S. No. 02
Regular

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CCP(S) 32/2025 in[WP(C) 2968/2024]

KASHMIR VALLEY ENERGY PRIVATE LIMITED AND ANR …Petitioner(s)/Appellant(s)

Through: Mr. Hilal Ahmad Bhat, Advocate

Vs

MR.BASHIR AHMAD BHAT ...Respondent(s)

Through: Mr. Satinder Singh Kala, AAG

CORAM:
HON'BLE MR JUSTICE RAHUL BHARTI, JUDGE

ORDER
17.02.2025

1. M/s Kashmir Valley Energy Pvt. Ltd. is a company engaged in building of power projects and in that regard operates in the Union Territory of Jammu and Kashmir as well.
2. In the erstwhile State of J&K before becoming Union Territory of J&K & Union Territory of Ladakh under the J&K Reorganization Act 2019, by virtue of a Govt. Order No. 71-EST of 2011 dated 27-12-2011, based upon a Cabinet Decision No. 212/26/2021 dated 16-12-2011, a policy for development of micro/mini/hydro electric power projects up to 2 MW came to be formulated so as to incentivize the power project developers to come and invest in the development/installation/running of hydro power projects in

the State of J&K and said Policy was set into effect on the promise of the incentives as laid out in the said Policy.

3. Clause 11 of Govt. Order No. 71-EST of 2011 enlisted incentives for the Power Developers. Clause 11.3 provided the incentive in the form of exemption from payment of stamp duty with respect to a mortgage deed required from promoters of power projects by financing institutions.

4. By virtue of subsequent Government Order No. 10-PDD of 2017, the capacity of power projects covered under Government Order No. 71-EST of 2011 came to be revised from 2 MW to 10 MW.

5. The domain for the development of power projects in terms of the Policy came to be vested in J&K Energy Development Authority (JAKEDA). The aforesaid policy purportedly came into being under the aegis of J&K Water Resources (Regulation and Management) Act 2010.

6. Post J&K Reorganization Act 2019 which resulted in disintegration of J&K to become two Union Territories, namely Union Territory of J&K and Union Territory of Ladakh, J&K Power Development Corporation, JKPDC came forward with the draft HydroPower Policy 2022 as an update of Policy of 2011 formulated by the Government Order No. 71-EST of 2011.

7. In this draft Policy of 2022, incentive for hydropower developers with capacity up to 25 MW came to be provided and one of which incentives being 100% exemption from payment of court fees and stamp duty for mortgage of land required for hydropower projects.

8. Whether the draft policy came to be given a legal sanction by passing an appropriate government order/statutory order or not is not yet clear on the record of this case, but nevertheless acting under an impression that a mortgage deed being furnished on behalf of a power developer in favour of a financial institution is exempted from payment of stamp duty with respect to loan transaction whereby financial assistance is solicited from a financial institution, a mortgage deed dated 16-11-2024 came to be executed by landowners namely Mst. Nazira, Mst. Farhat Jabeen, and Fayaz Ahmed Makroo in favor of J&K Bank with respect to furnishing of mortgage security of a term loan of Rs. 27.92 crores to be availed by the petitioner. The instrument of mortgage deed when presented for registration is said to have met a non-obliging Sub-Registrar who reckoned the document to be unstamped and admissible to stamp duty and, thus, did not accord any registration to the instrument which forced the petitioner Kashmir Valley Energy Pvt. Ltd. joined by Fayaz Ahmed

Makroo, one of the three mortgagers to petition this Court with writ petition WP(C) No. 2968/2024 seeking a writ of mandamus unto the registration authorities under the Registration Act, 1908 to register the mortgage deed without demanding stamp duty thereupon by recognizing it to be exempted from payment of stamp duty and registration fees.

9. This Court, in terms of an order dated 18-12-2024, came to dispose of the writ petition by directing the writ respondent No. 2 i.e., Inspector General of Registrations, J&K to provide requisite instructions to the respondent No. 3- Sub-Registrar, (Additional Deputy Commissioner), Awantipora District, Pulwama within a period of one week from the date of receipt of order dated 18-12-2024.

