

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19th May, 2008

Date of order: 2nd July, 2008

LPA No. 405/2007

MUNICIPAL CORPORATION OF DELHI Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal & Mr. Alok Singh, Advocates

versus

UNITY PROJECTS LIMITED Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates for
Respondent GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

This appeal is dismissed in terms of the common judgment of 2nd July 2008 passed in LPA No. 319 of 2007 titled "*Municipal Corporation of Delhi v. N.K. Gupta*" and connected matters.

Registry is directed to place on record a copy of the judgment passed in LPA No. 319 of 2007.

As per
CHIEF JUSTICE



S. MURALIDHAR, J.

Signature Not Verified

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15-05-2008

Present: H.S.Phoolka, Sr.Advocate with Mr.Sanjeev Sabharwal and Mr.Alok Singh, Advocates for MCD
Mr.Sanjay Goswamy, Advocate for the respondents
Mr.Ajay Kumar, Advocate for the respondent

LPA Nos.319/2007, 373 to 378/2007, 380 to 389/2007, 391/2007, 394 to 396/2007, 400 to 408/2007, 1051/2007, 1057 to 1061/2007 and 1285/2007

Renotify on 16th May, 2008 at 2.00 p.m.

CHIEF JUSTICE

S.MURALIDHAR, J

MAY 15, 2008

"v"

* 16.05.2008

Present: Mr. H.S. Phoolka, Senior Advocate with Mr. Sanjeev Sabharwal and Mr. Alok Singh, Advocates for MCD.
Mr. Sanjay Goswamy and Mr. Ajay Kumar, Advocates for the Respondents.

+ LPA Nos. 319/2007, 373 to 378/2007, 380 to 389/2007, 391/2007, 394 to 396/2007, 400 to 408/2007, 1051/2007, 1057 to 1061/2007 and 1285/2007

List on 19th May, 2008.

CHIEF JUSTICE

S. MURALIDHAR, J

MAY 16, 2008
sb

* 19.05.2008.
57, 60, 61, 63 to 94.

Present: Mr. H.S. Phoolka, Senior Advocate with Mr. Sanjeev Sabharwal and Mr. Alok Singh, Advocates for MCD.
Mr. Sanjay Goswamy and Mr. Ajay Kumar, Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates for Respondent GNCTD.

+ LPA Nos. 319/2007, 373, 374/2007, 376 to 378/2007, 380 to 389/2007, 391/2007, 394 to 396/2007, 400 to 408/2007, 1051/2007, 1057 to 1061/2007 and 1285/2007

Arguments heard.

Orders reserved.

CHIEF JUSTICE

S. MURALIDHAR, J

MAY 19, 2008
sb

IN THE HIGH COURT OF DELHI: NEW DELHI

LPA No. 319 of 2007

Reserved on: 19th May, 2008

Date of judgment: July 02, 2008

MUNICIPAL CORPORATION OF DELHI Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

N.K. GUPTA

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

With

LPA No. 373/2007

MUNICIPAL CORPORATION OF DELHI Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents..

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 374/2007

MUNICIPAL CORPORATION OF DELHI Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

KEY POINT

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 376/2007

MUNICIPAL CORPORATION OF DELHI

..... Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

K.K. ENTERPRISES

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 377/2007

MUNICIPAL CORPORATION OF DELHI

..... Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 378/2007

MUNICIPAL CORPORATION OF DELHI

..... Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

K.K. ENTERPRISES

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 380/2007

MUNICIPAL CORPORATION OF DELHI

..... Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

GARIMA AGGRAWAL

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 381/2007

MUNICIPAL CORPORATION OF DELHI

..... Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 382/2007

MUNICIPAL CORPORATION OF DELHI

..... Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,

LPA No.319/2007

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Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 383/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 384/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 385/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

HARI SINGH BUILDER & PROMOTRS Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,

Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 386/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

KAMAL KISHORE AGRAWAL Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 387/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 388/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

BASANT PROJECTS LTD Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,

Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 389/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 391/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 394/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 395/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 396/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

MANISH AGGRAWAL Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 400/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 401/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 402/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 403/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

✓ LPA No. 405/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

UNITY PROJECTS LIMITED Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.
LPA No. 406/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

KEY POINT Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 407/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 408/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

M.M. DEVELOPERS Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.
LPA No. 1051/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 1057/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 1058/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 1059/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and
Mr. Alok Singh, Advocates

versus

SUNDER CONSTRUCTION CO. Respondent
Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.
Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 1060/2007

