
(2014) 01 DEL CK 0194

Delhi High Court

Case No: Regular Second Appeal No. 120 of 2001 and CM No. 6310 of 2011

M.C.D.

APPELLANT

Vs

Ashfaq Ahmed and
Another

RESPONDENT

Date of Decision: Jan. 28, 2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Section 100(5)#Delhi Municipal Corporation Act, 1957 -
Section 114 115 119 120 126#Displaced Persons (Compensation and Rehabilitation) Act, 1954
- Section 20#Specific Relief Act, 1963 - Section 41(h)

Citation: (2014) 01 DEL CK 0194

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Amita Gupta, for the Appellant; Anju Lal, for the Respondent

Final Decision: Allowed

Judgement

Valmiki J Mehta, J.

In this regular second appeal, the following substantial question of law was framed on
23.4.2007:-

1. Whether the suit filed by the respondent was maintainable before Civil Court in view of
bar provided by Section 169 of the DMC Act read with

Section 41(h) of the Specific Relief Act?

In exercise of my powers u/s 100(5) proviso CPC, in addition, I also frame the following
substantial questions of law:-

2. Whether a licensee such as the respondent-plaintiff is not liable to pay property tax u/s
120 of the Delhi Municipal Corporation Act (in short

"DMC Act"), 1957?

3. Whether the occupier of the land is not liable to pay property tax once occupation is found to be long, continuous and with an entitlement/right

to stay in possession by virtue of a licence?

4. Whether the appellate court violated the law in not deciding the issue that property tax can be imposed independently on land or on building or

both land and building taken together u/s 120 of the DMC Act?

2. This regular second appeal impugns the judgment of the first appellate court dated 7.5.2001 by which the first appellate court accepted the

appeal filed by the respondent-plaintiff and set aside the judgment of the trial court dated 6.5.2000. Trial Court had dismissed the suit of the

respondent-plaintiff by which injunction was sought against the defendant/Municipal Corporation of Delhi (appellant herein) from claiming house

tax on the suit property bearing plot nos. A-98 and A-99, Jhandewalan, Junk Market, New Delhi admeasuring 76 sq. yds.

3. The admitted facts are that the respondent-plaintiff does not dispute that it is a licensee of the suit property. Respondent-plaintiff had filed in the

trial court the letter of DDA dated 21.7.1967 Ex. PW1/1, allowing the respondent-plaintiff to occupy the land as an alternative site for the land

which was vacated by the respondent-plaintiff. I may state that governmental authorities in view of its policies to bring about proper zonal usage in

the capital of the country, particularly for commercial or industrial activities, allots/gives licensee rights in alternative site to the person who has to

be relocated. Respondent-plaintiff in addition to Ex. PW1/1, admitted the license fee receipts and which were proved and exhibited by the

appellant/defendant as Ex. PW1/D-1 to D-3. These receipts show payment of ground rent by the respondent-plaintiff to DDA. Appellant-plaintiff

issued a notice u/s 126 of the DMC Act dated 30.4.1974 to assess the property for the purpose of property tax and to which a reply was sent by

the respondent-plaintiff objecting that he was not liable in view of Section 120 of the DMC Act. A second notice dated 27.3.1979 was issued to

the respondent-plaintiff for assessing the ratable value of Rs. 8,640/- w.e.f. 1.4.1978 on the ground of erection of property on the suit land. The

case of the respondent-plaintiff was that in spite of filing objections appellant did not decide the same but instead issued a demand for payment of

tax dated 28.3.1989, and therefore, the subject suit for injunction came to be filed. The appellate court by the impugned judgment has proceeded

on the basis that a licensee of a property is not an owner or a lessee and therefore no property tax can be charged from such a person as per

Section 120 of the DMC Act.

4. Section 120 of the DMC Act reads as under:-

120. Incidence of property tax.-(1)(a) The property tax on any land on building shall be primarily leviable upon the owner thereof.

(b) The liability of the several owners of any land or building constituting a single unit of assessment, which is, or purports to be, severally owned in

parts including flats or rooms, for payment of property tax or any installment thereof, payable during the period of such ownership, shall be joint

and several:

Provided that the Commissioner may apportion the amount of property tax on such land or building among several co-owners:

Provide further that in any case where the Commissioner is, for reasons to be recorded in writing, satisfied that the owner is not traceable, the

occupier of such land or building for the time being shall be liable for payment of the property tax and shall also be entitled to the rebate, if

admissible.

(c) In the case of any land or building which is not self-occupied and where the owner is constrained by any law, order of the Government, or

order of a court from recovering the tax due, such tax shall be recovered from the occupier or occupiers, as the case may be:

Provided that the owner shall continue to pay such amount of tax as he was liable to pay before the coming into force of the Delhi Municipal

Corporation (Amendment) Act, 2003 and only the balance, amount, if any, shall be recovered from the occupier.

(d) The property tax on any land or building, which is the property of [a Corporation] and the possession of which has been delivered under any

agreement or licensing arrangement, shall be leviable upon the transferee or the licensee, as the case may be.

