

Mirza Arif Beg vs State Of U.P. And 2 Others on 3 March, 2025

Author: Piyush Agrawal

Bench: Piyush Agrawal

HIGH COURT OF JUDICATURE AT ALLAHABAD

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Neutral Citation No. - 2025:AHC:29063

Reserved on 11.02.2025

Delivered on 03.03.2025

Court No. - 2

Case :- WRIT - C No. - 35537 of 2013

Petitioner :- Mirza Arif Beg

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- N.K. Chaturvedi

Counsel for Respondent :- A.C. Mishra, A.C.S.C.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Sri N.K. Chaturvedi, learned counsel for the petitioner and Sri A.C. Mishra, learned Additional Chief Standing Counsel for the State-respondents.

2. By means of this writ petition, the following prayer has been made by the petitioner:

"a. Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 22.05.2013 passed by the respondent no.2, Commissioner- Gorakhpur Region Gorakhpur and order dated 23.11.2011 passed by the respondent no.3 Collector Gorakhpur (Annexures- 6 & 4) to the writ petition;

b. Issue a writ, order or direction in the nature of Mandamus directing the

respondents not to recover stamp fee along with penalty (Rs.586700.00);

c.

d. "

3. Learned counsel for the petitioner submits that on 17.02.2000, a lease deed was executed between petitioner and Dr. S.C. Kaushik, Dr. S.K. Singh and Smt. Aarti Sinha and according to terms and conditions thereof, a hospital was constructed over the land in question. In the meantime, on 14.06.2005, Smt. Aarti Sinha, and Dr. Chandra Mohan Sinha executed a sale deed on 14.06.2005 in favour of the petitioner of their share, but the authorities without any authority have initiated the proceedings under Section 47-A of the Indian Stamp Act on the ground that at the time of execution of sale deed, superstructure was standing over the land in question.

4. He further submits that the building, which was constructed by the petitioner is much before the execution of the sale deed, and therefore, the owner has no right to sell the superstructure standing over it and hence, the stamp duty was rightly not paid thereof, as the buildings belong to the petitioner.

5. He further submits that as per Section 54 of the Transfer of Property Act, the sale can be done only by the person who is authorized to do it.

6. In support of his submission, learned counsel for the petitioner has placed reliance upon the judgement of this Court passed in the case of Ashok Kumar and another Vs. Chief Controlling Revenue Authority and others [2011 (2) ARC 672].

7. Per contra, learned Standing Counsel supports the impugned orders and submits that the proceedings have rightly been initiated against the petitioner.

8. He refers Clause 3 & 4 of the memorandum of lease deed executed on 12.2.2000 between the petitioner and the owner of the land which shows the superstructure standing over the land in question, which belongs to the seller of the property.

9. He further submits that once the superstructure standing over the land in question vest with the seller, admittedly the same has not been shown in the sale deed in question, which was liable to be included in the sale deed for payment/levy of stamp duty, the proceedings have rightly been initiated.

10. After hearing the parties, the Court has perused the records.

11. It is an admitted case between the parties that by the sale deed dated 14.06.2005, only some share of the Arazi was sold to the petitioner. The respondents have taken view that the superstructure standing over the land in question should have also be added to the value for payment of stamp duty. The revenue has emphasized that the owner of the land was also owner of

the buildings as contemplated in the lease deed dated 17.02.2000. The relevant preamble of the lease deed will be relevant for determining the present controversy, which reads as under: -

"WHEREAS on settlement of the terms and conditions of the lease the Second Party took the premises detailed above at yearly rent of 1.5,000/- for a period of Twenty Years (20 years) with effect from 17-2-2000 and is in occupation thereof as LESSEE. The terms and conditions which have been mutually settled in between the both parties, have now been reduced in writing with a view to avoid any dispute in future and it is felt that a deed of Memorandum of the terms and conditions of the lease which are already settled as follows:

(1) That the yearly rent of the demised premises has been settled at 5.5000/- per annum and the Second Party will continue to pay the yearly rent settled to the First Party or their authorised representative on completion of one year i.e. in the month of February each year.

(2) That the period of lease is 20 years with effect from 17-2-2000 with two options of five years each on same terms and conditions except the yearly rent to be mutually settled at that time in between both the parties. It has been settled that the option for further period of lease after expiry of 20 years has to be exercised by the Second Party in writing at least before three months before the date of the expiry of the lease deed.

That the Second Party, will have right to make construction on the portion of the land of the demised premises at their own cost. The construction, extension modification etc. so made shall ultimately be deemed to be the property of the FIRST PARTY.

(4) That on the expiry of the period of Lease or the period of extention the Second Party will have over the possession of the premises consisting at that time by removing all the furnitures and other fixtures etc. but the second party shall have no right the demolish the building."

12. Perusal of the afore-quoted clauses of the lease deed shows that the land was given on lease for a period of twenty years on a payment of Rs. 50,000/- per annum as rent.

13. Further, the petitioner being the second party was empowered to construct the building over the land in question on his own cost.

14. The clause 3 of the lease deed further provides that the construction extension modification etc. so made ultimately be deemed to be the property of the first party i.e. the seller in the present case.

15. Furthermore, Clause 4 of the lease deed provides that after the expiry of the lease period or the extension of period, the petitioner shall only be entitled to remove all furnitures and other fixtures etc., but the petitioner shall not be entitled to demolish the building. These clauses clearly show that after being erected the superstructure over the land in question, the same vests with the seller i.e. the person who has executed the sale deed in favour of the petitioner and in terms of the lease deed

agreement, the seller became the owner of superstructure standing over the land in question i.e. the property of the seller. When the sale deed was executed, the buildings ought to have been included for payment of stamp duty.

16. The judgment cited by the counsel appearing for the petitioner is of not aid to him as in the case Ashok Kumar (supra), no clause refers that after the construction of hotel as mentioned therein, the superstructure will vest with the owner of the land whereas on that premise, the Hon'ble Court has held that the proceedings under Section 47-A of the Indian Stamp Act was not justified and as such, the case in hand is entirely different.

17. In view of the peculiar facts and circumstances of the case as stated above, no interference is called for in the impugned orders by this Court.

18. Accordingly, the writ petition fails and is hereby dismissed. No order as to costs.

Order Date :- 03.03.2025 Pravesh Mishra/-

(PIYUSH AGRAWAL, J.)