SUPREME COURT OF INDIA

Tata Motors Ltd.

Vs.

Talathi of Village Chikhali & Ors.

C.A.No.10187 of 2010

(R.V.Raveendran,J., P.Sathasivam and A.K.Patnaik,JJ.,)

04.07.2011

JUDGMENT

R.V.Raveendran,J.,

1. Under Lease Deed dated 3.1.1995, Pimpri-Chinchwad New Town Development Authority (6th respondent herein - for short `the Development Authority') granted a lease of land measuring 164.5 acres in Sectors No.15 and 15A in Village Chikhali, Taluka Haveli, District Pune, converted to industrial use, to the appellant herein for a term of 99 years commencing from 21.11.1994. The consideration for the lease was a premium of Rs.17,91,40,500/- (at the rate of Rs.25/- per sq.ft.) paid by the appellant apart from a yearly rent of rupee one. The appellant utilized the said plot and adjoining plot obtained on lease from Maharashtra Industrial Development Corporation (for short `MIDC') for construction of its factory. The appellant commenced construction of its plant in or about the year 1997 and on completion, commenced actual use for industrial purpose, in the year 1999.

2. The appellant was served with a demand notice dated 26.2.2002 by the Gar Kamgar Talathi, Chikhali, demanding payment of Rs.45,25,538/- as non-agricultural cess and additional non-agriculture cess, for the period 1995-96 to 2001-02. As the said payment was not made, default notices dated 1.3.2002 and 5.3.2002 were issued under Section 174 of the Maharasthra Land Revenue Code, 1966 (`Code' for short) informing that if the amount demanded was not paid within seven days, the amount due will be recovered with 25% of the amount due as penalty. At that stage the appellant filed a writ petition before the Bombay High Court for quashing the demand notice 26.2.2002, 1.3.2002 and 5.3.2002. The appellant contended that it was a "government lessee". Alternatively, it was contended that it was the tenant of the Development Authority. It was submitted that neither a government lessee nor a tenant of the Development Authority was liable to pay the non-agricultural assessment under the provisions of the Code.

3. The High Court, by judgment dated 4.7.2007 rejected the contention that appellant was a government lessee. It held that as lessee under the Development Authority, the appellant was liable to pay the non-agricultural assessment. The High Court however held that having

regard to section 115 of the Code, non-agricultural assessment could be levied only with effect from the date on which the land was actually used for non-agricultural purpose, and as appellant commenced actual non-agricultural use in the year 1999, the non-agricultural assessment was due by it only from 1999-2000. As a consequence, the High Court allowed the writ petition in part, quashed the demand relating to the period 1995-96 to 1998-99 and upheld the claim for the non-agricultural assessment from the year 1999-2000 onwards. The said order is challenged in this appeal by special leave contending that it is not liable to pay the non-agricultural assessment as it is a government lessee. Alternatively it is contended that being the tenant of the `occupant', it is liable to pay the land revenue, as only the `occupant' is liable to pay the land revenue under section 39 of the said Code. On the contentions raised, the following questions arise for consideration:

> "(i) Whether the petitioner is a `government lessee' and therefore not liable to pay the non-agricultural assessment?
>
> (ii) Whether the appellant being a tenant of the Development Authority, the demand for non-agricultural assessment could be made only on the Development Authority and not against the tenant?
>
> The relevant statutory provisions"

4. The answers to the aforesaid two questions would depend upon the provisions of the Maharashtra Land Revenue Code, 1966. Section 39 makes the occupant liable to pay the land revenue and the said section is extracted below:

> "39. Occupant to pay land revenue and Government lessee to pay rent fixed.
> Every occupant shall pay as land revenue the assessment fixed under the provisions of this Code and rules made thereunder; and every Government lessee shall pay as land revenue lease money fixed under the terms of the lease."

(emphasis supplied)

The term "land revenue" and "occupant" referred in the said section are defined in Section 2(19) and section 2(23) and the said definitions are extracted below:

> "(19) - "land revenue" means all sums and payments, in money received or legally claimable by or on behalf of the State Government from any person on account of any land or interest in or right exercisable over land held by or vested in him, under whatever designation such sum may be payable and any cess or rate authorised by the State Government under the provisions of any law for the time being in force; and includes premium, rent, lease money, quit rent, judi payable by a inamdar or any other payment provided under any Act, rule, contract or deed on account of any land;

