(2011) 11 DEL CK 0164

Delhi High Court

Case No: Writ Petition (C.) No. 7093 of 2000

Indian Oil Corporation Ltd	APPELLANT
Vs	
The Cantonment Board, Delhi Ca	RESPONDENT

Date of Decision: Nov. 8, 2011

Acts Referred:

- Cantonments Act, 1924 - Section 103, 65, 65(1), 65(2), 66
- Cantonments Act, 1994 - Section 16(1)
- Delhi Rent Control Act, 1958 - Section 1(2), 6(2)

Hon'ble Judges: Vipin Sanghi, J

Bench: Single Bench

Advocate: R.P. Sharma and Ms. S. Dutta, for the Appellant; T.S. Chaudhary, Advocate for Mr. R. Nanawati, for the Respondent

Judgement

Vipin Sanghi, J.

The petitioner-Indian Oil Corporation Ltd (IOCL) seeks the quashing of notice dated 20.06.1996 issued u/s 68(1) of the Cantonment Act, 1924, purporting to prepare the assessment list for the years 1995-98. The petitioner also assails the letter dated 02.08.1996 issued by the respondent calling upon the respondent to file further objections, if any. The petitioner also assails the communication dated 16.09.1996 issued by the respondent disclosing the basis for assessing the letting value of the property in question. The property tax bill No. 9382 issued for the years 01.04.2000 to 31.03.2001, with arrears for the year 1999-2000, for Rs.25,13,846/- has also been assailed by the petitioner. The petitioner seeks refund of an amount of Rs.1,47,552/- paid by the petitioner to the respondent towards property tax dues.

2. The case of the petitioner is that an agreement was entered into between the petitioner and the President of India on 05.11.1962 whereunder the petitioner agreed to construct fuel depots for Indian Air Force so as to provide storage and supply facility for aviation fuels. It was agreed that land for the construction of the

depots shall be made available by the Government to the company on payment of 10% of the normal rates in force from time to time. According to the petitioner, in terms of the said agreement, the petitioner was allotted the site in question situated at Palam Air Force Station, Sadar Badar Road, Delhi Cantt, Delhi. According to the petitioner, the petitioner raised construction of the depot in the year 1962 itself. Subsequently, in the year 1988, a further agreement was executed between the parties on 13.12.1988. Clause 19 of this agreement provided that sales tax, local levies, octroi etc. will be paid by the Government at the rates applicable from time to time if so provided for in the appropriate DGS&D rates contract or posted Airfield price. This agreement also provided in Clause 29 that the initial period of the agreement shall be 20 years.

3. According to the petitioner, the respondent for the first time sought information u/s 103 of the Cantonment Act, 1924 vide a notice dated 16.02.1994. Prior to this notice, the respondent had not sought to tax the aforesaid facility of the petitioner. The petitioner communicated to the respondent that the cost of construction of the building at Palam Air Force Station was Rs.169977.60/.

4. On 20.06.1996, the respondent issued the notice u/s 16(1) of the Cantonment Act, 1994 on the subject of assessment list for the year 1995-98. The respondent proposed the annual assessment of Palam Air Force Station, Sadar Bazar Road, Delhi Cantt, Delhi at Rs.53,30,739/-. Objections were invited by the respondent to the said proposal. The petitioner responded on 26.07.1996. It was, inter alia, submitted that there was no perpetual lease and the period of lease has not been specified. Consequently no tax is leviable on the land provided by the Government. The petitioner also questioned the principle on the basis of which the assessment had been proposed by the respondent.

5. On 02.08.1996, the respondent responded to the petitioner''s objections. It was stated that the formula adopted for calculation of price amendment is based on cost of land plus cost of construction which had been furnished by the petitioner on 16.02.1994 & 28.10.1994. The area of the depot was computed as 1,81,800 square feet = 16896 square metres. The cost of the land assumed by the respondent was Rs.6,300/- per square metre, stated to be on the basis of the notified circle rates. A perusal of the statement of cost of land annexed to this letter would show that the land was treated as Category-I and the cost of land of Rs.6,300/- per square metre was valid for the period from 01.04.1992 to 31.03.1993. The petitioner on 29.08.1996 disputed the assessment of cost of land at Rs.8,87,04,000/- by calling the same as arbitrary. It was argued that the ownership of the land vested in the Union of India and not the petitioner. Various other objections were raised by the petitioner. The respondent stuck to its earlier communicated stand as contained in their communication dated 02.08.1996 in their subsequent communication dated 16.09.1996. The petitioner was called upon to file further objections, if any, which the petitioner did on 01.02.1997. The petitioner pointed out in the said

communication that the cost of land in the year 1962 was not more than Rs.171/- per square yard.

