

(2016) 03 UK CK 0014

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 489 of 2016.

M/s. Arihant Narrow Fabrics (P) Ltd. - Petitioner @HASH State of Uttarakhand and Others

Date of Decision : 08-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Stamp Act, 1899 — Article 63

Citation : (2017) 120 ALR 382 : (2016) 133 RD 378

Hon'ble Judges : U.C. Dhyani, J.

Bench : Single Bench

Advocate : Mr. Piyush Garg, Advocate, for the Petitioner; Mr. P. C. Bisht, Standing Counsel, for the Respondents Nos. 1 and 2

Final Decision : Allowed

Judgement

U.C. Dhyani, J. (Oral)—By means of present writ petition, the petitioner seeks following relief:

To issue a writ or direction in the nature of certiorari for quashing the order dated 30.01.2015 passed by respondent no. 1 under section 33/38 of the Stamp Act in case no. 50 of 2014-15 whereby deficit stamp duty 2,72,850/-, registration fee of Rs. 9,700/- and penalty of Rs. 87,500/- total amount of Rs. 3,70,050/- has been imposed upon the petition and for quashing the order dated 20.7.2015 passed by learned Board of Revenue, Uttarakhand in stamp revision no. 8 of 2014-15 whereby the revision filed by the petitioner against the aforesaid order has been dismissed and the said order has been confirmed.

2. The genesis of the present writ petition is traceable from the facts that one Dehradun Industrial Cooperative Estate acquired some land in Dehrakhas Dehradun for setting up a cooperative Estate from Guru Ram Rai Management Committee by means of registered lease-deed dated 22.6.63 and by means of registered lease deed dated 17.01.1964. The lessee divided the aforesaid land into small plots. Plot no. 4 out of the said plots was allotted to its member namely Sri D.C. Chandola. UPFC took over the possession of the plot from Sri

D.C. Chandola in pursuance of its debt which was subsequently transferred to one Ajay Agarwal and then from Ajay Agarwal to the petitioner M/s Arihant Narrow Fabric (P) Ltd. Since the plot was in original lease in favour of Dehradun Industrial Cooperative Estate who allotted the same to Sri. D.C. Chandola therefore the said original lessee executed a document of assignment of lease of the left over term in favour of the petitioner with the consent of Sri Ajay Agarwal. The document was presented for registration before Sub Registrar Dehradun who referred the document to Collector (Stamp) Dehradun with alleged contention of deficiency of stamp duty, registration charges and penalty to the tune of Rs. 3,70,050/- upon the said document. Collector (Stamp) accepted the reference and directed recovery of Rs. 3,70,500/- under various heads from the petitioner on the document in question vide order dated 30.01.2015. The petitioner preferred a revision against the same before the learned Board of Revenue but the learned Board of Revenue dismissed the revision filed by the petitioner vide its order dated 20.7.2015.

3. It is the contention of learned counsel for the petitioner that both the authorities i.e. Collector (Stamp) as well as Board of Revenue erred in law and wrongly held that the document in question is a document of new lease and utterly failed to appreciate that the assignor i.e. Dehradun Cooperative Industrial Estate is in itself a lessee of the land in question, who has merely assigned the lease in favour of the petitioner and the same cannot be termed as a fresh lease document.

4. It is further contended that the document in question is transfer of lease by way of assignment and is covered by article 63 of schedule 1-B of the Act, and therefore, Stamp Duty on the document is payable as per the rate prescribed for conveyance under article 23 (a) of schedule 1-B of the Act on the consideration and not on the market value.

5. It is an undisputed fact that two lease deeds dated 22.6.1963 and dated 17.01.1964 were being executed by Sri Guru Ram Rai Managing Committee in favour of Dehradun Cooperative Industrial Estate in respect of plots of land measuring 26 Bighas and 5 Biswas bearing no. 438 Min, 439 Min, and 467 Min, and measuring 26 Bighas 5 Biswas bearing no. 453, 454, 462, 463, 461, and 467, situated at Village Dehrakhas Pargana Pachva District Dehradun, respectively.

6. Petitioner has also been made a member of the Dehradun Cooperative Industrial Estate. Dehradun Cooperative Industrial Estate was a lessee of the land and it agreed to transfer/assign its leasehold rights in favour of the petitioner for the remaining term. A document in that respect was being executed and stamp duty as per article 63 of schedule I (b) of the Stamp Act was being paid.

7. The document was being produced for registration before the Sub Registrar Dehradun on 26.11.2013 whereby the Sub Registrar erroneously pointed out

deficiency in the stamp duty and referred the document to Collector (Stamp) with an alleged calculated deficiency of Rs. 2,82,550/- on the document purporting to be under section 33/38 of the Stamp Act.

8. The petitioner was being served upon with a notice to show cause by the collector (Stamp), on such reference being made by the Sub Registrar The petitioner submitted his objection before the Collector Stamp and specifically submitted therein that the document is not an execution of fresh lease but is rather simpliciter assignment of lease by the original lessee Dehradun Cooperative Industrial Estate in favour of the petitioner. It was specifically stated in the objection that the document is squarely covered under article 63 of schedule 1 (b) which provides for payment of stamp duty as per article 23 on the consideration and the stamp duty as required has been appropriately paid.

