
(2011) 02 AHC CK 0328

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 51979 of 2005

Vinayendra Nath Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

General Clauses Act, 1897 — Section 3(26)
Registration Act, 1908 — Section 2(6)
Stamp Act, 1899 — Article 23, 2(16), 31
Transfer of Property Act, 1882 — Section 105
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 39, 39(1)

Citation : (2011) 3 ADJ 84 : AIR 2011 All 100 : (2011) 4 AWC 3804 : (2011) 6 RCR(Civil) 848 : (2011) 112 RD 636 : (2011) 1 UPLBEC 634

Hon'ble Judges : F.I. Rebello, C.J.;V.K. Shukla, J;A.P. Sahi, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

1. This reference raises issues involving the power of the State to impose and realise Additional Stamp Duty on an instrument of lease executed for a contract to realise toll in respect of two 2 bridges in the district of Allahabad over the river Ganges, namely Lal Bahadur Shastri Bridge and Chandra Shekhar Azad Bridge. The imposition of this Additional Stamp Duty is under the provisions of Section 39(1) of the U.P. Urban Planning and Development Act, 1972 read with the Indian Stamp Act 1899.

2. The Petitioners in all the writ petitions have assailed the orders of the Addl. Collector (Finance & Revenue), Allahabad, u/s 31 of the 1899 Act as also the revisional orders passed by the Chief Controlling Revenue Authority u/s 56(2) of the Act, upholding the said imposition.

3. A learned single Judge of this Court, while proceeding to hear the writ petitions, took notice of a Division Bench judgment of this Court relied upon by the Petitioners in the case of M/s. Bilal Ahmad Sherwani and Kishori Lal Vs. State of Uttar Pradesh and others, , and upon a request made by the learned Standing

Counsel for reconsideration of the said judgment, came to the conclusion that the Division Bench appears to have not been apprised of the issue whether a toll is a benefit arising out of land and, therefore, immovable property. The learned single Judge was of the opinion that the contention advanced by the learned Standing Counsel requires a consideration in view of the observations made in the referring order dated 7.2.2006 and accordingly a request was made to Hon"ble the Chief Justice for constituting a larger Bench as the learned single Judge found himself to be bound by the decision of the Division Bench aforesaid.

4. The matter was placed before Hon"ble the Chief Justice, who vide order dated 31.3.2006, constituted a larger Bench of three Hon"ble Judges presided over by Hon"ble the Chief Justice to hear the matter. Accordingly, the reference has been placed before us for answering the doubt expressed by the learned single Judge and for an authoritative pronouncement on the issues raised.

5. Before embarking upon the matter any further, we may clarify that even though the questions to be answered have not been formally framed by the learned single Judge, yet in order to analyse the issue, we propose to frame the questions and answer them accordingly. Upon analysis of the pleadings and the gist of the order of reference dated 7.2.2006 of the learned single Judge, the following questions, to our mind, arise that need to be answered:

(1) Whether an instrument of lease executed for the right to collect toll on a bridge executed would amount to an instrument conveying or transferring immovable property subject to imposition of Additional Stamp Duty as defined u/s 39 of the U.P. Urban Planning & Development Act, 1973?

(2) Whether the words "immovable property" incorporated in Section 39 of the U.P. Urban Planning and Development Act, 1973 carry the same meaning and connotation as assigned to them in Section 2(16) of the Indian Stamp Act, 1899 while defining the term "lease" thereunder and consequently includes within its fold any instrument by which tolls of any description are let?

(3) Whether the decision of the Division Bench in the case of M/s. Bilal Ahmad Sherwani and Kishori Lal Vs. State of Uttar Pradesh and others, does not lay down the law correctly and requires any re-consideration as referred to by the learned single Judge?

6. Learned Counsels Sri Navin Sinha Senior Advocate on behalf of the Petitioners assisted by Sri R.C. Singh and Sri M.C. Chaturvedi learned Chief Standing Counsel for the State have been heard. They have advanced their submissions, the Petitioners contending that no such additional Stamp Duty is leviable and the Respondent State supporting the said levy. There are however certain undisputed areas which need be mentioned at the very outset.

7. The covenant, on which this additional duty is sought to be levied, is a lease deed recording an agreement relating to the right of the Petitioners to collect toll over the bridges in question. The instrument has been registered as such. The

Petitioners have paid Stamp Duty that was charged on the said instrument including the additional Stamp Duty under dispute.

