

SUPREME COURT OF INDIA

Welspun Projects Ltd.

Vs.

Director, State Transport, Punjab & Anr.

C.A.No.4944-4945 of 2016

(Anil R.Dave,J., R.K.Agrawal and L.Nageswara Rao,JJ.,)

08.11.2016

JUDGMENT

R.K.Agrawal,J.,

1. Challenge in the above said appeals is to the legality of the impugned common judgment and order dated 14.11.2011 rendered by learned single Judge of the High Court for the States of Punjab & Haryana at Chandigarh in F.A.O. Nos. 3372 and 3488 of 2011 whereby the High Court allowed the appeals filed by the respondent-State.

2. Factual position in a nutshell is as follows:-

“(a) On 22.06.2005, a Concession Agreement was entered into between the Government of Punjab (through Director, State Transport, Punjab) and M/s Welspun Projects Ltd. (formerly known as M/s MSK Projects India Ltd.)-the appellant-Company to design, finance, construct, operate and maintain the Bus Terminal Project at Jalandhar on Build, Operate and Transfer (B.O.T) basis and to determine, levy, demand, collect and retain the fees for a period of 8 years, 5 months and 21 days.

(b) A similar Concession Agreement was entered into between the parties mentioned above for the Bus Terminal at Ludhiana on the same basis for a period of 10 years and 3 months.

(c) On 16.08.2005 and 25.10.2005, lease deeds were entered into between the parties for the project sites at Jalandhar and Ludhiana respectively. According to the said lease deeds, the appellant-Company was required to pay only the annual rent of Re. 1 as lease rental.

(d) On 26.11.2008, the Commissioner, Municipal Corporation, Jalandhar-Respondent No. 2 herein issued a notice under Section 103 of the Punjab Municipal Corporation

Act, 1976 (in short 'the Act') stating that the premises in question was assessed for an annual rental value of Rs. 3,98,73,600/- for the year 2008-09.

(e) Similarly, on 08.02.2010, the appellant-Company received a notice from the Municipal Corporation, Ludhiana stating the house tax assessment for the year 2008-09 and 2009-10 had been carried out and the said property at Ludhiana was assessed at Rs.64,59,588.80/- for an annual rental value of the premises.

(f)The appellant-Company informed Respondent No. 2 herein that it was handling the project on BOT basis and as such the actual owner is the State Transport Authorities. However, when the contents of the notices were brought to the knowledge of the State Transport Authorities, the State Transport Authorities informed that the appellant-Company is the actual user, occupant and beneficiary of the properties of the Bus Terminals and as such is liable to pay all taxes including House Tax as per the terms and conditions of the Concession Agreements.

(g) Being aggrieved by the demand notices, the appellant-Company approached the High Court. The High Court, vide order dated 09.02.2010 directed the appellant-Company to approach Punjab Infrastructure Regulatory Authority (PIRA). The appellant-Company preferred Petition Nos. 1 and 2 of 2010 before the PIRA against the State Transport Authorities of Jalandhar and Ludhiana respectively.

(h) Vide orders dated 08.09.2010 and 15.12.2010, the PIRA allowed the petitions filed by the appellant-Company. Being aggrieved by the above orders, the State Transport Authorities preferred F.A.O. Nos. 3372 and 3488 of 2011 before the High Court.

(i) Learned single Judge of the High Court, vide common judgment and order dated 14.11.2011, allowed the appeals filed by the respondents herein.

(j) Aggrieved by the order dated 14.11.2011, the appellant-Company has preferred these petitions before this Court by way of special leave.

3. We have heard learned counsel for the parties and perused the records.

4. Concession Agreement was entered into between the Government of Punjab through the Director Transport, Punjab and M/s MSK Projects Ltd., to design, finance, construct, operate and maintain the Bus Terminal Projects at Jalandhar and Ludhiana on B.O.T. basis and to determine, levy, demand, collect and retain the fees. Lease deeds were also executed between the parties. Municipal Corporation is alleged to have issued notices for recovery of House Tax which led to the issue in question. The appellant-Company filed Petition No. 1 and Petition No. 2 before the PIRA which was allowed vide orders dated 08.09.2010 and 15.12.2010. Being aggrieved by the above said orders, the State Transport Authorities filed FAO Nos. 3372 and 3488 of 2011 before the High Court. Learned single Judge of the High Court allowed the same vide common order dated 14.11.2011.

5. Learned senior counsel for the appellant-Company contended that fastening the liability on the appellant- Company is manifestly erroneous and is based on without complete and comprehensive appreciation of relevant aspects of the case in proper manner and is liable to be set aside. There is overwhelming material and also the case in *Delhi Golf Club Ltd. and Another vs. N.D.M.C.*¹, is squarely applicable to the facts of the present case and, therefore, the impugned order of the High Court is liable to be set aside. Per contra learned Additional Advocate General for the respondent-State strenuously argued that in view of the various clauses in the Concession Agreement as well as the provisions of the Act, the High Court was justified in fastening liability upon the appellant-Company for payment of the house tax for the period under consideration.

6. Learned senior counsel for the appellant-Company strenuously contended that it does not fall in the category of the “owner” as defined under Section 2(35) of the Act and is neither an owner nor a tenant nor is entitled to receive rent etc. In a special arrangement determined by the Concession Agreements and the Lease Deeds, the appellant-Company is required to pay only Re. 1/- as annual rent to the Director State Transport, Punjab and is entitled to collect all the incomes from the Project for a short and limited period so as to enable the appellant-Company to recover the investments made in the Projects. Though the buildings on the Project sites have been raised by the appellant-Company, it has been done for the respondent-State who owns the land as well as the building. Therefore, under section 97 of the Act, no house tax could be levied on it. On the other hand, such a tax is entirely the liability of the Director, State Transport, Punjab. The appellant-Company further referred to Clause 13(e) of the Lease Deed which stipulates, “that except the lease rental specified in Clause 6 of the Lease Deed, it (Lessor) shall not levy any fee, rental, tax or any other charge on the lessee for the demised premises”. It further stipulates that the appellant-Company will only pay Re.1/- as annual lease rental.

