

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6086 OF 2013.

(Arising out of SLP(C) No. 3749 of 2012)

State of U.P. now Uttarakhand
and another

...Appellants

Versus

Vinit Traders and Investment Ltd.
and another

...Respondents

O R D E R

Leave granted.

Whether the sale deed executed by Aditya Mills Ltd. in favour of respondent No.1 could be treated as lease deed for the purpose of stamp duty is the question, which arises for consideration in this appeal filed against order dated 4.7.2011 passed by the learned Single Judge of the Uttarakhand High Court in Writ Petition No.1987/2001.

For the sake of reference, the relevant portions of the sale deed are reproduced below:

"This Indenture made this 3rd day of May One Thousand Nine hundred Ninety Five between Aditya Mills limited a Company incorporated under the Companies Act, 1956 having its Registered Office at Madanganj Kishangarh (Rajasthan) through their duly constituted attorney Sri Kishan Singh Kothari S/o Sri Tej Raj Kothari, R/o Old Kotwali Road, Kishangarh, Distt. Ajmer (Rajasthan) hereinafter

called the VENDOR (which expression shall unless excluded by or repugnant to the context, be deemed to include his heirs, executors, administrators, representatives, etc.) of the ONE PART AND Vinit Traders & Investment Ltd. a Company incorporated under the Companies Act, 1956, having its registered office at 135, Canning Street, Clive Row Entrance, Calcutta, hereinafter called the VENDEE (which expression shall unless excluded by or repugnant to the context be deemed to include their heir, executors, administrators, representative, liquidators and assigns) of the OTHER PART.

WHEREAS the VENDOR has represented that he is the absolute owner of law premises known as "MANAK" (Adhikari Lodge) being Bunglow No.60 (Sixty), situated at Nehru Road within the limits of Ranikhet Cantonment, Distt. Almora, Uttar Pradesh, more particularly described in Schedule I hereto.

AND WHEREAS the VENDOR has also represented that the said premises is built on land (more particularly described in Schedule II hereto) held on lease for 99 years expiring on 9.3.2021 by the VENDOR under the President of India by virtue of a lease deed in Form "D" of the Cantonment Code, 1912.

AND WHEREAS the VENDOR has also represented that the said premises and the said lease hold rights were purchased/acquired by the VENDOR from Shri Sita Ram Mehra son of Shri Bhagat Ram Mehra, resident of B-317, New Friends Colony, New Delhi-110014 vide sale deed, dated 29.9.1978 registered at Book No.I (One) Volume 333, on pages 147 (One hundred forty seven) to 170 (One hundred seventy) at Serial No.768 in the office of Sub-Registrar, Ranikhet, District Almora, Uttar Pradesh on 29.9.1978.

AND WHEREAS the VENDOR has also represented that the said purchase/acquisition has been duly entered in the records of the Cantonment authority by mutating the said land in the name of the VENDOR who has been and is paying the ground rent and house tax to the authorities concerned.

AND WHEREAS the VENDOR has agreed to sell and the VENDEE, acting on the aforesaid representations, have agreed to purchase the said property and the lease-hold rights in the said land as an absolute estate at or for the price of Rs.2,85,000/- (Rupees Two Lacs eighty five thousand) only."

At the time of registration, the value of the land and building was shown as Rs.2,85,000/- and stamp duty of Rs.35,625/- was paid. Sub-Registrar, Almora did not agree with the valuation of the property, i.e., the land and building by respondent No.1 and its vendor and made a reference to the Collector under Section 47A(2) of the Indian Stamp Act, 1899, as applicable to the State of Uttarakhand, (for short, 'the Act'). The latter got conducted an inquiry through the Tahsildar, who submitted valuation report dated 23.5.1995 with the finding that value of the property was Rs.47,25,200/-.

After considering the report of the Tahsildar, the Collector issued show cause notice to respondent No.1 for recovery of the deficit stamp duty. Respondent No.1 contested the notice by asserting that its vendor was a lessee of the Government of India and the property was rightly valued at Rs.2,85,000/- for the purpose of stamp duty. The Collector did not accept the plea of respondent No.1 and passed order dated 16.1.1997, the relevant portions of which are extracted below:

"The statement of the vendee that he purchased only building is not correct because according to provisions of the Stamp Act, the stamp duty is payable on the basis of contents mentioned in the deed. In the deed the vendor sold 66 nalis land and building. The value of the building was assessed Tehsildar was Rs.4,00,000/-. Annual rent of the building was assessed as Rs.2,214/-. According to the multiplier given in Rule 341 (111) of Stamp Rules the value come to Rs.55,350/-. On the other hand the Sub-Registrar, Ranikhet said the rent of building taken for office of the City Municipal Officer, Ranikhet as Rs.1125/- as decided by Naib-Tehsildar, Ranikhet. The meaning of this incident is that in Ranikhet

value of old building is also increasing and annual income of buildings is also increasing. In deciding value of buildings their usefulness cannot be ignored. On this basis if monthly rent of the entire banglow be taken as Rs.2000/- and rent of each other room (four rooms) be taken Rs.100/- per month then also the value of property comes to Rs.2400/- x 12 x 25 = Rs.7,20,000/-. Therefore, the valuation of the property seems to be appropriate on the basis of this incident. Accordingly the value of building is decide as Rs.7,20,000/-.

