearing on behalf of the 3rd respondent.

2. The learned Special Government Pleader submitted that Clause 4 of the special condition that was relied upon by the petitioner is nothing but the reproduction of Section 36(F)(5)(d). The Special Government Pleader submitted that the special enactment has created a mandate whereby the transferor cannot charge or accept from the transfer any premium in addition to the sum that is spent by him in obtaining the lease and for conducting any of the operations over the land that was leased to him. That by itself will not make the entire consideration as nil and if the agreement entered into is without a consideration, such an *agreement will be considered to be void unless the exceptions as carved out under Section 25 of the Contract Act, 1872 is made out in the present case.*

3. The learned Special Government Pleader submitted that if the petitioner puts forth a case that the transfer of lease agreement is without consideration, such an agreement has to be treated as void. If on the other hand, the document does not mention any figure as consideration, then the stamp duty has to be paid in line with Article 35 which will be 1% of the anticipated seigniorage fee at least for the remaining 17 years for which the petitioner is going to utilize the subject property for mining. In order to substantiate this principle, the learned Special Government Pleader relied upon the judgment of this Court in India Cements Ltd., rep.by its General Manager .vs. Government of Tamil Nadu, rep.by its Secretary to Government and Others reported in 2022 3 CWC 260.

4. The ground that has been raised by the learned Special Government Pleader has to be dealt with by this Court since there is no precedent insofar as this issue is concerned.

5. Post this writ petition for reply arguments on the side of the petitioner on 04.03.2025 at 2.15 p.m."

4. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Additional Government Pleader appearing for the respondents.

5. The learned Senior Counsel appearing on behalf of the petitioner made the following submissions :

(i) The supplementary lease deed 23.9.2023 was executed strictly in line with the requirement under Rule 36F of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as the Rules). Hence, this agreement must not be read qua the Indian Contract Act, 1872. Even though the nomenclature for the said instrument has been given as the supplementary lease deed, the contents of the same will clearly establish that it is nothing but reproduction of Appendix V-A under the Rules and the only Article that will apply is Article 63 of Schedule I of the Indian Stamp Act.

(ii) Consequently, the duty that is payable will be equal to the amount of consideration for the transfer and in the case in hand, the consideration is -NIL-. In view of the same, the third respondent cannot place reliance upon Article 35(a) of Schedule I of the Indian

Stamp Act nor make a demand for payment of stamp duty at the rate of 1% of the anticipated seigniorage fee. The stamp duty can be fixed only based on what is provided under the Indian Stamp Act and the third respondent cannot rely upon an Article, which cannot be applied to the transaction on hand and somehow recover the stamp duty.

6. Per contra, the learned Additional Government Pleader appearing for the respondents submitted as follows :

(i) The document in question is compulsorily registerable since a right is created in favour of the party, to whom, the lease is transferred and the petitioner cannot take a stand that no stamp duty is payable since no consideration passed on from the petitioner. Such a stand taken by the petitioner will run against the very object of the Indian Stamp Act. If no consideration is passed on, Article 35(a) of Schedule I of the Indian Stamp Act will apply since the transferee is going to exploit the mines for 17 years.

(ii) In order to substantiate his submissions, he relied upon a decision of the learned Single Judge of the Rajasthan High Court in the case of ***Smt.Nirmal Malik Vs. State of Rajasthan [reported in 2012 SCC OnLine Rajasthan 3909]***.

7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order.

8. The lease was originally granted in favour of one Mr.C.R.Tamilvanan, proprietor of M/s.C.R.T.Granite Park for quarrying and removal of grey granite over a total extent of 1.72.0 hectares in S.Nos.418/3, 418/4, 418/5, 418/6, 418/7, 418/8, 418/9, 418/12, 418/13, 421/1, 421/2, 421/3, 421/4A, 421/4B, 421/5, 421/6, 421/7, 421/8, 421/12A and 421/12B, Baleguli Village, Krishnagiri Taluk & District. The lease deed was executed on 23.11.2020 and the expiry date of lease is 22.11.2040. While the quarry lease is in currency, the lessee sought to transfer the lease in favour of the petitioner.

9. After considering the said request, the Government issued G.O.(2D) No.8 Natural Resources (MME 2) Department dated 08.9.2023 and approved to accept the proposal of transfer of quarry lease from the said Mr.C.R.Tamilvanan to the petitioner. While granting approval, the Government took note of Rule 36F of the Rules

and imposed certain conditions. One of the important conditions that was imposed by relying upon Rule 36F(5)(d) of the Rules is that the transferor will not charge or accept from the transferee any premium in addition to the sum spent by him in obtaining the lease and for conducting all or any of the operations in or over the land leased to him.

10. Pursuant to the approval granted, a supplementary lease deed dated 23.9.2023 was executed in favour of the petitioner and it was referred to the third respondent for registration purposes. While referring the same through the letter dated 23.9.2023, it was made clear that the supplementary lease deed has to be executed at the expenses of the transferee-cum-lessee and that the name transfer effected does not involve any additional amount remitted in favour of the Government.

