

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4367 OF 2000

M/s. Residents Welfare
Association, Noida

.....Appellant(s)

Versus

State of U.P. & Ors.

....Respondent(s)

JUDGMENT

TARUN CHATTERJEE, J.

1. This appeal by special leave is directed against the judgment and order dated 27th of May, 1999 of the Division Bench of the High Court of Allahabad in Writ Petition No 38748 of 1997 whereby, the Division Bench of the High Court had dismissed the Writ Petition filed by the appellants above named.

2. The relevant facts leading to the filing of this appeal, as emerging from the case made out by the appellant may be summarized as follows:-

New Okhla Industrial Development Area (in short "Noida") allotted lands to several Co-operative Housing Societies by execution of lease deeds with such Co-operative Group Housing Societies in respect of the lands allotted to them. The said lease deeds contain various restrictions on the transfer of leasehold rights which, interalia include:

- 1) Restrictions on the transfer without prior consent of the Noida authorities by transfer memorandum.
- 2) Construction of buildings on such leasehold lands had to be made within a stipulated period from the date of allotment failing which the leases of the respective Co-operative housing societies were liable to be resumed by the Noida authorities.

3. The lease deeds also contained another clause, which stipulated that such lease deeds must be compulsorily registered with the sub-Registrar. It may be clarified that Noida is the lessor, the co-operative societies are the lessees, members of the cooperative societies are sub-lessees and the present appellants are the assignees.

4. The appellant is the Resident Welfare Association, Noida, (hereinafter called the "Association"). The members of the association executed various agreements for transfer of leasehold rights with the co-operative societies and its members from 1988 onwards. Each of the agreements for transfer of leasehold rights entered into by the members of the association with the lessees and the sub-lessees were registered with the Office of the Sub-Registrar, Noida. It may be kept on record that from 1984 to June 1997, Noida

authorities were injuncted by the Civil Court from issuing transfer memorandums for grant of permission for transfer of leasehold rights. The order of injunction was operative from 1988 and continued almost throughout the State of UP till July 1997. It may also be kept on record that the agreements for transfer of leasehold rights were denoted as agreements of sale. The various transactions entered into by the members of the association may be categorized in three different heads:

- 1) By the agreements of transfer entered into and possession taken over on payment of most or all of the consideration due and such agreements being duly registered with the Office of the Sub-Registrar, Noida on payment of stamp duty charges at half of the stamp duty payable on a conveyance for the consideration set forth in the agreement in accordance with Article 5 (b)(1) of Schedule 1-B to the UP Stamp Act,

- 2) By the agreements entered into and possession not taken under the agreements, but later the said agreements were duly registered with the Sub-Registrar, Noida,
- 3) In both the above mentioned categories, the agreements for transfer were either for a plot of land on which construction was made thereafter by the assignees (members of the association) of the leasehold property out of their own funds or the agreements for a plot of land along with the building constructed thereon. Thus in some cases, as noted hereinabove, the plots were purchased along with small construction which was later demolished and the assignees constructed new building after obtaining new sanction plans using their own funds.

5. On 1st of July, 1997, a public notice was issued advertising that Noida authorities shall issue transfer memorandums with respect to the transfer

of plots in question upon terms and conditions including payment of transfer premium. Upon issuance of the said notice, various members of the association applied for and obtained transfer memorandums from Noida authorities after complying with the conditions thereof and making payments of the prescribed premium. One of the conditions, namely condition no. 4 of the transfer memorandum issued by the Noida authorities required the lessees of the demised premises to execute a regular deeds of transfer with the assignees and to get the same registered with the Sub-Registrar, Noida. A copy of the same was required to be filed with the Noida authorities within a period of 60 days failing which, the Noida authorities would be entitled to cancel such transfer and impose a penalty for revalidation of the transfer memorandum. It is at this stage appropriate that condition no. 4 of the transfer memorandum may be produced for the proper understanding of the

dispute in this case:

"The transferee will submit a certified copy of transfer deed to be duly registered with Office of the Sub-Registrar, Noida within 60 days from the date of issue of this memorandum. This transfer deed is required to be signed by the person who has signed the transfer application. The transferee of the transfer deed executed by power of attorney holder of the transferor after 30th September 1997 shall be liable to pay additional transfer charges as per policy of the Authority. If the transferor/transferee fails to execute and register the transfer deed within 60 days from the date of this memorandum then this transfer memorandum shall be required to be revalidated subject to payment of penalty at transferring rate applicable from time to time (present penalty for delay in executing transfer deed is Rs. 10/- per day for actual period of delay over and above the given period of 60 days)"

6. In compliance with the above stated condition of the transfer memorandum, some of the members of the association executed the relevant transfer deeds with the lessees. It appears that these transfer deeds were in essence and in reality deeds for transfer of the lease by way of assignments by

the original lessees in favour of the members of the association. Prior to submitting the documents for registration, enquiries were made as to the stamp duty payable on which the officials of the respondent no. 3 informed that the stamp duty to be fixed on the documents should be as applicable to conveyance under Article 23 of the Schedule 1-B of the Stamp Act, on the basis of the current market value of the plot along with the constructed portion thereon and for which reference to the present notified rates for Noida would be taken, as indicative of the market value.

7. Challenging this decision of the Sub-Registrar, a Writ Petition was filed before the Allahabad High Court. In the Writ application, the appellant raised the following issues:

- 1) Whether the relevant date for determination of the market value of property would be the date of agreement to sell, when the consideration was frozen, or the date of

presentation of the documents of transfer for registration?

- 2) Whether the stamp duty could be levied on the buildings that have been constructed after getting possession of the lands and whose cost has been borne entirely by the members of the association?

8. The Division Bench of the High Court decided the aforesaid two questions and it was held inter-alia, as follows:

- 1) As far as the leasehold land is concerned, it can only be the subject matter of assignment and not absolute sale by the very nature of the land and therefore both Articles 23 and 63 of the Schedule of the Indian Stamp Act would be applicable.
- 2) Whether the association or its members constructed the buildings was a question of fact, which the High Court in the exercise of its jurisdiction under Article 226 of the Constitution was not in a position to determine.
- 3) If the Constructions were made after the possession was delivered to the members of the association, stamp duty could not be levied on the buildings so constructed, as they were not the subject matter of transfer between the sub-lessees and assignees.
- 4) Market value of the lands could not be calculated on the date of agreement to

sell but the same can be calculated on the date of execution of the conveyance deed.

9. Based on the aforesaid findings, the Division Bench of the High Court rejected the Writ application of the appellant.

10. Feeling aggrieved by the judgment of the Division Bench of the High Court, the association had filed this special leave petition, which on grant of leave was heard in the presence of the learned counsel for the parties.

11. We have heard the learned counsel appearing for the parties and have carefully examined the materials on record. Having done that the pivotal questions that need to be decided in this appeal, as were decided by the High Court are as follows:

- 1) Whether the condition precedent to pass an order under section 47 A of the Stamp Act, as amended by the State of

- Uttar Pradesh (in short U.P.), was present in the instant case?
- 2) Whether the said documents were deeds of assignment falling under Article 63 of the Schedule 1-B of the Stamp Act, as applicable to the State of UP or they were deeds of conveyance, as defined in section 2(10) of the Stamp Act to which Article 23 would be applicable?
 - 3) Whether the document dated 22nd of November, 1997, is a deed of assignment or it is a conveyance to which Article 23 applies and if so, whether the order dated 22nd of November, 1997, passed by the Sub-Registrar purporting to make a reference under Section 47 A of the Stamp Act, as applicable to the State of UP is not legal and without jurisdiction?
 - 4) Whether the relevant date for determining the consideration entered in the document would be the market value of the property on the day of entering into the agreement for sale and not the date of presentation of the documents for registration?