(e) The property tax in respect of any land or building, being the property of the Union, the possession of which has been delivered in pursuance of

section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), shall be leviable upon the transferee.

(2) If any land has been let to a tenant for a term exceeding one year and such tenant has built upon such land, the property tax assessed in respect

of such land and the building erected thereon shall be payable by such tenant, whether the land and the building are in the occupation of such tenant

or a sub-tenant of such tenant.

Explanation.-For the purpose of this section, ""tenant"" shall include any person deriving title to the land or the building erected upon such land, from

the tenant, whether by operation of law or by transfer inter vivos.]

5. Whatever may be the legal position at the time of passing of the judgment by the first appellate court in May, 2000, as of today, a legal position

now stands settled as per the judgment of the Supreme Court in the case of Pradeep Oil Corporation Vs. Municipal Corporation of Delhi and

Another, . In this judgment the following ratio was laid down:-

(i) The mere nomenclature of a document of the same being a license is not conclusive for the purpose of deciding whether rights created under the

same were the same rights of a lessee. If the document titled as licence is found to have given rights which a lessee can enjoy, then the licensee

actually would be a lessee.

(ii) Even an occupier of land is liable to pay property tax as per Section 115 of the DMC Act (para 46 of the judgment) under certain

circumstances as stated in the judgment.

(iii) If there is building on the land, and even if a person may not have interest of an owner or a licensee in the land, on a finding that buildings have

been constructed, then, such buildings can be assessed to tax, and in any case, both land and building jointly can be assessed to tax.

(iv) A long occupation with entitlement to construction is indication of such rights existing which are sufficient u/s 120 of the DMC Act for property

being assessed to property tax. The relevant paras of the judgment of the Supreme Court in the case of Pradeep Oil Corporation (supra) are paras

33, 34, 38, 39, 41, 42, 43, 44, 45, 46 and 49 and which read as under:-

33. Reverting back to the factual situation of the case at hand, admittedly, the Appellant is in possession of the buildings in question since 1958.

They have been permitted to raise huge constructions and the nature of construction is of wide range. An administration block along with tanks for

storing petroleum had been constructed. A boundary wall around installations and administrative block had also been constructed. Admittedly, the

grantee is in exclusive possession over the lands in question along with construction thereon without any let or hindrance from the Administration.

34. Further, the Appellant had been continuously carrying on their business without any interference from any quarter whatsoever since 1962. As

in the instant case, exclusive possession has been granted, as discussed hereinbefore, there is a strong presumption in favour of tenancy. That being

the case, it is for the Appellant to show that despite the right to possess the demised premises exclusively; a right or interest in the property has not

been created. The burden therefore would be on the Appellant/grantee to prove contra.

38. It is true that there are indeed certain restrictions which have been imposed by the Administration with regard to the construction of the building

storage tank, etc., but in our considered view such restrictions are not decisive for the purpose of determining as to whether a document is a lease

or license as such restrictions could also be imposed in case of a lease as well.

39. In *Glenwood Lumber Co. Ltd. v. Philips* 1904 All ER 203, it was held:

In the so-called license itself it is called indifferently a license and a demise, but in the Act it is spoken of as a lease, and the holder of it is described

as the lessee. It is not, however, a question of words, but of substance. If the effect of the instrument is to give the holder an exclusive right of

occupation of the land though subject to certain reservations or to a restriction of the purposes for which it may be used, it is in law a demise of the

land itself.

41. It is well settled legal position that a license can be revoked at any time at the pleasure of the licensor. Even otherwise, unless the parties to the

agreement had an intention to enter into a deed of lease the Administration would not have agreed to demise the premises on payment of rent in

lieu of grant of exclusive possession of the demised land and further stipulated service of three months' notice calling upon either party to terminate

the agreement. In view of the same, the argument advanced by the learned Counsel of the Appellant that a stipulation having been made in the

agreement itself that by reasons thereof the grantee shall not be a tenant and thus the deed must be construed to be a license cannot be accepted.

In our considered view, such a clause may at best be one of the factors for construction of the document in question but the same by itself certainly

be a decisive factor.

42. The next question which needs to be addressed in view of the aforesaid well settled legal position is whether the agreement in question should

be interpreted as lease or license having regard to the object sought to be achieved by the provisions of DMC Act.

43. By reason of the provisions of the DMC Act, the MCD is required to render several services as specified therein for the purpose whereof, tax

is required to be imposed both on land as also on building. The definition of "land" and "building" as provided in the DMC Act must be given its full

effect. As mentioned hereinbefore in the case of *Municipal Corporation of Greater Bombay* case (supra), even an oil tanker has been held to be

building.