10. It is with respect to the direction so passed by the writ court, in terms of said order dated 18-12-2024, that the writ petitioners have come rushing again to this court with a present contempt petition alleging disregard to the direction of the writ court in terms of said order dated 18-12-2024.

11. It is an interplay of the Stamp Act, 1899 read with Registration Act, 1908 which was and is supposed to deal with the documents of mortgage deed so presented by mortgagers without payment of any stamp duty thereupon.

12. Section 27 of the Stamp Act, 1899 calls for statement of facts affecting stamp duty to be set forth in an instrument. Section 27 reads as under:-

> ***27. "Facts affecting duty to be set forth in an instrument****:- The consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein".*

13. In the context of the present case, the mortgage deed in reference bears a simple note which reads as under:-

> *"the stamp duty and registration fee is exempted as per hydro power policy, 2022 J&K UT."*

14. It is an admitted factual position that a mortgage deed without bearing stamp duty came to be presented for registration before Sub-Registrar (Additional Deputy Commissioner) Pulwama and that instantly set section 33 of the Stamp Act, 1899 into effect.

15. The Sub-Registrar (Additional Deputy Commissioner) Pulwama, in the event of finding the mortgage deed in reference not duly stamped, was supposed to have impounded the same and then act in terms of mandate of section 38 of the Stamp Act, 1899 and then to act in terms of section 40 of the Stamp Act of 1899.

16. To reiterate, the Sub-Registrar (Additional Deputy Commissioner) Pulwama in the event of finding the mortgage

deed not duly stamped was supposed to have impounded the same and then act in terms of section 40 of the Stamp Act of 1899.

17. It is in the light of the aforesaid legal position that the course of things ought to have attended the registration of mortgaged deed in reference so presented by the petitioners for registration.

18. It is in terms of section 9 of the Stamp Act, 1899 that power to reduce/remit/compound the duties is provided for. Section 9 reads as under:

> **"9.** *The Government may, by rule or order published in the official gazette, reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments or any particular class or instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favor of any particular class of persons, by or in favor of any members of such class are chargeable, and ....*"

19. The Government, in scheme of section 9 of Stamp Act, 1899 in the context of Union Territory of J&K, has to be the Government of Union Territory of J&K providing for a rule or an order to said effect of exempting a mortgage deed from payment of stamp duty covered under the Hydro Electric Power policy if any in vogue.

20. Learned Counsel for the petitioner has referred to indulgence of a Coordinate Bench in terms of an order dated 22-07-2024 passed in WP(C) No. 1678/2024.

21. Given the state of confusion obtaining in the matter, particularly, when the Government is found to be coming up with a Policy for encouragement of power development projects in the Union Territory of J&K providing some incentives in favour of the power project developers and on the other hand the requisite documentation attending therewith getting stuck in the matter of registration on account of call of non-payment of stamp duty, Mr. Satinder Singh Kala, learned AAG is to assist this court in the matter and for this purpose all the concerned authorities, be it Collector Stamps, Pulwama under the Stamps Act, 1899, for that matter the Chief Controlling Revenue Authority of Union Territory of J&K under the Stamp Act, 1899, J&K Power Development Department (J&K PDD), Government of Union Territory of J&K to lend full assistance to Mr. Satinder Singh Kala learned AAG in the matter by apprising this Court about the true state of facts on the issue of exemption in the matter of payment of stamp duty with respect to hydroelectric power project developing/promoting

companies in Union Territory of J&K engaged in setting up power projects under the policy if any in vogue.

22. Payment of stamp duty if any by the mortgagers on mortgaged deed in reference shall be without prejudice to their right to seek recovery of the money paid for the stamp duty on the mortgaged deed.

23. List on 03-03-2025.

24. A copy of this order be provided to Mr. Satinder Singh Kala learned AAG appearing for the respondents.

(RAHUL BHARTI)
JUDGE

SRINAGAR
17.02.2025
AAMIR