12. We shall now proceed to deal with the questions framed by us in this appeal. Let us first consider the scope of Section 47 A of the Stamp Act as amended by the State of UP, and the condition precedent for invocation of Section 47 A of the Act

which would be necessary for passing an order under the said Section of the Stamp Act as applicable to the State of UP. Section 47 A was substituted by UP Act 38 of 2001 with effect from 20th of May, 2002, whereby a provision has been made to charge duty as per the market value of the property valued in case of evasion of the stamp duty. Section 47 A reads as under:

"47-A. Instruments of conveyance etc., if undervalued, how to be dealt with:- (1)(a) If the market value of any property which is the subject of any instrument on which duty is chargeable on the market value of the property as set forth in such instrument is less than even the minimum value determined in accordance with any rules made under the Act, the registering officer appointed under Indian Registration Act, 1908, shall, notwithstanding anything contained in the said Act, immediately after presentation of such instruments and before accepting it for registration and taking any action under section 52 of the said Act, require the person liable to pay the deficit stamp duty as computed on the basis of the minimum value determined in accordance with the said rules and return the instrument for presenting again in accordance with section 23 of the Registration Act, 1908.

(b) When the deficit stamp duty required to be paid under clause (a), is paid in respect of any instrument and the instrument is presented again for registration, the registering officer shall certify by endorsement thereon, that the deficit stamp duty has been paid in respect thereon and the name and the residence of the person paying them and register the same.

(c) Notwithstanding anything contained in any provision of the Act, the deficit stamp duty may be paid under clause (a) in form of impressed stamp containing such declarations as may be prescribed.

(d) If any person does not make the payment of deficit stamp duty after receiving the order referred to in clause (a) and present the instrument again for registration, the registering officer shall, before registering the instrument, refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon.

(2) On receipt of a reference under sub section (1) the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject of the instrument and proper duty payable thereon.

(3) The Collector may suo moto, or on a reference from any court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any Officer authorized by the Board of Revenue in

that regard, within four years from the date of registration of any instrument on which duty is chargeable on the market value of the property, not already referred to him under sub section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject of such instrument and the duty payable thereon, and if after such examination he has reason to believe that the market value of such property has not been truly set forth in the instrument, he may determine the market value of such property and the duty payable thereon. Provided that, with the prior permission of the State Government, an action under this sub section may be taken after the period of four years but before the period of eight years from the date of the registration of the instrument on which the duty is chargeable on the market value of the property.

Explanation- The payment of deficit stamp duty by any person by any order of the registering officer under sub section (1) shall not prevent the Collector from initiating proceedings on any instrument under sub section (3).

(4) If on enquiry under sub section (2) and examination under sub section (3) the Collector finds the market value of the property-

- a) truly set forth and the document duly stamped, he shall certify by endorsement that it is duly stamped and return it to the person who made the reference
- b) not truly set forth and not truly stamped, he shall require the payment

of the proper duty or the amount required to make up the deficiency in the same together with a penalty of an amount not exceeding four times the amount of proper duty or the deficit portion thereof.

(4A) The Collector shall also require along with the deficit stamp duty or penalty required to be paid under clause (ii) of sub section (4), the payment of a simple interest as a rate of one and a half per mensem on the amount of deficit stamp duty calculated from the date of execution of the instrument till the date of actual payment.

(4B) The amount of interest payable under sub section (4A) shall be added to the amount due and also deemed for all purposes for the amount required to be paid.

(4C) Where the realization of the deficit stamp duty remains stayed by any order of any court or any authority and such order is subsequently vacated, the interest referred to in sub section (4A) shall be payable also for the period during which the order or stay remained in operation.

(4D) Any amount paid or deposited by, or recovered from, or refundable to, a person under the provision of this Act, shall first be adjusted towards the deficit stamp duty or penalty outstanding against him, and the excess, if any shall then be adjusted towards the interest, if any, due from him

(5) The instrument produced before the Collector under sub section (2) or sub section (3) shall be deemed to have come before him in performance of his function

(6) In case the instrument is not produced within the period specified by the

Collector, he may require payment of deficit stamp duty, if any, together with penalty on the copy of instrument in accordance with the procedure laid down in sub section (2) and (4)."

