

SUPREME COURT OF INDIA

State of Uttarkhand & Ors.

Vs.

Harpal Singh Rawat

C.A.No.1894 of 2011

(G.S. Singhvi and Asok Kumar Ganguly, JJ.,)

17.02.2011

JUDGMENT

SLP(Civil)No.7350/2007

1. Delay condoned.

2. Leave granted.

3. What should be the stamp duty payable on lease agreement executed between appellant No.1 and the respondent entitling the latter to collect toll tax is the question which arises for consideration in this appeal filed against the order passed by the Division Bench of the Uttarakhand High Court whereby the writ petition filed by the respondent was disposed of in terms of the judgments of the Allahabad High Court in *Tejveer Singh v. State of Uttar Pradesh* 1997 (29) ALR 687 and the Uttarakhand High Court in *Writ Petition No.1020 of 2004 (M/B) - Naresh Agarwal v. State of Uttaranchal*.

4. The respondent participated in the auction held by Executive Engineer, Construction Division, PWD, Haldwani (appellant No.2 herein) for grant on lease collection of toll tax for using Haldwani Bye-Pass Road, 14 K.M. (Kathgodam) Gaula bridge. The bid of Rs.22 lakhs given by the respondent was accepted by the competent authority. Thereafter, lease agreement dated 24.3.2006 was executed between the Governor of Uttaranchal (now Uttarakhand) through Commissioner, Kumaon Division and the respondent whereby the latter was given exclusive right to collect toll from the vehicles using the road and Gaula bridge. As a condition for execution of lease, communication dated 25.2.2006 was sent by appellant No.2 to the respondent requiring him to deposit stamp duty of Rs.2,20,400/-. However, instead of depositing the stamp duty, the respondent filed Writ Petition No.204(M/B) of 2006 for quashing the notice issued by appellant No.2 and also for issue of a direction to the appellants to charge stamp duty in accordance with the judgments in *Tejveer Singh's* case and *Naresh Agarwal's* case by asserting that the contract executed between the parties was only a security bond and stamp duty was payable as per Article 57 of Schedule I-

B of Indian Stamp Act, 1899 (for short, 'the Act'), as amended by the State of U.P. and as applicable to the State of Uttarakhand.

5. The Division Bench of the High Court disposed of the writ petition by recording a cryptic order, which reads thus:

"By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the order dated 25.2.2006 (Annexure No.2) passed by Respondent no.2 and further a writ of mandamus commanding the respondent not to demand/realize stamp duty on the earnest money/security deposit the money of contract as demanded on the basis of the Government instructions and the respondents may be directed to demand stamp duty in pursuance of the direction in the case of Tejveer Singh Vs. State of U.P. and others reported in 1997 (29) ALR Page 687 as well as judgment passed by this Hon'ble Court in Writ Petition No.1020/2004 (M/B), Naresh Agarwal Vs. State of Uttaranchal.

2.A Division Bench of this Court has also followed the aforesaid judgment, which is referred in the prayer clause of the present writ petition. The controversy raised in the writ petition is squarely covered by the aforementioned judgment as submitted by learned Addl. Chief Standing Counsel. Therefore, the writ petition is disposed of in terms of the aforementioned judgment of Hon'ble Allahabad High Court."

6. Learned counsel for the appellants invited our attention to the contents of lease agreement dated 24.3.2006 to show that the respondent was given exclusive right to collect the toll from 31.3.2006 to 30.3.2007 against the consideration of Rs.22 lacs and argued that stamp duty on such lease is payable under Article 35 of Schedule I-B of the Act and not under Article 57 thereof. In support of this argument, the learned counsel relied upon judgments of the Special Bench of the Allahabad High Court in Banney Khan versus Chief Inspector of Stamp, U.P.

AIR 1976 Allahabad 475 and a Division Bench of the Andhra Pradesh High Court in Uppalapati Durga Prasad and others versus Executive Engineer (R&B) N.H. Division, Srikakulam and others 2001 (4) ALT 228. Learned counsel then submitted that stamp duty was demanded from the respondent keeping in view the terms of the lease agreement, which enabled him to collect toll tax and not on the security given by him for due performance of the contract and the Division Bench of the High Court committed serious error by disposing of the writ petition in terms of the judgments in Tejveer Singh's case and Naresh Agarwal's case.

7. We have considered the argument/submission of the learned counsel. Section 2(16)(c), Articles 35(b) and 57 of Schedule I-B of the Act, which have bearing on the decision of this case read as under:

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

(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 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 of minor minerals as defined in clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957;

Schedule I-B

35. Lease, including an under-lease or sublease and any agreement to let or sublet-

(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved.-

(i) where the lease The same duty as a purports to be for a Conveyance [No.23 term not exceeding clause (a)], for thirty years; consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.

(ii) where the lease The same duty as a purports to be for a Conveyance [No.23 term exceeding thirty clause (a)]. for a years; consideration equal to the market value of the property which is subject of the lease.

