

(2001) 02 AHC CK 0147

Allahabad High Court

Case No: C.M.W.P. No. 14700 of 1996

Mohd. Farman

APPELLANT

Vs

State of Uttar Pradesh and
Others

RESPONDENT

Date of Decision: Feb. 9, 2001

Acts Referred:

- Stamp Act, 1899 - Article 35C, 40, 57, 2(17)

Citation: AIR 2001 All 256

Hon'ble Judges: Sudhir Narain, J; A.K. Yog, J

Bench: Division Bench

Advocate: V.S. Chaudhary, for the Appellant;

Final Decision: Allowed

Judgement

A.K. Yog, J.

Petitioner, Mohd. Farman, claimed to be a Registered Contractor and General Order Supplier with the Public Works Department of Uttar Pradesh and other Corporations, contends that the Respondent (authorities of U.P. Public Works Department, Rural Engineering Services) published an advertisement inviting tenders from Registered Contractors in order to execute certain work. The Contractors were required to furnish tenders form quoting rates. On accepting the tenders, Contractor (Petitioner) was required to execute an agree merit with the respondents and also to deposit the contract amount as earnest money apart from certain amount as security with an object to ensure that contract work was executed as per terms and conditions of agreement between the concerned parties. In case of default of any of the conditions on the part of either party, amount of security, apart from other consequences was to be forfeited; Petitioner alleges that the Stamp Department issued instructions to all the concerned Departments to charge stamp duty apart from stamp duty over other heads, on security deposit under agreements entered into between the Department and said Contractor. In

Paragraph 5 of the petition it is alleged that vide letter dated 15th February, 1996 Respondent No. 5/Executive Engineer, Rural Engineering Service (R.E.S.), Division Meerut expressed acceptance of the tender and required the petitioner to deposit a sum of Rs. 15,563/- as security amount (Annexure-1 to the Writ Petition).

2. Petitioner is aggrieved due to the instructions contained in the aforesaid letter dated 15th February, 1996 (Annexure-1 to the writ petition) directing the petitioner to pay stamp duty on security deposit by prescribing higher rate of stamp duty and not to treat the said refundable security deposit under Article 57, Schedule 1-B of Indian Stamp Act According to the petitioner, respondents illegally want to charge stamp duty treating said deposit of refundable security under Article 40, Schedule 1-B.

3. Petitioner thus claimed writ of mandamus directing the respondents not to realise stamp duty from the petitioner on the deposit of security amount on the basis of order contained in letter dated 15th February, 1996 (Annexure-1 to the writ petition).

4. No counter-affidavit has been filed on behalf of the respondents as per record before the Court.

5. Heard learned Counsel for the petitioner as well as learned standing counsel on behalf of the respondents.

6. According to the petitioner, the short controversy required to be decided in the present petition is that the petitioner, who is a Registered Contractor, has to pay stamp duty on the refundable amount of security under Article 57, Schedule 1-B as the deposited refundable security amount is not a mortgage. Consequently, petitioner alleges that the demand of stamp duty over and above the rate prescribed under aforesaid provision of Indian Stamp Act is illegal and cannot be legally justified.

7. Learned standing counsel has submitted "written arguments stating that the only question; to be adjudicated in the case is -whether the security bond/deposit is charge-able with stamp duty as per Article 57 of Schedule 1-B or under Article 40 of Schedule 1-B?" In the written argument learned standing counsel points out that this very question has already been referred by a learned single Judge in Writ Petition No. 25706 of 1999, Sharma Build-tech (Pvt.) Ltd. v. The State of U.P. vide order dated 30th June, 1999. It appears that this controversy had arisen in large number of writs filed in the Court and one of such cases, being Writ Petition No. 47964 of 1999, has been referred to a larger Bench.