13. Before the introduction of Section 47 A in the Stamp Act, there was no provision under the said Act empowering the revenue authorities to make an enquiry regarding the valuation of the property conveyed for the purpose of determining the duty chargeable, if, the registering authorities were of the view that the valuation shown in the document was undervalued. This was reflected through the decision in Himalaya House Company vs. Chief Controlling Authority & another, AIR 1972 SC 898, whereby this court held that the stamp duty was chargeable as conveyance under Article 23 and the Collector (Stamps) was not entitled to charge stamp duty on a document presented for registration except on the consideration set forth in the document. Pursuant to this judgment, several

States amended the Stamp Act. The State of UP also introduced an amendment by way of Section 47 A, which has been quoted herein above. Thus, the object underlying Section 47 A of the Indian Stamp Act is to neutralize the effect of under valuation of immovable property under registered instrument of sale or exchange or gift or partition or settlement. From a bare perusal of sub-section (1) of Section 47 A of the Act, it is clear that if the market value of any property, which is the subject matter of an instrument on which stamp duty is chargeable, as set forth in the instrument, is less than even the minimum value determined in accordance with the rules made under this Act, the registering officer shall request the person to pay the deficit stamp duty and present the instrument again for registration. At the same time, it should be kept in mind that it is not enough for the authorities for the purpose of invoking Section 47 A that the consideration amount stated in the instrument of

sale is less than the prevailing market value but they must be satisfied that there is an attempt of under valuation. It is pertinent to mention that if the registering authority finds that the market value of the property presented for registration is higher than the one shown in the document, in that case, the registering authority after presentation of such instrument and before accepting the document for registration would ask the person liable to pay the required stamp duty, to pay the deficit amount as computed on the basis of the minimum value determined in accordance with the rules and return the instrument for presenting the document again in accordance with Section 23 of the Registration Act. Again a close look at Sub-Section (2) of Section 47 A reveals that in case such an officer has reason to believe that the market value of the property has been under valued, he shall refer the same to the Collector but only after registering the same. Even for the sake of argument, if we assume that

Section 47 A is applicable in the present case, then also it is apparent that in the current scenario, the registering authority could not register the said instrument before referring it to the Collector which has been mandated under the Act. For the further illustration of this point, we may refer to the decision of this Court in *State of Punjab vs. Mahavir Singh*, (1996) 1 SCC 609, where this Court has categorically held that whenever a document is presented for registration, the Sub-Registrar is required first to register the document and then make a reference under Section 47 A if he deems fit and proper.

14. Before we proceed further to ascertain whether Section 47 A would at all be applicable in the present case at our disposal, we have to first establish whether the alleged documents were deeds of assignment falling under Article 63 of the Schedule 1-B of the Stamp Act as applicable to the

State of UP, or they were deeds of conveyance, as defined in Section 2(10) of the Stamp Act to which Article 23 would be applicable. It is only after this question is properly answered, that we can proceed to answer whether Section 47 A would be applicable in the present case.

15. The learned counsel for the appellant contended that since Article 63, Schedule 1-B of the Act is a specific provision that deals with transfer of lease by way of an assignment; it should be excluded from general provisions. This Article is the charging provision for such transfers. It provides for the duty to be charged which is equal to conveyances as provided in Article 23 of the said Schedule, the only distinguishing factor being that in the former, the rate of duty would be according to the consideration mentioned in the deed, while the latter states the exact duty chargeable. The learned counsel also contended that for application of

Article 23, it is necessary that there is a conveyance. It was also contended by him that the main condition for registration of an instrument is that it must be chargeable to duty on the market value and the same is possible in case of an out right sale. In case of lease, only partial rights are transferred and the right of reversion remains with the lessor whereas in case of sale, there is an absolute transfer of ownership. Therefore, we have to establish whether the documents presented for registration were, in fact, an out right sale or a deed of lease. The learned counsel appearing on behalf of the respondent no 4. (i.e. being the Noida authorities) contended that the deed was a composite deed of assignment and sale owing to which both Articles 23 and 63 would be applicable. The Division Bench of the High Court in its impugned judgment also agreed to this contention. Thus, considering this, it becomes essential for us to determine the nature of the deed.

