Municipal Corporation of Delhi

Vs

Trigon Investment and Trading Private Limited and another

Civil Appeal No. 5356 of 1996

(B.P. Jeevan Reddy, K.S. Paripoornan JJ)

03.04.1996

JUDGEMENT

B. P. JEEVAN REDDY, J.:-

1.Leave granted. Heard counsel for both the parties.

2. This appeal is preferred by the Municipal Corporation of Delhi (Corporation) against the judgment and order of the Delhi High Court dismissing the writ petition filed by it. The matter pertains to assessment of property tax. Ms. Madhu Tewatia, learned counsel for the appellant-Corporation, submits that the problem arising herein is a common one and the decisions of the nature questioned herein are resulting in loss of substantial revenue legitimately due to the Corporation and, therefore, the questions arising herein must be decided by this Court authoritatively to serve as a guidance to the authorities under the Delhi Municipal Corporation Act, 1957 (Act).

3. Saket Properties Private Limited constructed a multi-storeyed building on plot No. 21, Yusuf Sarai Community Centre, New Delhi. Flats Nos. 302, 303 and 305 on the third floor of the said building were allotted to the respondent-Trigon Investment and Trading Private Limited-under a letter of allotment dated February 29,1984 (Annexure R-1) subject to the terms and conditions mentioned therein. The respondent accepted the allotment and paid a sum of Rs. 2,35,000/- by way of earnest money to Saket Properties. On February 23, 1986, says the respondent, possession of the said flats was handed over to and accepted by them (Annexure R-2). Neither the Saket Properties nor the respondent intimated the Corporation of the said allotment or delivery of possession. This is an admitted fact. It is also the admitted case of the parties that so far no sale deed (s) has been executed and/or registered in respect of the said flats- as appears to be the general position and practice obtaining in Delhi.

4. On July 11, 1990, the Deputy Assistant Assessor and Collector, M. C. D. issued a "call letter for hearing of the objection under section 126 of the Municipal Corporation Act, 1957" to the respondent requesting him to attend the office in connection with the finalisation of the rental value of the aforesaid flats. The respondent replied on July 17, 1990 stating that Sri K. K. Dwivedi, its authorised representative, is being deputed to represent the case and to discuss the matter and provide necessary information to the officer. On August 10, 1990, another notice was issued by the said office to the respondent to attend the office on August 17, 1990 along with necessary documents and evidence. On August 30, 1990, the Deputy Assistant Assessor and Collector made

the order of assessment. The order dated August 30, 1990 recites the following facts:

> (a) Though call letters dated July 11, 1990 and August 10, 1990 were sent to the tax-payer, no one had attended the office nor were any documents produced.
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> (b) The flats were purchased by the tax-payer from Saket Properties Private Limited (the original owner) and the possession of the flats was offered to the respondent on April 1, 1985. Accordingly, the liability of payment of property tax by the respondent is fixed from April 1, 1985 as per the terms of the agreement entered into between the builder/ promoter and the respondent.
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> (c) De jure title of the flats has not so far been bestowed upon the respondent because no proper sale deed has been executed.
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> (d) A notice under section 126 of the Act with consolidated R.V. for the entire building was given to the builder\ promoter proposing the R.V.
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> (e)In the above circumstances, the assessment is made ex-parte;the rental value is determined at Rs.3,37,800/- take the prevailing rental value in the said complex. The rateable value is determined at Rs.3,04,020/-. billing shall be done on the above basis.

5. On receiving the aforesaid assessment order, the respondent addressed a letter dated September 17,1990 to the assessing officer asking for rectification of the said order. Two grounds were mentioned in the letter.

> They are :
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> "(1) The date of possession of the flat was 23-2-1987. 1-4-1985 which has erroneously been mentioned in the order and attested photo-stat copy of the possession letter is enclosed.
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> (2) The flats have been given on rent in March, 1987 alias Rs.16,800/- per month. The annual rent of these flats would be Rs.16,800/-X 12=Rs.2,01,600/- and (not?) Rs.3,37,800/- as mentioned in the assessment order. Attested copy (Photostat) of the rent receipt for the month of May,1989 is enclosed."

6. The letter requested that the assessment order may be rectified in the light of the above facts. It must be mentioned that no other objection, legal or factual, was raised in the said letter apart from the two objections above.

