

The Inspector General Of Registration vs S.R. Trust Rep. By Its Trustee on 24 January, 2024

Author: M.S.Ramesh

Bench: M.S. Ramesh, M. Nirmal Kumar

W.A. (MD) .Nos.1155 &

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 25.09.2023
Pronounced on 24.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE M. NIRMAL KUMAR

W.A. (MD) .Nos.1155 & 1395 of 2023
and C.M.P. (MD) .No.8852 of 2023

WA. (MD) .No.1155/2023

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 028.

2.The District Registrar (Admn),
Deputy Inspector General of Registration,
Madurai North Regn. Dist,
Madurai – 625 107.

3.The Sub Registrar,
Othakadai Sub Registrar Office,
TNAU Nagar, Rajakambeeram,
Y. Othakadai, Madurai – 625 107.

... Appe

Vs.

1.S.R. Trust rep. by its Trustee,
G. Sakthi Saravanan,
Meenakshi Mission Hospital & Research Centre,
Lake Area, Melur Road,
Madurai – 625 107.
2.Sunmed Healthcare Pvt. Ltd.,

Page 1 of 44

<https://www.mhc.tn.gov.in/judis>

Plot No.39, 5/103D, VIP Garden, 5th Ward,
Narasingam, Opp. to High Court,
Madurai – 625 107.

... Resp

Prayer : Writ Appeal filed under Clause XV of the Letters Patent, a
the order passed in W.P.(MD).No.4658 of 2021 dated 07.06.2023 by th
Court.

For Appellants : Mr.Veera Kathiravan,
Additional Advocate General III
assisted by Mr.T. Villavan Kothai
Additional Government Pleader

For R1 : Mr.K. Subramanian,
Senior Counsel
for Mr.S. Venkatesh

For R2 : Mr.Atul Chitale,
Senior Counsel
for Mr.Niranjan S. Kumar

WA. (MD) .No.1395/2023

S.R. Trust rep. by its Trustee,
G. Sakthi Saravanan,
Meenakshi Mission Hospital & Research Centre,
Lake Area, Melur Road,
Madurai – 625 107.

... Appel

Vs.

1.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 600 028.

2.The District Registrar (Admn),

Page 2 of 44

<https://www.mhc.tn.gov.in/judis>

W.A. (MD) .Nos.1155 &

Deputy Inspector General of Registration,
Madurai North Regn. Dist,
Madurai – 625 107.

3.The Sub Registrar,
Othakadai Sub Registrar Office,
TNAU Nagar, Rajakambeeram,
Y. Othakadai, Madurai – 625 107.

4.Sunmed Healthcare Pvt. Ltd.,
Plot No.39, 5/103D, VIP Garden, 5th Ward,
Narasingam, Opp. to High Court,
Madurai – 625 107.

... Resp

Prayer : Writ Appeal filed under Clause XV of the Letters Patent, a
the findings recorded in para 5 of the order dated 07.06.2023 passe
the learned Single Judge of this Court in W.P.(MD).No.4658 of 2021
W.M.P.(MD).Nos.3770 & 9628 of 2021 and partly dismissing the said
Writ Petition filed by the petitioner in W.P.(MD).No.4658 of 2021.

For Appellant : Mr.K. Subramanian,
Senior Counsel
for Mr.S. Venkatesh

For R1 to R3 : Mr.Veera Kathiravan,
Additional Advocate General III
assisted by Mr.T. Villavan Kothai,
Additional Government Pleader

For R4 : Mr.Atul Chitale,
Senior Counsel
for Mr.Niranjan S. Kumar

COMMON JUDGMENT

<https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 M.S.RAMESH, J.

M/s.S.R. Trust (hereinafter referred to as 'the Trust') [first respondent in WA.(MD).No.1155 of 2023 and appellant in WA.(MD).No. 1395 of 2023] is a Public Trust, involved in the establishment and running of hospitals etc. M/s.Meenakshi Mission Hospital and Research Centre, Madurai, is one such hospital run by the Trust at Madurai.

2. For the purposes of obtaining National Accreditation Board for Hospital (NABH) and for availing medical insurance reimbursements, the Trust intended to open a New Hospital, for which purpose, it had identified a land adjacent to Meenakshi Mission Hospital measuring an extent of 1 acre 20 cents in Survey Nos.171/2A3B, 171/2A2B and 171/8A2 [Plot 36A], which was owned by one Dr.S.Gurushankar and who had also agreed to lease out the said lands to M/s.Sunmed Healthcare Private Limited (hereinafter referred to as 'SUNMED') [second respondent in WA.(MD).No.1155 of 2023 and fourth respondent in WA.(MD)No.1395 of 2023].

3. For the purpose of forming a pathway to the proposed New Hospital to be constructed by SUNMED, an extent of 22.79 cents in Survey No.161/1, Uthangudi Village and an extent of 5.23

cents in <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 Survey No.171/2A1, totally measuring 28.02 cents, was earmarked and both the Trust and SUNMED had entered into a Memorandum of Understanding (MOU) dated 27.04.2019 with certain terms and conditions. When the MOU was presented for registration before the Sub Registrar, Othakadai, Madurai on 19.07.2019, by paying a sum of Rs.40,100/- towards registration charges, the document was treated as a pending Document No.2 of 2019. The Sub Registrar had relied upon the terms of MOU providing for payment of Rs.10 Crores as security deposit, together with a monthly fee of Rs.1 Crore by the Trust to SUNMED, as license fee for utilization of 30% of the bed facilities in the proposed New Hospital, for a period of 10 years and on expiry, the license fee was to be raised by another 30%, with an automatic renewal clause of the license period for 5 times till 50 years and thereby, found that the stamp duty in MOU was undervalued and accordingly, had demanded the Trust to pay a sum of Rs.44,26,29,836/- by way of deficit stamp duty through his proceedings dated 26.09.2019.

