

(1998) 03 AHC CK 0153

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 81 of 1990

D.K. Jain

APPELLANT

Vs

Addl. Collector (Revenue of
Finance), A.D.M. (Revenue and
Finance) and Others

RESPONDENT

Date of Decision: March 3, 1998

Acts Referred:

- Constitution of India, 1950 - Article 226, 35, 5
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 3
- Stamp Act, 1899 - Section 2(16), 31, 56

Citation: (1998) 3 AWC 1928

Hon'ble Judges: R.H. Zaidi, J

Bench: Single Bench

Advocate: R.K. Agarwal, for the Appellant; C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

R.H. Zaidi, J.

Heard learned Counsel for the petitioner, learned standing counsel and also perused the record.

2. By means of this petition under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in (he nature of certiorari quashing the order dated 30.7.1990 passed by respondent No. 2 holding that document in question was lease-deed and chargeable to stamp duty under Article 35 of Schedule IB of the Stamp Act.

3. It appears that the document, copy of which is contained as Annexure-2, to the writ petition, was proposed to be executed between Babu Lai s/o Mohan r/o Village Harkana Garhi, Tehsil Mohanlalganj, district Lucknow and M/s. Jain Brick Field,

Harkana Garhi, Lucknow, through its partner Sri D.K. Jain. Question of payment of stamp duty arose and the petitioner filed application u/s 31 of the Stamp Act for adjudication. Reference u/s 56 of the Act was made by the A.D.M. (Revenue and Finance), Lucknow, to the Chief Controlling Revenue Authority, U.P.

4. Chief Controlling Revenue Authority, U.P., came to the conclusion that the document in question was a lease-deed and was liable to be charged stamp duty, under Article 35 of Schedule IB of the Stamp Act, by its judgment and order dated 30.7.1990.

5. Learned Counsel for the petitioner submitted that the document in question was simply a licence and not lease. Therefore, no stamp duty was liable to be charged on the same. Stamp duty as prescribed under Article 5 of the Act, was required to be paid.

6. Clause (e) of Sub-section (16) of Section 2 of the Stamp Act, defines "lease" as under:

16. Lease--Lease means a lease of immovable property and include also:

(a)

(b)

(c)

(d)

(e) any instrument by which minor lease is granted in respect of minor mineral, as defined in Clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957.

7. Terms of minor minerals, has been defined in Clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 as under:

3. Definitions.--In this Act, unless the context otherwise requires:

(a)

(b)

(c)

(d)

(e) minor minerals means building, stones, gravel, ordinary clay. ordinary and other than sand used for prescribed purposes, and any other mineral, which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral.

8. From the combined reading of (he aforesaid statutory provisions, it is apparent that mud, which has been permitted to be dug out, comes within the definition of minerals. Brick earth has been also declared to be minor mineral by means of notification issued by the Central Government. In [Banarsi Dass Chadha and Brothers Vs. Lt. Governor, Delhi Administration and Others](#), it has been ruled that brick earth comes within the definition of minor mineral. The relevant recital of the deed in question are quoted below:

Whereas the First Party is Bhumidhar of plot No. 222 measuring Order 14-2 (14 Biswa and 2 Biswansi) situated at village Harkana Garhi, Pargana and Tahsil Mohanlalganj, district Lucknow.

And whereas the Second Party has approached the First Party to allow him to dig brick earth for moulding bricks and the First Party has agreed to do so.

And, whereas the First Party hereby grants licence to the Second Party for digging and taking out brick earth from his plot No. 222 village Harkana Garhi, Pargana and Tahsil, Mohanlalganj, district Lucknow, on the following terms and conditions:

That the second party will pay a sum of Rs. 1,000, per year (one thousand), only to the First Party as licence fee and obtain the receipt for payments made.

9. Deed in question, in my opinion is fully covered by definition of "lease", as given under Stamp Act. Respondent No. 2 was, therefore, right in holding that the document in question was a lease and stamp duty was chargeable on it under Article 35, Schedule 1B of the Stamp Act. Writ Petition has got no merit. Same fails and is dismissed, but without any order as to costs.