8. Perusal of the referring order indicates that the Court was considering the scope and extent of Government Order dated April 1 1999 issued by Principal Secretary, Tax and Institutional Finances, U.P. Government. The learned single Judge has referred to the decision of Tajveer Singh v. State of U.P (1987) 2 AWC 1029 as well as Supreme Court decision in [Board of Revenue and Others Vs. A.M. Ansari and Others](#),

9. The learned single Judge (S. R. Singh, J.) observed:

The answer to the question is interwoven with the interpretation of the term Mortgage Deed as defined in Section 2(17) of the Act and interaction of Article 40 with Article 57 of Schedule 1-B of the Act as well as terms and conditions of contract as stipulated in the tender notice. In *Tajveer Singh* (supra) a Division Bench has placed reliance on Supreme Court decision in *A.M. Ansari* and held the position is thus settled that the security deed is chargeable with duty under Article 57 of Schedule 1-B. I have my reservations about the correctness of the proposition laid down by the Division Bench in the case aforesaid. As a matter of fact, the view so taken by the Division Bench purports to be based on Supreme Court decision in *A.M. Ansari* (supra) but to me, it appears that the Supreme Court decision in *A.M. Ansari* is not intended to lay down the proposition that in each and every case the stamp duty on security as per the deed of agreement to-be executed for due performance of contract is chargeable with duty under Article 57 of Schedule 1-B only. In the case of *A.M. Ansari*, the question that bagged consideration before the Supreme Court was "as to whether the security deposits made by the respondents savoured of the nature of mortgages so as to make the respondents liable to pay the stamp duty under Article 35-C of the Stamps Act." The Supreme Court after noticing the definition of Mortgage Deed as embodied in Section 2(17) of the Act held bearing in mind Clause (17) of the said notice in that case thus "There is nothing in the above clause to indicate that any right over or in the security deposit was created in favour of the State Government."

Further the learned single Judge observed:

On a careful consideration of the decision in *A.M. Ansari*, it would transpire that in case, any right over or in the security deposits is created in favour of the State Government, in that event, the instrument may be termed as "Mortgage Deed" leviable to stamp duty under Article 40 of Schedule 1-B and by that reckoning the Government Order dated April 1, 1999 being Annexure-3 to the writ petition, cannot be discounted. In the above perspective, therefore, it would be in the fitness of things if a larger Bench is constituted to delve into the question.

10. Learned single Judge referred the matter to larger Bench in view of Government Order dated April 1, 1999 (referred to above). This contingency, however, does not arise in the present case since as the Government Order dated April 1, 1999 (annexed as Annexure-3 to the Writ Petition No. 25706 of 1999 *Sharma Build-tech (Pvt.) Ltd. v. The State of U.P.*, was not in existence when the demand order dated 15th February, 1996, impugned in the present petition) was issued.

11. To justify the imposition of stamp duty under Article 40, Schedule 1-B of the Act and to establish that under its terms--reading the document as a whole--renders the security deposit--a mortgage as defined under relevant Act, it was incumbent upon the respondents to file a copy of the agreement in question to satisfy the Court that

the deed in question required deposit of security, and though refundable, it is covered by the definition "Mortgage". This has not been done. Respondents have miserably failed to bring on record even by way of pleading a simple fact that deed in question requiring deposit of security is in effect a mortgage and, therefore, their stand requiring stamp duty under Article 40, Schedule 1-B is justified.

12. There is nothing on record of this case, as it stands today, to indicate that any interest is being created in the security amount as such and the deed sought to be executed between the parties is in the nature of mortgage deed. The respondents have failed to support their claim of charging higher stamp duty under Article 40, Schedule 1-B of the Indian Stamps Act vide impugned order dated 15th February, 1996 (Annexure-1 to the writ petition).

13. In absence of the above, decision reported in the case of Tajveer. Singh 1997 (2) AWC 1029 squarely applies to the facts of the present case.

14. Our view is supported by the judgment and order dated 18th March, 1996 passed by Division Bench comprising B.M. Lal and R.K. Mahajan, JJ. in the case of Shri Pal Goel v. Deputy Director (Construction), Rajya Krlshl Utpadan Mandi Parlshad, U.P. (copy filed as Annexure-2 to Writ Petition No. 31866 of 1996).

15. As a consequence thereof, writ petition deserves to be allowed. It is already noted above that there has been no interim order. One can presume that petitioner has paid stamp duty under the impugned order while executing his contract agreement. In that situation petitioner cannot be granted relief as claimed, but the petitioner is entitled to the relief being appropriately moulded by the Court.

16. Consequently, the writ petition stands-allowed. A writ of mandamus is issued directing respondents to refund excess amount charged as stamp duty on security deposit provided petitioner files requisite application under Indian Stamps Act within two months of receipt of certified copy of this judgment and if such an application is being filed, as contemplated above, the excess amount shall be refunded to the petitioner within three months of filing of the application.

17. No costs.