"(23) - "occupant" means a holder in actual possession of unalienated land, other than a tenant or Government lessee ; provided that, where a holder in actual possession is a tenant, the land holder or the superior landlord, as the case may be, shall be deemed to be the occupant; The expressions "to hold land" or "to be a land holder or holder of land" is defined in section 2(12) and mean to be lawfully in possession of land, whether such possession is actual or not. The term "tenant" and "government lessee" referred in the definition of "occupant" are defined in Section 2(40) and Section 2(11) and they are extracted below:

"(40) "tenant" means a lessee, whether holding under an instrument, or under an oral agreement, and includes a mortgagee of a tenant's rights with possession; but does not include a lessee holding directly under the State Government;

(11) "Government lessee" means a person holding land from Government under a lease as provided by section 38". Section 38 referred in the definition of `Government Lessee' is extracted below:

"It shall be lawful for the Collector at any time to lease under grant or contract any unalienated unoccupied land to any person, for such period, for such purpose and on such conditions as he may, subject to rules made by the State Government in this behalf, determine, and in any such case the land shall, whether a survey settlement has been extended to it or not, be held only for the period and for the purpose and subject to the conditions so determined. The grantee shall be called a Government lessee in respect of the land so granted.""

Chapter XI of the Code deals with realization of land revenue and other revenue demands. Section 168 in Chapter XI of the Code dealing with the liability for land revenue is extracted below:

"168. Liability for land revenue.

(1) In the case of

(a) unalienated land, the occupant or the lessee of the State Government,

(b) alienated land, the superior holder, and

(c) land in the possession of a tenant, such tenant if he is liable to pay land revenue therefor under the relevant tenancy law, shall be primarily liable to the State Government for the payment of the land revenue, including all arrears of land revenue, due in respect of the land. Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable. (2) In case of default by any person who is primarily liable under this section, the land revenue, including arrears as aforesaid, shall be recoverable from any person in possession of

the land. Provided that, where such person is a tenant, the amount recoverable from him shall not exceed the demands of the year in which the recovery is made. Provided further that, when land revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable".

5. It is not in dispute that the land in question is unalienated land and that in regard to such land, only the `occupant' as defined in the Code is primarily liable to pay the non-agricultural assessment to the state government. Section 2(23) makes it clear that where the land is in the actual possession of a tenant, the superior landlord or the land holder is deemed to be the occupant. It is also not in dispute that the Development Authority is the `occupant' and the appellant is not the occupant, but only a tenant under the occupant.

Re : Question (i)

6. There is no dispute that a government lessee is not liable to pay any land revenue. Section 2(11) read with section 38 defines a `government lessee' as a lessee under a lease granted by a Collector in regard to unalienated unoccupied land belonging to the government. In this case the lands in question for which the non-agricultural assessment has been demanded, were not leased by the Collector to the appellant. The lease deed states that the lands leased were held by the Development Authority, and the lessor is the Development Authority. Therefore the leased lands were not government lands and the lessor was not the government. There is also nothing to show that the lands belonged to government and that the Development Authority granted the lease in favour of appellant, acting as an agent of the state government. A lessee from the Development Authority is not a government lessee as the Development Authority is not the government and the lease lands are not government lands. Therefore the appellant cannot call itself a government lessee. The first contention is therefore rejected.

7. Though the issue is thus simple and straightforward, the appellant however contended that it is a `government lessee' in a rather round-about manner, relying upon a state government Circular dated 29.3.1975 which clarified that as on that date, MIDC was the agent of the state government and therefore not liable to pay any assessment to the government in respect of the lands held by it as agent of the state government; that any lessee under MIDC would therefore become a government lessee and will not be liable to pay the non-agricultural assessment under the provision of Code, but will only be liable to pay the lease money fixed under the lease; and that consequently the industrial lessees, under MIDC, were not required to pay any non-agricultural assessment in addition to the lease money. It is submitted by the appellant that in regard to the adjoining land taken by it on lease from MIDC, it is not required to pay the non-agricultural assessment on account of appellant being treated as government lessee, under the said Circular dated 29.3.1975. It is contended that in principle, there is no difference between the MIDC and the Development Authority and having regard to the provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short

`MRTP Act'), the Development Authority should also be treated as agent of the state government and consequently, the appellant should be treated as a government lessee which is not liable to pay any non-agricultural assessment, in regard to the lands taken on lease under deed dated 3.1.1995.