4. On 09.12.2019, the District Registrar, Madurai, had issued a show cause notice to the Trust, as well as SUNMED, in connection with the demand of deficit stamp duty. Through a reply dated 14.02.2020, the <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 Trust had replied that the demand of deficit stamp duty was on a misconception of law and fact and therefore, sought for return of the document. However, on 21.02.2020, the District Registrar had passed a final order under Section 40(1)(b) of the Indian Stamp Act (hereinafter referred to as 'the Act'), demanding the deficit stamp duty of Rs. 44,26,29,836/-, together with deficit registration charges and penalty. The Trust had then given a representation on 04.03.2020 to the Inspector General of Registration, requesting for return of MOU kept as pending document No.2 of 2019 dated 19.07.2019 without registration, by stating that MOU itself was on Rs.20 stamp paper, which does not require registration. However, on 01.12.2020, the Inspector General of Registration had passed another order under Section 56 of the Act, treating the petitioner's representation as an appeal and rejected their request for return of MOU.

5. Challenging these orders dated 21.02.2020 and 01.12.2020, the Trust had preferred a Writ Petition in WP.(MD).No.4658 of 2021. The learned Single Judge of this Court, had partly allowed the Writ Petition through his order dated 07.06.2023, holding that the portion of the land, which was agreed to be used as a common pathway between the Trust <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 and SUNMED for a monthly rent of Rs.1,05,075/-, is deemed to be a 'lease' and thereby, upheld the demand for deficit stamp duty under Article 35(b) of Schedule I of the Act. However, the demand for the deficit stamp duty, by treating the lease period as 50 years, was negatived. Likewise, the agreement for utilization of 30% of the shared space in the proposed New Hospital, was treated as a 'license' and not as a 'lease' and consequently, the demand of deficit stamp duty on this head was also rejected. So also, the demand of duty for the security deposit of Rs.10 Crores was also held as impermissible. Challenging the order of the learned Single Judge, both the Trust, as well as the Registration Department, have preferred these Writ Appeals.

6. Learned Senior Counsels appearing on behalf of the Trust, as well as SUNMED, submitted that though the terms of MOU dated 27.04.2019, reflects the agreement to be one of a 'lease', in effect it is only a 'license', since the MOU gives only a right to use a property in a particular way under

certain terms and the exclusive possession of the subject lands, have not been handed over to SUNMED. It is their further submission that there is no infirmity in the findings of the learned Single Judge with regard to denial of the demand of deficit stamp duty for the <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 period over and above 10 years till 50 years, as well as for the security deposit.

7. For both these propositions put forth by them, they had placed reliance on certain case laws, which we shall be dealing with, in the later portion of our order.

8. Per contra, the learned Additional Advocate General submitted that though the document that was presented for registration is termed to be a 'Memorandum of Understanding', the terms of MOU itself indicates that the lands earmarked for the purpose of forming a pathway, was agreed to be leased out by the Trust to SUNMED and therefore, there is no infirmity in the demand for the deficit stamp duty by treating MOU as a 'lease'. He also submitted that both the parties have agreed for a security deposit of Rs.10 Crores, together with a monthly fee of Rs.1 Crore for utilization of 30% of the shared space in the proposed New Hospital, the stamp duty for which, has been evaded by the parties. According to the learned Additional Advocate General, since the possession of the lands to be utilized as a pathway has been handed over to SUNMED, the entire transaction is deemed to be only as 'lease' and <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 therefore, the learned Single Judge had rightly treated this portion of MOU as a 'lease' and not a 'license'.

9. We have given a careful consideration to the submissions made by the respective counsels.

10. The crux of the issue that requires consideration in both these Writ Appeals, are as to whether MOU dated 27.04.2019, is to be treated as a 'lease' or 'license' or a mere 'Memorandum of Understanding'?

11. In order to determine the aforesaid issue, it would be apposite to ascertain as to whether the terms and conditions in MOU creates a 'license' or a 'lease' or an 'understanding', in the light of the intention of the parties to come into such an agreement.

12. In order to determine the intention of the parties, the clauses of MOU were scrutinized. Some of the salient features of understanding arrived at between the parties under MOU, are as follows:-

a) The Trustees of S.R. Trust had resolved to enter into MOU with SUNMED for construction of a new hospital in the land adjacent <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 to Meenakshi Mission Hospital belonging to the Trust, admeasuring approximately 1.2 acres in Survey Nos.171/2A3B, 171/2A2B and 171/8A2 (Plot 36A), which was agreed to be leased out to SUNMED by Dr.S.Gurushankar, along with an extent of 28.02 cents owned by the Trust for the purpose of forming a road/pathway. In pursuance to such a resolution, SUNMED had agreed to construct and provide the appropriate space and infrastructure at the New Hospital, in which at least 30% of the inpatients with bed facilities are made available for the treatment of poor patients from the Trust under the Pradhan Mantri

Jan Arogya Yojna (PM-JAY). The New Hospital shall be set up under the name of Meenakshi International Hospital or any other mutually agreed term.

