2209
2025
MONDAY

COURT : **MB-07**
ITEM : **AD-01**
STAUTS : **DISMISSED**
ID : **266057**
AR : **NANDY**

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1230 OF 2020

NIRMALESH CHOWDHURY
VS.
THE STATE OF WEST BENGAL ORS.

MR. ARIJIT BARDHAN, ADVOCATE
MR. ARINDAM GHOSH, ADVOCATE
……for the Petitioner
MR. PANTU DEB ROY, LD. AGP
MR. PANNALAL BANDOPADHYATY, ADVOCATE
……for the State

1. The determination of the stamp duty and registration charges payable in cases involving the transfer of leasehold rights by a family member in favor of another family member often presents a complex issue that has engaged judicial scrutiny. The present writ petition calls for such a determination. In this case, the leasehold right was transferred and the deed was duly registered. However, the petitioner has subsequently filed this writ petition seeking a refund of the excess stamp duty and registration charges paid, along with interest @ 8% per annum from the date of registration of the deed of gift until the date of refund.
2. For a proper appreciation of the issues raised in the writ petition, it is necessary to advert to the essential facts leading to its presentation.
3. By virtue of an agreement executed between the petitioner and the Government of West Bengal on 11th December 1986, a lease of a plot of land being Plot No. 25, comprising an area of 4 cottahs in the Mini Holiday Home Sector of the Digha Development Scheme, subsequently renamed as the Digha Shankarpur Development Authority, Digha, Midnapore (now Purba Midnapore), was granted in favour of the petitioner for a period of 999 years.
4. The said deed of lease was registered on 20th December 1986 at the office of the District Sub-Registrar, Ramnagar, Purba Midnapore. Subsequently, a possession certificate dated 10th December 1986 was issued to the petitioner. Thereafter, the petitioner constructed a multi-storied (G+ 3) building on the leased land, where he operated a hotel

and lodging business under the name and style of 'Gulmohar Lodge'.

5. In 2018, the petitioner sought and obtained permission from the Executive Officer of the Digha Shankarpur Development Authority to transfer the leasehold rights over the said plot of land to his youngest son, Prosenjit Chowdhury. Accordingly, the leasehold rights were transferred through an instrument styled as a 'Deed of Gift' executed on 10th November 2018 in favour of his son. The said Deed of Gift was duly registered upon payment of stamp duty amounting to Rs. 7,99,069 and registration fees amounting to Rs. 1,14,158.

6. According to the petitioner, stamp duty @ 7% of the total market value was illegally realized from him in contravention of the provisions of Schedule 1A of the Indian Stamp Act and the relevant circulars governing the matter. By way of a representation dated 21st June 2019, the petitioner requested the concerned authority to refund the excess stamp duty. However, despite receipt of the representation, no effective action was taken. This continued inaction by the respondents compelled the petitioner to file the present writ petition.

7. Mr. Bardhan, learned Advocate appearing for the petitioner, submits that the District Sub-Registrar failed to take into account that the transfer was made by a father in favour of his son, i.e., between family members. Referring to Article 33 of Schedule IA of the Indian Stamp Act, 1899, he contends that in the case of registration of a deed of gift, stamp duty at the rate of one-half of one per cent of the market value of the property, which is the subject matter of the gift, is applicable. However, in the present case, the same stamp duty applicable to other conveyances based on market value was wrongly charged. Citing the decision of a Coordinate Bench in *Pran Krishna Dey & Ors. vs. State of West Bengal & Ors.*, reported in (2018) SCC Online Cal 11923, he submits that a deed of gift may transfer an interest in leasehold property, and there is no legal impediment to gifting one's interest in such property.

8. Accordingly, he argues that in cases where the transfer involves the right, title, and interest in property from one family member to another, the applicable stamp duty

should be one-half of one per cent of the market value of the property, in accordance with the relevant provisions of the Indian Stamp Act. He contends that the Government Order dated 15th June 2010 and submits that the said circular ought to have been duly considered by the authorities before taking any decision on the issue.

9. In rebuttal, Mr. Deb Roy, learned Additional Government Pleader, submits that a clear distinction exists between a deed of gift and a deed effecting the transfer of leasehold rights. He contends that while a deed of gift involves the transfer of ownership, a transfer of leasehold rights merely conveys the right to use and enjoy the property, without conferring ownership. He further submits that the State has consciously differentiated between these two forms of transfer for the purpose of determining the applicable stamp duty. According to him, in cases where a deed of gift is executed by one family member in favour of another, the Government has provided for levy of stamp duty at the concessional rate of one-half of one per cent of the market value of the property.

10. However, he contends that, in terms of Article 35(iv) of Schedule 1A of the Indian Stamp Act, in cases where a lease purports to be for a term exceeding thirty years, the same stamp duty as is applicable to a conveyance (No. 23) on the market value of the property that is the subject matter of the lease is payable. He submits that, in the present case, the leasehold right over a commercial plot of land has been transferred, and the petitioner was not legally competent to transfer ownership of the land. What the petitioner has effectively executed is an assignment of leasehold rights. Therefore, even if Article 63 of Schedule 1A were to be considered applicable, the same rate of duty as prescribed for a conveyance under Entry No. 23, based on the market value of the property, would still be payable.