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr.H.S. Phoolka, Senior Advocate
Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

LPA No. 1061/2007

MUNICIPAL CORPORATION OF DELHI

..... Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

VARDHMAN PROPERTIES

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

AND

LPA No. 1285/2007

MUNICIPAL CORPORATION OF DELHI

..... Appellant

Through: Mr.H.S. Phoolka, Senior Advocate

Mr. Sanjeev Sabharwal and

Mr. Alok Singh, Advocates

versus

SURYA BUILDWELL LIMITED

.....Respondent

Through Mr. Sanjay Goswamy and Mr. Ajay Kumar,
Advocates for the Respondents.

Ms. Iram Majid and Ms. Zubeda Begum, Advocates
for Respondent GNCTD.

Coram:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether the judgment should be reported in Digest? *Yes*

JUDGMENT

Dr. S. Muralidhar, J.

1. These appeals are directed against the common judgment dated 13th March, 2007 passed by the learned Single Judge of this Court in Writ Petition (Civil) No. 8161 of 2005 and Batch. The writ petitions challenged the validity of the notices issued by the Collector of Stamps under Section 40 of the Indian Stamp Act, 1899 ('Stamp Act') demanding transfer duty as well as deficient stamp duty and penalty equal to ten times of the deficient duty.

2. The demand for transfer duty was made in respect of the conveyance of plots of land in favour of the appellants who successfully bid for them in auctions held by the Delhi Development Authority ('DDA')/ Municipal Corporation of Delhi ('MCD'). Consequently, perpetual lease deeds were executed and registered in their favour. The writ petitioners had also paid the appropriate stamp duty and transfer duty in terms of the certificate issued by the Collector of Stamps in each of the cases.

3. On 29th August 2004 a general order was issued by the Divisional

Commissioner, Delhi stating that the Collectors of Stamp of different districts had adopted varying methods of calculation of duty in respect of perpetual leases which had resulted in the duty being short levied and collected. This conclusion was reached on an interpretation of Article 35 of Schedule 1 (A) to the Stamp Act as applicable to Delhi and Section 147 to the Delhi Municipal Corporation Act, 1957 ('DMC Act'). Consequently, the impugned notices were issued in February 2005 to each of the appellants calling upon them to pay the deficient duty as well as the penalty equaling ten times of the deficient duty. In respect of Vardhman Properties, for instance, the auction purchaser had paid Rs.12,42,215 as stamp duty. This was now recomputed as Rs.13,30,604 being the aggregate of Rs.10,79,772 as stamp duty and Rs.2,00,832 as transfer duty. In re-working the duty, the total consideration for the perpetual lease was taken as the aggregate of the premium amount of Rs.1,91,11,000 and the annual rent calculated as a percentage of the premium amount. In addition a penalty of Rs.8,88,389 (being ten times of the deficient duty) was also demanded.

4. Before the learned Single Judge the respondents contended that they were not challenging the re-working of the stamp duty since the question of interpretation of Article 35 of Schedule 1(A) of the Stamp Act was debatable. Their challenge was, therefore, confined to the penalty imposed under the Stamp Act as well as the DMC Act with regard to the stamp duty and transfer duty respectively as well as the

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dues in the transfer duty as demanded in the impugned notices.

5. On the question of penalty, the learned Single Judge came to the conclusion that in terms of Section 40 of the Stamp Act, the power to impose a penalty was consequential upon the Collector of Stamps impounding an instrument. Since no instrument had yet been impounded by the Collector, the question of imposition of any penalty did not arise. To the extent, therefore, that the impugned notices sought to levy penalty, they were held to be unsustainable in law.

6. The next question before the learned Single Judge concerned the interpretation of the relevant entry in Section 147 (2) (b) (v) DMC Act. After referring to the decision of the learned Single Judge of this Court in *Niagara Hotels & Builders (P) Ltd. v. Union of India* 65 (1997) DLT 826, the learned Single Judge concluded that the words 'amount' and 'value' in Section 147 (2) (b) (v) DMC Act did not refer to the premium collected for the grant of the lease. The learned Single Judge rejected the contention of the MCD that the word 'amount' referred to premium and the word 'value' referred to the rent. It was held that they referred to the quantum of the rent for the first fifty years of the lease. Consequently, transfer duty would be leviable on one-sixth of the rent for the first fifty years of the lease. Although the lease referred to only the first thirty years, the learned Single Judge held that "the transfer duty has to be computed on the basis of $1/6^{\text{th}}$ of the rent payable at present for the first

30 year period but computed for the first fifty years”.

