

NASIRUDDIN & ANR. ETC.

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v.

THE STATE OF UTTAR PRADESH THROUGH SECRETARY
& ORS.

(Civil Appeal No. 3695 of 2009)

DECEMBER 06, 2017

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[ABHAY MANOHAR SAPRE AND NAVIN SINHA, JJ.]

Stamp Act, 1899 – ss. 2(12), 2(14), 2(16) and Art.35 of Schedule I – Respondent No.3-Corporation and appellants entered into a formal contract – Each appellant was to carry out the work of collection of “Tehbazari” and “Parking Fees” in terms of contract – Dispute arose as to the true nature of the contract and stamp duty payable by the appellants – Corporation demanded requisite stamp duty payable under the Stamp Act whereas as per Collector of Stamps the appellants were liable to pay stamp duty @ Rs.70/- per thousand on the contract amount treating the contract as Lease – High Court upheld the demand raised by the Collector of Stamps – Held: The terms of the contract would show that it was meant to collect tolls (fees) called “Tehbazari” in local parlance from squatters, vendors, kiosks etc. and was for collecting parking fees – By awarding such contract to the appellants, the Corporation had let their right to the appellants to collect the fees from a class of persons and for carrying on particular activity in the city – The contract satisfied the definition of the expression “instrument” as defined in s.2(14) of the Act because it created a right and liability and lastly, it also satisfied the definition of expression “executed” and “execution” as defined in s.2(12) of the Act because it contained the signature of contracting parties – Further, it related to the right to collect the tolls let by the Corporation to the person concerned, which squarely attracts s.2(16)(c) of the Act and partakes the character of a “Lease” – Therefore, the contract in question is a “Lease” as defined in s.2(16)(c) of the Stamp Act and is accordingly chargeable to payment of stamp duty as per the rates prescribed in Art.35 of Schedule I of the Stamp Act as “Lease”.

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Dismissing the appeals, the Court

HELD: 1.1 The contract in question show that it was meant to collect tolls (fees) called “Tehbazari” in local parlance from

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A squatters, vendors, kiosks etc. and was for collecting parking fees. Such contract is regarded as an instrument by which tolls of any description are let. The contract was, therefore, for recovery of tolls and created rights and liabilities in favour of contracting parties *qua* each other. It cannot be disputed that the expression “tolls of any description” in clause (c) would include all kinds of levy, charges, fees etc. which the Corporation is entitled to charge under its Bye-laws (41). *A fortiori*, the fees in question would also fall under Section 2(16)(c) of the Stamp Act. [Paras 16 and 21] [1080-B; 1081-E]

C 1.2 The contract in question also satisfied the definition of the expression “Instrument” as defined in Section 2(14) of the Stamp Act because it created a right and liability and lastly, it also satisfied the definition of expression “executed” and “execution” as defined in Section 2 (12) of the Stamp Act because it contained the signature of contracting parties. The case at hand relates to the right to collect the tolls let by the Corporation to the person concerned. It squarely attracts Section 2(16)(c) of the Stamp Act and partakes the character of a “Lease”. Accordingly stamp duty is chargeable as per the rates prescribed in Article 35 of Schedule I of the Stamp Act as “Lease”. [Paras 22, 26 and 27] [1081-F-G; 1082-D-E]

E *Mohammad Ali v. Board of Revenue, U.P. AIR 1987 Allahabad 348 – approved.*

F *New Bus-Stand Shop Owners Association v. Corporation of Kozhikode & Anr. (2009) (10) SCC 455 : [2009] 14 SCR 793 – distinguished.*

Munindra Nath Upadhaya v. State of U.P. & Ors. (1995) 2 UPLBEC 1789 – referred to.

