2026 INSC 827

(REPORTABLE)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.2412/2011

ZAKI ULLAH KHAN Appellant(s)

VERSUS

STATE OF U.P. AND ORS. Respondent(s)

O R D E R

1. The issue raised in this Appeal is whether the deed in question by which, fishing rights were settled in favour of the appellant for rearing fishes from the Sharda Sagar Jalashya for the period from 05.09.1998 to 30.06.2001, was a lease of immovable property and was therefore, chargeable to stamp duty as such.

2. The Collector, Pilibhit, Uttar Pradesh (hereinafter, 'the Collector') by its order dated 23.03.2006, directed the appellant to pay the deficit stamp fee of Rs.15,72,525/- and in the absence of non-deposit of the charged amount/ deficit stamp fee, the same shall be recovered as

arrears of land revenue.

3. The above order passed by the Collector was affirmed by the Chief Controlling Authority U.P. at Allahabad (hereinafter, 'the CCA') by its order dated 06.10.2006 which, in turn, was called in question before the High Court and has been duly affirmed under the impugned order.

4. The Collector and the CCA, passed the orders imposing the liability on the appellant to pay the deficit stamp duty of Rs.15,72,525/- mainly on the ground that the subject deed though referred as licence, is in fact a lease requiring registration under Section 17(1)(d) of the Registration Act, 1908 if the value of the document is more than Rs.100/-, and the same would attract stamp duty as a 'lease'. The reasoning given by the Collector was found in favour with the CCA and the High Court.

5. Mr. Abhishek Swarup, learned counsel appearing for the appellant, would

seek parity by referring to a two Judge Bench order passed by this Court on 12.02.2025 in the case of *Farookh Ahmad vs. State of Uttar Pradesh* seeking parity on the ground that in a similar matter wherein also, a licence of the same nature was in issue, this Court has set aside the order passed by the High Court wherein the appellant, *Farookh Ahmad,* was held responsible for payment of the stamp duty as a lease.

6. It is also argued that the appellant was not granted permission to conduct fishing activities for the entire year, much less three consecutive years, inasmuch as by a permission granted by the Uttar Pradesh Matsya Vikas Nigam Ltd. fishing activities were allowed only for 10 months in a year and thus, the 'licence' cannot be treated to have been issued for more than a year or more.

7. *Per contra*, learned counsel, Mr. Shaurya Sahay, appearing for the respondent-State would refer to the law

laid down by this Court in;

a. Anand Behera & Anr. V State of Orissa & Anr., (1955) 2 SCC 303

b. Bihar Eastern Gangetic Fisherman Co-operative Society Ltd. V. Sipahi Singh & Ors., (1977) 4 SCC 145.

c. Godwin Construction Pvt. Ltd. v. Commissioner, Meerut Division and Anr., 2025 INSC 1207.

d. Santosh Jayaswal & Anr. V. State of M.P. & Ors. (1995) 6 SCC 520 and

e. A full Bench judgment of the Allahabad High Court in the case of Guddi wife of Keshav Das v. State of U.P. & Ors., AIR 1997 AII 396,

to argue that the rights to rear fishes from the pond by executing a deed, amounts to transfer of immovable property, as the same amounts to *profit à prendre.* Thus, it is compulsorily registrable and would attract stamp duty as a lease deed in view of Section 17(1)(d) of the Registration Act, 1908 read with Section 2(16) of the

Stamp Act, 1899.

8. It is also argued that this Court's order in *Farookh Ahmad (supra)* is clearly distinguishable and would in fact, not assist the appellant for the reason that this Court has observed that reading the document as a whole is required.

9. We have heard learned counsel for the parties at length and have perused the appeal papers.

10. The subject deed titled as "licence for fishing" was granted consequent to the appellant being successful in an auction of the Sharda Sagar Jalashya, Pilibhit, Uttar Pradesh conducted by the Uttar Pradesh Matsya Vikas Nigam Ltd.

11. Admittedly, the licence was granted for a period of three years on payment of auction amount of Rs.38.01 Lakhs for the period 01.09.1998 to 30.6.1999; 41.81 lakhs for the period 01.09.1999 to 30.6.2000 and Rs.45.99 lakhs for the period ending on 01.09.2001. Thus, the 'licence' was issued for a total period of

three years. Permission for carrying out 'fishing activities' is altogether different than 'licence to carry on fishing activities'. Such permission is granted only on the basis of licence, inasmuch as fishing activity is not allowed to be carried out throughout the year.

12. Under Section 6(4) and (5) of the Fisheries Act, 1897 read with the Rules framed thereunder, fishing activity is not permissible during the breeding season, i.e. during the rainy season and therefore, the fishing activity is always restricted to be carried out for a period excluding the breeding season, the same being in the nature of a regulatory suspension. However, this would not amount to reduction of the period of licence.