16. "Sale" has been defined under section 54 of the Transfer of Property Act. Although the Indian Stamp Act 1899 has not included the definition of "sale", Section 2, sub-section (10) of the Act defines "conveyance" as including a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred intervivos and which is not otherwise specifically provided for by Schedule 1-A or Schedule 1-B, as the case may be. "Lease" has been defined under section 105 of the Transfer of Property Act and also in section 2 sub section (16) of the Indian Stamp Act 1899. According to section 2 sub section (16) of the Indian Stamp Act, "Lease" means a lease of immovable property and includes a Patta, a kabuliyat or any instrument by which tolls of any description are let, any writing on an application for lease intended to signify that the application is granted and finally any instrument by which mining lease is granted in respect of minor minerals as defined in clause (e) of

section 3 of the Mines and Minerals (Regulation and Development) Act, 1957.

17. From a plain reading of Section 54 and Section 105 of the Transfer of Property Act, there cannot be any doubt in our mind that in case of a lease, there is a partial transfer and the right of reversion remains with the lessor. Whereas in case of a sale, there must be an absolute transfer of ownership and not some rights only as in the case of a lease. Therefore, it is to be considered whether the document in question, which was presented for registration, was a partial transfer and accordingly, it was a lease, or whether it involved any outright sale therein. As noted herein earlier, a lease deed was executed by the lessor in favour of the co-operative societies and its members. It is an admitted position that the lessor namely Noida Authorities had entered into the lease agreement with the co-operative societies and their members,

being lessees and the sub-lessees respectively, and the sub-lessees further entered into the agreements with the assignees (members of the appellant association). Such being the position, it is amply clear to us that the document in question presented for registration before the registration officer was, in fact, a lease and the transfer to the members of the association was an assignment of the leasehold rights. It cannot be doubted that the demised land was merely an enjoyment of the land and not transfer of the ownership.

18. In order to appreciate whether a document is a sale or a lease, reference can be made to the case of Byramjee Jeejeebhoy (P) Ltd. vs State of Maharashtra (AIR 1965 SC 590), where this Court formulated the following principles for determination of the aforesaid question:

"Such a grant cannot be regarded as a lease, for a lease contemplates any right for a transfer of a right in a consideration

price paid or promised or service or other things of value to be rendered periodically or on specified again to the transferor. The grant does not purport to demise a right of enjoyment of land. It confers right of ownership in then land. There is gain no contractual right reserved. It is specifically or by implication to determine the right. The reservation and reversion remained and remains yearly and runs, years and profits of all lands determine and property in the premise is of nature of a restriction upon the said transfer and does not restrict the equality of the said. The rent to be demanded was again not stipulated as consideration for the grnat of the right to enjoy the land but expressly in consideration of grnating freedom from liability to pay assessment."
[Emphasis supplied]

19. The High Court in the present case decided that the document given for registration contained a composite deed of lease as well as a deed of sale. Therefore, both Article 63 as well as Article 23 of the said Act would apply. We cannot agree with these observations of the Division Bench of the High Court. As mentioned earlier, the said document consists of a single deed of assignment of lease. The

Division Bench construed the transfer of the land as an assignment of lease whereas the transfer of the building appurtenant thereto to be through a deed of sale. It appears to us that the High Court has clearly not interpreted the true essence of the lease deed executed between the lessor and the lessees. The learned counsel appearing on behalf of the appellant has brought to our notice that the said lease deeds categorically provided that not only the land but the appurtenants attached thereto are also governed by its covenants as per para "k" of the said deed which states that every transfer, assignment, relinquishment, mortgage or sublet of the property shall be bound by the covenants of the deed along with the assignee being answerable to the Noida authorities in all respects. The appellant has also brought to our notice that para "g" of the said deed states that the lessee/ sub lessee would only be allowed to make any alterations in the building with the prior permission of the authority

and would also be liable if any deviations from the permission obtained is brought to light. Moreover, the concerned lease deed specifically provides for a lease of 99 years of the land along with its appurtenances thereto with the right of reversion. So it is clear from the above-mentioned provision that the land along with its appurtenances would be reversed back to the lessor after the stipulated period. The alleged document is therefore a transfer of the assignment of lease and not an outright sale of its appurtenances. The learned counsel appearing on behalf of the respondent No.4 (being the Noida Authorities) had contended that the lessee or the sub lessee have absolute rights over the buildings constructed by them and hence the lessor has no right over them. Therefore, the lessee or the sub-lessee can transfer such buildings by way of an outright sale and the same cannot be the subject matter of an assignment of lease. We are in a position to accept this submission of the Noida