8. The question whether the appellant is liable to pay non-agricultural assessment in regard to the land taken on lease from the Development Authority will have to be decided with reference to the relevant statutory provisions and the terms of lease and not with reference to position prevailing with reference to some other lease taken by the appellant from MIDC. The status, objects, functions and area of operation of MIDC and the Development Authority are different. Any decision or clarification issued in regard to lands held by MIDC or lands leased by MIDC will not apply to lands held or leased by the Development Authority. As noticed above, the circular dated 29.3.1975 relied upon by the appellant is not relevant as it applies only to lessees of MIDC, which as agent of the state government granted certain leases and consequently such lessees as government lessees were exempted from paying the non-agricultural assessment. The said notification did not refer to Pimpri-Chinchwad New Town Development Authority as the agent of the state government in regard to grant of leases to appellant and others. In fact there is no document which shows the state government to be the owner of the lands leased by the Development Authority, nor any document to show that the state government had either constituted or recognized the Development Authority as its agent in regard to leased lands.

9. To know whether the Development Authority was an agent of the state government and to ascertain its status, it is necessary to refer to the relevant provisions of the Maharashtra Regional and Town Planning Act, 1966 (for short `MRTP Act'). Section 113 of MRTP Act provides for designation of new towns and constitution of Development Authorities for those new towns. Sub-sections (1), (2), and (4) of that section are extracted below:

> "113. (1) If the State Government is satisfied that it is expedient in the public interest that any area should be developed as a site for a new town as reserved or designated in any draft or final Regional Plan it may by notification in the Official Gazette, designate that area as the site for the proposed new town. The new town shall be known by the name specified in the notification.
>
> (2) After publication of the notification under sub-section (1) for the purpose of acquiring, developing and disposing of land in the area of a new town, the State Government shall by another notification in the Official Gazette, constitute a New Town Development Authority..........
>
> xxx xxx xxx
>
> (4) Every Development Authority shall be a body corporate with perpetual succession and a common seal with power to acquire, hold and dispose of property, both moveable and immoveable, and contract and sue or be sued by such name as may be specified in the notification under sub-Section (2)".

Section 114 lays down the object of Development Authority and sub-section (1) thereof is extracted below:

"114(1) The objects of a Development Authority shall be to secure the laying out and development of the new town in accordance with proposals approved in that behalf under the provisions of this Act, and for that purpose every such Authority shall subject to the provisions of section 113A have power to acquire, hold, manage and dispose of land and other property to carry out buildings and other operations, to provide water, electricity, gas, sewerage and other services, amenities and facilities and generally to do anything necessary or expedient for the purpose of the new town or for purposes incidental thereto." Section 116 empowers Development Authorities to acquire lands. Section 118 deals with disposal of lands by Development Authorities and sub-section (1) thereof which is relevant is extracted below:

"118.(1) Subject to any directions given by the State Government under this Development Act, a Development Authority may dispose of any land acquired by it or vesting in it to such persons, in such manner, and subject to such terms or conditions as they consider expedient for securing the development of the new town in accordance with proposals approved by the State Government under this Act :
Provided that, a Development Authority shall not have power, except with the consent of the State Government, to sell any land or to grant a lease of any land for a term of more than ninety-nine years, and the State Government shall not consent to any such disposal of land unless it is satisfied that there are exceptional circumstances which render the disposal of the land in that manner expedient."

10. It is evident from section 113,114 and 118 of MRTP Act that the Development Authority is a body corporate which can acquire, hold, manage and dispose of land. Section 113 provides for constitution of a New Town Development Authority. Section 114 states the objects of such Development Authority. Section 118 of MRTP Act provides for disposal by the Development Authority of any land acquired by it or vesting in it. The Development Authority is therefore a body corporate which can acquire, hold, possess, manage, develop and dispose of land in its name and on its own behalf. The fact that the Development Authority requires the consent of the state government to dispose of any of its land by way of leases in excess of 99 years will not alter the position that the lands leased are lands of the Development Authority. There is no provision in MRTP Act which requires the New Town Development Authority, to hold and dispose of any government land as agent of the state government. In contrast, MRTP Act contains a specific provision enabling the state government to require a corporation or company (other than a New Town Development Authority, which is specific to a new Town), to execute development work and dispose of its lands as its agent. Sub-section (3A) of section 113 of MRTP Act provides:

"(3A). Having regard to the complexity and magnitude of the work involved in developing any area as a site for the new town, the time required for setting up new machinery for undertaking and completing such work of development, and the comparative speed with which such work can be undertaken and completed in the

public interest, if the work is done through the agency of a corporation including a company owned or controlled by the State or a subsidiary company thereof, set up with the object of developing an area as a new town, the state government may, notwithstanding anything contained in sub-section (2), require the work of developing and disposing of land in the area of a new town to be done by any such corporation, company or subsidiary company aforesaid, as an agent of the state government; and thereupon, such corporation or company shall, in relation to such area, be declared by the state government, by notification in the official gazette, to be the New Town Development Authority for that area."