7. Probably finding that no action was being taken on its rectification application, the respondent filed an appeal before the learned District Judge, Delhi against the order of assessment dated August 30,1990. In the Memorandum of Appeal, the respondent stated that possession of the flats had been handed over to it on February 23,1987 pursuant to the agreement of sale but that no sale deed has been executed till then. It referred to the letting out of the said flats and then stated that the Corporation has not served any notice on it under Section 126 of the Act which is a pre-condition to a valid assessment. It was also submitted that the Corporation is barred from making any assessment for any period prior to April 1,1988 as no notice was served on it (appellant before the learned Additional District Judge) till that date. It submitted that the rental value has been wrongly assessed

at Rs.3,37,800/- and that it ought to be Rs.2,01,600/- in the light of the rent being received by it.

8. On September 9,1992, the appeal was allowed by the Learned Additional District Judge in toto. It is equally relevant to notice the reasons for the said order. It states :

> (i) The assessment order itself states that though the said flats were purchased by Trigon Investment Private Limited, de jure title has not so far been bestowed upon it since a proper sale deed is yet be executed.
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> (ii) "A consolidated notice of the entire building was given to the builder w.e.f.1-4-1985. However, since the tax-payer did not attend the office nor the required documents were submitted, the assessing authority proceeded ex-parte and decided the case as above. On the fact of it, the order is bad in law."
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> (iii) "Admittedly no notice U/s. 126 of the D.M.C. Act has been served upon the appellants (Trigon Investments). The notice if any was served upon the Builder/Promoter and no sale deed has yet been executed among the parties. Therefore, no title has passed on to the appellants not the transfer appears to have been conveyed."
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> (iv) "Therefore, the appellants cannot be subjected to any tax for such a year in which no notice has been served upon them. The order is accordingly set aside and is hereby quashed."

9. The appellant-Corporation questioned the order of the learned Additional District Judge by way of a writ petition (C.W.P.No.411 of 1994) in the Delhi High Court. The writ petition was dismissed at the admission stage without issuing a notice to the respondent. The order of the High Court posed the question arising in the matter thus : "The short question which arises for decision is whether the petitioner-M.C.D. is entitled to assess tax on any individual without serving a notice as contemplated u/s. 126". The order states that the property in question was constructed by the builder who had entered into agreements for sale of various portions of the said property with several parties, that in 1985 a notice under Section 126 is stated to have been issued to the builder in respect of the said property inviting objections and that later on, another notice under Section 126 was issued to the builder styling it as a consolidated notice. The order further recites that the persons in whose favour the agreement for transfer has been executed by the builder did not get their names mutated in the records of the Corporation and that call letter was issued to the respondent, who is one of the transferees from the builder, in year 1990 only. The call letter is not a notice contemplated by Section 126 of the Act. The order then notices the submission of the learned counsel for the Corporation in the following words :"The Ld. Counsel for the petitioner has vehemently argued that even if no mutation had taken place in law, even then the person who had entered into an agreement with the builder for purchase of the particular flat becomes liable to pay tax in view of Section 120 of the Municipal Corporation Act and as a matter of fact such person steps into the shoes of the Original owner and the Notice served under Section 126 on the Builder be deemed a good notice served on the transferee from the Builder". The High Court opined that the said submission is unacceptable. It observed that under Section 120, the property tax is primarily the liability of the lessor and then posed the question "(H) owever, the question arises whether the persons who are liable to pay property tax by virtue of Section 120 of the Act can be made liable for tax without serving notice U/s.126 of the Act." It answered the said question in the following words : "Section 126 of the Act lays down that the Commissioner may at any time amend the Assessment

list and the proviso to that Section makes it incumbent that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the order in which the notice U/Sub-section 2 is given. Sub-section 2 makes it clear that the Commissioner shall give to any person affected by the Assessment notice of not less than one month that he propose to make the amendment and consider any objection which may be made by such person Admittedly, no notice as contemplated by these provisions had been served on the Respondent." The High Court then referred to the submission of the counsel for the Corporation based upon Section 128 (4), which makes it obligatory on the part of the vendor to intimate the factum of transfer to the Corporation and also making the failure to give such notice punishable. The High Court observed, "mere fact that no such notice had been given to the M.C.D. regarding transfer of the portion of the property by the Builder would not mean that the M.C.D. is entitled to recover property tax from the transferee without complying with the provisions of Section 126 of the Act." The High Court observed further,"in case no intimation has been given to the M.C.D. regarding transfer of the property by the Owner and the M.C.D. on its own has not been able to find the names of such transferees, the interest of the M.C.D. are well protected by provisions of Section 128(4) where it is clearly laid down that the liability to pay the property tax shall in that case will continue to be of the owner and the Owner would also be subjected to the imposition of some penalty."