6. The respondent then raised a property tax bill No.9382 for Rs.13,30,695/- on 10.05.2000 for the year 2000-01. The respondent also excluded arrears to the tune of Rs. 11,83,147/- for the year 1999-2000. The petitioner made a payment of Rs.1,47,552/- under protest in response to the said bill. Thereafter, the petitioner has preferred the present petition.

7. The first submission of Mr. Sharma, learned counsel for the petitioner is that since the land in question belongs to the President of India, and the same has been given to the petitioner on a lease, the petitioner is not liable to pay any property tax. He relies upon clause 19 of the agreement dated 13.12.1988.

8. I do not find any merit in this submission of Mr. Sharma. Section 65 of the Cantonment Act, 1924 deals with the aspect of incidents of taxation. Section 65(1) reads as follows:

(1) Save as otherwise expressly provided in the notification imposing the tax, every tax [assessed] on the annual value of buildings or lands or of both shall be leviable primarily upon the actual occupier of the property upon which the said tax is assessed, if he is the owner of the buildings or lands or holds them on a building or other lease [granted by or on behalf of the Government or] the [Board] or on a building lease from any person.

9. From a reading of section 65(1), it is clear that the property tax is leviable on the occupier of the property upon which the tax is assessed. The section makes it clear abundantly clear that the occupier may be the owner of the building or the land, or may hold the same on a building lease or other lease granted by or on behalf of the government or the board, or on a building lease from any person. It cannot be disputed that the petitioner is the occupier of the property in question. The land has been taken on a building lease from the President of India, i.e. the Govt. of India. Thereon the petitioner has erected a building. Merely because the lease has not have been executed in a particular form, it does not cease to be a lease as it is covered by the provisions of the Government Grant Act and no particular form for execution of a lease is required to be adopted to create a government grant.

10. Reliance placed by Mr. Sharma on section 65(2), in my view, is misplaced. Section 65(2) reads as follows:

(2) In any other case, the tax shall be primarily leviable as follows, namely:

(a) If the property is let, upon the lessor;

(b) If the property is sub-let, upon the superior lessor;

(c) If the property is unlet, upon the person in whom the right to let the same vests.

11. A perusal of the aforesaid clause would show that it opens with the words "in any other case". Since the case of the petitioner is squarely covered by section 65(1) of the Cantonment Act, 1924, there is no reason to proceed to apply section 65(2) of the Act, which deals with residuary cases.

12. Reliance placed on clause 19 of the agreement dated 13.12.1988 between the petitioner and the President of India is also misplaced. The board is only seeking to enforce its rights under the Cantonment Act, 1924. If the petitioner is so minded, it is open to the petitioner to seek recovery of the property tax paid by the petitioner to the board by resort to clause 19. However, the petitioner cannot dispute its liability to pay the property tax. I may hasten to add that my aforesaid observation may not be taken as an adjudication of the inter se rights between the petitioner and the President of India/Union of India emanating from the agreement dated 13.12.1988.

13. Mr. Sharma has next contended that the Delhi Rent Control Act, by virtue of section 1(2) of the said Act extends to the areas included within the limits of, inter alia, Delhi Cantonment Board. He submits that the process of preparation of the assessment lists is contained in section 66 to 72 of the Cantonment Act, 1924. He submits that the annual value of buildings or land or both has to be assessed in the same manner as is provided for in section 6(2)(b) of the Delhi Rent Control Act, which provides the manner for fixation of standard rent where the premises have been let out on or after 02.06.1944. Clause (b) of section 6(2) provides that the rent is to be calculated on the basis of 10% p.a. of the aggregate amount of the actual cost of construction and the market price of the land comprised in the premises on the date of the commencement of construction. He submits that the respondent has not disputed the cost of construction as conveyed by the petitioner. The real dispute is about the cost of land assumed by the respondent. He submits that the respondent has not even dealt with the petitioners submission while levying tax that the cost of land in the year 1962 was approximately Rs.171/- per sy. yd.

