

Nagpur Improvement Trust

Vs

Nagpur Timber Merchants' Association and Another

Civil Appeals Nos. 2030-2036 of 1997

(S. C. Agarwal, S. Saghir Ahmed JJ)

18.03.1997

JUDGMENT

S.C. AGRAWAL, J. –

1. Special leave granted.

2. These appeals raise common questions for consideration. The Nagpur Improvement Trust, the appellant herein, has been constituted under the provisions of the Nagpur Improvement Trust Act, 1936 (36 of 1936) enacted to provide for improvement and expansion of the town of Nagpur. The said Act makes provisions for acquisition of land by the Improvement Trust in connection with various schemes which are framed by the Improvement Trust. After development the land is disposed of by the Improvement Trust. The disposal of lands vested in the Improvement Trust is governed by the Nagpur Improvement Trust (Land Disposal) Rules, 1955 (hereinafter referred to as "the Rules") made by the State Government in exercise of the powers conferred by Section 76 read with Section 89 of the Nagpur Improvement Trust Act, 1936. Rule 3 provides for transfer of land of Improvement Trust by (a) direct negotiation with party; (b) public auction; (c) inviting tenders; and (d) concessional rates. Rule 4 prescribes that the land shall be disposed of at a premium to be fixed in accordance with the provisions contained therein. In addition to the amount of premium, the transferee is liable to pay ground rent at 2% of the premium annually. Rule 7 lays down that every transfer of Improvement Trust land shall be made by lease which shall be either for thirty years or ninety-nine years as may be determined by the Improvement Trust. If the purchaser by an application in writing requests the Improvement Trust to convert the period of lease from thirty years to ninety-nine years, the Improvement Trust may do so after charging in addition 15% of the premium fixed for thirty years of lease with proportionate increase in annual ground rent. In certain specified circumstances the Improvement Trust can dispose of land by outright sale or exchange. Rule 9 of the Rules, which is relevant for the purpose of this case, reads as under :

"9. Where land revenue is payable in respect of any plot so transferred, such land revenue shall be payable by the Trust."

3. The other provisions of the Rules have no bearing on the matter in issue.

4. The respondents in these appeals are lessees in respect of lands of the Improvement Trust. Under the terms of lease deed they are liable to pay the amount prescribed therein as premium and ground rent periodically. Clause 1(b) of the lease deed contains the following provision :

"(b) The lessee shall from time to time and at all times during the said term pay and

discharge all rates, taxes, charges and assessments of every description or imposed upon the said land hereby demised or the building erected thereupon or upon the landlord or tenant in respect thereof."

5. In 1978 the Government of Maharashtra initiated proceedings for assessment and recovery of non-agricultural assessment charges under the provisions of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the Land Revenue Code"). Non-agricultural assessment charges in respect of the plots which had been allotted by Improvement Trust to the respondent-lessees were demanded by the State Government from the Improvement Trust. The Improvement Trust, as per clause 1(b) of the lease deed, asked the lessees to make the payment of the non-agricultural assessment charges in respect of their lands. The respondents disclaimed their liability for non-agricultural assessment and filed writ petitions in the Bombay High Court, Nagpur Bench, challenging the said demand of non-agricultural assessment from them. The writ petitions which have given rise to Special Leave Petitions (Civil) Nos. 11018-23 of 1992 were disposed of by the High Court by a common judgment dated 3-9-1991 whereby the High Court has allowed the said writ petitions and has quashed the recovery notices issued by the Improvement Trust and has restrained the Improvement Trust from making recovery of non-agricultural assessment from the plot-holders, like the respondents or their members. The High Court has held that non-agricultural assessment is nothing but land revenue and in view of Rule 9 of the Rules the Improvement Trust is liable to pay the same and it could not recover it from the lessees. The High Court has further held that clause 1(b) of the lease deed does not include payment of land revenue by the lessees of plots held by them and that such a construction of the said clause would be in consonance with Rule 9 of the Rules and that if the said clause is interpreted to include even land revenue then the said clause would be against Rule 9 which provides that the land revenue of the plot, transferred to the lessees is made payable by the Improvement Trust and no one else and that the burden that is statutorily fixed under Rule 9 cannot be shifted to others as is sought to be done by the Improvement Trust. The High Court has also observed that since the respondents or their members had no notice about the fixation or assessment being undertaken, they could not participate in those proceedings and that the Improvement Trust failed to get proper fixation done because it took no interest in the proceedings and that in these circumstances no liability could be fastened upon the lessees.