57. Security Bond or Mortgage-deed executed by way of security for the due execution of an office, or to account for money or other property received by virtue thereof, or executed by a surety to secure the due performance of a contract or the due discharge of a liability -

(a) xx xx xx xx xx xx

(b) in any other case One hundred rupees.

xx xx xx

(a) xx xx xx xx xx xx

(b) xx xx xx xx xx xx

- (c) xx xx xx xx xx xx
- (d) xx xx xx xx xx xx
- (e) xx xx xx xx xx xx

8. The definition of `lease' contained in Section 2(16) consists of two parts. The first part is applicable to any lease with respect to immovable property. The second part, which is inclusive, applies to various kinds of instruments by which a title, or other rights may be conferred upon the lessee for a specified period in respect of immovable property or otherwise. The use of the words "includes also" implies that the definition of lease contained in Section 2(16)(c) is very wide and even if the transaction does not amount to a lease under Section 105 of the Transfer of Property Act, the same may nonetheless be a lease for the purpose of the Act.

9. The acceptance of the argument made on behalf of the appellants will largely depend on the contents of auction notice dated 27.10.2005 issued by appellant No.2 and the lease agreement executed between the parties, the relevant portions of which are extracted below:

"AUCTION NOTICE

This is for the information of the general public that a public auction will be held in Janpad Nainital under construction Division, Public Works Department by the undersigned or its authorised representative in the office premises on 9.12.2005 at 12.00 for giving on lease collection of toll tax for using Haldwani Bye- Pass Road, 14 K.M. [Kathgodam] Gaula bridge. The tender documents can be collected from the office of the undersigned on any working day between 1.12.2005 to 7.12.2005 on payment of fixed price. The tender documents can be obtained by post on payment of additional cost of Rs.100/- but the Department shall not be responsible for any delay caused by postal department. The persons interested in participating in auction will be required to fulfill and complete all requisite formalities alongwith certificates and the tender documents alongwith requisite certificates/documents will have to be submitted in the office of the undersigned by 3.00 p.m. evening on 8.12.2005. A list will be prepared after scrutinizing the tender documents. Such persons, who fulfill all the conditions as determined will be allowed to participate in auction on 9.12.2005. The details concerning auction are as under:

10. Sr. Road/Name of Earnest Price of Status of Validity Duration No. the bridge. money tender Bidder of bid of documents Rs. contract 1 Collection of 4,00,000/ 30.00 + 2,00,000/ 3 months 1.4.06 or Toll Tax - in the Trade Tax - from the under Haula form of date of bridge N.S.C./F. Transfer situated at D.R. to Haldwani Bye- 31.3.07 Pass, 14 K.M. [Kathgodam] Note: Other conditions of bid/Rules can be seen in the office of the undersigned. E.V.C. Binwal Executive Engineer, Construction Division P.W.D., Haldwani" AGREEMENT This

agreement of lease is made today dated 24.03.2006 through Public Works Department between Hon'ble Governor Uttaranchal "hereinafter will be called as lessor", the first party and the contractor of bridge hereinafter will be called as lessee, the second party witnessing where of that in lieu of the toll which has been reserved in this lease later and in consequent upon covenants made by lessee which have been prescribed hereinafter in this lease. Lessor through this lease gives the exclusive right to collect the toll from all those vehicles whether rented or on rent "which are described in Schedule and not exempted of toll but with the condition that lessor will have the right to have the control of said bridge and its existing places and to run upto the extent of any period. That if in respect of any serious situation in relation to public service or specific need arise, only such officer will be deciding authority who works on behalf of lessor because of this it was necessary for him to do that and for which the compensation amount have to be paid by Uttaranchal Govt., as by Govt. may issue order in each case for utilizing for this. Said lessee will have the said right from the midnight 12' O clock of 31.3.2006 to 31.03.2007 against consideration of Rs.22,00,000/- [Twenty two lakhs] annual rent in monthly installments without any deduction in the office of Executive Enginner of concerned division as prescribed in clause-I of schedule enclosed with this lease.....

Schedule-1 Rs.22,00,000/- which has been reserved through this lease will be paid by lessee in twelve monthly installments on first date of each month as per the details given below:-

"Name of Month	Due Date	Amount
April, 2006	01.04.2006	Rs.183300/-
May, 2006	01.05.2006	Rs.183300/-
June, 2006	01.06.2006	Rs.183300/-
July, 2006	01.07.2006	Rs.183300/-
August, 2006	01.08.2006	Rs.183300/-
September, 2006	01.09.2006	Rs.183300/-
October, 2006	01.10.2006	Rs.183300/-
November, 2006	01.11.2006	Rs.183300/-
December, 2006	01.12.2006	Rs.183300/-
January, 2007	01.01.2007	Rs.183300/-

February, 2007 01.02.2007 Rs.183300/-

March, 2007 01.03.2007 Rs.183700/- “

11. The Lessee will deposit the amount equal to three monthly installment with the Executive Engineer of Construction Division, P.W.D., Haldwani, hereinafter will be called as Executive Engineer and Executive Engineer will keep this amount with him as partial security for fulfilling and compliance of terms and conditions of agreement prescribed in schedule and out of which he can take such amount as rent which becomes due and payable or can deduct such amounts of penalties from that which may be imposed upon lessee and provision of which has been made hereinafter."

