(2007) 12 UK CK 0037

In the Uttarakhand High Court

Khurana Brothers and — APPELLANT

Vs

State of Uttaranchal and Others — RESPONDENT

Date of Decision : 27-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 185
Stamp Act, 1899 — Section 2(10), 2(14)

Citation : AIR 2009 Utt 12 : (2008) 1 UC 462 : (2008) 1 UD 202

Hon'ble Judges : P.C. Verma, J;M.M. Ghildiyal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Ghildiyal, J.—Since all these review petitions are based on common grounds involving similar set of facts and question of law and have been filed seeking review of common judgment dated 13th April, 2004 passed by this Court in aforementioned writ petitions, hence these are being decided by one and common judgment.

2. The dispute relates to payment of stamp duty on the instrument of sale of resin by auction. Earlier this Court, following the judgment of Allahabad High Court Bhatt Industries, Damodhara, District Almora and Ors. v. The Divisional Forest Officer, Almora and Ors., had dismissed these writ petitions vide order dated 13.4.2004 by holding that the petitioners were liable to pay the stamp duty. Now, these review petitions have been filed citing one and common ground that the Division Bench of the Allahabad High Court in the aforesaid judgment did not examine the document in question as to whether it is a conveyance or simply an instrument of agreement of sale.

3. On a careful perusal of the judgment of the Allahabad High Court (supra), we find that the submission of the learned Counsel for the review petitioners/ petitioners is correct for the reason that in the said judgment document in question has not been examined. Therefore, we may proceed to examine this question.

4. Form of contract of crude resin is reproduced as under:

Value of the deed : 3,94,400/-.

This indenture made this 24 day of the March 2001 between the Governor of the Uttaranchal (hereinafter called ''seller'' of the one part and M/s. Khurana Brothers, Rishsikesh (hereinafter called the ''Buyer'' which expression includes its executors, administrators, successors and assigns) of the other part witnessed as follows:

1. The seller in consideration of payment to be made by the buyer as hereinafter provided at the rate of Rs. 1972/- per quintal calculated at per quintal named without container) and in addition the buyer shall have to pay sale tax on the total sale value of the resin 79% or the rate applicable at the time of sale subject to the following lines and conditions.

(A) Approximately 1160 tines 200 Quintals of crude resin (net weight) will be delivered at resin depot Sultan Nagari. The quantity may increase or decrease by 10% & the buyer will have to accept the quantity made available by the seller.

2. The weight of resin will be the same as has been recorded in the books of the seller. The seller reserves the right to reject the claim of the purchaser for weighment at the time of taking delivery.

(B) The resin sold will remain at purchaser''s risk from date of acceptance of his bid and the seller will not be responsible for any loss and damage which may occur thereto from any cause whatsoever.

(C) All the resin sold will have to be removed by the purchaser within 60 days of the date of approval of the sale. It will be removed in not more than 60 installments as follows.

1. Within Days of approval of Sale.

2. Within Days of approval of Sale.

3. Within Days of approval of Sale.

4. Within Days of approval of Sale.

The purchaser can remove resin only with the written permission of the Divisional Forest Officer, Nainital, Forest Division, Nainital and on payment in advance of the full cost and sale tax of resin.

The seller does not take any responsibility for the quality of resin contained in the tins and will not give any resin in exchange.

3. The amount of sale price of the lot calculated on the basis of per quintal bid at the time of auction shall he payable by the buyer irrespective of the fact whether he lifts the material or not.

4. Any resin or tin left within the depot after the last date of lifting shall vest in

the Govt. and shall be confiscated and refund in lieu of such resin or tins shall be due to the buyer.

5. No crude resin will be exported by the buyer from the resin depot specified in clause I except by such routes and via such chaukies as may be decided upon and recorded in written by the Forest Officer. The resin tins may be counted and weighed by any Forest Officer at any time during transit.

6. The buyer shall furnish the Forest Officer in writing with the names of all the agents and servants it proposes to employ for it before they are employed and the Forest Officer shall be at liberty to forbid the employment of any person whom he may consider undesirable.

7. The buyer shall not drag the resin tins from the Sultan Nagari depot.

8. In the event of a breach of any of the conditions of this indenture by the buyer or by agents or servants the buyer M/s. Khurana Brothers, Rishikesh shall be liable to pay a fine which may extend to fifty rupees at the discretion of the Forest Officer for leach such breach.