10. Ms. Madhu Tewatia, learned counsel for the Corporation, invited our attention to the relevant provisions of the Act and submitted that the view taken by the High Court is inconsistent therewith. Admittedly, she submitted, neither the builder not the purchaser-respondent had intimated the Corporation of the said transaction between them. Prior to 1990, the Corporation was not aware that the respondent had purchased the said flats. The Corporation had in due course given notices to the builder in the year 1985 who failed to respond to the same. The liability to pay taxes got fastened to the premises in accordance with law and that liability is not erased by the failure of the builder to respondent to the notices. When the Corporation came to know that the respondent has purchased the said flats, it issued notices, "call letters", to it in the year 1990 and made the assessment order dated August 30,1990. The learned Additional District Judge has allowed the appeal on a ground which is altogether different from the grounds urged by the respondent in the appeal. The learned Additional District Judge states-according to the learned counsel, erroneously- that since de jure title has not been transferred to the respondent, the respondent cannot be subjected to any tax in respect of an year for which no notice has been served upon him and that notices served upon the builder/promoter are of no avail against the respondent. But when it came to High Court, the view taken by the High Court is that even if transferor and transferee have failed to comply with the mandatory statutory requirement in Section 128, still no tax can be levied upon the transferee until and unless a notice under section 126 is served upon him. For the period prior to the service of such notice upon the transferee, the Corporation's remedy is suggested to be against the transferor. Counsel submits that this is contrary to law. The learned counsel also pointed out that on receiving the assessment order dated August 30,1990, the respondent filed an application for rectification wherein it did not dispute or deny its liability to pay the property tax in respect of the said flats; its only submission was that since possession of the flats have been delivered to it on February 23,1987, the tax must be levied only from March,1987 and not from April 1,1985.(It, of course, disputed the quantum of rental value also.) Learned counsel also relied upon clause (12) of the Allotment Letter, according to which the allottees/purchasers were made liable for "their share of ground rent, property taxes, water charges and any other cesses which may be levied on the property". The said clause also contemplates that the Corporation will normally be expected to demand the property taxes directly from the allottees/purchasers. This clause, says the learned

counsel, clearly makes the purchaser liable for the property taxes levied on the said flats irrespective of the fact whether the levy was prior to allotment letter and/or delivery of possession or subsequent thereto.

11. Sri B.B.Jain, learned counsel for the first respondent, relied upon the decision of the expression "Owner" in clause (37) of Section 2 of the Act and submitted that no assessment of property tax can be made upon the respondent until and unless a notice under Section 126 is served upon it and in no event can the respondent be made liable to pay the property tax for the period anterior to the service of the notice under Section 126. The learned counsel relied upon certain decisions of the Delhi High Court referred to in the first respondent's counter and submitted that no tax can be levied upon a building until the completion certificate is issued. He pointed out that possession of the flat was handed over to the respondent only on February 23,1987 and hence, no tax can ever be levied for the period anterior to the said date. Counsel submitted that until and unless an assessment is made with notice to the respondent as contemplated by Section 126, it cannot be made liable for the tax and certainly not for the anterior period.

12. It is necessary to notice the relevant provisions of the Act for a proper appreciation of the questions arising herein. Among the taxes which the Corporation is empowered to levy by Section 113 "property taxes" is the first one. Sections 114 to 135 occur under the sub-heading "property taxes". Section 114(1) states that "save as otherwise provided in this Act, the property taxes shall be levied on lands and buildings in Delhi and shall consist of the following, namely.....". Section 115 specifies the premises in respect of which property taxes are to be levied while Section 116 prescribes the basis upon which the rateable value of the lands and buildings has to be determined. Section 120(1) then says that "the property taxes shall be primarily leviable as follows :(a if the land or building is let, upon the lessor; (b) if the land or building is sub-let, upon the superior lessor; (c) if the land or building is unlet, upon the person in whom the right to let the same vests." Section 122 declares that on the failure to pay taxes by the person primarily liable therefor, it shall be open to the Commissioner to recover the same "from every occupier of such land or building by attachment, in accordance with Section 162 of the attachment, of the rent payable by such occupier, a portion of the total sum due which bears, as nearly as may be, the same proportion to that sum as the rent annually payable by such occupier bears to the total amount of rent annually payable in respect of the whole of the land or building". Sub-section (2) empowers the occupier from whom the amount is recovered under sub-section (1) to claim reimbursement from the person primarily liable/owner. Section 123 declares that "property taxes due under this Act in respect of any land or building shall, subject to the prior payment of the land revenue, if any due to the Government thereon, be a first charge...(b) in the case of any other land or building, upon such land or building and upon the goods and other movable properties, if any, found within or upon such land or building and belonging to the person liable for such taxes." Section 124 prescribes the procedure according to which assessment list of all lands and buildings in Delhi is to be prepared. Section 126 provides for the amendment of the assessment list. In view of the reliance placed upon the said section, it would be appropriate to set out sub-sections (1) and (2) thereof in full. They read :

