(2013) 03 AHC CK 0292

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9273 of 2013

M/s. Pantaloon Retail (India) Ltd.	APPELLANT
Vs	
Additional Collector (Administration) Gautam Budh Nagar and Others	RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 9 ADJ 486 : (2014) 3 ALJ 5 : (2013) 101 ALR 351 : (2014) 4 AWC 4189 : (2013) 121 RD 44

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Abhishek Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Heard learned counsel for the petitioner and the learned Standing Counsel. New Okhla Industrial Development Authority granted lease of plot No. A-2, Sector 38A, Noida to M/s. International Recreation Parks (Private) Limited for a period of 90 years.

2. The aforesaid International Recreation Parks (Private) Limited is in the process of developing a multi storied commercial complex over the said land.

3. Petitioner entered into an agreement dated 12.3.2007 with the aforesaid International Recreation Parks (Private) Limited for using the third floor of the said complex having an area of 17,300 sq. ft. for the purposes of running of retail outlets.

4. Petitioner alleges that the said agreement is simply a licence to use the above property and is chargeable to stamp duty accordingly.

5. The Additional District Collector (Administration) vide order dated 12.3.2007 has held that the aforesaid agreement is virtually a lease-deed and is chargeable to stamp duty according to Article 35 of Schedule 1-B of the Indian Stamp Act,

1899 (in short ''Act''). Accordingly, deficiency in stamp duty of Rs. 82,84,524/- has been determined and a penalty of Rs. 1,70,000,00/- has been imposed by the order dated 5.12.2012 and both the above amount have been directed to be recovered with simple interest of 1.5% per month i.e. 18% p.a.

6. The above order passed by the Additional Collector (Administration), Gautambudh Nagar dated 5.12.2012 has been challenged by the petitioner by means of the present writ petition basically on the ground that the agreement in question is merely a licence and the authority below has grossly erred in law in treating it to be a lease.

7. I refrain myself going into the above aspect of the matter for the simple reason that the against the aforesaid order the petitioner has a statutory remedy of filing an appeal or a revision, as may be considered appropriate, u/s 56 of the Act. The petitioner has not availed any of the aforesaid statutory remedies available to it in law. A writ petition directly, without exhausting the statutory remedies is not ordinarily to be entertained.

8. The contention of learned counsel for the petitioner that the order impugned is an ex parte order and, therefore, the writ remedy has rightly been invoked is also misconceived for the reason that if that be so, the petitioner can apply for recalling it on the ground that he was not served with the notice or given opportunity before passing the impugned order.

9. In view of the above circumstances, it is all the more necessary that the petitioner should avail either of the remedies as referred to above before approaching this Court in exercise of extraordinary jurisdiction.

10. This apart, in a similar case of the petitioner itself wherein a similar and identical agreement was involved and the same controversy as regards to the nature of the agreement was raised, the Lucknow Bench of this High Court had dismissed the said Writ Petition No. 3862 of 2012 (M/s. Pantaloon Retail (India) Ltd. v. The Chief Controlling Revenue Authority/Board of Revenue and others) vide judgment and order dated 12.9.2012 holding that the agreement is an instrument of lease and is chargeable to stamp duty accordingly. In view of the aforesaid facts and circumstances, without going into the correctness of the order impugned or the controversy regarding the nature of the agreement in question and without dealing with the authorities cited by the counsel for the petitioner making distinction between a lease and licence and the manner in which a fiscal statute is to be interpreted, I dismiss the writ petition on the ground of availability of alternate remedy leaving it open to the petitioner to avail the same, if so advised.