8. The Stamp Duty about which there is no dispute between the parties is that which has been charged for registering the instrument under Schedule 1-B, Article - 35(b) read with Explanation-4 and Article 23 of the Indian Stamp Act, 1899. Thus there is absolutely no quarrel over the imposition of Stamp Duty 5 on the instrument treating it to be a transaction of lease as defined u/s 2(16)(c) of the 1899, Act. The Petitioners do not dispute the imposition of Stamp Duty to the aforesaid extent.

9. The doubt expressed by the learned Single Judge in the reference order arose when the Petitioners relying on the judgment of a Division Bench of this Court in the case of M/s. Bilal Ahmad Sherwani and Kishori Lal Vs. State of Uttar Pradesh and others, contended that the imposition of 2% additional Stamp Duty u/s 39 of the U.P. Urban Planning and Development Act, 1973 was illegal and the State had no authority to levy the same. The learned Single Judge felt bound by the judgment of the Division Bench but on first principles expressed his doubt about the correctness of the said Division Bench and accordingly referred the matter to be resolved by a Larger Bench.

10. The Petitioners contend that the definition of the word "lease" as contained in Section 2(16) of the Indian Stamp Act, 1899 does not include within its fold every immovable property by way of fiction nor does it include every immovable property as understood generally in terms of the Transfer of Property Act and also the U.P. Urban Planning and Development Act, 1973. They contend that the word "immovable property" as contained in Section 39 of the U.P. Urban Planning and Development Act, 1973 is not inclusive of the definition of lease as contained in the Stamp Act, 1899 inasmuch as the word "includes" as contained in Section 2(16) of the 1899 Act only gives an extended meaning to the word lease, and not to the words immovable property. It is submitted 6 on their behalf that the word "lease" is not synonymous with the word "immovable property" as contained in the 1973 Act and, therefore, the additional Stamp Duty as sought to be levied under the 1973 Act would not apply to a lease which has been incorporated through an extended meaning in Section 2(16) of the Stamp Act, 1899.

11. Sri Sinha learned Counsel for the Petitioners has urged that the first part of the definition of the term lease as used in Section 2(16) of the 1899 Act is not a lease defining collection of toll to be immovable property. It includes the instrument of collection of toll as a lease only under a fiction created thereafter and is by itself not an instrument connoting transfer of immovable property. He therefore, submits that this definition does not allow the provisions of Section 39 of the 1973 Act to be invoked for such instruments in order to levy additional Stamp Duty @ 2%.

12. Sri Sinha has relied on Judgments to contend that even otherwise the right

to collect toll to the Petitioners is only creating an agency in favour of the Petitioners to realise the toll on behalf of the State Government and nothing more. He submits that it is not a profit arising out of land so as to include it within the meaning of immovable property and the instrument so executed in favour of the Petitioners would not amount to any instrument of transfer of immovable property.

13. The contention advanced is that it is the right of the public at large to passover the bridge and in lieu thereof the Government is collecting toll. The Petitioners are mere agents to collect the said toll on behalf of the Government and are not earning any profit out of land. Even if the bridge is embedded in the earth, the same would not be included within the term immovable property. He submits that the judgment in the case of M/s Bilal Ahmad Sherwani (supra) lays down the law correctly and therefore, the reference made by the learned Single Judge deserves to be rejected.

14. Sri M.C. Chaturvedi learned Chief Standing Counsel disputing the aforesaid proposition submits that the word "means" as used in Section 2(16) of the Stamp Act, 1899 includes all transactions of immovable property and the extended meaning of the said terminology has been explained so as to include other instruments as defined therein. He therefore submits that the word "includes" gives an extended meaning to the terminology of immovable property and the same would equally apply while defining immovable property as contained in Section 39 of the 1973 Act.

15. He submits that the splitting of Section 2(16) of the 1899 Act, as attempted by the Petitioners, on the strength of the Division Bench judgment in the case of M/s Bilal Ahmad Sherwani (supra) is misplaced, inasmuch as, the Division Bench judgment has incorrectly restricted the inclusive definition of immovable property, and even otherwise upon a perusal of the definition of the word "lease" as contained in Section 105 of the Transfer of Property Act, the word "immovable property" as used in Section 2(6) of the Registration Act, 1908 and the meaning assigned to the words immovable property in Section 3(26) of the General Clauses Act, 1897, leave no room for doubt that the extended meaning of the word immovable property as contained in the Stamp Act, 1899 would be the same as understood in Section 39 of the 1973 Act.