7. The petitions were accordingly partly allowed holding that no penalty could be imposed in respect of the transfer duty under the DMC Act since that was a debatable issue. A direction was issued to re-work the transfer duty in terms of the judgment of the learned Single Judge. It was further held that no further stamp duty in addition to the amounts already paid was payable nor was any penalty chargeable.

8. Aggrieved by the judgment of the learned Single Judge, the MCD has filed the present appeals.

9. It is contended by Mr. H.S. Phoolka, the learned senior counsel appearing for the MCD that in the sense and in the context in which the word ‘rent’ is used in Section 147 (2) (b) (v) DMC Act, it had to connote the total consideration payable under the lease deed. His submission was that unless the total consideration as shown on the lease deed was paid by the lessee, the execution of the perpetual lease deed could not have taken place. Therefore, the word ‘rent’ would include the premium paid by the auction purchaser for obtaining the lease. In other words, the expression ‘rent’ meant ‘rent + premium’ and not the rent alone. Reference was made to the definition of the word ‘premium’ in Black’s Law Dictionary, 6th Edition (page 1181). Mr. Phoolka then submitted that every word occurring in Section 147 (2) (b) (v) DMC Act had to be

given full effect to keeping in view the context in which the word occurs. Therefore the disjunctive 'or' had to be read as a conjunctive 'and'. Since the lease could not have been executed without the premium being paid, the legislative intent was to levy transfer duty on the amount equal to one-sixth of the entire consideration payable in respect of the lease which, in any event, has been set forth in the instrument. Mr.Phoolka contended that since the annual rent payable is calculated as a percentage of the premium paid, it is a measure of the premium itself. Consequently, there it was logical to include the premium amount as part of the rent for the purposes of computing the transfer duty.

10. In support of his contention that all words in the statute have to be given full effect Mr.Phoolka referred to the judgments of the Supreme Court in *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.* (2005) 7 SCC 234, *Manohar Lal v/ Vinesh Anand* (2001) 5 SCC 407, *Noorie Manure Mill v. Commissioner Trade Tax* (2007) 10 SCC 478, *Associated Cement Co. Ltd. v. State of MP* (2004) 9 SCC 727 and *Indcon Structurals (P) Ltd. v. Commissioner of Central Excise* (2006) 6 SCC 786..

11. Mr.Sanjay Goswamy, learned counsel appearing on behalf of the respondents submitted that a taxing statute admits of only strict interpretation. If the intention of the legislature was to tax the premium paid for the obtaining of a perpetual lease, then certainly the wording of

the provision should expressly indicate it. Reliance is placed on Section 105 of the Transfer of Property Act, 1882 ('TP Act') where the words 'premium' and 'rent' have been separately defined. Relying on the judgment of the Supreme Court in *Commissioner of Income Tax v. Panburi Tea Company AIR 1965 SC 1871*, it is submitted that the expression 'premium' and 'rent' have to be separately understood and one cannot include the other in the context in which it is used in the deed of perpetual lease in the instant case. The word 'rent' can only refer to the actual rent indicated in the lease deed and not the premium. Reference is also made to the decisions in *Govind Ram v. Rajphul Singh AIR 1973, Punjab & Haryana 94* and *S. Venkataraman Swami v. S. Abdul Wahab AIR 1969 Madras 473*.

12. In order to appreciate the respective contentions, a reference may be made first to Section 147 (2) (b) (v) of the DMC Act which reads:

"147. Duty on transfer of property and method of assessment thereto.- (1) Save as otherwise provided in this Act, the Corporation shall levy a duty on transfers of immovable property situated within the limits of Delhi in accordance with the provisions hereafter in this section contained.