b) As per clause 3.4(a), the Trust had agreed to 'lease' its properties in Survey No.161/1 measuring 22.79 cents and Survey No.171/2A1 measuring 5.23 cents for the purpose of forming a road or pathway to exit, for a period of 10 years at a time, which shall automatically stand renewed five more times, until the period of 50 years.

c) As per Clause 3.4(b), the consideration for the aforesaid lease of the premises was fixed at Rs.1,05,075/- per month as rent, to be <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 payable by SUNMED to the Trust. The rent amount was agreed to be enhanced by 30% during the lease period.

d) Under Clause 3.4(c), both parties have agreed that the leased premises shall be used as a common pathway by both the Trust, as well as SUNMED, including as an additional fire exit for the Trust Hospital.

e) Under Clause 3.6, the financial gains that the Trust may receive under this MOU, was agreed to be utilized for educating poor students and providing free education in the Nursing College run by the Trust at Madurai District.

f) Clause 4 stipulates the payment terms, whereby under sub-clause

(a), the Trust had agreed to pay to SUNMED, an interest-free refundable security deposit of Rs.10 Crores, which shall be refunded upon termination of the MOU and under sub-clause (b), the Trust had agreed to pay to SUNMED Rs.1 Crore per month towards monthly 'license fee' for utilization of the shared space in consideration of the benefits and services to be received by the Trust under the MOU. This 'monthly license fee' was agreed to be increased by 30% at the end of every 10 years under the MOU. <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023

13. When the demand of deficit fee was put to challenge, the learned Single Judge had held that Clause 3.4(a) of MOU itself states that the property measuring 22.79 cents and 5.23 cents, have been leased in favour of SUNMED for the purpose of forming a road or pathway and that the exclusive handing over of possession is not an essential or mandatory feature of a 'lease' and thereby, had come to the conclusion that the right of SUNMED to use it as a pathway, has created an interest over the property, which is enforceable before the Court of law. The relevant portion of the order reads as follows:-

..... "Now, the only point to probe is whether under clause 3.4 of the Memorandum of Understanding, an interest in the property has been created in favour of SUNMED Healthcare Private Limited. Clause 3.4 (a) of the Memorandum of Understanding itself states that the property is leased in favour of SUNMED Healthcare Private Limited for the purpose of forming a road or pathway to exist. Initially, the lease period is to be for ten years. There is an automatic renewal and the period may go up

to fifty years. The consideration payable by SUNMED Healthcare Private Limited has been fixed at Rs.105075/- as rent. Of course, Clause 3.4 (c) states that the leased premises shall be used as common pathway by <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 the petitioner as well as the SUNMED Healthcare Private Limited. Merely because SUNMED Healthcare Private Limited has not been given exclusive possession, that does not mean that the transaction is not a lease. Exclusive possession is not an essential or mandatory feature of lease. It is obvious that SUNMED will have joint possession. Even if I discount the employment of the expression “lease”, “leased premises” and “rent”, on a careful reading of the entire clause, one can easily come to the conclusion that an interest in the property has been created in favour of SUNMED Healthcare Private Limited. Of course, the leased premises will be used as common pathway as per the Memorandum of Understanding. It is not a mere permission which can be revoked at will. It is not a mere right to use alone. It is SUNMED Healthcare Private Limited that will be forming the road. If in future, the petitioner interferes with the rights of SUNMED Healthcare Private Limited, it can definitely go to court to enforce its rights to use the pathway. The clause 3.4 cannot be read in isolation. A hospital is to be built on the adjacent land by SUNMED and this pathway is to be laid by SUNMED to access the same. The right to use the pathway is based on the interest created in the property. The authority is justified in treating this transaction as one of lease and levying stamp duty under Article 35(b) of Schedule I of the Stamp Act.....” <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023

14. In the aforesaid manner, a learned Single Judge had treated the 'understanding' in Clause 3.4(a) to be construed only as a 'lease' and thereby, upheld the demand of the authorities for deficit stamp duty under Article 35(b) of Schedule I of the Act. This portion of the order of a learned Single Judge, has been challenged by the Trust in WA.(MD).No. 1395 of 2023.

15. Apart from the aforesaid findings, the learned Single Judge had also held the action of the authorities in treating the lease period as 50 years, as illegal. This apart, the understanding for sharing of space in the New Hospital that is to be constructed, it was held that such an understanding did not create any interest in the hospital and therefore, such an understanding is deemed to be only a 'license' and not a 'lease'.

16. Reliance was also placed on a decision of the Full Bench of the Delhi High Court in the case of 'Chief Controlling Revenue Authority Vs. Marshal Produce Brokers Co. Pvt. Ltd., reported in '1978 SCC OnLine Del 157' and held that under Article 35(c) of the Act, stamp duty cannot be demanded on the security deposit/refundable advance but <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 would be chargeable only under Article 57 of the Act. These portions of the order, that were found in favour of the Trust, have been challenged by the Registration Authorities in WA.(MD).No.1155 of 2023.

17. Before analyzing the intention of the parties in coming to the understanding under the MOU, we deem it appropriate to deal with the significance of the nomenclature of a document and the

circumstances as to when and how, such a document can be determined to be 'lease' or 'license' or an 'understanding'.