Case Law Reference

G	(1995) 2 UPLBEC 1789	referred to	Para 10
	AIR 1987 Allahabad 348	approved	Para 10
	[2009] 14 SCR 793	distinguished	Para 24

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3695 of 2009

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From the Judgment and Order dated 22.05.2006 of the High Court
of Judicature at Allahabad in Civil Misc. Writ Petition No. 9661 of 2005

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WITH

C. A. Nos. 3714, 3709, 3705, 3699, 3711 and 3702 of 2009.

Jitendra Mohan Sharma, Sr. Adv., Anupam Lal Das, Anirudh Singh,
Ashok Kumar Sharma, Ms. Bandana Singh, Deepak Jyoti Ghildiyal, Vikal
Mudgal, Praveen Chaturvedi, Advs. for the Appellants.

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M. R. Shamshad, Sanjay Kumar Tyagi, Aviral Saxena, Dhawal
Uniyal Vinay Garg, Kamendra Mishra, Vishwa Pal Singh, Ravi Prakash
Mehrotra, K. L. Janjani, Adarsh Upadhyay, P. K. Chakravarty, Gunnam
Venkateswara Rao, Advs. for the Respondents.

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The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. These appeals are filed
against the judgment and order dated 22.05.2006 passed by the High
Court of Judicature at Allahabad in Civil Misc. Writ Petition Nos. 9661/
2005, 21327/2006, 13249/2003, 12958/2004, 26755/2004, 31238/2005,
44533/2005, 31058/2003, 22817/2006, 12957/2004 and 44532/2005
whereby the High Court dismissed the writ petitions filed by the appellants
herein.

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2. In order to appreciate the short issue arising in this bunch of
appeals, it is necessary to set out few relevant facts hereinbelow.

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3. Respondent No.3 is a "Nagar Nigam Meerut" also called
"Municipal Corporation Meerut" in the State of U.P. (hereinafter referred
to as "the Corporation"). The Corporation is constituted and governed
by the provisions of the Uttar Pradesh Municipal Corporation Act, 1959
(for short "the Act"). Its area of operation is in the city of Meerut.

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4. In exercise of powers conferred by Section 541 (41) of the
Act, the Corporation has framed Bye-laws for implementing the
provisions of the Act and for regulating various activities meant essentially
for the benefit of the residents/public of Meerut city. Clause 41 of the
Bye-laws empowers the Corporation to fix any fees for grant of any
license, sanction or permission to person(s) by and under the Act.

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5. In March 2004, the Corporation issued an advertisement inviting
bids from public at large for letting out the right of collection of (1)

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A realization of Tehbazari Fee from squatters, vendors, kiosks and (2) for collecting parking fees.

6. So far as the connecting appeals are concerned, they pertain to other cities of U.P. but relate to the same aforementioned activities. The appellants participated in the public auction held by the Corporation.

B Their bids were finally accepted.

7. The Corporation accordingly informed to the appellants individually about acceptance of their bids and entered into a formal contract with each appellant to enable them to carry out the work of collection of what is called as "Tehbazari" and "Parking Fees" in terms of the contract. One such contract is (Annexure P-10). The period of contract was up to 31.03.2005.

8. The execution of contract led to the disputes among the appellants, Corporation and the Collector of Stamps, namely, what is the true nature of the contract and how much stamp duty is payable by the appellants on the contract under the Indian Stamp Act, 1899 (for short "the Stamp Act").

9. The Corporation, vide their letter (Annexure P-8), requested the appellants to deposit the requisite stamp duty payable under the Stamp Act whereas the Collector of Stamps requested the appellants to pay stamp duty @ Rs.70/- per thousand on the contract amount treating the contract as Lease.

10. The appellants felt aggrieved of the demand raised by the Collector of Stamps and filed writ petitions in the Allahabad High Court. The Allahabad High Court placing reliance on its previous decisions in **Munindra Nath Upadhaya vs. State of U.P. & Ors. (W.P. No.4978 of 1994) (1995) 2 UPLBEC 1789** and **Mohammad Ali vs. Board of Revenue, U.P. (AIR 1987 Allahabad 348)** upheld the demands raised by the Collector of Stamps and finding no fault therein dismissed the writ petitions which has given rise to filing of these appeals by special leave by the unsuccessful writ petitioners in this Court.

11. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals. In our opinion, the conclusion arrived at by the High Court in the case of **Mohammad Ali vs. Board of Revenue, U.P.** (supra) is just and proper calling for no interference for the reasons given by us hereinbelow.

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12. Sections 2(12), 2(14), 2(16) and Article 35 of Schedule I to the Stamp Act are relevant for deciding the question arising in the case. They read as under: A

“2(12) “Executed” and “execution”, used with reference to instruments, mean “signed” and “signature”.

2(14) “Instrument” includes every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. B

2(16) “Lease” means a lease of immovable property, and includes also – C

(a) a patta;

(b) a *Kabuliyat* or other undertaking in writing, not being a 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

(d) any writing on an application for a lease intended to signify that the application is granted;

Article 35 of Schedule 1.

Description of Instrument	Proper Stamp-duty
<p>LEASE, including an under-lease or sub-lease and any agreement to let or sub-let</p> <p>(a) where by such lease the rent is fixed and no premium is paid or delivered—</p> <p>(i) where the lease purports to be for a term of less than one year;</p>	<p>The same duty as a Bond (No.15) for the whole amount payable or deliverable under such lease.</p>

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A	(ii) where the lease purports to be for a term of not less than one year but not more than three years;	The same duty as Bond (No. 15) for the amount or value of the average annual rent reserved.
B	(iii) where the lease purports to be for a term in excess of three years;	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.
C	(iv) where the lease does not purport to be for any definite term;	The same duty as a Conveyance (No.23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
D	(v) where the lease purports to be in perpetuity.	The same duty as a Conveyance (No. 23) for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.
E	(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.
F	(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to
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<p style="text-align: center;">Exemptions</p> <p>(a) Lease, executed in the case of a cultivator and for the purposes of cultivation (including a lease of trees for the production of food or drink) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees.</p>	<p>the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered:</p> <p>Provided that, in any case when an agreement to lease is stamped with the ad valorem stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas.</p>
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13. The expression "Lease" defined in Section 2(16) clause (c) shows that it also includes therein "*any instrument by which tolls of any description are let*".

14. Similarly the expression "executed" and "execution" with reference to any instrument, as defined in Section 2(12) of the Stamp Act, means "*signed*" and "*signature*".

15. Likewise the expression "Instrument" defined in Section 2(14) shows that it includes therein every document by which any right

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A or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded.

B 16. In our considered opinion, reading of the contract in question would show that it was meant to collect tolls (fees) called “**Tehbazari**” in local parlance from squatters, venders, kiosks etc. and was for collecting parking fees. Such contract, in our view, is regarded as an instrument by which tolls of any description are let. In other words, by awarding such contract to the appellants, the Corporation had let their right to the appellants to collect the fees from a class of persons and for carrying on particular activity in the city.

C 17. The expression “**Lease**” under the Stamp Act has a wider meaning as compared to its original meaning contained in Section 105 of Transfer of Property Act (for short “the T.P. Act”). If “**Lease**” under Section 2(16) of the Stamp Act includes therein four specified category of documents set out in clauses (a) to (d), we do not find any such inclusion in Section 105 of the Transfer of Property Act. It is for this reason, we are of the view that the definition of “**Lease**” for the purpose of Stamp Act is extensive in nature. It is also clear from the use of the expression “*and includes also*” in Section 2 (16) of the Stamp Act.

D 18. So by fiction, “*any instrument by which tolls of any description are let*” is considered as “**Lease**” for the purpose of payment of stamp duty under the Stamp Act.

E 19. Justice G.P. Singh, the learned author in his book “**Principles of Statutory Interpretation**” in 13th edition - at pages 179 and 180 has dealt with this subject under the heading “**Definition sections or interpretation clause**”. In its sub-heading (a) “**Restrictive and extensive definition**”, the author has explained as to where the words “mean”, “include”, “includes”, and “means and includes” are used in any definition clause in the Act then how such definition should be interpreted. The following passage is apposite to quote.

