

(2010) 07 AHC CK 0455

Allahabad High Court

Case No: None

Ashish Kumar

APPELLANT

Vs

Deputy Commissioner (Stamp)
and Others

RESPONDENT

Date of Decision: July 21, 2010

Acts Referred:

- Stamp Act, 1899 - Article 35, 47A

Citation: AIR 2010 All 132

Hon'ble Judges: Pankaj Mithal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Pankaj Mithal, J.

A lease is chargeable to stamp duty under the provision of the Indian Stamp Act (hereinafter referred to as "the Act") in accordance with Article 35 of Schedule 1-B of the Act.

2. Article 35 of the of Schedule 1-B of the Act provides for stamp duty on the lease as under:

35. Lease, including an under-lease or sub-lease and any agreement to let or subject:

(a) whereby such lease the rent is fixed and no premium is paid or delivered:

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) where the lease pur-
ports to be for a term
exceeding twenty
years but not exceed-
ing thirty years

The same duty as a Con-
veyance No. 23 Clause (a),
for a consideration equal to
six times the amount or
value of the average annual
rent reserved

(vi) where the lease pur-
ports to be for a term ex-
ceeding thirty years or in
perpetuity or does not
purport to be for any defi-
nite term

The same duty as a Con-
veyance No. 23 Clause (a),
for a consideration equal to
market value of the prop-
erty which is the subject of
the lease.

3. Under Clause (v) on a lease which purports to be for a term exceeding twenty years but not exceeding thirty years stamp duty as a conveyance for a consideration equal to six times the amount or value of the average annual rent reserved is payable, whereas under Clause (vi) where the lease purports to be for a term exceeding 30 years or in perpetuity the stamp duty as a conveyance equal to market value of the property which is subject of the lease is payable.

4. Thus, there is a marked distinction in payment of stamp duty on a lease for a period up to 30 years and the lease exceeding the term of 30 years. In the former, stamp duty is payable on a consideration equal to six times the rent or value of the average annual rent reserved and in the later it is payable on the market value of the property.

5. In view of the aforesaid provision the question which arises for determination in this writ petition is whether the lease under consideration, which is for a period of 29 years six months with a renewable clause, is chargeable to stamp duty under Sub-clause (v) or Sub-clause (vi) of Clause (a) of Article 35 of the of Schedule 1-B of the Act.

6. The brief facts giving rise to the above question is that the document of lease, being document No. 836 of 2005 dated 23-4-2005 was executed by one Rahul Goel in respect of plot No. 1246 area 1296 square meter in favour of the petitioner Ashish Kumar. The lease is for a term of 29 years six months and it also contains a Clause 3(b) which provides for automatic renewal of the lease for a further similar period. The aforesaid renewal clause is reproduced herein below:

b) The LESSOR agrees that at the expiration of the said terms of 29.6 years this lease will automatically and without any further act of the parties hereto shall stand renewed for a further similar period, unless either party shall, prior to the expiration

of the last mentioned term, have given to the other party three calendar month's previous notice in writing of its intention not to renew the lease. The renewed lease will be on a monthly rent as may be mutually agreed between the parties subject to the same covenants, conditions and agreement as are herein contained including the present covenant for renewal. It being clarified that at the time of such renewal the parties shall execute fresh lease deed.

7. The aforesaid lease deed was referred u/s 47-A of the Act for determining the proper stamp duty payable thereon and Stamp Case No. 2 of 2006-07 was registered on the above reference. The Assistant Commissioner vide order dated 29-8-2007 held that in view of the aforesaid renewal clause the lease is to be treated for a period more than 30 years and, as such is subject to payment of stamp duty under Article 35(a)(vi) of Schedule 1-B of the Act on the market value which was determined by applying rate of Rs. 1,600/- per square meter. Accordingly deficiency in stamp duty of Rs. 1,65,420/- was determined and penalty of Rs. 25,000/- was imposed. Consequently, further registration charges of Rs. 4,520/- were also demanded. The aforesaid order has been upheld in appeal by the order of the Commissioner dated 29-8-2009. Thus, the petitioner has come up in this writ petition and has raised the above question for consideration.