18. The mode of determining the distinction between 'lease' and 'license', is no more resintegra, since being settled through a catena of decisions. In the case of 'Qudrat Ullah Vs. Municipal Board, Bareilly' reported in '(1974) 1 SCC 202', Justice V.R.Krishna Iyer, speaking for the three Judges Bench, had held that there is no simple litmus test to distinguish a 'lease' as defined in Section 105, Transfer of Property Act from a 'license' as defined in Section 52 of the Easements Act, but the character of the transaction turns on the operative intent of the parties. To put it pithily, if an interest in immovable property, entitling the transferrers to enjoyment, is created, it is a 'lease'; if permission to use <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 land without right to exclusive possession is alone granted, a 'license' is the legal result.

19. In 'Associated Hotels of India Limited Vs. R.N. Kapoor reported in 'AIR 1959 SC 1262', to which the learned Single Judge had also relied on, the Hon'ble Supreme Court had dealt in detail, the mode of distinguishing a 'lease' from a 'license'. The relevant portion of the order reads as follows:-

..... “28. There is a marked distinction between a lease and a licence. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is therefore a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor.

Whereas Section 52 of the Indian Easements Act defines a licence thus:

“Where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable property <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.” Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is clear though sometimes it becomes very thin or even blurred. At one time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial opinion is reflected in

Errington v. Errington [(1952) 1 All ER 149] , wherein Lord Denning reviewing the case-law on the subject summarizes the result of his discussion thus at p. 155:

“The result of all these cases is that, although a person who is let into exclusive possession is, prima facie, to be considered to be tenant, nevertheless he will not be held to be so if the <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 circumstances negative any intention to create a tenancy.” The court of appeal again in Cobb v. Lane [(1952) 1 All ER 1199] considered the legal position and laid down that the intention of the parties was the real test for ascertaining the character of a document. At p. 1201, Somervell, L.J. stated: “... the solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties.” Denning, L.J. said much to the same effect at p. 1202:

“The question in all these cases is one of intention : Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?” The following propositions may, therefore, be taken as well established : (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties — whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 be established which negative the intention to create a lease.....”

20. The decision in Associated Hotels' case (supra) came to be followed in another order in the case of 'ICICI Vs. State of Maharashtra & others' reported in '(1999) 5 SCC 708' wherein, the facts revealed therein was that, the terms of the agreement provided that the licensee was permitted to enter upon the land for the purpose of erecting a building for a period of three years and until the grant of a lease, the licensee was required to pay a rent. The Hon'ble Supreme Court had relied upon Associated Hotels' case (supra) and held that the document was, on the face of it, an agreement to create a lease in future and for the present, the document gave only a right to use the property for the purpose of constructing a building and therefore, no interest in the land was conveyed in favour of the licensee. The relevant portion of the order reads as follows:-

..... “7. Our attention has been drawn to a decision of this Court in Associated Hotels of India Ltd. v. R.N. Kapoor [AIR 1959 SC 1262 : (1960) 1 SCR 368, 383] SCR at p. 383 where this Court has made a distinction between a lease and a licence. Referring to Section 105 of the Transfer of Property Act, this Court has observed that it defines a lease of immovable property as a transfer of a right to enjoy such <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 property made for a certain time in consideration for a price paid or promised. A lease is, therefore, a transfer of an interest in land and the interest transferred is called the leasehold

interest. It follows that the lessee gets that right to the exclusion of the lessor. Whereas Section 52 of the Indian Easements Act defines a licence thus:

“52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.”

8. Therefore, if a document gives only a right to use the property in a particular way or under certain terms, while it remains in possession and control of the owner thereof, it will be a licence. In the present case, the licensee has been put in possession only for the purpose of constructing a building or buildings. Under this document, no interest in the land is conveyed in favour of the appellants. The agreement does not create a lease, nor does it demise any interest in land in favour of the appellants. In this connection, a reference may also be made to a subsequent decision of this Court in *State of Maharashtra v.*

Atur India (P) Ltd. [(1994) 2 SCC 497] where this Court has made a distinction between a lease and an agreement for lease.....” <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023

21. There are several other decisions of the Hon'ble Supreme Court, upholding the aforesaid position of law with regard to the distinction between 'lease' and 'license', in all of which, it was held that to determine the character of the transaction, the intent of the parties are required to be inferred from the terms of the agreement.

22. It has also been held that the nomenclature of a document would not govern the decision when an issue is put to test, as to whether a document is a 'lease' or 'license'. One such decision in the case of '*Madhu Behal Vs. Rishi Kumar*' reported in '*2009 SCC OnLine P&H 141*' was relied upon by the learned Single Judge in his order dated 07.06.2023.

23. In the instant case, the subject document is termed as 'Memorandum of Understanding'. In Clause 3.4 of MOU, the term used is 'lease' for formation of a road in the property. In Clause 4(b) of the MOU, the consideration for the benefits and services to be received by the Trust has been termed as a 'license fee'. The engagement of these terms in the MOU, has constrained us to analyze the real intention of the <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 parties, at the time when they had come to an understanding while entering into the MOU. Clause 3.4(a) starts with the phrase, 'The Trust shall lease its property situated forming a road or pathway for a period of 10 (ten) years.....'. A reading of the Clause clearly establishes that the lease was not created through the present MOU but the parties had agreed to enter into a 'lease' only, since the term used therein is 'shall lease', which relates to only a future event. Under Clause 3.4(b), the monthly rent for the proposed lease has been determined. Under 3.4(c), the utilization of the common pathway that was agreed to be constructed by SUNMED has been spelled out.