> "126-Amendment of assessment list:(1) The commissioner may, at any time, amend the assessment list-
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> (a) by inserting therein the name of any person whose name ought to be inserted; or
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> (b) by inserting therein any land or building previously omitted; or

(c) by striking out the name of any person not liable for the payment of property taxes; or

(d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

(e) by making or cancelling any entry exempting any land or building from liability to any property tax; or

(f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident; or

(g) by inserting or altering an entry in respect of any building erected, re-erected, altered or added to, after the preparation of the assessment list;

Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year (in which the notice under sub-section (2) is given)

(2) Before making any amendment under sub-section (1) the Commissioner shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider any objections which may be made by such person."

13. Section 128 is equally relevant. Sub-section (1) of Section 128 provides that "whenever the title of any person primarily liable for the payment of property taxes on any land or building is transferred, the person whose title is transferred and the person to whom the same is to be transferred shall within three months after the execution of the instrument of transfer or after its registration, if it is registered, or after the transfer is effected, if no instrument is executed, give notice of such transfer in writing to the Commissioner." Sub-section (4) is of crucial relevance and it reads :

"Every person who makes a transfer as aforesaid without giving such notice to the Commissioner shall, in addition to any penalty to which he may be subjected under the provisions of this Act, continue liable for the payment of all property taxes from time to time payable in respect of the land or building transferred until he gives such notice or until the transfer has been recorded in the Commissioner's book, but nothing in this section shall be held to affect the liability of the transferee for the payment of the said tax."

14. Section 131 empowers the Commissioner to call for information and returns and also to enter on premises to enable him to determine the rateable value of any land or building.

15. Now, what do the above provisions mean and indicate? According to us, the scheme and purport of the above provisions is this : the property taxes are levied upon the lands and buildings in Delhi [Section 114(1)]. Property taxes due under the Act in respect of any land or building constitute first charge upon such land and building subject only to the prior payment of the land revenue, if any due to the Government thereon [Section 123 (1)]. The primary liability to pay taxes is upon the lessor where the building is let and upon the person entitled to let it, where the building is not let [Section 120]. If the person primarily liable fails to pay the tax, it can be recovered from the occupier who in