6. Writ Petition No. 2351 of 1982, which has given rise to Special Leave Petition (Civil) No. 5594 of 1993, was disposed of by the High Court by its judgment dated 6-9-1991 on the basis of the earlier judgment dated 3-9-1991 referred to above.

7. Shri V.A. Bobde, the learned Senior Counsel appearing for the Improvement Trust, has urged that the High Court was in error in holding that non-agricultural assessment is land revenue and that in view of Rule 9 of the Rules it is the Improvement Trust alone which is bound to pay the said charges and it cannot require the lessees to pay the same. Shri Bobde has also placed reliance on clause 1(b) of the lease deed and has submitted that the Improvement Trust is entitled to require the lessees to pay the non-agricultural assessment that is being recovered by the State Government from the Improvement Trust and that the High Court was in error in holding that in view of Rule 9, clause 1(b) of the lease deed cannot be construed to impose such a liability on the lessees.

8. The learned counsel appearing for the respondents have, on the other hand, urged that the High Court has rightly construed the expression "land revenue" in Rule 9 of the Rules to include non-agricultural assessment and that in view of the mandate in Rule 9, the Improvement Trust alone is liable to pay non-agricultural assessment and it cannot pass on the liability for the same to the lessees. The submissions of the learned counsel is that clause 1(b) of the lease deed cannot be

construed as entitling the Improvement Trust to require the lessees to pay the non-agricultural assessment and that, if clause 1(b) is so construed, it would be inconsistent with the provisions contained in Rule 9 of the Rules.

9. We will first examine the question whether Rule 9 of the Rules precludes the Improvement Trust to require the respondent-lessees to pay the amounts sought to be recovered from the Improvement Trust by the State Government as non-agricultural assessment in respect of the plots leased out to the respondents. For that purpose, we will proceed on the basis that the expression "land revenue" in Rule 9 includes non-agricultural assessment. A perusal of Rule 9 shows that it governs the relationship between the State Government and the Improvement Trust in the matter of recovery of land revenue payable in respect of lands disposed of under the Rules. The said Rule imposes the liability for the payment of land revenue in respect of the lands disposed of under the Rules on the Improvement Trust. As a result, the State Government can recover the land revenue payable in respect of the lands so disposed of from the Improvement Trust and it need not take proceedings for recovery of such land revenue from the transferees of the lands that are disposed of under the Rules. But that does not mean that the Improvement Trust cannot pass on its liability to the lessees in respect of the land revenue payable by it to the State Government in respect of the lands that have been transferred to the lessees. The High Court has construed Rule 9 to mean that the land revenue in respect of the plots transferred to the lessees has to be paid by the Improvement Trust and no one else and that the said burden which is statutorily fixed under Rule 9 cannot be shifted to others. We find no warrant for adding the words "no one else" in Rule 9 so as to preclude the Improvement Trust from requiring the lessees to pay the land revenue which the Improvement Trust is required to pay to the State Government in respect of the lands that have been transferred to the lessees. If it is so held, the Improvement Trust would be saddled with the liability to pay non-agricultural assessment which would vary with the user of the land by the lessees. Under Section 114 of the Land Revenue Code the rate of non-agricultural assessment in respect of lands in urban areas is one-half the standard rate if the land is used for the purpose of industry and it is thrice the standard rate in certain areas including Nagpur and twice the said rate in other urban areas if the land is used for the purposes of commerce. The possibility cannot be excluded that the amount of the non-agricultural assessment payable in respect of the plot of land disposed of by the Improvement Trust may, in the course of time, exceed the amount of the premium that is paid by the lessee at the time of grant of lease and, if the Improvement Trust is precluded from recovering the amount of non-agricultural assessment from the lessee, it may end up paying more by way of non-agricultural assessment than the amount received by it as premium for the land. By way of illustration we may refer to the lease deed dated 15-10-1956 (Annexure 'H' to the SLP) executed in favour of Arya Pratinidhi Sabha (petitioner in Writ Petition No. 2265 of 1982 before the High Court). The amount of premium paid by the lessee was Rs. 6534 in respect of a plot measuring 7286 square feet and the ground rent is Rs. 10 per year. The letter of demand dated 29-5-1982 (Annexure 'I' to the SLP) shows that the non-agricultural assessment payable in respect of the said plot @ Rs. 270.70 for the period from 1956 to 1982 was Rs. 7038. The amount of non-agricultural assessment payable for the plot for the period from 1956 to 1982 thus exceeds the premium that was received by the Improvement Trust from the lessee. Surely it could not be the intention of the rule-making authority in Rule 9 that the Improvement Trust shall finance the lessees in respect of lands that are disposed by the Improvement Trust under the Rules.