24. As on the date of the MOU, the land in which a pathway was proposed to be constructed, was never leased out by the Trust to SUNMED, but rather an understanding had been arrived at between the parties for future leasing of the property. Likewise, the pathway was never in existence on the date of MOU and therefore, the monthly rent of Rs.1,05,075/- stipulated in Clause 3.4(b), was only a future payment under a lease to be executed between the parties.

25. Merely because Clause 3.4 refers to the term 'lease', such a nomenclature cannot and will not determine and conclude that the parties <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 have entered into a lease through this MOU. As held in Qudrat Ullah's case (supra), as well as Associated Hotels' case (supra), when a permission to use a land, without a right to an exclusive possession is agreed upon, a license is deemed to have been granted.

26. Viewed from this legal position, since the Trust has agreed to lease its property to SUNMED for forming a road or pathway for a period of 10 years, extendable upto 50 years, it requires to be held that the Trust had only granted permission to SUNMED for entering into a land, after a 'lease' is created in favour of SUNMED, for the purpose of forming a road or pathway and for its usage as a common pathway for a period of 10 years, extendable up to 50 years.

27. The learned Single Judge, however, was of the view that exclusive handing over of possession of a property, is not an essential or mandatory feature of a 'lease' and since SUNMED would be entitled to enforce its rights over the pathway if the Trust interferes with such rights, had come to the conclusion that this agreement between the parties would amount to a lease and therefore, upheld the demand made by the Registering Authorities for the claim of deficit stamp duty under Article <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 35(b) of Schedule I of the Act.

28. In the light of our discussion, we are of the view that such a finding by a learned Single Judge would be opposed to the well laid down dictum of the Hon'ble Supreme Court and therefore, this portion of the order cannot be legally sustainable.

29. Insofar as the demand for deficit stamp duty relating to the period of lease is concerned, the learned Single Judge had placed reliance to the case of 'Gopal Swarup Chaturvedi Vs. State of U.P.' reported in '2006 SCC OnLine All 1157' and held that the authorities had erred in treating the lease period as 50 years and directed the authority to revisit the issue and levy stamp duty by treating the lease period as 10 years.

30. Under Section 5 of the Indian Stamp Act, any instrument comprising or relating to several distinct matters, shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

<https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023

31. As per Clause 3.4(a), the Trust had agreed to lease its property to SUNMED for a period of 10 years at a time, which shall stand automatically renewed 5 times up till a total time period of 50 years. The term renewal literally would mean that on the expiry of the first term of the lease, a new

lease is required to be entered into by the parties, 'renewing' the earlier lease for a further period.

32. In the case of 'Secretary to the Commissioner of Salt, Akbari and Separate Revenue, Madras' reported in 'AIR 1920 Mad 225 (Full Bench), when a reference was made to a Full Bench with regard to legality of renewal covenant in a deed, it was held by the Hon'ble Full Bench that a lease which contained a covenant for renewal, was held not to relate to two distinct matters as the option to renew the lease was merely ancillary to the lease and formed part of the consideration for entering into it.

33. In 'Hindustan Petroleum Corporation Ltd. & another Vs. Dolly Das' reported in '(1999) 4 SCC 450', this legal position was reiterated by the Hon'ble Supreme Court in the following manner:-

..... "12..... A covenant for renewal is not treated [https://www.mhc.tn.gov.in/judis W.A.\(MD\).Nos.1155 & 1395 of 2023](https://www.mhc.tn.gov.in/judis W.A.(MD).Nos.1155 & 1395 of 2023) as a part of the terms prescribing the period of lease but only entitles a lessee to obtain a fresh lease. Renewal of lease could only be for one term and no more, but nevertheless it could be contended that the covenant for renewal was also part of the lease and, therefore, stood incorporated in the renewed lease arising under the Act."

34. The learned Additional Advocate General had also made a reference to term 'automatic renewal' in Clause 3.4(a) and submitted that in view of the engagement of these terms, the validity of the lease period requires to be taken as 50 years only. We are not in agreement with such a submission.

35. In the case of 'Hardesh Ores (P) Ltd. Vs. Hede and Company' reported in '(2007) 5 SCC 614', the Hon'ble Supreme Court had held that there is no concept of automatic renewal of lease but a renewal can be effected, only by execution of another lease deed.

36. Thus, the second portion of the decision by a learned Single Judge, rejecting the claim of the authorities for deficit stamp duty for further period of 50 years, is well in conformity with the correct position [https://www.mhc.tn.gov.in/judis W.A.\(MD\).Nos.1155 & 1395 of 2023](https://www.mhc.tn.gov.in/judis W.A.(MD).Nos.1155 & 1395 of 2023) of law and hence, no interference is required to this portion of the order. However, since we have already held that the understanding for utilization of the pathway, cannot be termed to be 'lease', the consequential finding of the learned Single Judge in this regard, granting liberty to the Registering Authority to levy stamp duty by treating the lease period as 10 years, cannot be legally sustained.

