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**(2010) 10 AHC CK 0116**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 63621 of 2009**

Lalta prasad and Others

APPELLANT

Vs

Housing Commissioner, U.P., Appointed Under Industrial  
Housing Act, 1955 and Others

RESPONDENT

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**Date of Decision :** 08-10-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Court Fees Act, 1870 — Section 5

**Citation :** (2011) 112 RD 80

**Hon'ble Judges :** S.P. Mehrotra, J

**Bench :** Single Bench

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## Judgement

S.P. Mehrotra, J.—Order on objection, filed u/s 5 of the Court Fees Act, 1870 against the Report/Order of the Taxing Officer dated 10.11.2009 as well as the Report of the Stamp Reporter dated 29.10.2009.

It appears that the present Writ Petition, wherein 35 persons have joined as Petitioners, was placed before the Stamp Reporter for getting the same reported. The Court Fees paid on the Writ Petition is Rs. 100/- while Rs. 5/- has been paid as Court Fees on the Stay Application. The Stamp Reporter in his Report dated 29.10.2009 reported that there was deficiency of Rs. 3570/- in Court Fees paid on the Writ Petition and the Stay Application. The said Report was evidently given by the Stamp Reporter on the ground that separate Court Fees was payable by each of the 35 Petitioners in respect of the Writ Petition and the Stay Application.

2. The learned Counsel for the Petitioners objected to the said Report of the Stamp Reporter whereupon the matter was placed before the Taxing Officer.

3. The Taxing Officer by his Report/Order dated 10.11.2009 has agreed with the Report of the Stamp Reporter holding that each Petitioner has separate and independent cause of action and has to pay separate Court Fees. Accordingly, the Taxing Officer has directed the Petitioners to make good the deficient Court Fees

as per the Report of the Stamp Reporter.

4. Thereafter, Objections u/s 5 of the Court Fees Act, 1870 have been filed on behalf of the Petitioners against the said Report/Order of the Taxing Officer dated 10.11.2009 and the Report of the Stamp Reporter dated 29.10.2009.

5. The Stamp Reporter thereafter put a Note dated 20.11.2009, inter alia, stating that the matter be placed before the Court. The Writ Petition was presented on 20.11.2009.

6. On 24.11.2009, Hon"ble S.U. Khan, J. passed the following order:

Question of payment of Court fees is not being decided finally at this stage. Taxing Officer has reported that there is deficiency in Court fees and each of the 35, Petitioners should pay separate Court fees.

Let the matter be placed before the Hon"ble Judge, who is nominated to hear the objection against such orders passed by Taxing Officer.

Meanwhile, issue notice pending admission to the Respondents.

7. Pursuant to the said order dated 24.11.2009, the aforesaid Objections filed on behalf of the Petitioners u/s 5 of the Court Fees Act, 1870, have been placed before me.

8. For deciding the question of Court Fees, relevant allegations made in the Writ Petition may be noted.

It is, inter alia, alleged in the Writ Petition that the Petitioners were employees in M/s Triveni Engineering Limited, and were living in the quarters constructed by the State Government under the U.P. Industrial Housing Act, 1955; and that on the closure of M/s Triveni Engineering Limited and its shifting to some other part of the State, the Petitioners got themselves engaged in other factories wherein production was carried on in Naini, Allahabad; and that the rent of one room tenement was fixed at Rs. 10/- per month while rent in respect of two room tenement was fixed at Rs. 17.50 per month; and that in 1988, the Petitioners were asked to vacate the quarters, and several notices were issued to the Petitioners, which were challenged in a Writ Petition before this Court; and that this Court passed a Stay Order staying the eviction of the Petitioners from the quarters in their possession; and that since then, the Petitioners have been living in the quarters and they had been paying rent regularly; and that by the order dated 29.11.1990, the State Government enhanced the monthly rent of the aforesaid quarters from Rs. 10/- and Rs. 17.50 to Rs. 235/- per month; and that the workmen living in the colonies in Kanpur filed Civil Misc. Writ Petition No. 6373 of 1991 before this Court challenging the said order dated 29.11.1990, and this Court passed a Stay Order dated 31.3.1992 staying the operation of the order dated 29.11.1990 enhancing the rent of the quarters and further staying the eviction of the Workmen from the quarters in their possession; and that the said Civil Misc. Writ Petition No. 6373 of 1991 filed by the Workmen living in the