10. The High Court has also referred to the provisions of Rule 11 of the Land Disposal Rules, 1983 wherein it is expressly stated that the lessee during the continuance of the lease shall pay land revenue, non-agricultural assessment and cesses assessed or which may be assessed on the demised land. The fact that under Rule 11 of the Land Disposal Rules, 1983 it is expressly provided that the

lessee is liable to pay land revenue, non-agricultural assessment in respect of land held by him does not mean that in the absence of such an express provision Rule 9 of the Rules must be construed to mean that the lessee is not liable to pay land revenue non-agricultural assessment assessed on the demised land. As indicated earlier, we are of the opinion that Rule 9 of the Rules did not preclude the Improvement Trust from recovering from the respondent-lessees the amount of non-agricultural assessment payable by it to the State Government in respect of lands leased out to respondent-lessees. Since we have held that Rule 9 of the Rules did not preclude the Improvement Trust from requiring the respondent-lessees to pay in respect of the lands leased out to them non-agricultural assessment which the Improvement Trust was required to pay to the State Government, we do not consider it necessary to deal with the question whether the expression "land revenue" in Rule 9 includes "non-agricultural assessment".

11. The High Court has observed that liability could not be passed on to the lessees because they had no notice of the proceedings regarding fixation or assessment of non-agricultural assessment and they could not participate in the proceedings. It is no doubt true that at the stage of assessment of amount of non-agricultural assessment notice had only been issued to the Improvement Trust and the lessees had no notice of the proceedings and they had no opportunity of placing their case before the authorities concerned. The grievance of the respondents in this regard would be redressed if they are afforded an opportunity of making their representations against determination of non-agricultural assessment in respect of plots leased out to them and, in case such representations are made by the lessees, the same are given due consideration by the authority concerned.

12. In the result, the appeals are allowed. The impugned judgments of the High Court are set aside and the writ petitions filed by the respondents in the High Court are disposed of with the direction that it is permissible for the Improvement Trust to require the respondent-lessees to pay the amount of non-agricultural assessment in respect of the lands leased out to them. It would, however, be open to the respondents to submit their representations to the authority concerned against the determination of non-agricultural assessment in respect of lands leased out to them and, if such representation is made within one month of this judgment, the same shall be given due consideration by the authority concerned and it should be disposed of within a period of two months from the date of submission of the representation. The recovery of non-agricultural assessment shall not be made from the respondent-lessee/lessees making the representation till the representation is disposed of by the authority concerned. No order as to costs.