turn is entitled to be reimbursed by the person primarily liable [Section 122]. Assessment lists containing the specified particulars have to be prepared by the Corporation [Section 124]. The lists prepared under Section 124 can be amended at any time in any of the situations mentioned in sub-section (1) of Section 126. The situations specified in sub-section (1) of Section 126 inter alia are insertion of the name of a person whose name ought to be inserted, insertion of any land or building which was omitted and insertion or alteration of any entry in respect of any building re-erected, altered or added after the preparation of the assessment list. Before making any amendment under sub-section (1), the Commissioner shall give to any person affected by amendment a notice of not less than one month of his intention to make the amendment and consider any objection received in that behalf [Section 126 (2)]. No person shall become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which notice under sub-section (2) is given [Proviso to section 126 (1)]. Where a land or building is transferred, the transferor is bound to give notice of such transfer to the Commissioner. If the transfer is effected by the registered document, such notice has to be given within three months of the registration and if the transfer is effected under an instrument of transfer which is not registered, within three months of the execution of such instrument. Failure to give such notice renders the transferor liable not only to penalty but also to payment of all property taxes from time to time payable in respect of such land or building until he gives such notice [Sections 128 (1) and (4)]. At the same time, sub-section (4) of Section 128 expressly provides that the continued liability to pay the taxes cast upon the transferor [in addition to penalty] shall not affect the liability of the transferee for the payment of the said tax. Now, what do the words "but nothing in this section shall be held to affect the liability of the transferee for the payment of the said tax" in sub-section (4) of Section 128 mean and signify? in our opinion, the said words have to be understood in the light of the preceding provisions, viz., that the levy of the property tax is upon the lands and buildings, that the said tax constitutes the first charge upon such lands and buildings and that while the liability to pay tax lies upon the transferor, the transferee is not freed from the said liability on that account. The expression "transfer" is not defined in the Act. If so, it has to be understood in its normal sense, i.e., in the sense it is understood in the Transfer of Property Act but with the rider that Section 128 (1) recognises a transfer even where the instrument of transfer is not registered. The fact that possession of the flats was delivered to the respondent, that the respondent has paid the full consideration for the said flats and the further fact that the respondent has let out the flats and is in exclusive receipt of the rent clearly establishes that he is a transferee within the meaning of Section 128. Indeed, he would be the "owner" as defined by clause (37) in Section 2 of the Act. He would be the "owner" within the meaning of and for the purposes of the Act-whatever may be the position in general law. In that sense, the respondent is equally liable to pay the said taxes. This liability of the transferee arising from the fact of his being the "owner" of the concerned land or building should not be mixed up or confused with the proviso to Section 126 (1). Since the property tax constitutes first charge upon the land/building and because the land/building is fastened with this liability, the liability travels with the land/building. The transferee is liable to pay the property taxes due thereon not only for the period subsequent to transfer in his favour but even for the period anterior to the transfer. What Section 128 does is to keep alive and continue the liability of the transferor to pay property taxes even after the transfer till he gives the notice contemplated by Section 128(1). While making him so liable, Section 128(4) declares that this liability cast on the transferor shall not relieve the transferee from the obligation to pay the said tax, as explained above. This liability of the transferee is in no way qualified, curtailed or abridged by any provision in Section 126. Section 126 deals with amendment of assessment list and the procedural aspects concerning amendment. By way of illustration, take a case where property tax is assessed on a building say, with effect from april 1, 1985. The building is transferred on April,1,1987 but the transferor does not give notice of transfer.

Later, on April 1,1990, the name of the transferee is inserted in the place of the name of the transferor by amending the assessment list. Can the transferee say in such a case that he is not liable to pay the taxes for the period prior to April 1.1990? If he can say so in law, would it not make Section 128(4) and Sections 119 and 123 [property taxes being levied upon the the lands/buildings and their constituting a first charge on such lands/buildings] nugatory and meaningless? So far as transferee is concerned, therefore, Section 126 does not in any manner cut down his liability or exonerate him from the liability resting upon him by virtue of other provisions in Chapter VIII. For the purposes of this case, it is not necessary to go into the scope and purport of section 126. It is enough to clarify that whatever its scope and purport it does not have the effect of relieving a transferee of a land/building from the liability to pay property taxes duly assessed upon such land/building and that this liability extends even for the period prior to the transfer in his favour and such taxes can be recovered from him according to law.

16. Now, coming to the facts of the case, we may make it clear that there are certain factual aspects which we cannot decide in this appeal for the reason that they have not been gone into or pronounced upon either by the assessing authority or by the learned Additional District Judge or by the High Court. They are : what was the notice given to the builder in 1985 and what happened pursuant thereto? Whether any assessment of property tax upon the building as a whole, or upon the flats in question, as the case may be, was made pursuant to such notice or not? If an assessment was already made pursuant to the notice issued to the builder in the years 1985/1986, why was another assessment made on August 30,1990 and why does the order of assessment say that the "liability of payment of property tax by the flat owner is fixed from April 1,1985 as per agreement and terms with the builder/promoter? Or was it a case of increase in the R.V.? It is obvious that if an assessment of property taxes was made upon the builder, the said property taxes constitute a first c charge upon the building irrespective of the fact whether the assessment was made on the building treating it as one unit (as compendium of several flats) or upon each flat or group of flats separately. Such property taxes, being a first charge upon such building/flats, and can be recovered either from the builder/promoter or from the transferee thereof. Their liability is joint and several subject to the rider that the liability of the builder/promoter ceases once he gives a notice contemplated by Section 128(1). In other words, if the tax had been assessed pursuant to the notices served upon the builder/promoter in the years 1985 or 1986, as the case may be,or at any time earlier to the assessment order dated August 30,1990, such tax has to be paid by one or the other among the transferor and tranferee.

