

SUPREME COURT OF INDIA

M.C.D.

Vs.

Shashnak Steel Industries (P) Ltd.

C.A.Nos.6802-6806 of 2003

(S.H. Kapadia and B. Sudershan Reddy JJ.)

17.11.2008

JUDGMENT

S. H. KAPADIA, J.

1. Leave granted in S.L.P. (C) No.18371 of 2006.

2. In this batch of civil appeals we are concerned with two types of matters - one concerning perpetual sub-lease and the other concerning lease.

3. The lead matter is Civil Appeal Nos.6802-6806 of 2003 - Municipal Corporation of Delhi vs. M/s. Shashnak Steel Industries Pvt. Ltd. which concerns Perpetual Sub-lease dated 20.2.81. Similarly the lead matter for the other set of civil appeals is Civil Appeal No.1011 of 2005- Municipal Corporation of Delhi v. M/s. Gauri Constructions Co. CIVIL APPEAL NOS.6802-6806 OF 2003

4. A Perpetual Sub-lease dated 20.2.1981 stood executed between the President of India (as the lessor), Mohan Co-operative Industrial Estate Ltd. (as the lessee) and M/s. Shashnak Steel Industries Pvt. Ltd. (as the sub-lessee) of an industrial plot.

5. We quote hereinbelow some of the relevant recitals and the terms and conditions of the said Deed dated 20.2.1981:

"RECITALS This indenture made this Twentieth (20th) of February One thousand nine hundred and Eighty one between the President of India (hereinafter called "the lessor") of the one part and the Mohan Co-operative Industrial Estate Ltd. Society registered under the Bombay Co-operative Societies Act, 1925, as in force in the Union Territory of Delhi and having its registered office at S. Mohan Singh Building, Connaught Lane, New Delhi hereinafter called "the Lessee" of the second part and M/s. Shashank Steel Industries Pvt. Ltd. hereinafter called sub-lessee of the third part.

(i) Whereas by a lease executed on the Twentieth (20th) of February One thousand nine hundred and Eighty and registered in office of the Registrar/Sub-Registrar, Delhi/New Delhi (hereinafter called "the lease", a copy of which is annexed hereto and marked 'X') the Lessor demised unto the lessee in perpetuity the industrial plots as mentioned therein.

(ii) And whereas under the lease the lessee has to sub-lease, on such premium and yearly rent as may be fixed by the lessor, one industrial plot to each of the members of the lessee who may be approved by the Chief Commissioner Delhi (hereinafter called "the Chief Commissioner") for carrying on such manufacturing

process or running such industry as may be approved by the Chief Commissioner.

(iii) And whereas the Sub-lessee has applied to the lessee for the grant of a perpetual sub-lease of an industrial plot and, on the faith of the statements and representations made by the Sub- lessee, the Lessee has agreed grant and the lessor has agreed to confirm a perpetual sub-lease of an industrial plot.

(iv) And whereas on an application by the lessee the lessor has fixed the amount to be paid initially towards premium before the execution of these presents (and the lessor shall fix subsequently additional or sum payable towards premium as provided in the covenants hereinafter contained) and the yearly of industrial plot hereby sub-leased.

(v) And whereas the Chief Commissioner has approved the sub-lessee and the manufacturing process be carried on or the industry to be run on the said industrial plot by the sub-lessee. Now this indenture witnesseth that, in consideration of the sub-lessee having paid to the lessee 16,093.60 Sixteen thousand and ninety three and paise sixty only towards premium before the execution of these present (the receipt whereof the lessee hereby acknowledges) and of the rent hereinafter reserved and of the covenants on the part of the Sub-lessee hereinafter contained, the lessee doth hereby sub-lease and the lessor doth hereby confirm unto the sub-lessee.

Subject always to the exceptions reservations, covenants and conditions contained in the lease and hereinafter contained that is to say as follows:-

Covenants and the conditions contained in the Lease I. The lessor ...