37. The third finding of the learned Single Judge, which is challenged by the authorities, is that the agreement between the Trust and SUNMED for utilization of 30% of the bed facilities in the New Hospital to be constructed, would amount to a 'license' only. As per Clause 3.2 of MOU, it was agreed between both the parties with regard to provision of certain healthcare services at the proposed New Hospital and the Trust Hospital. As per this Clause, SUNMED had agreed to provide sufficient and appropriate space and infrastructure at the proposed New Hospital to move the catheterization laboratory, equipments, cardiac operation theatre and cardiac surgery post-operative rooms from the Trust Hospital to the proposed New Hospital and the services at each of such Departments shall be shared between the Trust Hospital and the New Hospital, in such a

way, that at any given point of time, treatment for [https://www.mhc.tn.gov.in/judis W.A.\(MD\).Nos.1155 & 1395 of 2023](https://www.mhc.tn.gov.in/judis W.A.(MD).Nos.1155 & 1395 of 2023) atleast 30% of the inpatients with bed facilities are available for the poor patients from the Trust Hospital in the proposed New Hospital. For such a consideration, the Trust had agreed to pay to SUNMED a license fee of Rs.1 Crore every month as per Clause 4(b).

38. The learned Single Judge had held that under this agreement, no interest in the New Hospital has been created in favour of the Trust and therefore, the arrangement is only a license for utilization of shared space. In connection with this point, as observed by us in the earlier portion of this order, the MOU dated 27.04.2019 is only an agreement for certain future considerations to be observed by each of the parties, only after the New Hospital has been constructed.

39. As per Clause 3.1(a) SUNMED had agreed to build a New Hospital with a minimum of 1 lakh sq.ft. adjacent to the existing campus of the Trust Hospital on land admeasuring approximately 1.2 acre in the property in Survey No.171/2A3B, 171/2A2B and 171/8A2 (Plot 36A) in Madurai which is agreed to be leased out to them by Dr.S.Gurushankar.

40. Clause 3.2(a) is also an agreement between the parties for [https://www.mhc.tn.gov.in/judis W.A.\(MD\).Nos.1155 & 1395 of 2023](https://www.mhc.tn.gov.in/judis W.A.(MD).Nos.1155 & 1395 of 2023) SUNMED to provide the space and infrastructure at the New Hospital and for sharing of certain healthcare services for the purpose of treatment of at least 30% inpatients with bed facilities. For such an agreement, the Trust had agreed to pay SUNMED an amount of Rs.1 Crore per month towards monthly license fee for utilization of the shared space. It has also been agreed in the same Clause that the payment of the monthly license fee shall commence only after the Building Completion Certificate is received by SUNMED.

41. The aforesaid terms are explicitly clear, to the effect, that both the parties had only come into an understanding for taking the lands belonging to Dr.S.Gurushankar, on lease, for construction of a New Hospital therein, with an understanding for payment of the monthly license amount for the shared facilities, in future. In other words, as per these Clauses, SUNMED had agreed to enter into a license agreement with the Trust for which the terms of the agreement had been reduced to writing in the present Memorandum of Understanding dated 27.04.2019. Unless and until, the New Hospital is constructed and completed fully and 30% of the bed facilities therein, are extended to the Trust, the existence of a license in this regard would not arise and till such time, it [https://www.mhc.tn.gov.in/judis W.A.\(MD\).Nos.1155 & 1395 of 2023](https://www.mhc.tn.gov.in/judis W.A.(MD).Nos.1155 & 1395 of 2023) is deemed to be only an 'understanding' between the parties. The terms of MOU, at no given point, has explicitly stated that a license is being created through this agreement. Nor does the intent of the parties seem to be so.

42. On an over all reading of the relevant clauses in the MOU, the intention of the parties can only be inferred to that of an arrangement between them to enter into a license agreement for sharing of 30% of the bed facilities, after completion of the New Hospital building. In other words, these arrangement is only an 'understanding' between the parties and not a 'lease'. To this extent, the decision of a learned Single Judge may warrant interference.

43. In the light of our above observations and findings, we are of the view that MOU dated 27.04.2019 is neither a 'lease' nor a 'license' but only a 'Memorandum of Understanding', for

SUNMED to enter into a lease deed with Dr.S.Gurushankar, for lease of his lands to them and thereafter, for construction of a New Hospital therein, on completion of which, the parties have agreed to enter into a license, whereby, SUNMED had agreed to grant license for the Trust to utilize 30% of its <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 bed facilities, which terms of understanding have been reduced to writing.

44. A Memorandum of Understanding is not a document which requires compulsory registration under Section 17 of the Registration Act, 1908. Initially, when the Authorities had demanded the alleged deficit stamp duty, the Trust had rightly requested the Registering Authorities, as well as the Appellate Authority, to return MOU without registration, which was denied and the impugned order came to be passed. However, on the option of the parties, if they chose to register this document dated 27.04.2019, the same shall be treated only as a 'Memorandum of Understanding' and the stamp duty leviable on this MOU shall only be under Article 5(i) of Schedule I of the Act.

45. Thus, the entire exercise of the Registration Authorities, in attempt to treat the MOU dated 27.04.2019 as 'lease', cannot be legally sustained. We have also taken note of the object of the MOU spelled out in Clause 3.6 that the financial benefit that would accrue to the Trust under the MOU, shall be used for educating poor students and providing free education in the Nursing College run by the Trust at Kottakudi <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 Village, Madurai District. The MOU is in the interest of the Trust, building a Hospital to the benefit of the public at large.

46. In fine, we sum up our findings as follows:-

- i. The subject document dated 27.04.2019 is declared to be only as a Deed of 'Memorandum of Understanding' and cannot be termed to be either a 'lease' or a 'license'.
- ii. The finding of the learned Single Judge in the order passed in W.P. (MD).No.4658 of 2021 dated 07.06.2023 that Clause 3.4(a) of the MOU is a transaction of lease and upholding the levy of stamp duty under Article 35(b) of Schedule I of the Indian Stamp Act, is set aside.
- iii. The findings of the learned Single Judge, holding that the authority had erred in treating the lease period as 50 years, is upheld. However, direction to the authorities to revisit the issue of lease period as one for 10 years, is set aside.
- iv. The findings of the learned Single Judge that the arrangement between the Trust and SUNMED for sharing of 30% of the inpatient beds in the New Hospital is only a 'license' and not a 'lease', is upheld.