13. The subject fishing tank, namely Sharda Sagar Jalashya is situated in District Pilibhit, Uttar Pradesh. The fishing and allied activities in the State of Uttar Pradesh are governed under the

U.P. Fisheries Act, 1948 (hereinafter ‘1948 Act’). Section 3 of the 1948 Act makes provision regarding prohibition and licensing of fishing in selected waters by rules. Under clause (d) of Section 3(3) of the 1948 Act, the State Government can frame rules to prohibit fishing, except under licence, or regulate the granting of such licences, the charges of fees therefor and the conditions to be inserted therein. Further, clauses (e) and (g) enable the State Government to frame rules to prescribe seasons in which the killing or catching or sale of any spawn, young or adult fish, of any prescribed species shall be prohibited or prohibit fishing in any specified water for specified period.

In exercise of the above powers, the State of Uttar Pradesh has framed rules known as U.P. Fisheries (Development and Control) Rules, 1954 (hereinafter ‘1954 Rules’). Rule 3 thereof provides that no person shall be allowed to catch, destroy or sell fry and fingerlings (2”-10”) from

July 15 to September 30 and breeding fish from June 15 to July 30 in the prohibited areas for fishing, except under a licence issued by the Director of Animal Husbandry, Uttar Pradesh.

14. Thus, restricting fishing activities in the subject Jalashya to 10 months in a year upon grant of permission from the Uttar Pradesh Matsya Vikas Nigam Ltd. is in accord with the provisions of the 1948 Act and the 1954 Rules. Prohibition of fishing for a particular period has thus statutory backing. However, that by itself would not convert the licence for a period less than one year.

15. In the licence itself, it is clearly mentioned in Clause 6 that the same is granted for specific rights of conduct of fishing and for taking away fish cot from the Jalashay. Thus, the licence was exclusively granted for carrying out fishing activity.

16. In the matter of *Anand Behera (supra)*, a five Judge Bench of this Court held that the right to catch and carry away fish in specific sections of the lake over a specific future period is a right to take some profit of the soil for the use of the owner of the right and in India, it is regarded as a benefit that arises out of the land and as such, is immovable property. This Court, proceeded to observe thus;

> *" ...8. The facts disclosed in Para 3 of the petition make it clear that what was sold was the right to catch and carry away fish in specific sections of the lake over a specified future period. That amounts to a licence to enter on the land coupled with a grant to catch and carry away the fish, that is to say, it is a profit a prendre: see 11 Halsbury's Laws of England (Hailsham Edn.) pp. 382 and 383. In England this is regarded as an interest in land (11 Halsbury's Laws of England, p. 387) because it is a right to take some profit of the soil for the*

use of the owner of the right (p. 382). In India it is regarded as a benefit that arises out of the land and as such is immovable property.

9. Section 3(26) of the General Clauses Act, 1897 defines “immovable property” as including benefits that arise out of the land. The Transfer of Property Act does not define the term except to say that immovable property does not include standing timber, growing crops or grass. As fish do not come under that category the definition in the General Clauses Act applies and as a profit a prendre is regarded as a benefit arising out of land it follows that it is immovable property within the meaning of the Transfer of Property Act.

10. Now a “sale” is defined as a transfer of ownership in exchange for a price paid or promised. As a profit a prendre is immovable property and as in this case it was purchased for a price that was paid it requires writing and registration because of Section 54 *of the Transfer of Property Act. If a profit a prendre is regarded as tangible immovable property, then the "property" in this case was over Rs 100 in value. If it is intangible, then a registered instrument would be necessary whatever the value. The "sales" in this case were oral: there was neither writing nor registration. That being the case, the transactions passed no title or interest and accordingly the petitioners have no fundamental right that they can enforce.*

17. Thereafter, in the matter of Santosh Jayaswal (supra), a similar issue came for consideration and this Court clearly held in paragraph nos. 5 to 8 which is reproduced hereunder for ready reference;

"….5. Section 17(1) of the Indian Registration Act provides that certain documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the specified date. By virtue of Section 17(1)(d) leases of immovable property from year to year, or for any term exceeding one

year, or reserving a yearly rent is compulsorily registrable instrument. This Court considered the controversy in Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh [(1977) 4 SCC 145] and held ***that if the profit a prendre is a tangible immovable property, its sale has to be by means of a registered instrument in case its value exceeds Rs 100. If it is intangible, the sale is required by Section 54 of the Transfer of Property Act, 1882, to be effected by a registered instrument, whatever its value. Therefore, in either situation the grant of the profit a prendre has to be by means of a registered instrument.***

6. Since the definition of "immovable property" in M.P. General Clauses Act includes benefits to arise out of land and things attached to the earth, the question is whether the right to catch fish is a benefit to arise out of the land. ***It cannot be controverted that catching fish from the tank would be a benefit arising out of the land. Therefore,***

it is an immovable property. Even though it is profit a prendre, since it is a benefit to arise from the land, it is an immovable property. If its value is more than Rs 100 or the lease is on year to year basis, it is a compulsorily registrable instrument under Section 17(1)(c) of the Indian Registration Act. It is an instrument under Article 35(a) of Schedule 1-A clauses (1) to (3) of the Stamp Act. Therefore, it requires to be engrossed with required stamp duty and registered under Section 17(1)(d) of the Indian Registration Act.