7. Undoubtedly, the inter-se relationship between the parties and all the relative rights and obligations are entirely governed by the Concession Agreements and the Lease Deeds. It is thus to be seen first of all that if these Agreements can provide any conclusive direction to settle the matter in hand.

8. For appreciating the relevant provisions of the Lease Deeds and Concession Agreements referred to above, it is to be mentioned here that house tax is always assessed and paid in accordance with the provisions of the Act. The definition of owner has been described in sub-Section 35 of Section 2 which reads as under:

“2(35) “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 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;”

9. Section 97(2) of the Act (as it stood at the relevant time) provides with the incidence of tax on lands and buildings. It reads as under:-

“97(2) - Incidence of taxes on lands and buildings: -

If any land has been let for a term exceeding one year to a tenant and such tenant has built upon the land, the taxes on land and buildings assessed in respect of that land and the building erected thereon shall be primarily leviable upon the said tenant, whether the land and building are in the occupation of such tenant or sub-tenant of such tenant.”

10. Clause 6 and Clause 13(e) of the first lease deed dated 16.08.2005 are reproduced below:-

“6. The Lessee shall pay unto the Lessor an annual rent of Re 1/- as lease rental, which shall be paid as an advance lease rental in single lump sum payment of Rs. 15/- (in consideration of a possible extension of the Concession Period) on or prior to the date upon which this deed is executed. 13(e). That except the lease rental specified in Section 6 hereof, it shall not levy any fee, rental, tax or any other charge on the Lessee for the lease of the Demised Premises.”

11. Another lease deed was executed on 25.10.2005. Clause 6 and Clause 13(e) of the said lease deed are reproduced below:-

“6. The Lessee shall pay unto the Lessor an annual rent of Re 1/- as lease rental, which shall be paid as an advance lease rental in single lump sum payment of Rs. 15/- (in consideration of a possible extension of the Concession Period) on or prior to the date upon which this deed is executed.

13(1)(e). That except the lease rental specified in Section 3 hereof, it shall not levy any fee, rental, tax or any other charge on the Lessee for the lease of the Demised Premises.”

12. From a perusal of the aforesaid clauses, it is clear that they are identical and no change has been made. The Concession Agreement was executed on 22.06.2005. Clause 24.1(a) of the Agreement, which is relevant and heavily relied upon by the respondents, is reproduced below:-

“24.1 Local Taxation:-

a. The concession period shall include all charges towards import license, toll, customs, duties, import duties, business taxes etc. that may be levied in accordance with the applicable laws as on the proposal acceptance date in India on the concessionaire's equipment, plant and Machinery and Materials (whether permanent, temporary or consumable) acquired for the purpose of this concession agreement and

on the services to be performed under this concession agreement. Nothing in this concession agreement shall relieve the concessionaire from its responsibility to pay any tax that may be levied in India on profits made by it in respect of this concession agreement.

13. It may be mentioned here that both the lease deeds were executed by the Director, State Transport, Punjab for and on behalf of the Governor of the State of Punjab. From a perusal of Clauses 6 and 13(e) of the lease deeds reproduced above, we are of the opinion that the appellant-Company was required to pay rent of Re. 1 only as lease rental and further the Government has specifically mentioned that except the lease rental, it shall not levy any fees, rent, tax or any other charge on the lessee for the lease of the demised premises. We find that even though under the provisions of Section 2(35) read with 97(2) of the Act, normally the tenant who has been given land on lease for a term exceeding 1 (one) year is primarily liable to pay taxes on lands and buildings yet in view of the provisions of Section 157(1) of the Act, the Government is empowered to exempt in whole or in part from the payment of any such tax any person or class of persons or any property or description of property which in the present case has been done on behalf of the government when the lease deeds were executed. For ready reference, Section 157(1) of the Act is reproduced below:-

“157. Powers of Government in regard to taxes-(1) The Government may by order exempt in whole or in part from the payment of any such tax any person or class of persons or any property or description of property.”

14. A reading of Concession Agreement dated 22.06.2005, more so, Clause 24.1(a) which deals with the local taxation states that the concession period shall include all charges towards import license, toll, customs, duties, import duties etc. which is to be payable by the appellant-Company. In view of the specific exemption given under the lease deed regarding payment of any taxes on the demised premises, in our considered opinion, the appellant-Company is not at all required to pay any municipal taxes on the demised premises. We may also mention here that the house tax was being paid by the transport department prior to the signing of the Concession Agreement and if it was intended that this burden should be passed on to the appellant-Company, a clear clause interpreting this point would have certainly been inserted in the Agreement itself. Not only this, the Department continued to pay the house tax for 3 to 4 years even after the date of the signing of the agreement.

15. In view of the forgoing discussion, we are of the considered opinion that the appellant-Company is not liable to pay any house tax under the Act and the demand and payment of house tax from the appellant-Company was without the authority of law and the appellant-Company is entitled to the refund of the amount of house tax paid by it alongwith rate of interest at the rate of 10% p.a. from the date of deposit.

16. In view of the above, the impugned judgment and order of the High Court dated 14.11.2011 is set aside and, consequently, the appeals are allowed.

Judgment Referred.

¹(2001) 2 SCC 0633