16. His contention is that the distinction sought to be made by way of interpretation on behalf of the Petitioners by taking aid of the decision in M/s Bilal Ahmad Sherwani's case is misplaced which proceeds on an incorrect assumption that admittedly there was no transfer of immovable property under the instrument. He contends that by virtue of the extended meaning, there is no requirement of actual transfer of immovable property as understood generally and by fiction the additional duty is leviable on such instruments. Sri Chaturvedi has also relied on certain decisions in support of his argument.

17. In order to appreciate the rival submissions and the doubt expressed by the

learned Single Judge it would be appropriate to begin with quoting Section 39(1) of the 1973 Act which is essential for the understanding of the controversy.

Section 39(1). Additional Stamp duty on certain transfer of property.-(1) The duty imposed by the Indian Stamp Act, 1899, on any deed of transfer of immovable property shall, in the case of an immovable property situated within a development area, be increased by two per cent on the amount or value of the 9 consideration with reference to which the duty is calculated under the said Act:

Provided that the State Government may, by notification in the Gazette, enhance, the aforementioned percentage of the increase in Stamp duty up to five.

18. The aforesaid provision therefore categorically provides that the duty imposed under the Indian Stamp Act on any deed of transfer of immovable property shall stand increased by 2% in the manner provided therein. The aforesaid definition therefore requires that any deed of transfer of immovable property shall be subjected to the additional duty imposed payable at the time of registration.

19. The word "immovable property" has not been defined under the Indian Stamp Act. The same is the position under the U.P. Urban Planning and Development Act, 1973. The instrument in relation where to this dispute has arisen, defines the agreement as a lease (Patta). The term lease has been defined under the Indian Stamp Act to mean a lease of immovable property and to also include certain other instruments as defined therein. Section 2(16) of the 1899 Act is quoted below:

Section 2(16) "Lease". - "Lease means a lease of immovable property, and also includes:

(a) a patta;

(b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy or pay or deliver rent for immovable property;

(c) any instrument by which tolls of any description are let;

(d) any writing on an application for lease intended to signify that the application is granted;

[(e) any instrument by which mining lease is granted in respect 10 of minor minerals as defied in Clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957;"]

20. The definition leaves no room for doubt that any instrument by which tolls of any description are let, as presently involved is also a lease. The argument of the Petitioners have to be understood in the light of the above definition as they contend that the instrument falls within the inclusive definition of the word "lease" which is an extended meaning of the word lease that does not amount to immovable property.

21. The term immovable property used in Section 39 of the 1973 Act does not include within itself expressly an instrument by which tolls of any description are let. It however, indicates that it applies to any instrument of immovable property. The question is as to whether such instruments which have been included by virtue of an extended definition under the Stamp Act would also amount to immovable property as understood in Section 39 of the 1973 Act. To put it differently, would an instrument of a right to collect toll amount to a deed of transfer of immovable property for the purposes of levying additional duty under the 1973 Act.

22. The definition u/s 39 of the 1973 Act contains the words "any deed of transfer of immovable property". Every lease of immovable property would therefore, also amount to a transaction as understood under the Indian Stamp Act, 1899. The purpose and intent of Section 39 of the 1973 Act to our mind is to read the terminology of immovable property to include lease in order to levy Stamp Duty under the Stamp Act 1899. The 11 additional duty is being imposed on the instruments presented for registration even as a lease as defined u/s 2(16) of the Act. The Petitioners also do not dispute the levy of Stamp Duty on the instrument as a lease. In such a situation, the instrument which has been presented to be registered as a lease means an instrument of a transaction relating to immovable property by fiction of the provisions of Section 2(16)(c) of the 1899 Act. The instrument by itself may not amount to a transfer of immovable property as understood under the Transfer of Property Act or as suggested by the State, yet by virtue of the fiction created in relation to instruments as included under the extended definition, the additional duty as leviable u/s 39 would also be applicable as involved in the present context.

23. The Division Bench in the case of Bilal Ahmad (supra) in our opinion, proceeded on an assumption of admittedly treating the instrument not to be a transfer of immovable property. This in our view, was an erroneous approach by splitting the definition clause of the term lease in two parts. The word lease as defined under the Stamp Act 1899 cannot be segregated from the meaning of the word immovable property so as to exclude the instruments which have been included by way of fiction.