Authorities. It is clear from para (b) of section III of the lease deed executed between Noida and the sub-lessees that:

"At the time of re-entry the demised premises shall not have been occupied any building constructed by the sub-lessee therein the sub lessee shall within a period of three months from the date of re-entry, removes from the demised premises all erections or buildings, fixtures and things which at any time and during the said terms shall be affixed or set up within or upon the said premises and leave the said premises in as good a condition as it was on the date of demise, in default whereof the same shall become the property of the lessor without payment of any compensation to the lessee/ sub lessee for the land and the building fixtures and things thereon, but upon the sub lessee removing the erection buildings, fixtures and things within the period hereinbefore specified, the demised premises shall be re-allotted and the lessee/ sub lessee may be paid such amounts as may works out in accordance....."

20. Therefore, the only question which comes to our mind is that if the lessee or the sub lessee has an absolute right over the constructions constructed by him and he can transfer it by an out

right sale and not through an assignment of lease as contended by the Noida Authorities, the lease deed would not have provided for such a clause wherein the Noida authorities have a right over the buildings and the appurtenants on the land in case of any failure of the sub-lessee to remove such constructions at the time of re-entry. Thus the said lease deed specifically provides for a right of reversion to the land and appurtenances thereto including buildings, on the termination or expiry of the lease. It is thus clear that the buildings and all other appurtenants attached to the land become a part of the assigned transfer through lease and not a separate sale.

21. Moreover section 3 of the Transfer of Property Act states that when an immovable property such as land is transferred by way of assignment of lease, all appurtenances thereto attached to the earth

such as buildings and fixtures thereto would also stand assigned.

22. Accordingly, on a plain reading of the deed of assignment, we are of the view that the assignees became liable to the lessor, namely Noida on the covenants running with the land. In conclusion, we are, therefore of the view that the deed presented for registration was a deed of assignment.

23. Before we part with this aspect of the matter, that is to say, whether the document/instrument was in fact a deed of assignment or an outright sale, we must also keep in mind that the nomenclature to the document of assignment cannot be said to be determining factor in deciding whether a particular deed or document was a lease or a deed of assignment. In *Madras Refinery Ltd. vs. C.S.* [AIR 1977 SC 500], it was held that in order to decide whether a particular document is a lease or a deed of assignment, one has to look at the substance of

the deed of assignment to the document and not the nomenclature. Therefore, it must be held that no importance can be given to the nomenclature to the document. Although some of the members of the association had termed the document as a deed of sale or transfer cum sale deed instead of as a deed of assignment, it remains as a deed of assignment as has been noted above by us.

24. Keeping the above position in mind, we, therefore, would deal with the question as to whether Article 63 of Schedule 1B of the Stamp Act, as applicable to the State of UP will apply to the document in question, or whether Article 23 of the Stamp Act will be applicable in the present case. Article 63 deals with transfer of lease by way of assignment and provides that in such a case, the duty that would be payable is the same duty that would be payable in case of conveyance (Article No. 23) for a consideration equal to the amount of

consideration for the transfer. A plain reading of Article 63 of the Schedule 1-B to the Stamp Act would, however, show that the stamp duty chargeable to a document is not on the market value of the property but on consideration indicated in the same. It is only the rate of duty, which is to be taken from Article 23. Therefore, if Article 63 of the Stamp Act is to be applied, duty shall be paid on the consideration of the amount of consideration shown in the deed itself and not on the market value of the land or the construction thereon. Therefore, it is clear from a reading of Article 63 that it would apply in case of a transfer of lease by way of an assignment and Article 23 applies in case of a conveyance by way of sale. Article 63 in clear terms mentions that in case of an assignment, the duty that would be payable is the same duty as conveyance for a consideration equal to the amount of the consideration for the transfer. Thus it is clear that the duty is not calculated on

