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Trilok Chand Vs. the Chief Controlling Revenue Authority

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Court : Allahabad

Decided On : May-11-1973

Reported in : AIR1973All473

Judge : R.L. Gulati, ;H.N. Seth and ;C.S.P. Singh, JJ.

Acts : Stamp Act, 1899 - Sections 2(5), 2(10) and 2(16) - Schedule - Article 35

Appeal No. : Stamp Act Reference No. 207 of 1971

Appellant : Trilok Chand

Respondent : The Chief Controlling Revenue Authority

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.J. Hyder, Adv.

Judgement :

C.S.P. Singh, J.

1. The Chief Controlling Revenue Authority, has under Section 57 of the Stamp Act referred, the following questions for our opinion: --

'1. Whether the document (a copy of which is Annexure I to this reference) is an agreement to let tolls and is included within the meaning of a lease as given in Section 2(16)(c) of the Stamp Act read with Article 35 thereof and is chargeable

under Article 35 (b) of Schedule I-B of U. P. Stamp (Second Amendment) Act, 1958 with a duty of Rs. 195/-.

2. In case the answer to the above question is in the negative, is the document

(Annexure I) chargeable with stamp duty under any other Article of the Stamp Act, and if so what?'

2. The Town Area Committee Modinagar decided to auction the rights to realise fee of Tonga stand and Rickshaw licence of Modinagar, Ghaziabad, district Meerut for the year 1960-61, and it held an auction on the 20th March 1960. This auction was Conducted by the officers of the Town Area Committee and the reserved Price for sale of these rights was fixed at Rs. 10,000/- (see Annexure I). Bids were made by various persons but the bid of Tirlok Chand, the applicant was the highest, being of Rupees 6,200/-. The signatures of the various bidders were taken on the bid-sheet, and after the bid was closed, there was an endorsement to the effect that the bid was closed, as there was no bid higher to the applicant. This bid-sheet was put up before the Chairman of the Town Area Committee on the 22nd March 1960 i.e. on the 3rd day of the bid, and he also signed the bid-sheet. Thereafter, Tirlok Chand exercised the right of collecting fee of Tonga stand and Rickshaw licence within the Town Area.

3. The Inspector of Stamp and Registration, Meerut Circle, who had been appointed as Collector for the purpose of Section 40 of the Stamp Act by U. P. Government Notification No. C-4135/X-525 dated 20th August 1928 and Rule 325 of the U. P. Stamp Rules framed under Notification No. M-528/X/503 dated 25-3-1942 examined this document and treating it to be an agreement to let tolls, chargeable with Stamp Duty under Article 35 (b) Schedule I-B read with Section 3(16)(c) of the Stamp Act, impounded it, and imposed deficit duty of Rs. 195/- and penalty of Rupees 30/-. The matter thereafter came up before the Chief Controlling Revenue Authority, which has now made the present reference.

4. It will be convenient to extract the relevant provisions of the Stamp Act. Section 2(16) of the Stamp Act reads as under;--

'2 (16). 'Lease'--'Lease' means a lease of immovable property, and includes also --

(a) a patta;

(b) a kabuliyat or other undertaking in writing, not being counterpart of a lease, to cultivate, occupy or pay or deliver rent, for immovable property;

(c) any instrument by which tolls of any description are let;

(d) any writing on an application for a lease intended to signify that the application is granted:' Article 35 (b) Schedule I-B is as under:--

'35. Lease, including a under-lease or sub-lease and any agreement to let or sublet.

(b) Where the lease is granted for a fine or premium or for money advanced and where no rent is reserved:'

5. It will be seen that any instrument by which tolls of any description are let is a lease. It is not denied that the transaction in dispute relates to tolls. The controversy, however, is as to whether the bid-sheet is a lease as defined in Section 2(16) of the Stamp Act.

6. Now even if the document is not a lease but an agreement to let the tolls, it would be still taxable under Article 35 of Schedule I-B of the Act with the same duty as a lease. The question that arises for determination, is as to whether the bid-sheet can be said to be a lease or failing that an agreement to let. If it does not come within either of these two categories, it cannot be taxed under Article 35 Schedule I-B of the Act.