MIDC is a corporation which would fall under sub-section 113(3A) whereas the Development Authority falls under section 113(2) of MRTP Act. The circular issued with reference to MIDC is therefore of no assistance to contend that land leased by the Development Authority to appellant is a government land. The contention of appellant that the Development Authority is the agent of state government and that the appellant is a government lessee are therefore rejected.

Re : Question (ii)

11. The appellant next contends that even if it is not a government lessee, being a lessee of the `occupant', it is not liable to pay the land revenue. There is no dispute that section 39 of the Land Revenue Code, fastens liability to pay land revenue upon the occupant and not on the tenant of the occupant. Section 168(1)(a) of the Code also reiterates that in the case of unalienated land, the occupant shall be primarily liable to the state government for making the payment of land revenue including all arrears. Sub-section (2) of section 168 provides that in case of default of the person primarily liable, the land revenue shall be recoverable from any person in possession of the land. It is therefore contended by the appellant that the state government can make the demand for any land revenue only upon the occupant, that is, the Development Authority in this case, which is primarily liable. It is submitted that only if it defaults, the amount could be recovered from the person in possession, as provided under section 168(2) of the Code. It is submitted that the notice of demand, directly issued to the appellant, should be quashed, as there is nothing to show that a demand was first issued to the Development Authority, that it defaulted in payment of the amount demanded, and that the impugned notices were issued only thereafter, under section 168(2) of the Act. It is submitted that the liability to pay land revenue being that of the Development Authority, the demand notices issued to the lessee as if it is person primarily liable are liable to be quashed. It is further submitted that if and when the Development Authority pays the land revenue to the government, in turn, it would be entitled to make a demand upon the appellant, if the lease permitted such a demand; and when such a demand is made, the appellant as lessee would deal with the demand in terms of the lease and if there is any dispute between the Development Authority and the appellant as lessor and lessee, that will be
settled in accordance with law.

12. It is no doubt true that the primary liability to pay the land revenue which includes non-agricultural assessment is on the occupant, under Section 39 of the Code. The definition of

`occupant' excludes not only `government lessee' but also every tenant. Whenever the person in actual possession of the land is the tenant, the land holder or the superior landlord who granted the lease to such tenant is deemed to be an occupant. In this case the appellant has taken the lease from the Development Authority and therefore the Development Authority as the landlord and occupant, will be primarily liable to pay the land revenue. But the matter does not rest there.

13. In exercise of the powers conferred by Section 159 of the MRTP Act, the Development Authority, with the previous approval of the state government, has made regulations for regulating the disposal of land acquired by it or vesting in it in the Pimpri-Chinchwad New Town, known as the "Pimpri-Chinchwad New Town Development Authority (Disposal of Land) Regulations, 1973" (`Regulations' for short). Regulation 1(ii) provides that the said Regulations shall apply to the lands acquired by or vested in the Pimpri-Chinchwad New Town Development Authority for the development of Pimpri-Chinchwad New Town. Regulation 5 relates to disposal of land by lease. It provides that the Development Authority may from time to time dispose of plots of land on lease, to the persons eligible, in consideration of a premium and an annual ground rent. Part IV of the Regulation contains the conditions of lease. Regulations 10(iv) and 10(v) relating to the question of payment of rates and taxes and land revenue and cesses are extracted below:

> "10(iv) The lessee shall during the continuance of the lease, pay all the rates, taxes, fees and other charges due and becoming due in respect of demised land by the Development Authority or lessee thereof.
>
> (v) The lessee shall during the continuance of the lease pay the land revenue cesses assessed or which may be assessed on the demised land".
>
> Regulation 16 provides that in the event of conflict between the Regulations and provisions of a lease deed entered into by the Development Authority, the provisions of the Regulations will prevail. There is however no conflict between the Regulations and the terms of the lease. Clause 2 (c) of the lease deed dated 3.1.1995 between the Development Authority as lessor and appellant as lessee, reiterates the terms and conditions of lease contained in the Regulations by providing that the lessee would be liable to pay any future rates or taxes recoverable under law from the lessee. Thus there is a statutory liability upon the appellant as lessee to pay the land revenue (non-agricultural assessment) to the state government.