the market value but on the amount of

consideration mentioned in the deed itself. It is expedient to have a look at the Stamp Acts as applicable to the State of Tamil Nadu and Union Territory of Pondicherry for elaborating our point made above. From the Stamp Act of Tamil Nadu and Pondicherry, we find that Article 63 as applicable to the same provides that in case of assignment by way of lease, the duty that would be payable is the duty as a conveyance for a market value equal to the amount of the consideration for the transfer. Therefore, it is clear that in these areas, a clear intention has been expressed that duty should be payable for a market value equal to the amount of the consideration for the transfer whereas if we refer Article 63 as applicable to the State of UP, it mentions that duty would be payable for a consideration equal to the amount of the consideration for the transfer. The legislature expressly has specified therefore that the stamp

duty payable in case of an assignment would not be calculated on the market value of the property but on the consideration set forth in the deed itself.

25. In view of the above observation, we may note that it was not open to the registering officer to embark upon an enquiry into the market value of the land or the building in view of the fact that it is only the leasehold rights which are only transferred by way of assignment by the document/instrument presented for registration.

26. Section 47 A would be applicable only when Article 23 is applicable. In case Article 63 applies, the registration officer does not have any jurisdiction to enquire into the market value of a property under Section 47 A of the said Act. It is to be noted that the power under Section 47 A of the Act can be exercised in respect of an instrument presented for registration on which duty must be

charged on its market value. Thus Section 47 A applies in case of an outright sale. Since in this case, the instrument in question is not an outright sale but a lease hold right, therefore, the question arises whether the condition precedent mentioned in the Act has been fulfilled and, if not, the reference under Section 47 A was invalid. Moreover, even if we assume that Section 47 A applies in this case; we have to enquire whether the appellant intentionally tried to undervalue the property in the alleged document. At this juncture, it is necessary to again consider Section 47 A. Section 47 A clearly provides that when the valuation shown in the agreement presented for registration is, according to the authorities, under valued, in that case, the registering authorities are conferred with the discretion to hold an enquiry to find out if the duty chargeable on the market value of the property is less than even the minimum value determined in accordance with the rules made under the Act. As is

evident from the records placed before us, the appellant could not execute the sale deed because of the failure of the respondent No.4, i.e. Noida Authorities, to execute transfer memorandum due to the orders of injunction passed in pending litigations before the different courts. Therefore the appellant cannot be faulted for not executing the same. We have observed that the consideration mentioned on the agreement to sell was absolutely adequate with regard to the market value of the property at that time and the same was registered before the registering authority. Moreover, we find that there are no allegations on record against the appellant of under-valuation at the time of entering into the agreement for transfer of the property. Therefore we do not see any fraudulent intentions on the part of the appellant to under value the property in order to evade stamp duty paid thereon. Since the stamp duty is to be charged on the consideration mentioned in the document under

Article 63 of Schedule 1-B of the Act in case of an assignment of lease, the consideration mentioned on the document was adequate in respect of the time when the agreement of the transfer by way of lease was registered. It would be a different question that when the said deed is to be executed, the value of the said property has increased with the passage of time. The execution of the deed had not been delayed due to any fault on the part of the appellant and therefore he cannot be held liable for intentionally suppressing the value of the property. Moreover as we have noticed, the appellant did not make any undue delay in executing the deed after the Noida Authorities issued the transfer memorandums. Therefore, considering the above circumstances, it would be unwise to say that the appellant had any intention to evade the stamp duty as specified under the Act. Thus even if Section 47 A of the Act would have applied, the registering officer would have no jurisdiction to refer

it to the Collector since there was never any intention on the part of the appellant to undervalue the property.