9. The learned Collector (Stamp) failed to appreciate the provision of article 63 of schedule 1 (b) and the nature of the document executed and thereby failed to consider the objection filed by the petitioner and thereby held that there is a deficiency of stamp duty of Rs. 2,73,500/-, registration fee of Rs. 9,700/- and Rs. 87,500/- as penalty and held that the petitioner is liable to pay a sum of Rs. 3,70,050/- in total.

10. The Board of Revenue further erred in law and dismissed the revision vide its order dated 20.7.2015. The Board of Revenue while dismissing the revision failed to appreciate the facts of the case and reiterated the contents of the order passed by the Collector Stamp holding that the document in question is execution of a new lease and is not assignment of lease.

11. The present controversy has been resolved by Hon'ble Apex Court in Residence Welfare Association Noida v. State of U.P. and others (9) 14 SCC 716. The relevant paragraphs of such decision are extracted herein below for convenience:

24. The learned counsel for the appellant contended that since Article 63, Schedule 1-B of the Act is a specific provision that deals with transfer of lease by way of assignment, it should be excluded from the general provision. This article is the charging provision for such transfers. It provides for the duty to be charged which is equal to conveyances as provided in Article 23 of the said Schedule, the only distinguishing factor being that in the former, the rate of duty would be according to the consideration mentioned in the deed, while the latter states the exact duty chargeable. The learned counsel also contended that for application of Article 23, it is necessary that there is a conveyance.

25. It was also contended by the learned counsel for the appellant that the main condition for registration of an instrument is that it must be chargeable to duty on the market value and the same is possible in case of an outright sale. In case of lease, only partial rights are transferred and the right of reversion remains with the lessor whereas in case of sale, there is an absolute transfer of ownership. Therefore, we have to establish whether the documents presented for

registration were, in fact, an outright sale or a deed of lease.

26. The learned counsel appearing on behalf of Respondent no. 4 (ie. Being the Noida authorities) contended that the deed was a composite deed of assignment and sale owing to which both Articles 23 and 63 would be also agreed to this contention. Thus, considering this, it becomes essential for us to determine the nature of the deed??..

29. From a plain reading of Section 54 and Section 105 of the Transfer of Property Act, there cannot be any doubt in our mind that in case of a lease, there is a partial transfer and the right of reversion remains with the lessor. Whereas in case of a sale, there must be an absolute transfer of ownership and not some rights only as in the case of a lease. Therefore, it is to be considered whether the document in question which was presented for registration was a partial transfer and accordingly, was it a lease, or whether it involved any outright sale therein.

30. As noted herein earlier, a lease deed was executed by the lessor in favour of the cooperative societies and its members. It is an admitted position that the lessor, namely, Noida authorities had entered into the lease agreement with the cooperative societies and their members, being lessees and the sub-lessees respectively, and the sub-lessees further entered into the agreements with the assignees (members of the appellant Association). Such being the position, it is amply clear to us that the document in question presented for registration before the registering officer was, in fact, a lease and the transfer to the members of the Association was an assignment of the leasehold rights. It cannot be doubted that the demised land was merely an enjoyment of the land and not transfer of the ownership??...

32. The High Court in the present case decided that the document given for registration contained a composite deed of lease as well as a deed of sale. Therefore, both Article 63 as well as Article 23 of the said Act would apply. We cannot agree with these observations of the Division Bench of the High Court.

33. As mentioned earlier, the said document consists of a single deed of assignment of lease. The Division Bench construed the transfer of the land as an assignment of lease whereas the transfer of the building appurtenant thereto to be through a deed of sale. It appears to us that the High Court has clearly not interpreted the true essence of the lease deed executed between the lessor and the lessees.

12. The Hon?ble High Court of Judicature at Allahabad has also relied upon the aforesaid decision in Ramesh Chandra Gupta v. Board of Revenue U.P. Allahabad, reported in [2013] 8 ADJ 222 and has held as below:

11. The Apex Court in dealing with a similar controversy in the Resident Welfare Association NOIDA v. State of U.P., (2009) 14 SCC 716, where lease was granted by NOIDA and the lessee thereof transferred its rights in favour of third party, held the instrument to be a transfer of lessee by way of assignment chargeable

to stamp duty under Article 63 of Schedule 1-B of the Act and that it was not open for the authorities to embark upon enquiry into the market value of the land or even the building.

12. In *Om Shree Ganesh Sahkari Avas Samiti Limited v. State of U.P. and others*, 2013 (1) ADJ 130, relying upon the decision of the Supreme Court in the case *Resident Welfare Association (Supra)* I myself has held that in transfer of lease by way of assignment the lease holder assigns whatever rights he possesses under a lease in favour of third party without keeping any right reserved for himself thus bringing the assignee in direct contact with the original lessor. In such transfer the assignee/transferee does not acquire absolute ownership of the property but only lease hold rights which were possessed by the lessee clothing himself with the rights of his principal and the instrument would be covered by Article 63 Schedule 1-B of the Act.

13. Thus, Article 63 of Schedule 1-B of the Stamp Act, as applicable in State of Uttarakhand, shall be applicable in the instant case. The writ petition, therefore, succeeds. Impugned orders dated 30.01.2015 & 20.7.2015 are hereby quashed.

14. In view of aforesaid, the Sub Registrar 1st, Registrar Office, Court Compound, Dehradun/respondent no. 2 is requested to register and return the document to the petitioner, at the earliest.