14. It is also contended by Mr. Sharma that the petitioner has not even been provided with a hearing and the procedure prescribed in the Cantonment Act, 1924 has not been followed. He submits that u/s 68 of the Cantonment Act, 1924, the Executive Officer is obliged to give public notice of the date the board will proceed to consider valuation and assessment entered in the assessment list, and in all cases in which any property is for the first time assessed or the assessment is increased, the Executive Officer is also obliged to give written notice thereof to the owner and to any lessee or occupier of the property. After the objections to the valuation or assessment has been raised u/s 68(3), the objections are required to be enquired into and investigated and the persons making them are allowed an opportunity of being heard either in person or by authorized agent by an assessment committee appointed by the Board. Section 68(4) provides that assessment committee shall consist of not less than three persons.

15. Mr. Sharma submits that the petitioner was never granted any hearing by any assessment committee appointed by the board. He, therefore, complains of the breach of principles of natural justice and denial of a statutory right of hearing by the respondent. Mr. Sharma also submits that the exercise of preparation of assessment list is annually undertaken as each year is a fresh assessment year. He submits that the notice issued by the respondent pertained to three assessment years, i.e. for the period 1995-1998. Mr. Sharma submits that the procedure adopted by the respondent for preparation of a single assessment list for three years is illegal. Mr. Sharma submits that even though the same assessment list may be adopted for three consecutive years, the respondent is obliged to follow the prescribed procedure in section 66 onwards of the Cantonment Act, 1924 and to provide an opportunity to the assessee to raise his objections each year.

16. In support of his submission, Mr. Sharma has placed reliance upon the following decisions:

i) Municipal Corporation, Indore Vs. Rai Bahadur Seth Hiralal and Others, , wherein the Supreme Court, in para 8, has observed:

8. Ordinarily therefore the Municipal Corporation has to prepare a fresh assessment list every year. The legislature however has empowered by Section 79, as other State legislatures have similarly done in several Municipal Acts, to adopt the valuation and assessment contained in the assessment list prepared in an earlier year provided, however, that it prepares a fresh list once in every 4 years. But sub-section 2 of Section 79 provides expressly that when such a previous list is adopted for a particular official year it can be done subject to the provisions of Sections 75 and 76. In other words, an assessment list being for a particular official year even when an assessment list prepared in an earlier year is adopted it becomes the list for such subsequent year subject to the procedure laid down in Secs. 75 and 76. The list so adopted has therefore to be published, has to invite objections and has to be authenticated in the manner prescribed by Section 76(6) after disposing of the objections if any and it is then only that it becomes conclusive evidence of the valuation and the tax assessed thereon for that particular official year. If it were otherwise, the annual letting value or the value estimated on a particular building or house would be static for 4 years during which the Corporation can go on adopting the assessment list prepared in an earlier year and the owner or the occupier of the building would be deprived of the right to object to the valuation or the annual letting value or the tax assessed thereon for at least 4 years even though the valuation or the annual letting value thereof may have decreased for one reason or the other. In order to prevent such a result the legislature has provided by sub-section 2 of Section 79 that where a municipality adopts a previously prepared list for any subsequent year the provisions of Sections 75 and 76 shall be applicable as if a new assessment list has been completed at the commencement of that particular official year. The word, "if" appearing in sub-section 2 of Section 79 is

obviously a mistake and must be read as "as if" because the word "if" standing by itself makes no sense at all. Section 79 therefore has to be construed to mean that though a Municipality need not prepare a fresh assessment list every year and need prepare such list once in every 4 years and can adopt an earlier assessment list such an adopted list becomes the assessment list for that particular year as if it was a new list and to which Sections 75 and 76 apply.

ii) Municipal Corporation of City of Hubli Vs. Subha Rao Hanumatharao Prayag and Others, , wherein the Supreme Court, in para 9, has observed:

9. Then again considerable light on this question is thrown by the provision enacted in Section 82. It is a well settled rule of interpretation that the Court is entitled and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought and not to the construed as it would be alone and apart from the rest of the Act." The statute must be read as a whole and every provision in the statute must be construed with reference to the context and other clauses in the statute so as, as far as possible, to make a consistent enactment of the whole statute. Obviously, therefore, Sections 78 to 81 must be so construed as to harmonise with Section 82. They must be read together so as to from part of a connected whole Section 82, Sub-section (1) provides for making of an amendment in the assessment list by insertion or alteration of an entry in certain events after hearing objections which may be made by any person interested in opposing the amendment. Sub-section (3) of Section 82 makes the amendment effective from "the earliest day in the current official year on which the circumstances justifying the entry or alteration existed". The expression ''current official Year'' in the context in which it occurs in Section 82, Sub-section (3) clearly signifies the earliest day in the official year which is current when the amendment in the assessment list takes place and that expression refers only to the official year which is running at the time when the amendment is made by insertion or alteration of an entry under Sub-section (1) of Section 82. It would, therefore, see clear, on a com bind reading of Sub-sections (1) and (3) of Section 82, that an amendment, in order to be effective in levying tax for an official year, must be made during the currency of the official year. That is now well settled as a result of several decisions of the Bombay High Court culminating in the Full Bench decisions in Sholapur Municipal Corporation v. Ramchandra (supra) and we do not see any reason to take a different view. Now the scheme of Sections 78 to 81 is identical with that of Section 82 and in both cases what is contemplated first is a proposal to which objections are invited and after the objections are investigated and disposed of, the assessment list in the one case and the altered entry in the other are authenticated giving rise to liability in the rate payer. It must follow a fortiori that if an alteration in the assessment list, in order to fasten liability on the rate-payer, is required to be made during the currency of the official year, equally, on a parity of reasoning, the assessment list, in order to give rise to liability in the ratepayer, must also be

authenticated before the expiry of the official year. Moreover, it is difficult to believe that the legislature did not intend that there should be any time limit in regard to the levy of tax for any-official year and that the tax should be legally leviable at any time after the close of the official year. There is, in our opinion, sufficient indication in the various provisions of the Act to show that the authentication of the assessment list, in order to be valid and effective, must be made within the official year, though the tax so levied may be collected and recovered even after the expiry of the official year.

17. Mr. Sharma submits that u/s 69, upon disposal of the objections to the proposed assessment list, the assessment list is required to be authenticated by the signatures of the members of the assessment committee. The authenticated assessment list is required to be deposited in the office of the Board. u/s 70, it is provided that the entries made in the authenticated assessment list is conclusive evidence for purposes of assessing any tax imposed under the said Act of the annual value or other valuation of all buildings and lands to which entries made in the assessment list respectively referred is also accepted as conclusive evidence for the purposes of assessing any tax imposed of the amount of each such tax leviable thereon during the year to which the said list relates. Therefore, the preparation of the authenticated assessment list annually is sine qua non for levying tax annually. Mr. Sharma submits that since the respondent have not prepared a separate list for each year, i.e. 1995-96, 1996-97 and 1997-98, the assessment list prepared by the respondent cannot become the basis for levying tax for three years.

18. It was put to the learned counsel for the respondent as to whether or not, as a matter of fact, the petitioner was granted any hearing, as is required u/s 68(3) of the Cantonments Act, 1924 by the Assessment Committee appointed by the Board.

19. Learned counsel for the respondent submits that two notices were issued to the petitioner for grant of personal hearing. The first notice was issued for a meeting of the Cantonment Board slated on 17.10.1997 at 1100 Hrs. The notice was issued on 01.10.1997. The second notice was issued on 06.11.1997, since the petitioner failed to appear in response to the first notice.

20. Learned counsel for the petitioner points out, and in my view correctly so, that the said notices fixing dates for personal hearing were of no avail as the respondent had already passed the order of assessment on 16.09.1996 after giving the basis on which the respondent had made the assessment. The categorical stand of the respondent was that the proposed assessment to the tune of Rs.44,43,698/- has been worked out correctly. The admitted position is that there is no other assessment order passed by the respondent which may have been communicated to the petitioner or which may be existing on the respondent''s file.

21. In view of the aforesaid position, it is clear that the respondent has breached the requirement of Section 68(3) by failing to provide the petitioner an opportunity of

being heard either in person or by authorized agent before the Assessment Committee appointed by the Board. The respondent has also not dealt with the aforesaid submissions of the petitioner which were taken by the petitioner in its objections.

22. On this very short ground of breach of the statutory requirement as well as principles of natural justice, the impugned demand contained in Bill No. 9382 dated 10.05.2000 for Rs.25,13,846/- made by the respondent cannot be sustained and is hereby quashed.

23. In the meantime, since the Cantonments Act, 2006 has been enacted, the matter is remanded back to the Chief Executive Officer who shall re-assess the petitioner''s liability to pay the tax in accordance with the law, after granting a personal hearing to the petitioner''s representative. He shall deal with all the objections raised by the petitioner, except those which have been rejected by this Court and pass a reasoned order. The petitioner may raise additional grounds, only if those grounds could not have been raised earlier.

The petition stands disposed of in the aforesaid terms.