24. It is settled proposition of law that if a statute is sought to be applied by creating a fiction, then such a fiction has to be given full effect to by the Courts. Any attempt to exclude would therefore render the very purpose of a fiction redundant. The legislature will be presumed to be aware of the meaning that it 12 sought to assign to the terminology of immovable property while enacting Section 39 of the 1973 Act to give it a meaning so as to levy duty under the Indian Stamp Act 1899. The term immovable property therefore utilized in the 1973 Act is clearly relatable to all the instruments as defined in relation to immovable property including the definition of the word lease as contained u/s 2(16) of the 1899 Act. Any departure from the aforesaid meaning would therefore do violation to the statute and we would accordingly approve of the

view expressed by the learned Single Judge while proceeding to make the reference.

25. The law laid down by the Division Bench in the case of Bilal Ahmad (*supra*) does not define the aforesaid provisions correctly and the same deserves to be overruled.

26. In our opinion, when the terminology used in Section 39 of the 1973 Act directly requires it to be understood in relation to the imposition of duty under the Stamp Act, it is not necessary for this Court to borrow the meaning of the word immovable property as utilized in any other Act and contended on behalf of the State. The Stamp Duty is leviable under the Stamp Act and therefore the meaning assigned to the words contained therein have to be understood for the purpose of additional Stamp Duty u/s 39 of the 1973 Act.

27. It is not necessary to borrow any meaning of immovable property from any other Act for the reason that the levy of Stamp Duty is an exercise under the fiscal powers of the State. The 13 pecuniary liability of Stamp Duty is therefore in the nature of compulsory exaction which has to be construed strictly within the parameters of the meaning assigned in the Act itself. In our opinion, there is no ambiguity as explained above nor is it necessary to take aid of the provisions contained in any other Act.

28. The contention raised on behalf of the Petitioners is that a grant of lease to collect toll cannot be equated with the grant of mining lease and fisheries rights and collection of market dues, is founded on the premise that the provisions of Section 3(6) of the General Clauses Act read with the provisions of Sections 3, 4, 5, 105 and 107 of the Transfer of Property Act indicate that the benefits arising out of land is a necessary ingredient in order to bring it within the definition of immovable property.

29. This, in our opinion, would be attempting to read into the definition of immovable property which is not the intendment of the definition contained in the Stamp Act, 1899 as the term lease defined therein gives an extended meaning so as to include an instrument relating to letting of toll as indicated above. We do not find it necessary to import the meaning of the words "immovable property" by deploying the definition of the words "immovable property" as suggested on behalf of the Petitioners.

30. The decisions which have been relied upon for the said purpose, are therefore clearly distinguishable and this aspect of the matter in Bilal Ahmad's case, in our opinion, has not been appreciated. The entire purpose of imposing additional stamp duty 14 u/s 39 of the 1973 Act is to generate revenue through levy of a stamp duty on instruments which in our opinion would also include an instrument registered for letting of toll as defined under the Stamp Act, 1899. When the rights of the parties are governed by a written document, it is essential to study and to follow the terms of such document, just as it is necessary, when a Court is administering the sections of a Code, that it should study the exact

language of the section before troubling itself about decided cases or general considerations.

31. If by virtue of the said fiction, the duty is leviable then the issue relating to profits arising out of land may not be relevant inasmuch as the collection of toll through an agent is not a realisation of profit arising out of land. It is a distinct contractual right to collect a fee from the public at large on behalf of the Government. Such an Agent does not exercise any control over the passage of public at large over the bridge. That right continues to be regulated by the State Government and not by the Agent appointed by the State Government. The Petitioners only collect toll from those who pass over the bridge in the manner and to the extent as required by the State Government under the terms of the covenant which has been registered and on which Stamp Duty has been paid. There is no right created in favour of the Petitioners to receive profit out of land. It is only the profits or losses that accrue from collection of toll that is the subject matter of the instrument.

32. For the reasons aforesaid, we are of the considered view that the instrument which has been registered is an instrument of lease 15 which amounts to an instrument relating to immovable property with its extended meaning as contained u/s 2(16)(c) of the Indian Stamp Act, 1899 and therefore we would answer questions No. 1 and 2 in the affirmative in favour of the State.

33. Accordingly, the decision in the case of M/s Bilal Ahmad Sherwani does not lay down the law correctly and stands overruled. Question No. 3 therefore stands answered accordingly.

34. The reference having been answered, let the papers be placed before the concerned Bench for disposal of the writ petitions.