44. The tax is imposed upon the holders of land and building by the MCD which is compensatory in nature. The word ""letting out"" in the context of

the grant therefore must receive its purposive meaning. The MCD renders services and the benefits of such services are being taken by all

concerned, viz., the owner of the land or building. Even a person who is in possession of a land or building, whether legal or illegal, takes benefits

of such services rendered by the MCD. The MCD for the purpose of realization of tax is not concerned with the relationship of the parties. It is

concerned only with imposition and recovery of tax which is payable on all lands and buildings in accordance with law. The exceptions thereof

have been enumerated in the Act itself. Section 119 of the MCD Act is one of such provisions. Such an exemption clause, as is well known, must

be construed strictly. Section 119 of the MCD Act would apply if the lands and buildings are the properties of Union of India. The MCD has the

right to levy the property tax in terms of Section 114 of the MCD Act in the manner as specified therein.

45. By reason of the agreement in question, the buildings in question do not belong to the Administration. Admittedly, it belongs to the grantee i.e.

Appellant herein. As discussed hereinbefore, the Oil tanks has been construed as buildings for the purposes of tax. Therefore, Section 119 of the

MCD Act would not apply to the building in question. That being the case, the grantee/Appellant is liable to pay tax although the ownership of the

land may belong to the Administration.

46. Section 115 of the MCD Act clearly provides that the general tax shall be payable in respect of lands and buildings. Such lands and buildings

may be in lawful occupation of the owner. The occupation of the said building may be lawful or unlawful. Even in a case where apartments are

constructed on the land belonging to the Government or a statutory body but the occupier of the apartment is liable to pay tax. If a person

encroaches upon somebody's lands and constructs buildings thereupon, he would also be liable to pay tax. Once it is held that the grantee were

liable to pay tax, the same becomes payable from the date of accrual of the liability. The said position is also fortified from specific stipulation in the

agreement that the liability to pay all taxes including municipal taxes is on the grantee.

49. In view of the aforesaid discussion, we are of the considered view that the document in question constitutes lease in favor of the Appellant-

grantee; and accordingly liable to pay taxes. In view of the same, we find no merit in the present appeal, accordingly, the same is liable to be

dismissed and hence dismissed. No order as to costs.

(underlining added)

6. In the present case, in view of the fact that the respondent-plaintiff is in fact an allottee, although as a licensee of the suit property but which has

been given for relocation of the respondent-plaintiff, and there are no restrictions of any nature of the respondent for not constructing on the suit

land, in my opinion, sufficient interest is created as required by Section 120 of the Act for the property to be assessed to property tax. The suit

property can be assessed to tax as land if there is no construction on the same and even if construction has been made on the land, the assessment

will be of both land and building or on the building itself. I may clarify at this stage that I am not making any observations one way or the other as to

whether building stands constructed or does not stand constructed, and this aspect will be decided in the assessment proceedings, inasmuch as,

whereas the respondent-plaintiff claims that there is no construction, actually the trial court in its judgment has given a finding in paragraph 8 that

notice was given to the respondent-plaintiff on the ground that building was erected and that respondent-plaintiff has nowhere stated that he has not

erected the building on the same. However, assessment of property tax will have to be as per the nature and extent of building constructed and this

is an aspect which would be appropriately determined in the assessment proceedings by the Assessor and Collector of the appellant.

7. Accordingly, the substantial questions of law are answered as under:-

Suit would be maintainable on behalf of the respondent-plaintiff if tax could not have been assessed u/s 120 of the DMC Act, however, the factual

position in the present case is that the respondent-plaintiff has sufficient interest and rights in the said land, though titled as a licence only, and by

which there is an entitlement not only of long continuous possession, but also no restriction of construction of any building, and there exists such

interest as required u/s 120 of the DMC Act for the respondent to be assessed to property tax for the suit land and building if any. Even if a person

is not the owner or lessee yet if building exists, then such building can be assessed to property tax. A licensee in name, and who enjoys rights of a

lessee, would be liable within the provision of Section 120 of the Act. The nature of the rights which the respondent-plaintiff has in the licenced

premises are such that he is exigible to property tax.

(i) In view of the above, the appeal is allowed. The impugned judgment of the appellate court dated 7.5.2001 is set aside. The respondent-plaintiff

is held liable to pay property tax of the suit property being 76 sq. yds. of land bearing plot nos. A-98 and A-99, Jhandewalan, Junk Market, New

Delhi, and/or also for the building if there is any erection by the respondent-plaintiff on the plot in question. What is the extent of construction, if

any, made by the respondent-plaintiff will be determined by the Assessor and Collector in the assessment proceedings under the Delhi Municipal

Corporation Act, 1957.

(ii) Let the appellant now issue a fresh notice to the respondent-plaintiff seeking assessment of the property tax/house tax in accordance with law,

and thereafter, such proceedings would be decided by the competent authority in the appellant-defendant in accordance with law with respect to

the amount which the respondent-plaintiff is liable to pay as property tax and under which head and for what reason. Parties are left to bear their

own costs. It will be open to the respondents to take all objections of fact and law permissible in the assessment proceedings which are now to be

initiated pursuant to the present judgment. It is also clarified that if fresh notices are given they would be in continuation of the notices which have

already been issued by the appellant to the respondents and which are mentioned in this judgment.