11. On receipt of the supplementary lease deed dated 23.9.2023, the third respondent demanded for payment of a sum of Rs.28,40,000/- towards stamp duty and Rs.40,000/- towards registration fee. Such a demand was made purportedly by invoking

Article 35(a) of Schedule I of the Indian Stamp Act. However, in the counter affidavit filed before this Court, the third respondent placed reliance upon Article 63 of Schedule I of the Indian Stamp Act and sought for payment of the stamp duty as per the market value of the subject properties.

12. The supplementary lease deed came to be executed under Rule 36F of the Rules and in the form prescribed under Appendix V-A. Just because such an agreement has been executed in the prescribed form, it cannot be said that such an agreement is not traceable to the provisions of the Indian Contract Act. The Indian Contract Act is a substantive law and every agreement will be governed by the Indian Contract Act and it has to satisfy the requirement of a valid contract.

13. In the case in hand, it cannot be strictly stated that there is absolutely no consideration involved. A careful reading of Rule 36F(5)(d) of the Rules makes it clear that the transferor cannot charge or accept from the transferee any premium. But, he can always receive the sum spent by him in obtaining the lease and conducting the operations over the land that was leased to him. What was spent

by the transferor has not been mentioned anywhere. However, the amount that has been paid by the petitioner to the transferor in this regard can be taken to be the consideration for the contract. Hence, the agreement is not hit by Section 25 of the Indian Contract Act.

14. The next issue that arises for consideration is as to whether the stamp duty is payable towards registration of the supplementary lease deed and if so, whether Article 35(a) will be applicable or Article 63 of Schedule I of the Indian Stamp Act can be made applicable.

15. A careful reading of the supplementary lease deed would show that the lease has been transferred in favour of the petitioner, which is bound by all the terms and conditions provided in the original lease deed executed in favour of the said Mr.C.R.Tamilvanan. The petitioner is entitled to carry on with the quarrying operations till 22.11.2040. Thus, the petitioner will be able to carry on with the quarrying operations for nearly 17 years from 23.9.2023.

16. Article 35(a) of Schedule I of the Indian Stamp Act deals with the stamp duty payable for lease including an under lease or sub

lease and any agreement to let or sub-let for a period below 30 years. What will be payable is 1% of the amount of rent, fine, premium or advance, if any. On the other hand, if the stamp duty has to be paid under Article 63 of Schedule I of the Indian Stamp Act, it will carry the same duty as a conveyance as provided under Article 23 for a market value equal to the amount of consideration for the transfer.

17. The impugned proceedings of the third respondent dated 09.10.2023 proceeds on the basis of the lease amount that was originally fixed for 20 years and the advance amount that was paid and accordingly fixed the stamp duty under Article 35(a) of Schedule I of the Indian Stamp Act. The supplementary lease deed nowhere talks about any rent payable or advance payable and in fact, it makes it clear that the transferor cannot charge or accept from the transferee any premium. Therefore, except for paying the cost that has already been incurred by the transferor, there is no requirement for the transferee to make any payment. In view of the above, Article 63 of Schedule I of the Indian Stamp Act alone can be made applicable.

18. Article 35(a) of Schedule I of the Indian Stamp Act cannot be made applicable since it will only apply in a case of creating a new

lease or sub-lease and the case in hand is neither of it, but is only a transfer of lease.

19. If Article 63 of Schedule I of the Indian Stamp Act is made applicable, the stamp duty payable is the same as a conveyance as provided under Article 23 of Schedule of the Indian Stamp Act for a market value. Therefore, whether any amount has been mentioned in the supplementary lease deed or not, the stamp duty payable will be equal to the one paid for conveyance on the market value. The petitioner cannot place reliance upon Rule 36F of the Rules and state that no consideration will pass on from the petitioner to the transferor and that therefore, no stamp duty is payable. Such an interpretation will defeat the very object of the Indian Stamp Act.

20. A subordinate legislation like the Tamil Nadu Minor Mineral Concession Rules, 1959 cannot outweigh the provisions of the Indian Stamp Act. The provisions of the Indian Stamp Act will independently operate irrespective of whatever is provided under the Rules.

21. The third respondent has invoked Article 35(a) of Schedule I of the Indian Stamp Act and demanded for the payment of stamp duty

and fixed the registration charges also. By virtue of the interim order passed by this Court, the same have also been paid by the petitioner and the supplementary lease deed has been registered. The petitioner is, in fact, benefited since the third respondent invoked Article 35(a) instead of Article 63 of Schedule I of the Indian Stamp Act. Had Article 63 of Schedule I of the Indian Stamp Act been invoked, the petitioner would have paid a higher stamp duty and the registration charges. The petitioner should not face a worse off situation for approaching this Court by making them to pay a higher stamp duty and the registration charges. To that extent, this Court is inclined to exercise its discretion. In the result, this Court is not inclined to interfere with the impugned proceedings of the third respondent.

22. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected WMP is also dismissed.

13.3.2025

Index : Yes
Neutral Citation : Yes
To
1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Assistant Director,
Department of Geology &
Mining, Collectorate,
Krishnagiri.

3.The Sub-Registrar,
Kaveripattinam,
Krishnagiri.

RS

N.ANAND VENKATESH,J

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