27. Having decided the aforesaid questions raised in this case, we now proceed to deal with the question as to the date of determination of the consideration mentioned in the document. The respondents contended that the consideration mentioned should be the market value of the property on the date of execution of the deed and not on the date when the agreement to sell the land was executed. The appellants on the contrary argued that the relevant date in order to calculate the consideration would be the market value on the date when the agreement to transfer the land was entered and registered. We have heard the argument of the parties and referred to various cases dealing with this matter. In this regard, we would like to observe that there cannot be a

straightjacket formula devised for determining the same. It would depend on the various facts and circumstances of a particular case. In situations where the delay is caused on the part of a party intentionally while executing a deed after entering into an agreement of sale or lease as the case may be, the market value should be determined on the date when the deed is executed and not when an agreement to sale the property or lease the property had been registered. But in cases where a person is not at fault and the delay is caused due to the lessor as in this case, the market value should be determined on the date when the agreement to lease the property was entered. The lessee or the sub lessee should not suffer due to the inability of the lessor in handing over transfer memorandums as is required under the lease. For this, a reference can be made to the case of S.P. Padmavati vs. State of Tamil Nadu & Others. [AIR 1997 Mad 296], which is similar to the present case and to

which we are in respectful agreement where the property could not be registered due to no fault of the transferee and where the consideration was frozen earlier, as in the current case. The Madras High Court held that the relevant date for calculation of market value and the stamp duty is the date on which the consideration was frozen.

28. Since in view of our discussions made herein above that this was the case of assignment of a lease which has to be dealt with in accordance with the provisions under Article 63 of the Schedule 1-B of the Act which says that the duty shall be charged as per Article 23 on the consideration mentioned in the deed and not on the market value. So the question of determination of the market value does not arise at all in case of an assignment of lease which is to be charged as per Article 63 of the Act. An enquiry under Section 47 A is also not contemplated under the Act in case of an

assignment by way of lease unlike Article 23 of Schedule 1-B of the Act which deals with Stamp Duty to be levied on deed of sale. It is further observed by us that Article 63 of Schedule 1-B, being a specific Article, will have overriding effects on all the general clauses of the Act. As has already been mentioned, market value can be truly determined in case of an outright sale. The present case does not deal with such a situation.

29. Going by the aforesaid discussions, we are of the view that the consideration to be mentioned in the assignment of transfer by way of a lease would be the market value of the property on the date of agreement for sale when the property could not be registered earlier due to no fault of the members of the associations and when their consideration was frozen earlier. Concerns can be raised that since Article 63 of the Act deals with stamp duty to be levied on the consideration set forth in an

assignment by way of transfer of lease, and not on the market value of the property to be transferred, it can be misused and remedy would not be available under Section 47 A to determine the market value of the property. This has to be taken care of by the concerned Legislature and incorporate suitable safeguards to prevent such misuse. For this purpose, reference can again be made to the Stamp Acts of the State of Tamil Nadu and Union Territory of Pondicherry as applicable to these areas where it has been specifically mentioned in Article 63 that in case of an assignment by way of transfer of a lease, the duty which would be payable is the same duty as a conveyance for a market value equal to the amount of the consideration for the transfer. Thus it is clear that there is an express intention on the part of the legislature in these areas to charge the stamp duty on lease deeds according to the prevalent market value unlike the Stamp Act as applicable to the State of U.P. Therefore we cannot

go beyond that which has been provided under the statute and decide otherwise. Thus we reiterate that in the present circumstances, the consideration would be that which has been mentioned in the lease deed at the date of the agreement to enter into the same and there is no scope for looking into the market value of the property under the provisions of the Act in case of an assignment by way of a transfer of lease under Article 63 of the Schedule 1-B of the Act.

30. Thus accordingly, setting aside the judgment of the High court we hold that in the instant case Article 63 of Schedule 1-B of the Stamp Act, as applicable to the State of U.P., which deals with transfer of lease by way of assignment will apply to the documents in question. We also hold that the consideration to be mentioned in the document would be the market value of the property on the date when the agreement was entered into and not

when it was presented for registration, considering the peculiar facts of this case.

31. In view of our discussions made herein above, the appeal is thus disposed of. There will be no order as to costs.

.....J.
[ARIJIT PASAYAT]

New Delhi;
.....J.
April 15, 2009.

.....
[TARUN CHATTERJEE]