8. I have heard Sri Ramendra Asthana, learned Counsel for the petitioner and learned standing counsel for the respondents who agree for final disposal of the petitioner at the admission stage as the pleadings are complete.

9. Sri Asthana has argued that the lease is very specific and is for a fixed period of 29 years six months only which is less than 30 years and, as such, it is chargeable to stamp duty according to Article 35(a)(v) of Schedule 1-B of the Act.

10. Learned Standing Counsel has defended the reasoning adopted by the authorities below in holding the aforesaid lease to be of a period above 30 years in view of renewal clause and on its basis contended that as the renewal clause is automatic and requires no further action of the parties it would be presumed that the lease stands extended from the very inception and is for a period exceeding 30 years.

11. I have perused the entire lease deed which has been filed as Annexure-1 to the writ petition. It purports to lease out the demise premises in favour of the petitioner for a period of 29 years six months commencing from 1st April, 2005 at a monthly rent of Rs. 1,500/- which is liable to be increased after 5 years at the rate of 5% per annum. It also specifically provides that the period of the lease would expire on 30th September, 2034. On a plain reading, it is a lease for a specific period which is less than 30 years.

12. The renewal clause provides that the lease will automatically be renewed without any further act of the parties for a similar period. The aforesaid renewal though automatic is not free from conditions. One of the conditions which goes with

it is that either of the party may before expiry of the lease by giving three months previous notice in writing may express his intention not to renew the lease. Therefore, the automatic renewal of the lease is not unfettered and in effect is not virtually automatic. There would be no renewal of lease if parties are not agreeable to it and express their intention in the manner provided above.

13. Even otherwise, as a general rule, the parties are always entitle to revoke/cancel the lease before the expiry of its term and such revocation is not forbidden by any of the conditions of the lease.

14. The lease deed also contains a provision giving option to the lessor to purchase the premises at the fair marked value. There is also a possibility of land being acquired during the subsistence of the lease. In both these eventualities also there would be no question of renewal or automatic renewal of lease on the expiry of the term of the lease. Accordingly, the renewal clause in the lease deed, even if it provides for automatic renewal, is not certain until and unless the renewal takes place.

15. In this view of the matter, as the lease deed at the time of registration is only for a limited period of 29 years 6 months it shall remain valid for the period so specified unless the period expired or is renewed when the occasion arrives. Accordingly, it is chargeable to stamp duty as per the aforesaid period only under Article 35(a)(v) of Schedule 1-B of the Act and not under Article 35(a)(vi) by treating it to be automatically renewed.

16. It is also helpful to note that the renewal of a lease deed is not an extension of the period of lease. It is a fresh lease in itself independent of the previous one. Therefore, the period of the earlier lease as well as of the renewed lease cannot also be clubbed together for the purposes of levying stamp duty. The two documents have to be treated independently and chargeable to stamp duty independently.

A Division Bench of this Court in Gopal Swarup Chaturvedi v. State of U.P. 2007 (102) RD 574 : 2007 (4) ALJ (DOC) 209 while considering a similar situation in respect of a lease in context with Article 35 of Schedule 1-B of the Act relying upon a Supreme Court decision categorically held that renewal of lease is nothing but grant of a fresh lease.

In view of aforesaid legal position, the authorities below manifestly erred in law in treating the lease period of present leave to be over 30 years even though the stage of renewal has not arisen and the lease period has not been renewed or extended.

Accordingly, the impugned orders dated 29-8-2007 (Annexure V) and 29-8-2009 (Annexure IX) cannot be sustained in law and are hereby quashed. The writ petition is allowed with the direction to the authorities to charge stamp duty on the lease in question according to its present period in accordance with Article 35(a)(v) of Schedule 1-B of the Act.

There shall be no order as to costs.