9. In the event of breach of this agreement or of any forest law or rules the export of the buyer may be stopped under the orders of the Forest Officer, pending any investigation and decision of the case.

10. Nothing in this indenture shall be held to exempt the buyer or its agents or servants from liability to criminal proceedings for breach of the forest laws and rules committed by it or them.

11. In the event of a dispute concerning any of the terms of this indenture the same shall be referred to the sale arbitrator appointed by the Chief Conservator of Forest, Uttaranchal whose decision shall be final and binding the parties.

12. The seller has received from the buyer the sum of rupees 39,440/- only receipt of which is hereby acknowledged as security for the due fulfillment of all the covenants herein before contained. The Forest Officer is empowered to deduct from such security money any sum which may be due from the buyer whether in respect of any of the price payable by it or any fine or liability incurred by it under the provision of this indenture. The security money or such balance thereof as may be after making the deductions aforementioned will be returned to the buyer on the expiration or sooner determination of this agreement as after the Forest Officer shall have satisfied himself that all the terms of this indenture have been duly and faithfully carried out by the buyer.

13. The Stamp Duty payable on this deed and the fee for registration of this deed shall be borne by the buyer.

14. Any tax imposed by any lay on the present sale shall be payable by the buyer.

15. Any sum of money, either of sale consideration or fine or other kind of due, payable by the buyer under this deed to the seller shall be recoverable as arrears

of land revenue.

In witness whereof the Conservator of Forest, Southern Kumaon Circle, Uttaranchal on behalf of the Governor of the Uttaranchal and the M/s Khurana Brothers, Gopal Mandir, Rishikesh, aforesaid have thereto set their signature.

5. The conditions of tender are as under:

1. Buyers shall have to bid per quintal lisa in the bidding.

2. Buyers shall be given lisa at the original weight in the event of having lifted it in the stipulated period in which the weight of the tin shall be inclusive. The weight of one empty tin shall be taken as one kilogram. Empty tins are not required to be returned nor they will be charged separately.

3. The department shall not be responsible for the quality of lisa inside the tin. Buyers should bid after having seen the lisa lying in the depot.

4. Buyer''s proposal for buy shall be open for 60 days from the date of the bidding and during this period he shall not be able to take his proposal back.

5. The sale of lisa lots shall be put on the notice board of the office after having obtained the permission of the competent authority of the Forest Department. And in that event, information regarding permission of sale of lots shall be deemed to be received by the buyers of these lots.

6. Within 60 days from the date of approval, of sale the buyers shall have to pay the full price and other payable taxes. If payment is made within 30 days from the stipulated date the late fee shall not normally be charged. Thereafter late fee shall be charged, the rate of which shall depend on the period of delay.

7. After complete payment, the lisa bought shall have to be lifted from the depot within 10 days otherwise rent at the rate of one rupee per quintal per day shall be charged which shall also include the above period of 10 days. If due to any inevitable reasons, the department has not permitted to lift the sold lisa, the department may reduce the rent for such period during which lifting of lisa was not permitted.

8. The concerned authorities shall have power to accept or reject any bid without assigning any reasons thereof.

9. After knock of the hammer during the bidding, the successful bidder shall have to pay as Security 10 per cent of the price of lisa or such amount which Bidding Officer thinks proper. Thereafter, he shall have to sign the conditions and other related documents filling which proceedings shall be initiated against Section 185 CrPC. After completing of the bid agreement, the security amount shall either be adjusted in the final price or shall be refunded. If the successful bidder does not deposit the security amount, the Bidding Officer shall be empowered to again auction the lots and forfeit the entry fees.

10. After acceptance of the bid, the buyer shall be responsible for the lisa and

shall be responsible for any loss or damage, whatsoever the reasons thereof may be.

11. The buyer shall have to pay the trade tax etc. prevalent on the date of auction and only then he shall be permitted to lift the lisa.

12. The buyer shall not be allowed to transfer his rights regarding sale to any other person.

13. Only those units can participate in the auction which are really working and are registered with Uttaranchal/U.P. Lisa Act, 1976.

14. Only the buyer and other two nominated persons can enter in the auction hall. Every buyer shall have to Rs. 500/- as entry fee which shall be refunded after auction.