(1) The Sub-lessee shall pay to the lessee within such time such additional sum or sums towards premium in respect of the industrial plot as may be decided upon and fixed by the lessor on account of the compensation awarded by the Land Acquisition Collector being enhanced on reference or in appeal or both as mentioned in Sub-clause (1) and (5)(a) of Clause II of the Lease and the decision of the lessor in this behalf shall be final and binding on the Sub-lessee and lessee.

(2) The Sub-lessee shall pay unto the lessee the yearly rent hereby reserved on the days and in the manner herein before appointed.

(3) ...

(4) The sub-lessee shall at all times duly perform and observe all the covenants and conditions which are contained in the lease on the part of the lessee or sub-lessee there under to be performed and observed insofar as the same may be applicable to, affect and relate to the industrial plot sub-leased to him.

(5) The sub-lessee shall within a period of two years from the twentieth day of February one thousand nine hundred eighty one and the time so specified shall be of the essence of the contract after obtaining sanction to the building plan, with necessary designs, plans and specifications from the proper municipal or other authority at his own expense erect upon the industrial plot and complete in a substantial and workmanlike manner an industrial building for carrying on be

approved manufacturing process or industry within the requisite and proper walls, sewers and drains and other conveniences in accordance with the sanctioned building plan and to the satisfaction of such municipal or other authority.

(6)(a) The sub-lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any of the industrial plot in any form or manner, benami or otherwise to a person who is not a member of the lessee. (b) The Sub-lessee shall not transfer assign or otherwise part with the possession of the whole or any part of the industrial plot to any other member of the lessee except with the previous consent in writing of the lessor which it shall be entitled to refuse in his absolute discretion.

Provided that, in the event of the consent being given, the lessor may impose such terms and conditions as thinks fit and the lessor shall be entitled to claim and recover a portion of the unearned increase in the value (i.e. the difference between the premium paid and the market value) of the industrial plot at the time of sale transfer assignment, or parting with the possession, the amount to be recovered being fifty percent of the unearned increase and the vision of the lessor in respect of the market value shall be final and binding.

Provided further that the lessor shall have the pre-emptive right to purchase the property after deducting

Provided that the Lt. Governor reserves the right to resume any plot or part thereof on payment of reasonable compensation which may be required for the development of the area like laying of sewerage, Trunk Services, Electric and Telephone Wires and Water Supply lines etc., or such other purposes, which may be

deemed of public and general utility.

Lessor shall be entitled to claim the recover one fifty percent of the unearned increase in the value of the industrial plot as aforesaid and the amount of the lessor's share of the said unearned increase shall be a first charge, having priority over the said mortgage or charge. The decision of the lessor in respect of the market value of the said industrial plot shall be final and binding on all parties concerned. Provided further that the lessor shall have the pre-emptive right to purchase the mortgaged or charged property after deducting fifty percent of the unearned increase as aforesaid.

(7) The lessor's right to the recovery of fifty percent of the unearned increase and the pre-emptive right to purchase the property as mentioned hereinafter shall apply equally to an involuntary sale or transfer whether it be by or through an executing or insolvency court.

(8)

(9)

(10) The sub-lessee shall from time to time and at all time pay and discharge all rates, taxes, charges and assessment of every description which are now or may at any time hereafter during the continuance of the sub-lease be assessed, charged or imposed upon the industrial plot hereby sub-leased or on any building to be erected hereupon or on the landlord or tenant in respect thereof.

(11)

(12)

(13)

(14) The sub-lessee shall not without the written consent of the lessor use or permit to be used the industrial plot or any building thereon for residence or for carrying on any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of carrying on the manufacturing process or running the industry of Item as per Master Plan or such other manufacturing process or industry as may be approved from time to time by the Chief Commissioner or to or suffer to be done therein any Act or thing whatsoever which in the opinion of the lessor may be a nuisance, annoyance or disturbance to the Lessor, Lessee and other Sub-lessees and persons in the neighborhood.

(15)

(16) The sub-lessee shall on the determination of this Sub- lease peaceably yield up the said industrial plot and the buildings thereon unto the lessee or the lessor, as may be entitled.