7. Though Shri Pramod Swarup, learned counsel for the appellant, sought reliance on the judgment of this Court in Ananda Behera v.State of Orissa [(1955) 2 SCR 919 : AIR 1956 SC 17], State of W.B.v.Shebaits of Iswar Sri Saradia Thakurani [(1972) 4 SCC 158] , Board of Revenue v. A.M. Ansari [(1976) 3 SCC 512 : 1976 SCC (Tax) 350] and State of Orissa v. Titaghur Paper Mills Co. Ltd. [1985 Supp SCC 280 : 1985 SCC (Tax) 538] they render little assistance to the facts in these cases. Therein *the question was whether the right to catch fish is a lease or a licence.* ***In view of the language of documents in those cases, this Court considered that it would be a licence but not a lease. Since the document has not been placed before us, we cannot decipher whether it is a licence or a lease. Since the controversy was not put in issue before the Division Bench, we proceeded on the premise that it is a lease.*** *Under these circumstances, we are of the considered view that the Division Bench of the High Court is right in its conclusion that it is a lease and being of the value of more than Rs 100 and upwards, it is compulsorily registrable under Section 17(1)(d) of the Indian Registration Act.*

8. Under Section 17 of the Registration Act, read with Section 2(16) of the Indian Stamp Act, 'lease' means a lease of immovable property and includes a patta, 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 etc. ***Right to catch fish is profit a prendre and benefit to***

arise out of land is an immovable property for the purpose of stamp duty. It would, therefore, be clear that since it is a right given to the appellants to catch fish in the tank, it is a profit a prendre attached to or benefit to arise out of the land. Therefore, it is an instrument for the purpose of stamp duty. *Since the duration of lease in LPA No. 21 of 1994 is only nine months, it is not a compulsorily registrable instrument by operation of Section 17(1)(c) of the Act. The civil appeal arising out of LPA No. 21 of 1994 relating to Santosh Jaiswal is, therefore, partly allowed.* ***It is an instrument which requires to bear the appropriate stamp duty*** *but is not a compulsorily registrable instrument.* ***In appeal arising out of LPA No. 22 of 1994 of Surendra Shukla, since the duration of lease is more than a year, it is an instrument and compulsorily registrable by operation of Section 17(1)(c) of the Registration Act and liable to stamp duty under the Indian Stamp Act. Therefore, it cannot be acted upon unless it is duly engrossed with stamp duty and***

registered.

18. The law settled by this Court that when the right is given to a person to catch fish in the tank, it is *profit à prendre* attached to, or a benefit to arise out of the land. Therefore, it is an instrument for the purpose of stamp duty and since the duration of the licence which is in fact a lease, is for more than a year, it is compulsory registrable and liable to stamp duty as an instrument of lease.

19. In our considered view, the law being fairly well settled and having not being diluted by this Court's judgment in *Farookh Ahmad (supra),* the document in question, the terms of which we have referred to in the preceding paragraphs, would be an 'instrument' akin to a lease deed. Therefore, the orders passed by the Collector, the CCA and the High Court does not call for any interference.

20. **The order passed by this Court in *Farookh Ahmad (supra)*, relied by the appellant, is clearly distinguishable inasmuch as this Court has set aside the order passed by the High Court because in the said matter, the High Court had not adverted to the terms and conditions of the licence for deciding whether a document is a lease instrument or not. Whereas, in the present case, the Collector and the CCA, have discussed the terms of the document to record a categorical finding that the document is an 'instrument' requiring to be mandatorily registered being for a value more than Rs.100/- and for a period more than a year.**

21. **For all the above stated reasons, we are not inclined to interfere with the impugned order.**

22. **The appeal fails and is hereby, dismissed.**

23. Pending application(s), if any, shall stand disposed of.

........................J.
(PRASHANT KUMAR MISHRA)

.......................J.
(SHREE CHANDRASHEKHAR)

New Delhi
15-07-2026

ITEM NO.103 COURT NO.13 SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2412/2011

ZAKI ULLAH KHAN Appellant(s)

VERSUS

STATE OF U.P.AND ORS. Respondent(s)

Date : 15-07-2026 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA
HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For Appellant(s) :
Mr. Abhishek Swarup, Adv.*
Mr. Chetan Sharma, Adv.
M/S. Manoj Swarup And Co., AOR

For Respondent(s) :
Mr. Shaurya Sahay, AOR
Mr. Aman Jaiswal, Adv.
Ms. Sharvi Sharma, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. The appeal is dismissed in terms of the signed reportable order.

2. Pending application(s), if any, shall stand disposed of.

(NISHA KHULBEY) (AKSHAY KUMAR BHORIA)
COURT MASTER(SH) COURT MASTER(NSH)
(signed reportable order is placed on the file)