The value of 66 nali land transferred in the deed comes to Rs.39,60,000/- at the present rate of Rs.60,000/- per nali. The same value was also assessed by the Tehsildar. Therefore, the value of the 66 nalis transferred land is decided as Rs.39,60,000/-. The Tehsildar Ranikhet also told 48 fruit giving piece and 131 building trees in the land and assessed their value as Rs.45,200/-. Therefore, the value of property entire comes to Rs.7,20,000/- + 39,60,000/- + 45,200/- total Rs.47,25,200/-. On which stamp duty of Rs.5,90,687.50 is payable. The vendee paid Rs.35,625/- and the deficiency is of Rs.5.55,062.50. Therefore, recovery of stamp deficit of Rs.5,55,062.50 be assured from the vendee within one month."

The revision filed by respondent No.1 was dismissed by the Chief Controlling Authority vide order dated 7.3.2000.

Respondent No.1 challenged the orders of the Collector and the Chief Controlling Authority in Writ Petition No.1987/2001. The learned Single Judge accepted the contention of respondent No.1 that the provisions of Article 63 of Schedule IB of the Act are attracted in the case and the Collector committed an error by ordering recovery of Rs.5,55,062.50 as deficient stamp duty.

We have heard learned counsel for the parties and carefully perused the record. A reading of sale deed dated

3.5.1995 leaves no room for doubt that the vendor had transferred its ownership over the property constructed on the land specified in Schedule-II to the deed, which was held by the vendor on 99 years lease. The sale deed further shows that the vendor had purchased/acquired the premises and the leasehold rights from Shri Sita Ram Mehra, son of Shri Bhagat Ram Mehra, resident of B-317, New Friends Colony, New Delhi vide deed dated 29.9.1978. Unfortunately, neither the Collector and the Chief Controlling Authority nor the learned Single Judge called upon respondent No.1 to produce deed dated 29.9.1978 and decided the issue relating to the stamp duty without having the benefit of going through the contents of deed dated 29.9.1978, which would have helped them to determine true nature of the transaction between Aditya Mills Ltd. and respondent No.1.

In our considered view, the Collector could have decided whether deed dated 3.5.1995 was a lease deed simpliciter or sale deed for the purpose of stamp duty only after going through the contents of deed dated 29.9.1978 but he did not bother to undertake that exercise. The learned Single Judge also committed the same mistake and straightaway recorded a finding that it was a lease deed. He should have first examined the terms and conditions incorporated in deed dated 29.9.1978, referred to the judgments in *Byramjee Jeejeebhoy (P) Ltd. v. State of Maharashtra* AIR 1965 SC 590 and *Residents Welfare Association, Noida v. State of Uttar Pradesh* (2009) 14 SCC 716 and then decided whether the Collector was right in

demanding additional stamp duty from respondent No.1.

We may have finally decided the controversy but are unable to do so because neither party has placed on record copy of deed dated 29.9.1978 and without examining that document, it is not possible for us to record a firm finding about the nature and character of deed dated 3.5.1995. In this scenario, the only appropriate course is to remit the case to the Collector for fresh determination of the issue relating to valuation of the building and the land purchased by respondent No.1. Ordered accordingly.

The appeal is disposed of with a direction that the Collector shall call upon respondent No.1 to produce deed dated 29.9.1978, to which reference has been made in the deed executed in its favour by Aditya Mills Ltd. and then decide whether it is a lease deed simpliciter or a sale deed for the purpose of stamp duty.

While disposing of the appeal, we consider it necessary to make it clear that if the Collector comes to the conclusion that the deed executed by Aditya Mills Ltd. in favour of respondent No.1 is a lease deed then the latter shall have to surrender the land to the Government of India on 9.3.2021, i.e., the date on which term of the lease would expire.

.....J.
(G.S. SINGHVI)

.....J.

(V. GOPALA GOWDA)

New Delhi;
July 26, 2013.

SUPREME COURT OF INDIA



JUDGMENT