III. If the sum or sums payable towards the premium or the yearly rent hereby reserved or any part thereof shall any time be in arrear and unpaid for one calendar month next after any of the days

whereon the same shall have become due whether the same shall have been demanded or not, or if it is discovered that this sub-lease has been obtained by suppression of any fact or by any misstatement, misrepresentation or fraud if there shall have been in the opinion of the lessee or the lessor and the decision of the lessor shall final any breach by the sub-lessee or by any person claiming through or under him of any of the covenants or conditions contained herein and in the lease and on his part to be observed or performed, then and in any such case, it shall be lawful for lessor or the lessee with the prior consent in writing of the lessor notwithstanding the waiver of any previous cause or right of re-entry upon the industrial plot and sub-leased and the buildings thereon, to re-enter upon and take possession of industrial plot and buildings and fixtures thereon, and thereupon this sub-lease and everything herein contained shall cease determine in respect of the industrial plot so re-entered upon, and the sub-lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him.

IV. No. forfeiture or re-entry shall be effected until the lessor or the lessee has served on the sub-lessee a notice in writing.

(a) specifying the particular breach complained of and

(b) if the breach is capable of remedy, requiring the sub-lessee to remedy the breach.

and the sub-lessee fails within such reasonable time as may be mentioned in the notice to remedy the breach if it is capable of remedy; and in the event of forfeiture or re-entry the lessor in his discretion or the lessee, with the prior consent in writing of the lessor may relieve against forfeiture on such terms and conditions as the lessor thinks proper." (emphasis supplied by us)

6. In this civil appeal the main contention of the Corporation is that the perpetual sub-lease dated 20.2.81 operated as a conveyance having the effect of transferring

leasehold rights, which constituted "land" as defined in Section 2(24) of the Delhi Municipal Corporation Act, 1957, in favour of M/s. Shashnak Steel Industries Pvt. Ltd., who on purchase became the "owner" thereof as defined under Section 2(37) of the said 1957 Act and consequently as the said "owner" became exigible primarily to pay property tax under Section 120(1)(c) of the said 1957 Act. In short, according to the Corporation, M/s. Shashnak Steel Industries Pvt. Ltd. was the owner of the leasehold rights under the said Deed who was primarily liable to pay property tax under Section 120(1)(c) of the said 1957 Act. This argument has been rejected by the High Court which has interpreted the perpetual sub-lease dated 20.2.81 in entirety and has come to the conclusion that on account of various restrictions put on the sub-lessee it cannot be said that M/s. Shashnak Steel Industries Pvt. Ltd. (sub-lessee) was the owner of the industrial plot and that the perpetual sub-lease did not operate as a conveyance. The impugned judgment of the High Court was given in Civil Writ Petition No.1336 of 1990 dated 17.9.2002, hence this civil appeal is filed by the

Corporation.

7. For the sake of convenience, we also quote the relevant provisions of the Delhi Municipal Corporation Act, 1957 which read as follow:

"CHAPTER I PRELIMINARY

Section 2. Definitions.- In this Act, unless the context otherwise requires, -

(24). "land" includes benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by law over any street; (37). "owner" includes a person who for the time being is receiving or is entitled to receive, the rent of any land or building whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other person or who should so receive the rent or be entitled to receive it if the land or building or part thereof were let to a tenant and also includes-

(a) the custodian of evacuee property in respect of evacuee property vested in him under the Administration of Evacuee property Act, 1950 (31 of 1950);

(b) the estate officer to the Government of India, the Secretary of the Delhi Development Authority, constituted under the Delhi Development Act, 1957 (61 of 1957), the General Manager of a railway and the head of a Government department, in respect of properties under their respective control;

CHAPTER VIII TAXATION

Levy of taxes

Section 120. Incidence of property taxes.-

(1) 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:

Provided that the property taxes in respect of land or building, being property of the Union, 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 primarily leviable upon the transferee."