15. The buyers shall bring with himself the letter of registration.

16. In the event of bidding in the name of firm, attested copies of registration of the firm and the authority letter in the name of the person who is authorized to participate in the auction on behalf of the firm shall have to be produced and if more than one partners are there in the firm, the certified copy of the partnership deed shall also have to be produced.

17. Sale tax on this sale shall have to be paid as per rules.

18. Before lifting the lisa, the buyer shall furnish to the department the details of the lisa obtained earlier from other sources, their use and the trade tax paid on the items manufactured from that lisa.

19. On the date of auction more lots can be sold in addition to the lots which have earlier been detailed. The details of such lots shall be informed at the time of auction. Other special conditions, if any, shall -be announced at the time of auction.

20. On the sale of such lots the sale rules of Northern Kumaon Circle shall be applicable.

21. In case of any difference between the conditions of sale rules and conditions of lisa auction notice, the conditions of lisa auction notice shall be valid.

22. In case of any dispute between the buyer and the department, the decision of the Conservator of Forest shall be final and binding upon the parties.

6. The date of acceptance of bid approved by the Conservator has been communicated vide letter No. 4568/39-8 dated 7.4.2001, which says that your bids for the lots of lisa auctioned on 24.3.2001 at Bhawali Forest Guest House is accepted, which you shall be responsible to lift from the depot within 60 days from the issuance of this letter subject to following conditions:

1. The complete price of the lisa bought shall have to be deposited by you

through challan in favour of concerned Forest Officer.

2. You will have to produce the certified copy of the registration certificate with the department as per U. P. Lisa & Van Upaj Vyapar Viniyman Adhiniyam, 1977.

3. Lisa shall be allowed to be lifted only after the payment of complete price and trade tax prevalent on the date of auction.

4. On the date of auction more lots can be sold in addition to the lots which have earlier been detailed. The details of such lots shall be informed at the time of auction. Other special conditions, if any, shall be announced at the time of auction.

5. The stamp duty on the said sale shall be payable as per rules.

6. Contribution @ Rs. 5/- per quintal shall be payable to the Zilla Parishad on the lisa bought.

7. The determined income tax and surcharge shall have to be deposited as per rules on the price of lisa.

7. From the perusal of the agreement deed, it is crystal clear that it is merely a ''Security Document'' and at most it can be termed as ''Agreement to Sell'' and not sale and thus it is not a "Conveyance on Sale" because as per this document, the property in goods did not pass on the bidder and further the bid was to be finally accepted by the Conservator of Forest. Thus agreement deed is merely a security document referable to Article 62(c) of Schedule I-B of Stamp Act. The terms Conveyance'' and ''Instrument'' as defined u/s 2 of the Stamp Act is reproduced below:

Section 2(10) "Conveyance" - "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable is transferred inter vivos and which is not otherwise specifically provided for by Schedule I, Schedule I-A or Schedule I-B as the case may be.

Section 2(14) "Instrument" - "Instrument" includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.

8. It has been submitted by the learned Standing Counsel that allotment order is a document which is Conveyance on Sale. But even the allotment order is subject to some conditions which are required to be fulfilled before the bidder is allowed to lift the lisa and that does not transfer the property in goods. Therefore, such order is also not a document which can be termed as Conveyance on Sale.

9. Reliance is placed on the judgment delivered by the Hon''ble Apex Court in the case of The Installment Supply Ltd. Vs. S.T.O., Ahmedabad-I and Others, , wherein it has been held that an agreement to sell is a contract pure and simple whereas a sale is a contract plus a conveyance and the Apex Court has further observed that the main point to notice is that in a hire-purchase agreement there

is only an option to purchase and there is no sale till that option is exercised. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired.

10. A perusal of the clauses of the document reveal the document is not a document by which the property in goods are passing and the sale is complete. Sale is taking place, on future dates and of different quantities. The conditions further reveal that they regulate the future sale and by this document the title is not passing. Therefore, it is not sale. Only sale "price is on there. Thus, the document does not fall within Conveyance as defined u/s 2(10) of the Stamp Act.

11. For the reasons recorded above, all these review petitions are allowed. The judgment dated 13.4.2004 passed by this Court is reviewed and all the above writ petitions are allowed and it is held that the petitioners are not liable to pay the stamp duty. There shall be no order as to costs.