colonies at Kanpur was decided by this Court by the judgment dated 19.2.2009; and that while dismissing the Writ Petition, this Court directed that the order dated 29.11.1990 would be enforced with effect from the date of the said judgment dated 19.2.2009, and the arrears would not be recovered from the labourers staying in the labour colony; and that the Petitioners herein have been approaching the representative of the Additional Labour Commissioner for depositing the rent but the said representative has begun refusing to accept the rent; and that the Petitioners approached the Additional Labour Commissioner but he insisted that the rent would be accepted only at the enhanced rate; and that the Petitioners are continuing to live in the quarters allotted to them; and that it is necessary that the Respondents be directed to accept the monthly rent as being paid by the Petitioners in the past years and not to refuse accepting the same.

9. On the basis of the allegations made in the Writ Petition, the Petitioners have made the following prayers:

(i) to issue a suitable writ direction or order or a writ in the nature of mandamus to accept rent from the Petitioners at the rate at which they had been paid in the past and which the Respondents accepted earlier, but are now refusing to accept the same.

(ii) to issue a writ in the nature of mandamus or any other writ direction or order commanding the Respondents not to vacate the Petitioners from the quarters which they are occupying on account of their failure to pay the rent at the enhanced rate.

(iii) to issue any other writ direction or order or grant such other and further relief as may be deemed fit and proper in the circumstances of the case.

(iv) to award for costs.

10. I have heard Shri K.P. Agrawal, learned Senior Counsel assisted by Miss. Pooja Srivastava, learned Counsel for the Petitioner's.

11. It is submitted by Shri K.P. Agrawal, learned Senior Counsel appearing for the Petitioners that the cause of action in respect of all the Petitioners is non-acceptance of rent. As the cause of action in respect of all the Petitioners is identical, joint Writ Petition is maintainable. Shri Agrawal has further referred to the Stay Order dated 31.3.1992 passed in Civil Misc. Writ Petition No. 6373 of 1991, and the judgment dated 19.2.2009 whereby the said Writ Petition was dismissed with certain directions. A copy of the judgment dated 19.2.2009 passed in the said Writ Petition was also submitted for perusal of the Court during arguments.

12. Shri K.P. Agrawal submits that in view of the cause of action as pleaded in the Writ Petition, one set of Court Fee is payable, and the Report / Order of the Taxing Officer as also the Report of the Stamp Reporter requiring payment of separate Court Fee in respect of each Petitioner, are not correct.

13. Shri K.P. Agrawal, learned Senior Counsel appearing for the Petitioners has relied upon the following decisions:

1. Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others,

2. Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another,

14. I have considered the submissions made by Shri K.P. Agrawal, learned Senior Counsel appearing for the Petitioners.

15. In order to appreciate the submissions, it is necessary to refer to certain judicial decisions including those cited by Shri K.P. Agrawal wherein the principles regarding payment of Court Fees in case where more than one Petitioner joins in a single Writ Petition have been considered.

16. In Mota Singh and Others Vs. State of Haryana and Others, different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons, joined as Petitioners in one Writ Petition in respect of the impugned tax, and paid only one set of Court Fee. Their Lordships of the Supreme Court held that where every owner of a truck plying his truck for transport of goods has a liability to pay tax impugned in the Writ Petition, each one has his own independent cause of action arising out of the liability to pay tax individually and the Writ Petition of each one would be a separate and independent Petition and each such person would be liable to pay legally payable Court Fee on his Petition. Relevant portion of the decision of the Supreme Court is reproduced below (paragraph 1 of the said AIR):

We have carefully gone through the office report prepared pursuant to the directions given by us. We are prima facie satisfied that the Petitioners have not paid Court-fees legally payable and that the Petitioners have so modelled the title clause of the petitions as may indicate that the payment of the legally payable Court fee could be evaded. Having regard to the nature of these cases where every owner of a truck plying his truck for transport of goods has a liability to pay tax impugned in the petition, each one has his own independent cause of action. A firm as understood under the Partnership Act or a Company as understood under the Indian Companies Act, if it is entitled in law to commence action either in the firm name or in the Company's name, can do so by filing a petition for the benefit of the company or the partnership and in such a case Court fee would be payable depending upon the legal status of the Petitioner. But it is too much to expect that different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay only one set of Court-fee simply because they have joined as Petitioners in one petition. Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person

would be liable to pay legally payable Court-fee on his petition. It would be a travesty of law if one were to hold that as each one uses high way, he has common cause of action with the rest of truck pliers.