<https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 v. The findings of the learned Single Judge, setting aside the levy of the stamp duty for the security deposit of Rs.10 Crores, is upheld. vi. If the parties to the MOU dated 27.04.2019 opt for its registration, the Registering

Authority shall register the same as 'Memorandum of Understanding' and levy stamp duty under Article 5(i) of the Indian Stamp Act and the relevant parties, if any.

47. In the result, W.A.(MD).No.1155 of 2023 stands dismissed and W.A.(MD).No.1395 of 2023 stands partly allowed. No costs. Connected miscellaneous petition is closed.

[M.S.R., J.]

Index: Yes / No
Speaking/Non-speaking order
Neutral Citation: Yes / No

Sni

To

1.G. Sakthi Saravanan, Tustee of S.R. Trust,

Meenakshi Mission Hospital & Research Centre, Lake Area, Melur Road, Madurai – 625 107.

2.SUNMED Healthcare Pvt. Ltd., Plot No.39, 5/103D, VIP Garden, 5th Ward, Narasingam, Opp. to High Court, Madurai – 625 107.

<https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023

3.The Inspector General of Registration, No.100, Santhome High Road, Chennai – 600 028.

4.The District Registrar (Admn), Deputy Inspector General of Registration, Madurai North Regn. Dist, Madurai – 625 107.

5.The Sub Registrar, Othakadai Sub Registrar Office, TNAU Nagar, Rajakambeeram, Y. Othakadai, Madurai – 625 107.

<https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 M.S.RAMESH, J.

and M. NIRMAL KUMAR, J.

Sni Pre-delivert judgment made in W.A.(MD).Nos.1155 & 1395 of 2023 24.01.2024
<https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 W.A.(MD).Nos.1155 & 1395 of 2023 and M.NIRMAL KUMAR, J.

I had the benefit of perusing the draft common judgment prepared by learned brother Hon'ble Mr.Justice M.S.Ramesh. With utmost respect, I find myself in disagreement with the judgment and conclusion. Therefore, I am writing this separate dissenting judgment.

2. There are two parcels of land, one admeasuring 1.20 acres or thereabouts comprised in S.Nos.171/2A3B, 171/2A2B and 171/8A2 (Plot 36A) and the other comprised in Survey Nos.161/1 and 171/2A1 admeasuring 28.02 cents or thereabouts which is for the purpose of forming road / pathway. Both parcels of land form part of the Memorandum of Understanding [MOU] dated 27.04.2019. As short facts of the case which are necessary to appreciate the controversy have already been set out by my learned Brother, it is not necessary to set out further facts again.

3. The main controversy as regards above mentioned MOU centres around whether it creates lease or license. In very simple terms, difference between lease and license is, in lease, possession of demised <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 property is transferred by lessor to lessee, whereas in license, possession of licensed property continues to be remain with licensor.

4. The surrounding circumstances are to be considered and a total reading of document are necessary to determine whether a particular instrument/document is a lease or a license. The manifest intention of the parties is to be found out in this manner and not by nomenclature alone.

5. A reading of MOU dated 27.04.2019, more particularly Clause 3.4(a) would show that the appellant Trust shall lease its property situated at Survey No.161/1 (admeasuring 22.79 cents or 9927.32 square feet) and Survey No.171/2A1 (admeasuring 5.23 cents or 2278.18 square feet) in Madurai to Sunmed for the purpose of forming a road or pathway for a period of 10 years at a time, which shall stand automatically renewed five times, up till a total time period of 50 years.

6. In Clause 3.4(a) of MOU, the survey number and extent of the property which has been earmarked for the purpose of forming a road or pathway are recorded. Further in Clause 3.4(b), a sum of Rs.1,05,075/- per month is fixed, which shall be increased by 30% at the end of ten years and this can be paid by bank transfer or can be deducted from the receivables of the SUNMED from the Trust. A reading of the MOU in <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 totality would clearly confirm that the MOU had come into force on 27.04.2019 and the monthly payment for the pathway land to be calculated from the date of its execution.

7. Further, the learned Single Judge held that the original lease period is only upto ten years and treating the automatic renewal of lease period as fifty years in computing the stamp duty needs a re-visit is correct. It is seen that the MOU is dated 27.04.2019 which is kept as pending document in Document No.2/2019. The MOU has been executed between S.R. Trust and Sunmed Healthcare Private Limited. On perusal of MOU, it is seen that the execution date given therein is 27.04.2019 which is reiterated and confirmed in Column No.8 "TERM AND TERMINATION", wherein it is recorded as follows:

"8. Term and Termination This MoU shall be effective from the Execution Date and shall continue in full force and effect for a period of 10 (ten) years at a time, which shall stand automatically renewed (five) times, up till a total time period of 50 (fifty) years ("Term"). However, this MoU shall stand terminated earlier only on occurrence of any these events:

(1) On mutual agreement of the Parties OR (2) SUNMED can terminate the agreement in the event of violation of any of the clause of this <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 MoU.