11. He further submits that a Coordinate Bench of this Court had occasion to consider a similar issue in *Atma Ram Saraf vs. State of West Bengal & Ors.*, reported in AIR 2021 Cal 79. He contends that the judgment in *Pran Krishna Dey* (supra) was rendered without taking into account the provisions of Section 6 of the Indian Stamp Act and the Government

Order dated 15th June 2010. In *Atma Ram Saraf*, the Court held that, in the case of transfer of leasehold rights, the applicable stamp duty would be the same as that prescribed for a conveyance under Item No. 23. He further submits that the circular dated 15th June 2010, relied upon by the petitioner, pertains exclusively to residential plots and, therefore, has no application to the facts of the present case, which involves a commercial leasehold property.

12. In reply, Mr. Bardhan, learned Advocate appearing for the petitioner, submits that the doctrine of precedent mandates that if a Coordinate Bench disagrees with the view expressed in a decision rendered by another Coordinate Bench of equal strength, the proper course of action is to refer the matter to a larger Bench for authoritative adjudication. He contends that the Coordinate Bench, while deciding the case of *Atma Ram Saraf* (supra), ought to have referred the issue to a larger Bench instead of taking a contrary view on its own.

13. Heard the learned Advocate appearing for the respective parties. Perused the materials-on-record.

14. Admittedly, the land belongs to the Government of West Bengal, and the lease in respect of the said land was granted in favour of the petitioner by the then Administrator of the Digha Development Scheme (now renamed as the Digha Shankarpur Development Authority), through the execution of a deed of lease, which was registered on 20th December 1986. The land in question is a commercial plot. Accordingly, the petitioner held only the leasehold rights over the land, and not ownership. Consequently, by executing an instrument dated 10th December 2018, the petitioner transferred only the leasehold rights in favour of his son, and not the ownership of the land.

15. Section 122 of the Transfer of Property Act, 1882 defines a 'gift' as the transfer of ownership, that is, the right, title, and interest in an immovable property made voluntarily and without any consideration. In contrast, Section 105 of the said Act defines a 'lease' as the transfer of a right to enjoy immovable property for a certain period, in consideration of a price paid or promised. It is thus evident

that these two modes of transfer are fundamentally different in nature. Consequently, the instruments or documents through which such transfers are effected are also distinct from each other.

16. The underlying object of the Indian Stamp Act is the generation of revenue, and therefore, its provisions must be interpreted in a proper and purposive manner. Stamp duty is determined with reference to the substance of the transaction as embodied in the instrument, and not by the title or nomenclature assigned to it. Accordingly, for the purpose of classifying an instrument, it is the substance of the transaction that must be considered, rather than the label it carries. Based on such substance, a decision must be taken as to which clause or Article of the Schedule the particular instrument falls under, or by which Article of Schedule IA of the Indian Stamp Act it is to be governed. This principle finds support in the judgment of the Hon'ble Supreme Court in *S.N. Mathur vs. Board of Revenue & Ors.*, reported in (2009) 2 SCC 344.
17. Therefore, from the discussion in the preceding paragraph, it is clear that the nomenclature of the document, whether it is a deed of gift or a deed of lease, will not be the determining factor; rather, the substance of the transaction must be taken into account. In the present case, the subject matter of the transfer is the leasehold right of a commercial plot of land.
18. The West Bengal amendment to Section 6 of the Indian Stamp Act provides that, subject to the provisions of the preceding Section, an instrument that falls within two or more descriptions in Schedule I or Schedule I-A, as the case may be, shall, when the duties chargeable under such descriptions differ, be chargeable only with the highest of those duties.
19. As noted previously, there is a distinction between a deed of gift and a deed of assignment, that is, a deed of transfer of leasehold right. In this case, the stamp duty is to be determined in accordance with Article 35(iv) of Schedule I-A, since the lease of the commercial plot was granted for a period exceeding thirty years. Even if the transfer is held to be 'by way of assignment' under Article 63, the same duty as applicable to a conveyance, under Item No. 23,

based on the market value of the property, shall be chargeable. Article 23 prescribes that the stamp duty on a conveyance shall be 6% of the market value, and the Government has the power to revise this rate from time to time. At the time of registration of the deed, the applicable rate was 7%.

20. In the case of *Atma Ram Saraf* (supra), the law on the issue has been discussed extensively, taking note of Article 33 (163) of Schedule I and Section 6 of the Indian Stamp Act. This decision was also made after considering the provisions of Sections 122 and 105 of the Transfer of Property Act.

21. In the present case, the subsequent decision rendered in *Atma Ram Saraf* (supra), after considering the decision in *Pran Krishna Dey* (supra), specifically observed that Section 6 of the Stamp Act and the Government Order dated 15.06.2010 were neither considered by the Single Judge nor argued. The Court ultimately concluded that even assuming a deed of leasehold falls within the ambit of Article 33 of Schedule I-A, it would also be covered by Article 63 thereof, which attracts Section 6, thus mandating the higher duty to be deposited. If the judgments of two equal benches cannot be reconciled, the judgment, which appears to be stating the law more elaborately and accurately, is to be followed.

22. I express my agreement with the proposition laid down in *Atma Ram Saraf* (supra) and, therefore, I do not find any merit in the substance of the petitioner's contention.

23. Accordingly, **WPA 1230 of 2020** is **dismissed** applying the proposition laid down in ***Atma Ram Saraf*** (supra) and in ***S.N. Mathur*** (supra).

24. There shall be no order as to costs.

(PARTHA SARATHI CHATTERJEE, J.)