

SUPREME COURT OF INDIA

Housing and Urban Development Corporation Ltd

Vs

M.C.D.

13.12.2000

(B.N. Kirpal, U.C. Banerjee and Brijesh Kumar, JJ.)

Civil Appeal No. 6645 of 1999.

ORDER

B.N. Kirpal, J. - On 1st November, 1990, 42.6 acres of Government land at Andrew Ganj, Delhi was given by the Government of India to the appellant for development. According to the terms of the allotment letter, 17.6 acres of land was to be developed by the appellant and utilised as a hostel and guest house facilities, conference hall, shopping and other community centre facilities. Out of the money earned therefrom, on 25 acres of land flats were to be constructed for housing Government servants. The said letter envisaged that a lease to this effect would be executed in future.

2. Possession was taken and on 25th March, 1994, even though formal lease had not been executed in favour of the appellant, assessment under the provisions of the Delhi Municipal Corporation Act, 1957 (for short "the Act") was made to property tax for the period 2nd July, 1990 to 31st March, 1995. The assessment was made at the rate of 5 per cent of the value of the land. The assessment was on the vacant land as no building as on that day had yet been erected.

The challenge of the appellant to the said levy based on the provisions of Section 119 of the Act did not succeed. It was the contention of the appellant that the land in question belonged to the Central Government and by virtue of Sub-section (1) of Section 119 no tax thereof could be levied. Having failed in the High Court, the present appeal by special leave has been filed.

3. Learned Solicitor General for the appellant submits, as had been contended earlier, that under Section 119(1) the lands and buildings being the properties of the Union are exempt from tax. He submits that the provisions of sub-section (2) of Section 120 did not come into play because a formal lease deed was executed in favour of the appellant by the Central Government only on 4th July, 1997 and it is only thereafter that the interest in the land could be said to have passed on to the appellant. He further submits that even under Section 120(1) the property tax is primarily leviable if the land is let upon the lessor, if it is sublet upon the superior lessor and if it is unless then upon the person in whom the right to let the same vests. He submits that admittedly no lease deed has been executed during the period 2nd July, 1990 to 31st March, 1995 and, therefore, the land was unlet. He then contends that the right to let this land still vested with the Central Government and did not vest at that point of time with the appellant, for no right under a lease to that effect had been created.

4. Section 119 on which reliance is placed reads as follows :

"119. Taxation of Union properties - (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, lands and buildings being properties of the Union shall be exempt from the property taxes specified in section 114 :

Provided that nothing in this sub-section shall prevent the Corporation from levying any of the said taxes on such lands and buildings to which immediately before the 26th January, 1950, they were liable or treated as liable, so long as the tax continues to be levied by the Corporation on other lands and buildings.

(2) Where the possession of any land or building, being property of the Union, has been delivered in pursuance of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) to a displaced person, or any association of displaced persons, whether incorporated or not, or to any other person hereafter in this sub-section and the proviso to sub-section (1) of section 120 referred to as the transferee, the property taxes specified in Section 114 shall be leviable and shall be deemed to have been leviable in respect of such land or building with effect from the 7th day of April, 1958 or the date on which possession thereof has been delivered to the transferee, whichever is later, and such property taxes shall, notwithstanding anything in the proviso to sub-section (1) of section 126 of any other provisions of this Act, be recoverable with effect from that day or date, as the case may be."

5. It is clear from a reading of sub-section (1) of Section 119 that lands and buildings which are the properties of the Union are exempt from property tax. Mr. M.L. Varma, learned senior counsel appearing for the respondents, however, contended that under sub-section (2) of Section 119 when possession of the land is given to any person then property tax can be recovered from that person.

6. In our opinion, on a correct reading of Section 119(2), the aforesaid consequence does not follow. Sub-section (2) of Section 119 provides that where possession of the land or building being the property of the Union has been delivered in pursuance of Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act to (a) a displaced person or (b) an association of displaced persons or (c) to any other person, then the property tax can be recovered from the person in possession. It is clear that the expression 'to any other person' can only be that person to whom possession has been delivered in pursuance of the provisions of Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act. This obviously is not the position in the present case. Possession was not given to the appellant under the said Act and, therefore, sub-section (2) of Section 119 does not come into play.

7. From the aforesaid discussion, it clearly follows that the land in question being exempt from tax by virtue of Section 119(1) of the Act as it is the property of the Union and furthermore even under Section 120(1) no tax in respect of land could have been levied in the present case on the appellant prior to the same being let to them in 1997.

8. For the aforesaid reasons, this appeal is allowed and the judgment of the High Court and the order of assessment are set aside.

9. There will be no order as to costs.

10. We make it clear that we are not examining or expressing any opinion on the liability of the allottees of HUDCO to pay tax under the Delhi Municipal Corporation Act.