“(a) **Restrictive and extensive definitions**

G The Legislature has power to define a word even artificially. So the definition of a word in the definition section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word is defined to ‘mean’ such and such, the definition is prima facie restrictive and

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exhaustive; whereas, where the word defined is declared
to 'include' such and such, the definition is prima facie
extensive. When by an amending Act, the word 'includes'
was substituted for the word 'means' in a definition section,
it was held that the intention was to make it more
extensive. Further, a definition may be in the form of 'means
and includes', where again the definition is exhaustive, on
the other hand, if a word is defined 'to apply to and include',
the definition is understood as extensive. These meanings
of the expressions 'means', 'includes' and 'means and
includes' have been reiterated in Delhi Development
Authority vs. Bhola Nath Sharma, (2011) 2 SCC 54. The
use of word 'any' e.g. any building also connotes extension
for 'any' is a word of very wide meaning and prima facie the
use of it excludes limitation."

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20. In our opinion, the aforesaid rule of interpretation applies while
interpreting the definition of Lease under Section 2(16) of the Stamp
Act.

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21. As mentioned above, the Corporation in these cases awarded
the contract to the appellants to recover the tolls (fees) from squatters,
vendors, kiosks etc. and for parking the vehicles in specified places.
The contract was, therefore, for recovery of tolls and created rights and
liabilities in favour of contracting parties *qua* each other. It cannot be
disputed that the expression "tolls of any description" in clause (c) would
include all kinds of levy, charges, fees etc. which the Corporation is
entitled to charge under its Bye-laws (41). *A fortiori*, the fees in question
would also fall under Section 2(16)(c) of the Stamp Act.

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22. In our opinion, the contract in question also satisfied the
definition of the expression "Instrument" as defined in Section 2(14) of
the Stamp Act because it created a right and liability and lastly, it also
satisfied the definition of expression "executed" and "execution" as
defined in Section 2 (12) of the Stamp Act because it contained the
signature of contracting parties.

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23. Learned counsel for the appellants, however, placed reliance
on the decision of this Court in New Bus-Stand Shop Owners
Association vs. Corporaton of Kozhikode & Anr. [2009 (10) SCC
455] and contended that in the light of the law laid down in the case of

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A **New Bus-stand Shop Owners Association** (supra), the contract in question has characteristics of a “license” but not of a “lease” and, therefore, the contract would attract a stamp duty payable on a License Deed under the Stamp Act.

B 24. In our view, the law laid down in the case of **New Bus-stand Shop Owners Association** (supra) is not applicable to the case at hand and is distinguishable on facts.

C 25. In the case of **New Bus-stand Shop Owners Association** (supra), the Corporation of Kozhikode had let out their shops to several persons and executed agreement in their favour. The question, however, arose as to the true nature of the agreement, whether it is a “license agreement” or a “lease agreement”. Their Lordships on construction of the terms of agreement held that the agreement was a license and accordingly chargeable to stamp duty as “License” under the Kerala Stamp Act.

D 26. Such is not the case here. The case at hand relates to the right to collect the tolls let by the Corporation to the person concerned. It squarely attracts Section 2(16)(c) of the Stamp Act and partakes the character of a “Lease”.

E 27. In the light of foregoing discussion, we are of the considered opinion that the contract in question is a “Lease” as defined in Section 2(16)(c) of the Stamp Act and is accordingly chargeable to payment of stamp duty as per the rates prescribed in Article 35 of Schedule I of the Stamp Act as “Lease”. The conclusion arrived at by the Single Judge in Mohammad Ali vs. Board of Revenue, U.P. (supra) is, therefore, correct which we support with our reasoning given supra.

F 28. In view of foregoing discussion, the appeals are found to be devoid of any merit. They are accordingly dismissed.