17. It is equally necessary to clarify that the Act places the obligation upon the transferor to intimate the Corporation of any transfer and also provides for the consequences flowing from failure to inform. The Act does not contemplate the Corporation going about enquiring whether and when a particular land/building is transferred and to whom? Any notices required to be issued by the Corporation can be validly issued to the transferor until he intimates the Corporation of the transfer and it would be a valid and sufficient service in law; the transferee cannot contend that since he has not been served with the relevant notice, the assessment made or any other action taken is bad in law. If he takes a transfer from a particular person, it is his duty to ensure that the transferor sends the intimation contemplated by Section 128(1) and his [transfree's] name is recorded as the owner in the place of the transferor. Unless the trasferee's name is recorded as the "owner" or as the person primarily liable, the Municipality cannot be found fault with for not sending relevant notices to the transferee. The substantive liability of the "owner" to pay taxes cannot be defeated by the non-intimation under Section 128 or by the failure of the transferee to have his name entered in the Municipal records.

18-19. It is again made clear that if a valid assessment was made at any time prior to 1990, that assessment will continue to be valid and no notice or fresh order was necessary in the year 1990, unless the assessment was sought to be increased. Merely because a proceeding by way of affirmation of an existing levy was taken with notice to transferee by way of abundant caution, or under a misapprehension of law, the earlier assessment validly made is not effected. if, however, there was no assessment earlier and the 1990 assessment is the only assessment in respect of the flats in question, then it is obvious that no tax can be levied for the anterior period. The respondent cannot contend that because no notice was given to him, any assessment made prior to 1990, with notice to builder/promoter [whether on the building as a whole or on each flat or group of flats separately] is illegal or invalid. In this behalf, it is relevant to notice the following averment made by the respondent in Para 3-F [penultimate para] of his counter-affidavit filed in this appeal. It is stated therein:

> "It would also be relevant to place on record that the notice under Section 126 of the DMC Act dated 21-3-86 was issued and served upon M/s. Saket Properties Private Limited proposing to increase the rateable value of Rs. 1,22,500/- per annum to Rs. 12,42,000/- per annum w.e.f. 1-4-85 for the reason 'Newly Built Property' against which the builder had filed objections dated 25-4-86 (copy annexed hereto marked as Annexure-R-2) whereby the builder had specifically brought out to the notice of the respondent that the building was incomplete was under construction. These objections were never considered by the respondent and had visited this assessee with an assessment w.e.f. 1-4-1985 without application of mind especially when the said property was not liable to be assessed as per the law laid down by the Delhi High Court and the substantive law contained in Section 129 of the DMC Act reproduced hereinabove, against all norms and for the reasons best known to it."
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> This paragraph tends to show that a separate assessment was made by the Corporation in respect of the flats in question with notice to builder with effect from April 1, 1985. If this is so and if it has become final, it is obvious that it can be recovered both from the builder [Saket Properties Private Limited] and the [first] respondent herein. It should be remembered that the builder has failed to intimate the Corporation as required by Section 128 (1) and, therefore, it continues to be liable. But so does the tranferee too because the taxes constitute the first charge upon the flats and also by virtue of Section 128 (4) . While deciding the matter pursuant to this order, the learned Additional District Judge shall also take the above averment into consideration.

20. The Act does not contemplate situation-it is necessary to emphasise-nor should the Courts create a situation by a process of interpretation, where both the transferor and transferee escape the tax which has been duly assessed.

21. The appeal is accordingly allowed. The orders of the High Court and the learned Additional District Judge are set aside and the matter is remitted to the learned Additional District Judge for disposal of the appeal according to law and in the light of the position of law explained hereinabove. Learned Additional District Judge shall be entitled to call upon both the parties to adduce necessary evidence to decide the question arising herein, both factual and legal, according to law. Learned Additional District Judge shall dispose of the appeal within four months from the date of receipt of the copy of this order. Both the parties shall present themselves before the learned Additional District Judge on April 16, 1996 which is specified as the date of hearing in the appeal before the

learned Additional Distirct Judge. It shall also be open to the parties to file such documentary evidence as they wish to in support of their respective cases. No oral evidence shall, however, be permitted.

22. There shall be no order as to costs. Appeal allowed.