12. A conjoint reading of the auction notice and the lease agreement makes it clear that tenders were invited from the public for grant on lease collection of toll tax for using Haldwani Bye-Pass Road 14 K.M. (Kathgodam) Gaula bridge and highest bid of Rs.22 lakhs given by the respondent was accepted by the competent authority. The monthly amount payable by the respondent was lease money and not a security for due performance of the contract. Such an agreement clearly falls within the ambit of the term "lease" as defined in Section 2(16)(c) read with Article 35(b) of Schedule I-B and not under Article 57 of Schedule I-B, which gets attracted only when a security bond or mortgage deed is executed for due execution of an office or to account for money or other property received by virtue thereof or for due performance of a contract or the due discharge of a liability. Therefore, the demand of stamp duty of Rs.2,20,400/- from the respondent cannot be termed as illegal.

13. In Banney Khan's case, the Special Bench of the Allahabad High Court was called upon to consider whether the lease executed between Municipal Board, Ujhani and the appellant authorising the latter to collect toll from the premises known as "New Sabzimandi" was a lease falling under Section 2(16) of the Act was chargeable under Article 35(b) of Schedule I-B. The Special Bench referred to the definition of lease, the judgments of the Full Bench in *Burmah Shell Oil Storage and Distributing Co. Ltd. of India AIR 1933 All 735* and the *Andhra Pradesh High Court in Panchayat Samiti v. Smt. Kethavarapu Kanamma AIR 1973 AP 72* and observed:

".....A casual reading of the definition of "lease" indicates that any instrument by which tolls of any description are let comes within the definition of this term. What is, therefore, to be seen is whether the document is an instrument by which tolls of any description are let. In our opinion the agreement before us comes clearly within the language quoted above. This is a document by which all lands and buildings known as "New Subzi Mandi" have been made over by the owners thereof to the applicant for a period of one year. He is entitled to realise fee from occupiers

thereof at certain rates in consideration of a sum fixed by public auction. This "letting of tolls" and the document is covered by Section 2(16)(c) of the Stamp Act. It is needless to say that the word "toll" used in this sub-section means any sum of money which is taken in respect of some benefit, the benefit being the temporary use of land, that is, fares and market tolls. It includes all payments or taxes made by persons who frequent the market for the sale of any commodity or any thing which by practice or custom is expected to be sold in the market. This document is signed both by the lessor and the lessee. Therefore, it can hardly be doubted that it is an instrument by which collection of tolls is let and is lease within the meaning of Section 2(16) of the Stamp Act and is chargeable with Stamp duty under Article 35(b) Schedule I-B of the U.P. Stamp (Amendment) Act, 1962....."

14. In *Uppalapati Durga Prasad v. Executive Engineer (R&B)* (supra), a Division Bench of the Andhra Pradesh High Court considered a similar question in the context of an agreement signed by the parties in the matter of collection of toll. While rejecting the argument of the writ petitioner that he was not liable to pay stamp duty under Article 35(b) read with Section 2(16) of the Act, the Division Bench observed:

"On bare reading of the section it becomes clear that all leases with respect to immovable property would be leases in terms of Section 2(16) but in addition to leases of immovable property in other three categories there would also be lease under category (c) in which any instrument by which tolls of any description are let would be a lease for the purpose of Section 2(16). The instrument by which right to collect toll is conveyed has to be treated as lease for the purposes of Stamp Act. Right to collect toll will never in any circumstances involve immovable property. Basically toll is collected for using a road or bridge and as such neither the road nor the bridge is leased out, only the right to collection is leased out and this right of leasing out the collection is 'lease' for the purposes of Stamp Act....."

15. In our view, the aforementioned judgments of the Allahabad and Andhra Pradesh High Courts represents the correct legal position on the applicability of Article 35(b) of Schedule I-B of the Act.

16. In *Tejveer Singh's* case, the Division Bench of the Allahabad High Court considered the question whether the amount offered as security for due performance of the contract for construction of drains culvert etc., is chargeable under Article 57 of Schedule I-B. The Division Bench relied upon the judgment of Special Bench in *M/s. Hindustan Sugar Mills Limited v. State of U.P.* AIR 1972 Allahabad 8 and of this Court in *Board of Revenue v. A.M. Ansari* (1976) 3 SCC 512 and held that the stamp duty on such agreement is to be paid under Article 57 of Schedule I-B of the Act, as amended by the State of Uttar Pradesh. The judgment in *Tejveer Singh's* case was followed by the Division Bench of the Uttarakhand High Court in the case of *Naresh Agarwal*. These two judgments have no bearing on the issue raised in the writ petition filed by the respondent. Therefore, it must be held that the Division Bench of the High Court committed serious error by disposing of the writ petition of the respondent by relying upon the judgments in *Tejveer Singh's* case and *Naresh*

Agarwal's case, and that too, without even advertng to the lease agreement executed between appellant No.1 and the respondent.

17. In the result, the appeal is allowed, the impugned order is set aside and the writ petition filed by the respondent is dismissed. The appellants shall now be free to recover stamp duty from the respondent in terms of Notice No.775 dated 25.2.2006. Since no one has appeared on behalf of the respondent, the costs are made easy.