(2011) 03 AHC CK 0081

In the Allahabad High Court

Case No : C.M.W.P. No. 12488 of 2011

Rama Brick Field and Another — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Stamp Act, 1899 — Section 47A, 56
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 164, 229B

Citation : (2011) 112 RD 732

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Petitioner before this Court is the owner of a brick klin. He is engaged in manufacture and sale of bricks and other allied goods. The Petitioner is stated to have obtained an agricultural land bearing Khasra No. 1929, total area 12650 sq. meter situate at Village Daurala, Tehsil Sardhana, District Meerut for brick furnace etc. This deed according to the Petitioner is a lease deed. The term whereof has been provided as five years.

2. Proceedings u/s 47-A of the Indian Stamp Act were initiated against the Petitioner treating the document to be a transfer in view of Section 164 of Uttar Pradesh Zamindari Abolition & Land Reforms Act chargeable with stamp duty under Article 35(5) of Schedule I-B of the Indian Stamp Act. The same culminated in an order dated 30.6.2010 requiring the Petitioner to deposit a total sum of Rs. 1,71,000/- towards deficiency in stamp duty, registration fees of Rs. 4,000/- and penalty of Rs. 1000/-. Not being satisfied Petitioner filed an appeal u/s 56 of the Indian Stamp Act being appeal No. 112 of 1999-2010. The appeal has been dismissed vide judgment and order of the Deputy Commissioner, Stamp, Meerut Region Meerut dated 30.12.2010.

3. The Commissioner has relied upon a judgment of this Court in the case of Maharshi Dayanand Mahavidyalaya, Lakhani Mubarakpur v. State of U.P. and Ors., being-Writ Petition No. 32211 of 2009 decided on 17.12.2009 wherein it

has been held that since agricultural land has been transferred with possession under the deed in question, the same is a transfer of land chargeable with duty under Article 35(5) Schedule I-B of Indian Stamp Act in view of Section 164 of the U.P.Z.A. & L.R. Act.

4. Learned Counsel for the Petitioner challenging finding so recorded contends that the judgment passed by learned Single Judge relied upon by the authorities does not lay down correct law. He refers to two judgments of another learned Single Judge in the case of Nand Kumar Agarwal and Anr. v. State of U.P. and Ors. 2009 (107) RD 438. and Social Upliftment of Village Down Trodden and Health Action, Jaunpur through its President and Ors. v. State of U.P. and Ors. 2009 (107) RD 34

5. In the said two judgments learned Single Judge has held that the definition of lease as per the Stamp Act alone has to be looked into for the purpose of examining the nature of the document. The provisions of U.P.Z.A. & L.R. Act will have no application. Therefore, if the lease has been executed which may be in violation of the provisions of U.P.Z.A. & L.R. Act the same will have no impact on the chargeability of stamp duty on the document under the Indian Stamp Act.

6. In reply, learned standing Counsel contends that law laid down in the case of Maharshi Dayanand Mahavidyalaya (supra) is the correct law. It is settled by catena of decisions that the Principal governing the issue of chargeability of stamp duty is that the intention of the parties is to ascertain by reading of the document as a whole and mere use of the word lease in the document will not in itself be sufficient to categorize the document as lease. The real nature of the transaction which has to be determined for the purpose of chargeability of stamp duty. He clarifies that on the basis of the deed which is subject-matter of consideration in the present proceedings, if a suit u/s 229-B of U.P.Z.A. & L.R. Act is filed, a declaration shall be issued declaring the lease holder as bhumidhar with non transferable rights and, therefore, the document has rightly been treated as a transfer covered by Article 35(5) of Schedule I-B of the Stamp Act.

7. I have heard learned Counsel for the parties and examined the records of the present writ petition.

8. From the facts and the legal contention raised on behalf of parties herein above, this Court finds that judgment in the case of Maharshi Dayanand Mahavidyalaya (supra) is in conflict with the two judgments in the case of Nand Kumar Agarwal (supra) and Social Upliftment of Village Down Trodden and Health Action, Jaunpur (supra).

9. In the case of Maharshi Dayanand Mahavidyalaya (supra), it has been held that a lease of agricultural land may be treated to be a transfer with possession so as to be chargeable with stamp duty under Article 35(5) Schedule I-B of Indian Stamp Act in view of Section 164 of the U.P.Z.A. & L.R. Act. While in the other two cases it has been held that the provision of U.P.Z.A. & L.R. Act will have no application in the matter of determination of levy of stamp duty upon a

document under the Indian Stamp Act.

10. It would be proper that the controversy may be resolved by a larger Bench of this Court and therefore, the following questions are being framed for consideration:

(a) whether a document in respect of agricultural holding covered by Section 164 of the U.P.Z.A. & L.R. Act is to be treated as a transfer with possession so as to be chargeable to stamp duty under Article 35(5) Schedule I-B of Indian Stamp Act or not;

(b) whether the provisions of U.P.Z.A. & L.R. Act can be invoked for examining the real intention/purpose of the document in proceedings under the Indian Stamp Act inasmuch as the document being made the basis for a declaration of a title by way of a suit u/s 229-B of U.P.Z.A. & L.R. Act may result in a declaration in favour of lease holder to the effect that he has become a bhumidhar with non-transferable rights.

11. Let the papers be laid before Hon''ble the Chief Justice for constituting larger Bench for answer to the aforesaid two questions.

12. In the meantime, it is provided that if the reference made is answered, Petitioner may deposit the total amount of deficiency in stamp duty within a period of two months from today and if this is done recovery of other amounts shall remain stayed. In case of default, the Petitioner shall not be entitled to the benefit of this order. The amount so deposited shall be subject to the orders to be passed in this petition.