8. At the outset it may be stated that in this civil appeal we are concerned with the assessment years 1982 to 1987 when admittedly the land in question was vacant land. We may also state at the outset that in this civil appeal we are concerned with interpretation of sub-lease dated 20.2.81 which has been annexed to the civil appeal paper book.

9. The forms in which tenancies are created in India are not uniform and they do not conform to the precedents known to conveyancing; sometimes the words used are not precise and it is not easy to understand from the said words the intention of the parties in executing the documents. The nature of the tenancy created by any document must be determined by construing the document as a whole. If the tenancy is for a building purpose, as is the case herein, then prima facie it is intended for the life time of the lessee or it may in certain cases be even a permanent lease. Prima facie such a lease is not intended to be tenancy at will. But whether it is tenancy for life or a permanent tenancy must ultimately depend upon the terms of the contract itself. [See: Sivayogeswara Cotton Press, Devangere and others v. M.

Panchaksharappa and another - AIR 1962 SC 413].

10. Although it is the case of the Corporation that the perpetual sub-lease operated as a conveyance for which reliance was placed on the terms and conditions mentioned in the Deed, what we are concerned in this civil appeal is: whether on the terms and conditions mentioned in the said Deed, could primary liability to pay property taxes be placed on the assessee under Section 120(1)(c) of the said 1957 Act to pay property taxes. It is well settled that "intendment" has no role to play in a taxing statute. Section 120(1) falls in Chapter VIII of the said 1957 Act which deals with taxation.

11. Before dealing with the provisions of the Chapter VIII of the said 1957 Act we are required to

analyse the Deed dated 20.2.81. The Deed is described as perpetual sub-lease. The President of India under the Deed is the lessor, Mohan Co-operative Industrial Estate Ltd. is described as lessee and M/s. Shashnak Steel Industries Pvt. Ltd. is described as a sub-lessee. We have quoted the recitals extensively hereinabove. On reading the first recital, we enquired from Ms. Madhu Tewatia, learned counsel appearing on behalf of the Corporation, as to the existence of the lease dated 20.3.80 which is referred to in the first recital as "annexed mark X". This query was raised because it was argued on behalf of the Corporation that the Deed dated 20.2.81, which is the Deed in question, was between the President of India and M/s. Shashnak Steel Industries Pvt. Ltd. in which the lessee, namely, Mohan Co-operative Industrial Estate Ltd. was the confirming party. Since this was the argument put in the forefront by the learned counsel for the Corporation we enquired of the lease dated 20.3.80. It was not produced. Be that as it may, on reading the said Deed dated 20.2.81 we find that there was a lease deed dated 20.3.80 between the lessor and the lessee in the first instance under which the lessee Mohan Co-operative Industrial Estate Ltd. was given the authority to sub-lease on such premium and yearly rent as may be fixed by the lessor (President of India). This position emerges from the second recital in the Deed. It also appears from the first recital that the lessor had demised the lease in perpetuity to the lessee - Mohan Co-operative Industrial Estate Ltd. on 20.3.80. Similarly, from the third recital it becomes clear that the sub-lessee (M/s. Shashnak Steel Industries Pvt. Ltd.) had applied to the lessee ♦ Mohan Co-operative Industrial Estate Ltd. for grant of perpetual sub- lease of an industrial plot to which the lessee had agreed. The most important aspect in the third recital is that the sub- lessee had applied for the lease to the lessee, the lessee agreed to sub-let and the lessor (President of India through Delhi Administration) had agreed to confirm a perpetual sub- lease. This position is also stated in the operative part of the said Deed before setting out the terms and conditions. Therefore, the lessor and not the lessee is the confirming party to the sub-lease between the lessee - Mohan Co- operative Industrial Estate Ltd. on one hand and M/s. Shashnak Steel Industries Pvt. Ltd. on the other hand. Therefore, there is no merit in the contention advanced on behalf of the Corporation that under the Deed lessor conferred leasehold rights to the sub-lessee to which the lessee was a confirming party. On the contrary, the said Deed indicates the lease was between the lessee and the sub-lessee to which the lessor was the confirming party. There is one more aspect to be kept in mind. The lessor is the confirming party because under the Deed in question rent and premium was revisable periodically and the determination of the revised/enhanced rent/premium was left to the lessor though rent and premium was payable by the sub-lessee to the lessee.