17. In Umesh Chand Vinod Kumar case (supra), relied upon by Shri K.P. Agrawal, learned Senior Counsel appearing for the Petitioners, five questions were referred by a Division-Bench of this Court to the Larger Bench. The Full Bench answered the five questions as under (paragraph 45 of the said AIR):

45. Our answer to the referred questions is as follows:-

Q.1. Whether an association of persons, registered or unregistered, can maintain a petition under 226 of the Constitution for the enforcement of the rights of its members as distinguished from the enforcement of its own rights? A.1. The position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights--

(1) In case members of such an association are themselves unable to approach the Court by reason of poverty, disability or socially or economically disadvantaged position ("little Indians").

(2) In case of a public injury leading to public interest litigation; provided the association has some concern deeper than that of a wayfarer or a busy body, i.e., it has a special interest in the subject matter.

(3) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the Court in such proceedings will be binding on the members.

In other cases an association, whether registered or unregistered, cannot maintain a petition under Article 226 for the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights.

Q.2 Whether a single writ petition under Article 226 of the Constitution is maintainable on behalf of more than one Petitioner, not connected with each other as partners or those who have no other legally subsisting jural relationship where the questions of law and fact, involved in the petition, are common?

A.2 A single writ petition under Article 226 of the Constitution by more than one Petitioner, not connected with each other as partners or any other legally subsisting jural relationship, is maintainable where the right to relief arises from the same act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction, the Petitioners are jointly interested in the cause or causes of action.

Q.3 In case the answer to question No. 1 is in the affirmative, whether only one set of Court-fees would be payable on such petition or each such individual Petitioner has to pay court-fees separately?

A.3 Where a single writ petition by an association or by more than one person is maintainable, then a single set of Court-fees would be payable. Else, each Petitioner is liable to pay separate Court-fees.

Q.4 In case answer to question No. 1 is in the negative, whether the defect of misjoinder of several Petitioners in the writ petition can be cured by requiring each such Petitioner to pay separate Court-fees?

A.4 The technical defect of misjoinder of Petitioners can, in the discretion of the Court, be cured by each Petitioner paying separate Court-fees.

Q.5 Whether the petition is maintainable for questioning similar actions taken by different Mandi Samitis independently of each other in cases where the aggrieved party seeks relief against each such Committee on identical grounds?

A.5 Our answer to this question is in the affirmative.

18. While discussing Question No. 2, noted above, the Full Bench considered the decision of the Supreme Court in Mota Singh case (supra) and observed as under (paragraph 28 of the said AIR):

28. It appears to us that according to this decision a joint writ petition would be validly maintainable if there is legally subsisting jural relationship of association of persons between them or if they have the same cause of action. In substance, this decision applies the same principle of procedure as was enunciated by the Full Bench of our Court in Mall Singh's case 1968 All LJ 210. namely, generally joinder of more than one person can be permitted in a proceeding under Article 226 where the right to relief arises out of the same act or transaction or where the Petitioners are jointly interested in the cause of action and a common question of law or fact arises. In other words, joinder of more than one person is permissible when the cause of action is the same. Such joinder may not be permissible if the cause of action is similar.

19. Further, while dealing with Question Nos. 3 and 4, mentioned above, the Full Bench observed as under (paragraph 36 of the said AIR):

36. Where a single writ petition by an association or by more than one person is maintainable as mentioned above, only one set of court-fees would be payable. The levy of court-fee will not depend on the number of persons who have joined in the writ petition. But, where a single writ petition is not validly maintainable, but nonetheless several persons join in it, then the principle laid down in Mota Singh and Others Vs. State of Haryana and Others, . will apply; namely, each Petitioner will have to pay court-fee separately as if he had filed a separate writ petition. In such cases the writ petition may not, in the discretion of the Court, be dismissed outright. The defect of misjoinder of Petitioners can be cured by requiring each Petitioner to pay separate Court-fees.

