(1994) 12 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 27060 of 1991

Mahesh Chandra APPELLANT

Vs

State of U.P.& Ors. RESPONDENT

Date of Decision : 05-12-1994

Acts Referred:

Stamp Act, 1899 — Article 23, 35(b), 5(c), Schedule 1B, 2(16)

Citation : (1994) 12 AHC CK 0076

Hon'ble Judges : V.N.Khare, J and S.R.Singh, J

Final Decision : Dismissed

Judgement

S.R.Singh, J.—The question that comes into focus for determination in the present writ petition is whether the instrument by which the right to collect tolls in respect of Peelakhar Bridge situate at kilometre Stone flacked with the figure ''19'' Km. on Rampur Beesalpur Milk Road in the district of Rampur is a ''lease'' within the meaning of Section 2 (16) of the Indian Stamp Act, 1889 (in short the ''Act'') chargeable to stamp duty in accordance with Article 35(b) read with Article 23 of Schedule 1B of the Act.

2. The facts beyond the pale of controversy are that the right to collect tolls in respect of the bridge in question was let out to the petitioner in consideration of a sum of Rs. 1,38,000 settled on the basis of public auction for a span of one year. By means of the notice dated 20th September, 1986, the petitioner was notified to deposit stamp duty payable at the rate of Rs. 47.50 per thousand in accordance with Article 35(b) of Schedule 1B of the Act. The petitioner contested the notice and urged that the instrument in question was a licence and not the lease and as such, it was chargeable to stamp duty in accordance with Article 5 (c) of Schedule 1B of the Act and not in accordance with Article 35 (b) of Schedule 1B. Assistant Commissioner of Stamp, Moradabad Region, by means of the order date 3151990, held that the instrument in question would be chargeable to stamp duty in accordance with Article 35 (b) read with Article 23 of the Stamp Act. The petitioner who had deposited the stamp duty of Rs. 6,550

was required to deposit a sum of Rs. 6,550 more. It is this order which is sought to be quashed by means of the present petition.

3. Having heard the learned Counsel for the parties, we pursuade ourselves to the view that the petition lacks merit and is liable to be dismissed.

4. ''Lease'' as defined in the Section 2 (16) of the Act means a ''lease'' of immoveable property and includes also; (a) a Patta; (b) a kauliyat or other undertaking in writing, not being a counter part of a lease, to cultivate, occupy or pay or deliver rent for, immoveable property; (c) any instrument by which tolls of any description are let, (d) any writing on an application for a lease intended to signify that the application is granted; (e) any instrument by which mining lease is granted in respect of minor minerals as defined in clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957.

5. It crystallises that the word ''lease'' as defined in Section 2 (16) of the Act means not only "lease of immoveable, property" but it also includes, inter alia, any instrument by which tolls of any description are let. In M/s. Bilal Ahmad Sherwani and Kishore Lal v. State, AIR 1992 All 181 a Division Bench of this Court has held that "lease for collection of toll tax falls under Section 2 (16) (c) of the Act". Although the Division Bench in the aforestated case has further held that "there is no transfer of immovable property" in the case of a lease for collection of tolls but this observation seems to be founded on admission as would be evident from the word "Admittedly" preceding the observation aforestated. We have, however, our own reservations on the point as to whether the right to collect tolls in respect of a bridge can constitute ''benefit'' arising out of the land so as to bring it within the purview of "immovable property" as defined in Section 3 of the General Clauses Act, which definition, in the absence of any definition of the term ''immovable property'' in the Act, may be attracted (See Qudrat Ullah v. Bareilly Municipality, AIR 1974 SC 396). For the purpose of the present case, we need not dwell upon this issue.

6. In view of what we have discussed above, we are of the considered view that the instrument in question is a "lease'' within the meaning of Section 2(16) of the Act chargeable to stamp duty under Article 35(b) read with Article 2,3 of Schedule 1B of the Act and the impugned order does not wear taint of any infirmity.

7. In the result, the petition lacks merit and is accordingly dismissed.