14. Section 39 of the Code makes the Development Authority, as `occupant', liable to pay the non-agricultural assessment and the said liability is, in turn, statutorily passed on to the appellant as lessee under the Regulations 10(iv) and (v) and the clause 2(c) of the lease deed. This Court in *Nagpur Improvement Trust v. Nagpur Timber Merchants Association*[1]- recognized that the Improvement Trust or Development Authority under the terms of lease, can pass on the liability in regard to non-agricultural assessment to the lessees.

15. The only issue that remains for consideration is whether the demand for land revenue could be directly made against the lessee of the occupant, when the land revenue code makes the occupant primarily liable. But for the statutory obligation created under regulation 10(iv) and (v) of the Regulations, in the normal course, a demand should have been made upon the occupant (landlord) who is primarily liable and only if the landlord fails to pay, recourse could be had to sub-section (2) of section 168 which enabled a claim being made against the tenant in terms of the said sub-section. But where the liability to pay land revenue is fastened on the lessee under the statutory regulations, it is not be necessary for the state government to make a claim upon the occupant, leading to a demand by the Development Authority, in turn, upon its lessee, for payment of land revenue. The state government can directly make the demand as the lessee, by taking note of the liability statutorily fastened on the lessee under the Regulations. When the liability of the lessee to pay the land revenue is not open to challenge, having regard to the provisions of the Regulations and terms of the lease, no purpose would be served by requiring the state government to recover the amount from the Development Authority (occupant) and then require the Development Authority to make a demand upon the lessee to recover the amount. Having regard to the statutory liability created upon the lessee, under the Pimpri-Chinchwad New Town Development Authority (Disposal of land Regulations), 1973, the position of the lessee would be similar to a tenant referred to in sub-section 1(c) of section 168 of the Code which provides that in the case of the land in possession of a tenant, such tenant if he is liable to pay land revenue therefor under the relevant tenancy laws, shall be primarily liable to the state government for the payment of land revenue, including all arrears. The liability of the appellant as tenant, to pay the land revenue, though not under a `tenancy law' in its strict sense, but is nevertheless under a statutory regulation governing the tenancy and therefore the demand by the state government directly against the appellant, can be justified by the principle underlying section 168(1)(c). In the view we have taken, it is not necessary to consider the further submission that the term `tenancy laws' used in section 168(1)(c) should be understood in a broad sense, and if so interpreted, would include any law regulating or governing tenancies, and as the Regulations govern tenancies by the Development Authority, the Regulations will fall within the term `tenancy laws' and consequently the primary liability to pay land revenue would be upon the appellant under section 168(1)(c). Be that as it may.

16. However, as we have held that a demand can directly be made upon the lessee, the lessee can give a representation or file objections before the revenue authorities of the state government, if it has any grievance in regard to the determination of the quantum of the non-agricultural assessment or the demand therefor.

17. Sub-section (2) of section 168 no doubt provides that in case of default by any person who is primarily liable under sub-section (1), the land revenue including arrears shall be recoverable from any person in possession of the land provided that where such person is a tenant the amount recoverable from him shall not exceed the demands of the year in which the recovery is made. This sub-section no doubt implies the demand should be made upon the occupant and only if the occupant defaults, a demand can be made upon the person in occupation, that is the lessee. We are of the view that sub-section (2) of section 168 will

operate where the tenant is not primarily liable under section 168(1) of the Code, or where there is no statutory liability upon the lessee to bear and pay the land revenue. The procedure under sub-section (2) would apply where the liability to pay the land revenue is on the lessor, and where the lessee is not liable therefor or where the liability of the lessee to pay the land revenue is merely contractual, as contrasted from a statutory obligation. Where the liability of the lessee is a statutory liability, we see no reason why that recovery should be delayed and protracted by requiring a demand by the state government on the lessor and a consequential demand by the lessor on the lessee. We may further note, if the lessee commits default in paying the land revenue, it may amount to a breach leading to re-entry under clause (4) of the lease deed. Be that as it may. However, having regard to the pendency of these proceedings, if the payment of the land revenue dues is made within four months from today it shall not be treated as a default or breach of the terms of the lease deed for the purpose of re-entry.

18. In view of the above, we find no error in the order of the High Court. Consequently this appeal is dismissed reserving liberty however to the appellant to file Representations / objections before the concerned Revenue Authority, if it has any objection or grievance in regard to the quantum of non-agricultural assessment claimed in regard to the property leased to it. As the appellant had the benefit of interim stay against recovery, the appellant shall be liable to pay interest on the arrears/dues at the rate of 9% per annum from 26.2.2002.

[1]*(1997) 5 SCC 0105*