8.The Apex Court has repeatedly held the marked distinction between a lease and a license under Section 105 of Transfer of Property Act and Section 52 of the Indian Easements Act. The Apex Court further observed that the dividing line though clear, sometimes it becomes very thin or even blurred. At one time, it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But this position has been changed on the judicial opinion reflected in Errington vs. Errington, rendered by Lord Denning, who summarized “The result of these cases is that, although a person who is let into exclusive possession is, prima facie, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy”. The Apex Court further referred to the Court of appeal judgment in Cobb vs. Lane and the legal position laid down is that the intention of the parties was the real test for ascertaining the character of a document. Following the same, the Apex Court had summarized the following propositions:

(1) To ascertain whether a document creates a license or <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 lease, the substance of the document must be preferred to the form;

(2) the real test is the intention of the parties – whether they intended to create a lease or a licence;

(3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a license; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.

9.Looking at MOU dated 27.04.2019, the intentions of the parties are clear and unambiguous. The land earmarked is for the purpose of forming a road or pathway and as such no road or pathway exists, so formation of road or pathway is to be carried out by Sunmed and thereby its interest gets coupled with the purpose and usage, on payment of monthly rent, for a fixed period. A license is given for usage of any facility already available but in this case, the facility is to be created by Sunmed. The formation of the road /pathway is to be carried out by Sunmed and this pathway is going to be used as a common pathway and hence, an interest is created in the property towards Sunmed. Therefore, <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 this part of the transaction in the MOU is to be construed as Lease.

10.The learned single Judge has come to a conclusion that 28.02 cents of the land for the purpose of forming a road / pathway is lease and rest is license. This decision has been arrived at on a holistic and comprehensive reading of MOU and considering the attendant circumstances, the manifest intention of parties to the MOU and the purpose for which the MOU was executed. When there is a

dispute as to whether a particular document is a lease or license, we cannot go by the caption or the nomenclature. Even while construing 28.02 cents of land as lease, the learned single Judge has restricted it to 10 years and has not construed it as 50 years lease due to automatic renewal clause.

11. In my considered view, there is no point in the appeal which demonstrates that this view of learned single Judge warrants interference. The learned single Judge has examined clause 3.4 of MOU and come to the conclusion that this 28.02 cents of land is not a mere permission which can be revoked at will but it is a case of joint possession. In the impugned order, after bringing out the clear distinction between lease and license, the learned single Judge has come to a correct conclusion. In my view, the decision of learned Single Judge in this regard is correct <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 and the direction given to the authorities to revisit the issue with regard to the levy of stamp duty by treating the lease period for 10 years is also upheld.

12. Clause 3.2 of MOU relates to provision of certain health care services at the new hospital and sharing of 30% of bed capacity and moving of catheterization laboratory, equipments, cardiac operation theatre and cardiac surgery post operative rooms from the Trust Hospital to New Hospital and other facilities including usage of name and logo. In Clause 4(b), it is recorded that the consideration of the benefits and services to be received by the Trust pursuant to MOU is only after receipt of building completion certificate by Sunmed. With regard to shared space which is 30% of the inpatient beds, the learned Single Judge has held that there is no interest created in favour of appellant Trust in the new hospital, the arrangement is only license and not lease and therefore, the levy of stamp duty in this regard for the use of shared space was not correct. This view of the learned single Judge is, in my considered view, correct. As per clause 3.2(b) of MOU, the trust hospital will only treat its poor patients in the new hospital to the extent of 30% of the bed capacity of the new hospital (shared space). It has also been made clear in the said clause itself that the decision to accommodate the patients from the trust <https://www.mhc.tn.gov.in/judis> W.A.(MD).Nos.1155 & 1395 of 2023 hospital should in no way affect the patients of the new hospital and the day to day decision to accommodate the patients in the new hospital shall completely vest with the management of Sunmed. For utilization of shared space, a monthly payment of Rs.1,00,00,000/- shall be made by the appellant trust to Sunmed. Therefore, it is clear that the appellant trust has been permitted to use the 30% of the bed facility available in the new hospital by way of MOU and no interest is created in favour of the appellant trust. Hence, this cannot be construed as a lease and therefore, levying of stamp duty under this head is not correct and this has been correctly set aside by learned Single Judge.

13. With regard to levy of stamp duty on security deposit of Rs.10 Crores, the learned Single Judge relying on a Full Bench decision of Delhi High Court held that levying of stamp duty on security deposit is not correct and in that respect, learned Single Judge set aside the order of the authorities levying stamp duty. In my considered view, it does not require any interference.

14. Both the learned Senior counsels have pressed into service various judgments in support of their contentions. All of these judgements were not placed before the learned Single Judge at the time of hearing writ petition. The judgments referred by both the learned <https://www.mhc.tn.gov.in/judis>

W.A.(MD).Nos.1155 & 1395 of 2023 senior counsels can be categorized into three. Firstly, majority of the judgments (including our High Court) is with regard to difference between a license and a lease. The second category is with regard to whether the agreement creates a lease and does it demise any interest in land in favour of the party other than the owner of the land or possession remains with owner to show the distinction between a lease and license. The third category of judgments are for stamp duty not chargeable on the amount of security/deposit/advance which is refundable on determination of the lease.

15.In view of the above discussion and findings, both the writ appeals, one filed by the department and the other filed by Trust, are dismissed and the order of learned Single Judge is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

24.01.2024 (M.N.K.,J) <https://www.mhc.tn.gov.in/judis>