**(1979) 10 AHC CK 0053**

**In the Allahabad High Court**

**Case No :** E.D. Ref. No. 1366 of 1976

CONTROLLER OF ESTATE DUTY APPELLANT

Vs

SMT. KALAWATI TIWARI. RESPONDENT

**Date of Decision :** 19-10-1979

**Acts Referred:**

**Citation :** (1980) 15 CTR 339

**Hon'ble Judges :** C. S. P. Singh, J

**Bench :** Division Bench

## Judgement

JUDGMENT : C. S. P. Singh, J. - The Tribunal has referred the following question for opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the ITAT was correct in directing that the amount payable to the Nagar Mahapalika as Under Clause 2 (j) of the lease agreement should be allowed as a deduction while computing the value of the plot for the estate duty assessment ?"

The deceased owned a plot of land at Sarvodaya Nagar, Kanpur. The plot was valued at Rs. 11,255/- by the accountable person and in doing so, she had deducted an amount of Rs. 20,634/- being 75% share of the profit payable to the Nagar Mahapalika in the event of the sale, per cl. 2(j) of the lease agreement by which the plot had been taken by the deceased. The Asstt. Contlr. and the Appl. Contlr. did not accept this deduction but the Tribunal held in favour of the assessee. The view of the Tribunal now stands vindicated in the case of CWT v. P. N. Sikand, where in an identical situation in a case arising under the WT Act it was held that a covenant arising under the WT Act it was held that a covenant of this nature ran with the land and would bind whosoever was the holder of the leasehold interest. It was observed that the covenant was in the nature of a burden on the leasehold interest, and had the effect of depressing the value which the leasehold interest would fetch if it were free from the burden or disadvantage. In view of this decision of Supreme Court it has to be held that the view taken by the Appellate Tribunal was correct. The question is answered in the affirmative, in favour of the assessee and against the Department. There shall be no order as to costs.

 