(2) The said duty shall be levied –

(a) in the form of a surcharge on the duty imposed by the Indian Stamp Act, 1899 (2 of 1899) as in force for the time being in the Union Territory of Delhi, on every instrument of the description specified below, and

(b) at such rate as may be determined by the Corporation not exceeding five per cent, on the amount specified below against such instruments –

Description of instrument	Amount on which duty should levied
(i) Sale of immovable property	The amount or value of consideration for the sale, as set forth in instrument.
(ii) Exchange of immovable property	The value of the property of the greater value, as set forth in the instrument.
(iii) Gift of immovable property	The value of the property, as set forth in the instrument.
(iv) Mortgage with possession of immovable property	The amount secured by the mortgage as set forth in the instrument.
(v) Lease in perpetuity of immovable property	The amount equal to one-sixth of the whole amount or value of the rent which would be paid or delivered in respect of the first fifty years of the lease as set forth in the instrument. (emphasis supplied)
(vi) Contract for transfer of immovable property	Ninety per cent of the value of the consideration for the transfer as set out in the contract."

13. In *Niagara Hotels & Builders (P) Limited* a learned Single Judge of this Court held that the word 'or' in Section 147 (2) (b) (v) DMC Act could not be read in a manner so as to enable MCD to levy the transfer duty on an aggregate both the premium amount as well as the rent. In the impugned order in the instant cases, the learned Single Judge has held that the expression "amount' or 'value' both qualified "rent and rent alone" and, therefore, the rent (and not the premium) could alone form the basis for calculating the transfer duty.

14. Depending on the context, the word 'premium' can have both a broad as well as a narrow meaning. The definition of premium in the **Law Lexicon** by P. Ramanatha Aiyar, Second Edition reads as under:

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"Premium means a sum of money paid as consideration for grant of lease. It represents capitalized rent which in fact is the difference between the actual rent and the rent which might otherwise be obtained by the lessor.

"Premium Or other Like Sums", "are sums paid in excess of the agreed rent in consideration of grant, continuance or renewal of the tenancy"

In **Black's Law Dictionary**, Sixth Edition, premium is defined as capitalized rent "paid in lump sum at the time of lease is granted."

15. The question whether the 'rent' payable under the deeds of perpetual lease in the instant cases includes the 'premium' paid will depend on the context in which the word is used. This distinction is acknowledged in the definitions of the terms 'premium' and 'rent' in Section 105 of the TP Act as well.

16. The decision of the Supreme Court in *Panbari Tea Company* supports the contention of the respondent that, given the context, the word 'rent' in Section 147 (2) (b) (v) DMC Act has to have a narrow meaning. The question that arose in the said case was "whether the premium collected as a lump sum (although payable in instalments) could also be considered to be a revenue receipt in the same manner as the rent collected"? In the said case a registered lease deed had been executed by the Assessee Company by which two tea estates were leased out to a firm. The consideration for the lease was a combination of

premium in the sum of Rs.2,25,000 of the annual rent of Rs.54,000. The premium was to be paid in the following manner: Rs.45,000 as lump sum at the time of execution of the lease deed and the balance of Rs.1,18,000 in sixteen half yearly instalments of Rs.11,250 before the 31st January and 31st July of each year. The annual rent of Rs.54,000 was payable in the following manner:Rs.1,000 per month to be paid on or before last date of each month, thus, making in all Rs.12,000 per year and the balance of Rs.42,000 to be paid on or before 31st December of each year. In the assessment year for 1952-53, the income tax officer treated the instalment of Rs. 11,250 paid towards premium as a revenue receipt. This assessment was upheld by the Appellant Assistant Commissioner as well as the Tribunal. The High Court reversed the Tribunal and held that the sum of Rs.11,250 was a capital receipt and not a revenue receipt. The Department then appealed the Supreme Court. The Supreme Court referred to the decisions in *Kamakshya Narain Singh v. Commissioner of Income Tax (1943) II ITR 513*, *Member for the Board of Agriculture v. Commissioner of Income Tax (1957) 32 ITR 169* and *Chintamani Saran Nath Sah v. Commissioner of Income Tax AIR 1961 SC 732* to underscore the distinction between the premium and rent. It pointed out that a one-time payment of premium for the grant of a lease was known as 'salami' which is in the nature of a capital receipt in the hands of the lessor. The Supreme Court then referred to Section 105 TP Act and observed as under:

"The section, therefore, brings out the distinction

between a price paid for a transfer of a right to enjoy the property and the rent to be paid periodically to the lessor. When the interest of the lessor is parted with for a price, the price paid is premium or salami. But the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. The former is a capital income and the latter a revenue receipt. There may be circumstances where the parties may camouflage the real nature of the transaction by using clever phraseology. In some cases, the so-called premium is in fact advance rent and in others rent is deferred price. It is not the form but the substance of the transaction that matters. The nomenclature used may not be decisive or conclusive but it helps the Court, having regard to the other circumstances, to ascertain the intention of the parties."