12. The said Deed indicates that the sub-lessee obtained the sub-lease in order to put up an industrial unit on the industrial plot.

13. In this case great emphasis is placed by the Corporation on the fact that the sub-lessee was required to pay a sum of Rs.16093.60 as premium in addition to rent which according to the Corporation indicated purchase of leasehold rights. According to the Corporation on purchase of leasehold rights the sub-lessee became the owner thereof. We find no merit in this contention. If one looks at the Deed in question we find that the lessor has retained its right to determine periodically the rent payable and the premium chargeable. One has to keep in mind the purpose of the Deed in question. What was demised was an industrial plot. Initially, the lessee - Mohan Co-operative Industrial Estate Ltd. was given the authority to sub-lease the industrial plot on such premium and yearly rent as may be fixed by the lessor. Mohan Co-operative Industrial Estate Ltd. was a society

registered under Bombay Co-operative Societies Act, 1925; one of its members appears to be M/s. Shashnak Steel Industries Pvt. Ltd. who had agreed under the Deed in question to set up an industrial unit. Under one of the terms, the sub-lessee was required to pay premium and rent to be fixed by the lessor. However, both rent and premium was payable by the sub-lessee to the lessee. As stated, the sub-lessee had agreed to put up at its own expense a factory on the industrial plot within two years from dated 20.2.81. Under the Deed the lessor had to estimate the capital value (including the enhancement) as and when the unit came up. It appears from the Deed that lessor was entitled to a share in the enhanced value. The said Deed further stated that the lessor shall have a right to recover 50% of the unearned increase as and when the lessor gives permission to the sub-lessee to transfer, assign or part with the possession of the plot to any other member of the lessee society. All these terms indicate that under the Deed parties contemplated that on the unit coming up on the leasehold land there would be an accretion in the value. In our view, the provision for premium was only an additional source of revenue. Therefore, we do not find any merit in the contention advanced on behalf of the Corporation that on payment of premium the sub-lessee became the owner of the leasehold rights. Further as rightly held by the High Court there are numbers of restrictions put on the sub-lessee which prevented the sub-lessee from full enjoyment of the leasehold rights. Under Clause 6(a) the sub-lessee was not entitled to sell, transfer, assign or part with possession of the whole or any part of the industrial plot to a person who is not a member of the lessee society - Mohan Co-operative Industrial Estate Ltd. Under Clause 6(b) it was not allowed to transfer, assign or part with possession to any other member of the lessee society, except with the prior consent in writing of the lessor which in its discretion is entitled to refuse such concept. Further, under Clause 6(b), in the event of consent being given, it was open to the lessor to claim a portion of the unearned increase in the value. Under Clause 16, on determination of the sub-lease, M/s. Shashnak Steel Industries Pvt. Ltd. herein had to yield up the industrial plot along with the buildings thereon unto the lessee/lessor. The said restrictions indicate that the said Deed did not operate as a conveyance.

14. In this case, we are concerned with the question of primary liability on the vacant land during the period 1982 to 1987. During that period the factory had not come up. Therefore, there was no question of enhanced value on account of accretion taking place during the said period. Therefore, keeping in mind the restriction(s) placed on the sub-lessee we are of the opinion that this is a case of "letting". It is not the case of conferring ownership rights on the sub-lessee. Under the Deed, M/s. Shashnak Steel Industries Pvt. Ltd. remains a sub-lessee. In fact, there is forfeiture/re-entry provided for in the said lease. That right of forfeiture/re-entry can be effected either by the lessor or by the lessee which further shows that the sub-lessee is not in full enjoyment of the leasehold rights in the property in question.