7. The Standing Counsel has urged that the bid-sheet is an instrument by which tolls have been let out. Section 2(14) defines 'an instrument as including a document by which any right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded. We may assume that the bid-sheet is an instrument, but that by itself would not make it a lease, because the tolls should have been let out by that instrument. Before, however, any tolls can be said to be let out, there must be an agreement. An agreement postulates the making of a

proposal by a person and the acceptance of the said proposal by the other. After proposal has been accepted, an agreement between the parties is created. In the present case, it appears from the bid-sheet that the reserved price fixed by the Town Area Committee was Rs. 10,000/-. This meant that the officials of the Town Area Committee, who sanctioned the rights, could not finalise auction unless the reserved price had been bid at the auction. In the present case, the bid offered was much less than the reserved price. This being so, the officials of the Town Area Committee who acted as auctioneers could not possibly accept the proposal made on behalf of the applicant which consisted of an offer to pay Rs. 6200/- only. The mere fact that the highest bidder, and the officers of the Town Area Committee who conducted the auction, put their signature on the auction bid, would not alter the position in law, for the signature on the bid-sheet by these two parties were only for the purposes of giving authenticity to the auction proceedings which took place on that date. It is, however, contended that even if it can be said that the bid-sheet did not mature into a lease on the 20th March, 1960, it became such, on the 22nd March, 1960, when the Chairman signed the same in token of his approval of the bid. We are not impressed by this argument too. In the first place it is doubtful as to whether the Chairman of the Town Area Committee had any authority to enter into a contract on behalf of the Town Area Committee without a requisite resolution being passed by the Town Area Committee. It is however not necessary to express any final opinion on this matter for otherwise too the mere signing of the bid-sheet by the Chairman, Town Area Committee, would not convert it into a binding contract between the applicant and the Town Area Committee. It has been seen that the bid-sheet only contains a memo of the highest bids made by the various persons who participated in the auction. It does not contain any terms or conditions relating to:

1. The maximum rate of tolls chargeable by the applicant.

2. The duration of the lease.

3. The mode, manner and time of the payment of the auction money.

4. The consequences of any breach on the part of the applicant of the terms of the agreement.

In the absence of some of these conditions the agreement, if any, that came into existence would be unenforceable on the ground of vagueness. The bid-sheet as such cannot be treated as a lease of the tolls in question, as no concluded enforceable contract between the parties emerged by the mere signing of the bid-sheet. It cannot also be treated as an agreement to let out the tolls, inasmuch as it does not evidence any such enforceable contract. A similar view has been taken by the Madras High Court in the case of The Rajanagram Village Cooperative Society v. P. Veerasami Mudaly : AIR1951 Mad322 and also in the case of Sir Rameshwar Singh Bahadur v. Shaik Kitab Ali, AIR 1926 Pat 487 by the Patna High Court. We are in respectful agreement with the views expressed in these cases. The Board of Revenue, which is the Chief Controlling Revenue Authority, has in its referring order referred to two decisions of this Court one, in the case of Amar Nath Khanna v. State Government, (Civil Misc. Writ No. 345 of 1956 decided on 21-3-1961 (All)) and in the case of Mumtaz AH v. Town Area Committee, Bharwari, 1970 All LJ 114, on the basis of which it took the view that the document in question would be dutiable under Article 35 Schedule I-B of the Act. None of the cases referred deal directly with the question raised in the present reference. The answer to the first question must, therefore, be returned in the negative.

8. Coming now to the second question. The document in question not being chargeable as a lease, the question arises as to whether it is chargeable under any other item of the Schedule or the Act. The only possible item under which it could be brought is 'bond' as defined in Section 2(5) or a 'conveyance' as defined in Section 2(10) of the Act. Clauses (a) and (c) of Section 2(5) are clearly inapplicable. We are thus left with clause (b) of that sub-section which reads:--

'(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another.'

Clause (b), however, only applies if the document in question is (1) an instrument, and (2) attested by a witness. How the document in question, which is a bid-sheet of the auction held on 22-3-1960 has been signed by all the bidders who were parties to the auction and the officer concerned, who conducted the auction. There is no attestation of the document by a witness. It would as such not answer the

description of 'a bond'. It also does not appear that it is 'an instrument' as defined in Section 2(14) of the Act. The bid-sheet itself, did not create any right or liability in the applicant toll such time that the offer was not accepted by the Town Area Committtee. The applicant could withdraw the bid before its acceptance, and in that event, there would be no liability on him to pay the money bid at the auction. It did not also create any right, for till such time that the bid was accepted, the applicant could not enforce the offer. The position of the auction had stipulated that in the event of a bidder resiling from his bid, he would be liable to pay damages, for if that were so, the bid would create a liability and the document in question would than be 'an instrument'. There is, however, nothing on the record to warrant such a conclusion. It is also not 'a conveyance' for no move-able or immovable property has been transferred by the bid-sheet, and a conveyance can only be executed after an agreement, and in the present case, it has been seen that no agreement had come into existence. The document as such is not chargeable to duty under the Act.

9. We, therefore, answer the first question in the negative and the second question by holding that the document is not chargeable with stamp duty under any other Article of the Stamp Act. The applicant is entitled to costs which we assess at Rs. 200/-. Answered accordingly.

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