On an analysis of the relevant clauses in the lease deed, it was held that the amount paid as premium could not be construed as rent and, such premium was a capital receipt in the hands of the lessor.

17. In *Hotel Kings v. Sara Farhan Lukmani* (2007) 1 SCC 202, the Supreme Court emphasized the importance of a contextual interpretation and held that while the permitted increase in rent can serve as a yardstick for the landlord to increase the rents it did not make such permitted increase "a part of the rent though it may be a consideration for the grant of lease."

18. The lease deed in the instant cases a makes reference to the annual rent that would be payable in future. This is not a pre-determined figure but is to be worked out as a percentage of the premium amount. This is set out in the lease deed. For instance in the lease deed dated 1st

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December, 2003 in favour of M/s N.K. Gupta, the fourth paragraph of the preamble reads:

"NOW THIS INDENTURE WITNESSETH that, in consideration of the amount of Rs. 1,31,04,000/- (Rupees One Crore Thirty One lacs and Four thousand only) **paid towards premium before the execution of these presents** (the receipt where of the Lessor hereby acknowledges) **and of the rent hereinafter reserved** and of the covenants on the part of the lessee hereinafter contained, the Lessor doth hereby demise unto the Lessee, all that plot of land being the Commercial Plot No. 09 Block No. X in the lay out plan of New Friends Colony District Centre"

19. In the later portion of the same paragraph of the lease deed, the annual rent is stated as being two and a half per cent of Rs.1,31,04,000 and the first annual rent instalment is to be paid on 15th January, 2008.

The relevant portion reads as under:

"TO HOLD the premises unto the lessee in perpetuity from 24th day of January two thousand and three **YIELDING AND PAYING** therefore yearly rent payable in advance of Rs. 5/- (Rupees Five only) up to the 23rd day of January two thousand and Eight and thereafter at the rate of two and a half per cent of the premium (the sums already paid and such other sum or sums hereafter to be paid towards premium under the covenants and conditions hereinafter contained) or such other enhanced rent as may hereafter be assessed under the covenants and conditions hereinafter contained clear of all deductions by equal half yearly payments on the 15th day of January and 15th day of July in each year at the Reserve Bank of India, New Delhi."

20. A reading of the aforementioned portions of the perpetual lease deed brings out the distinction between 'premium' on the one hand and 'rent' on the other. The word 'premium' carries more than one definition; it has to be understood in the context in which it is used in a lease deed. The question whether the word 'premium' is also subsumed in the words "whole amount or value of the rent" occurring in Section 147 (2) (b) (v) DMC Act has to be answered with reference to the context in which the word is used in the lease deeds in question. A careful examination of the above clauses of the lease deed, leads to the conclusion that the 'premium' paid for the lease is distinct from the 'rent' payable thereunder. In other words, 'rent' in Section 147 (2) (b) (v) DMC Act cannot be said to include the premium paid for the lease.

21. It is also not possible to construe the premium paid as advance rent since the annual rent in is not indicated as a pre-determined sum in the lease deed. It is a percentage of the premium paid. The premium amount serves as a yardstick for determining the rent payable. It is therefore not possible to interpret the word 'rent' in the lease deeds in the instant cases as including the premium paid.

22. This Court is inclined to accept the contention of the respondent that since what is sought to be collected is a transfer duty, which is an involuntary exaction of revenue, the statute admits of a strict

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interpretation. The principle enunciated in the decisions relied upon by the appellants that every word in a statute must be given its full meaning is unexceptionable. However, the meaning so given must be in the context of the statute in general and the provision in particular. In the context of the lease deeds in question in the instant cases, the word 'rent' cannot possibly be interpreted to include the premium paid for the grant of the lease. As rightly contended by the respondents, if the legislature intended to make the premium paid for the lease as includible for the purposes of determining transfer duty then the statute should have been expressly worded to reflect that intention.

23. Accordingly, this Court concurs with the conclusion arrived at by the by the learned Single Judge. The appeals are dismissed with no orders as to costs.


S. MURALIDHAR, J.


CHIEF JUSTICE

July 02, 2008
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