15. For the aforesaid reasons on interpretation of the perpetual sub-lease dated 20.2.81, we are of the view that the said Deed cannot be construed as a conveyance of leasehold rights in favour of M/s. Shashnak Steel Industries Pvt. Ltd. We are of the view that this case is that of letting. Therefore, we do not find any infirmity in the impugned judgment. We also agree with the view taken by the Delhi High Court that a bare perusal of the Deed would show that the condition imposed on the sub-lessee to pay tax is only as a matter of indemnification and it would not indicate ownership of the leasehold rights in favour of the sub-lessee.

16. Coming to the interpretation of the provisions of Section 120(1) of the said 1957 Act, at the outset we may state that the language of the said section suggests that the intention of the Legislature in fixing primary liability of property tax upon the owner of the land is to facilitate the collection of property tax. It is not unreasonable for the Legislature to impose the primary liability upon the lessor and to give him the right of recoupment. In this case, we are concerned only with the question as to whether the Corporation was right in imposing primary liability to pay property tax on the sub-lessee under Section 120(1)(c) of the said 1957 Act. Whether the liability was on Mohan Co-operative Industrial Estate Ltd., is not required to be gone into by us because that is not the case of the Corporation and also because the lease between the President of India and Mohan Co-operative Industrial Estate Ltd. dated 20.3.80 was not produced before us. We also do not know the basis on which premium was payable by the lessee to the lessor.

17. On a bare reading of Section 120(1)(c), in the context of the Deed dated 20.2.81, we find that the said Deed did not operate as a conveyance and that the industrial plot was let out to M/s. Shashnak Steel Industries Pvt. Ltd. Since there was letting in favour of the said company, Section 120(1)(c) of the said 1957 Act did not apply.

18. For the aforesaid reasons, we see no infirmity in the impugned judgment of the Delhi High Court. Accordingly, the civil appeal filed by the Corporation is dismissed with no order as to costs. Facts in Civil Appeal No.1011/2005 and other Civil Appeals

19. The lead matter in this set of civil appeals is Civil Appeal No.1011 of 2005 - Municipal Corporation of Delhi v. M/s. Gauri Constructions Co. On 7.5.1999 there was a Perpetual Lease executed by the President of India through Delhi Administration as lessor in favour of M/s. Gauri Constructions Co. (respondent herein). Unlike Mohan Co-operative Industrial Estate Ltd., the lessee in the earlier case, the respondent herein had no right to sell, transfer, assign or part with the possession of the commercial plot except with the consent in writing from the lessor who was entitled to refuse such consent in its absolute discretion. In the case of M/s. Shashnak Steel Industries Pvt. Ltd. (supra) it was a case of grant of Perpetual Sub-lease. In that case there were two leases. In the first instance, there was a lease dated 20.3.80 from the lessor to Mohan Co-operative Industrial Estate Ltd. (lessee), a society registered under Bombay Co-operative Societies Act, 1925, under which the lessee was entitled to sub-lease whereas in the present case of M/s. Gauri Constructions Co., no such right was given to the lessee to sub-lease. In the circumstances, for the reasons given hereinabove, the case of M/s. Gauri Constructions Co. would not attract Section 120(1)(c) of the said 1957 Act. In this civil appeal also we are concerned only with the period when the land was vacant.

20. Before concluding, we may state that there is a difference between "liability" and "exemption from liability". In this case Union of India is exempt from payment of property tax, we are not concerned with that aspect. We are only concerned with whether the assessee(s) was primarily liable

to pay property tax under Section 120(1)(c) of the said 1957 Act. For that purpose, we were required to examine the Deed dated 7.5.99 to find out whether the case is that of letting or conferment of ownership of leasehold rights. On reading and analyzing the said Deed, we are of the view that it did not operate as conveyance of leasehold rights. Consequently, Section 120(1)(c) of the said 1957 Act is not attracted.

21. For the aforestated reasons we find no infirmity in the impugned judgments of the Delhi High Court and accordingly all the civil appeals filed by the Corporation stand dismissed with no order as to costs.