20. In Saroja Nand Jha and Ors. v. Hari Fertilizers, Varanasi and Ors. (1994) 2 UPLBEC 1228 (D.B.). a Division Bench of this Court considered the answers given

in regard to Question Nos. 2 and 3 by the Full Bench of this Court in Umesh Chand Vinod Kumar case (supra), and held as follows (paragraph 5 of the said UPLBEC):

5. According to the decision of Full Bench, single writ petition under Article 226 of the Constitution of India by more than one Petitioner, not connected with each other as partners or any other legally subsisting jural relationship, is maintainable in two contingencies, viz. (1) where the right to relief arises from the same act or transaction and there is a common question of law or fact; and (2) where right to relief does not arise from same act or transaction, the Petitioners are jointly interested in the cause or causes of action. If a single writ petition by more than one person is maintainable, then only a single set of court-fee is required to be paid. In other cases each Petitioner has to pay separate Court-fees, even for convenience sake one writ petition is filed by more than one Petitioner.

21. Keeping in view the propositions laid down in the above decisions, we may summarise the principles regarding payment of Court Fees in case where more than one Petitioner joins in a single Writ Petition:

1. A single Writ Petition under Article 226 of the Constitution of India by more than one Petitioner, not connected with each other as partners or any other legally subsisting jural relationship, is maintainable in following two situations:

(A) Where the right to relief arises from the same act or transaction and there is common question of law or fact.

(B) Where though right to relief does not arise from the same act or transaction, the Petitioners are jointly interested in the cause or causes of action.

2. If a single Writ Petition by more than one person is maintainable, then only a single set of Court Fee is required to be paid. In other cases, each Petitioner has to pay separate Court Fees, even if for convenience sake one Writ Petition is filed by more than one Petitioner.

22. As regards the decision in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, relied upon by Shri K.P. Agrawal, learned Senior Counsel appearing for the Petitioners, it may be mentioned that the observations made in paragraph 63 of the said decision (as reported in AIR) pertained to the question of locus-standi. In this regard, reference may also be made to paragraph 33 of the Full Bench decision of this Court in Umesh Chand Vinod Kumar case (supra) (as reported in AIR) wherein the decision of the Supreme Court in Akhil Bharatiya Soshit Karamchari Sangh case (supra), has been considered.

23. Keeping in view the principles, mentioned above, let us now consider the question of deficiency in payment of Court Fees in the present case.

24. From a perusal of the averments made in the Writ Petition, it is evident that the Petitioners are aggrieved by the same act of the Additional Labour Commissioner, namely, refusal to accept the rent in respect of the quarters allotted to the Petitioners. The act of the Additional Labour Commissioner affects the Petitioners in general. The challenge to the said act of the Additional Labour Commissioner by all the Petitioners is on the basis of the same facts, namely, the orders passed by this Court in Civil Misc. Writ Petition 6373 of 1991 filed by the Workmen living in the labour colony at Kanpur. The reliefs sought in the Writ Petition is regarding the said act of the Additional Labour Commissioner. Hence, the right to seek relief, if any, arises to the Petitioners from the same act of the Additional Labour Commissioner. Further, common questions of law and fact are involved in such a situation. Hence, such a case falls in category (A) of Principle No. 1 mentioned above. Therefore, in case more than one Petitioner joins in a single Writ Petition challenging the said act, only a single set of Court Fees is required to be paid.

25. Even otherwise also, the Petitioners in such a case are jointly interested in the cause of action, and such a case will fall in category (B) of Principle No. 1, mentioned above, in any view of the matter. Hence, in case more than one Petitioner joins in a single Writ Petition challenging such act, only a single set of Court Fee is required to be paid.

26. In view of the above, I am of the opinion that the Report/Order of the Taxing Officer dated 10.11.2009 as well as the Report of the Stamp Reporter dated 29.10.2009 in regard to the deficiency in payment of Court Fees are not correct. The Report/Order of the Taxing Officer dated 10.11.2009 is set aside. It is held, that only one set of Court-Fees is payable which has already been paid, and the Writ Petition is in order.

27. It is made clear that the above discussion in the present order is only for deciding the question of deficiency in payment of Court Fees, and there is no expression of any opinion in regard to the maintainability of the Writ Petition or the merits thereof.