

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20th December, 2010.

+ W.P.(C) No.8451/2010

% M/S USHA CONSTRUCTION CO. PETITIONER
Through: Mr. B.B. Jain & Mr. Amitabh
Marwah, Advocates

Versus

MUNICIPAL CORPORATION OF DELHI RESPONDENT
Through: Ms. Amita Gupta & Mr. Parveen
Kumar, Advocates

AND

+ W.P.(C) No.8452/2010

% M/S GOURI CONSTRUCTION CO. PETITIONER
Through: Mr. B.B. Jain & Mr. Amitabh
Marwah, Advocates

Versus

MUNICIPAL CORPORATION OF DELHI RESPONDENT
Through: Ms. Amita Gupta & Mr. Parveen
Kumar, Advocates

+ W.P.(C) No.8453/2010

% M/S K.K. ENTERPRISES PETITIONER
Through: Mr. B.B. Jain & Mr. Amitabh
Marwah, Advocates

Versus

MUNICIPAL CORPORATION OF DELHI RESPONDENT
Through: Ms. Amita Gupta & Mr. Parveen
Kumar, Advocates

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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 the Digest? Yes.

RAJIV SAHAI ENDLAW, J.

1. The petitions impugn the demand by the respondent MCD under Section 154(1) of the Delhi Municipal Corporation Act, 1957 of arrears of property tax for the period ending 31st March, 2004 and in pursuance to the assessment orders of the year 2004. The three petitions entail common questions of law and facts and though listed today for the first time but not requiring any counter affidavit, with the consent of the counsel for the parties have been taken up for final hearing.

2. The petitioner in each of the petitions was granted perpetual lease of plots of land for construction of commercial buildings. Each of the petitioners soon after the grant of perpetual lease, applied to the respondent MCD for sanction of plans for construction and immediately upon sanction commenced construction of the building and which was completed in or about December, 2003. It is the claim of the petitioners that the petitioners transferred the built up commercial space so constructed and which since the completion of construction is being assessed by respondent MCD for the purpose of property tax in the name of the said transferees. The present

petitions have been filed upon being served with the demand notices under Section 154(1) of the Act in or about the month of September, 2010.

3. It is the contention of the petitioner that the said demand notices and the assessment orders in pursuance whereof the same have been issued are with respect to vacant land only and do not cover tax for the period since the completion of construction. The demand is challenged on the ground that the land being lease hold, the liability for property tax with respect thereto till the completion of construction thereon was of the lessor i.e. the President of India and not of the petitioners as lessees. Reliance in this regard is placed on the judgment of the Full Bench of this Court in ***Municipal Corporation of Delhi Vs. Shashank Steel Industries (P) Ltd.*** 100 (2002) DLT 66 (FB) and appeal whereagainst was dismissed by the Supreme Court vide judgment reported in (2009) 2 SCC 349. I have recently in order dated 29th November, 2010 in W.P.(C) No.7846/2010 titled ***M/s Manish Enterprises Vs. MCD*** have had occasion to deal with the said subject. The demand of the respondent MCD in that case against the lessee for vacant land tax was quashed and it was held that the perpetual lessee of the land is not liable for any tax on land even for the period the building is in the process of erection.

4. The counsel for the respondent MCD however contends that the perpetual lessee of the land is not liable for vacant land tax only so long as construction is not possible on the land; if construction is possible then the

liability for vacant land tax is of the perpetual lessee only even if he chooses not to raise construction thereon. Reliance in this regard is placed on Section 116 (2) of the Delhi Municipal Corporation Act, 1957 as it stood prior to the amendment with effect from 1st August, 2003.

5. I am unable to agree. Section 116(2) of the Act is only a charging Section while Section 120 (2) apportions the liability between the lessor and the lessee. For convenience Section 116(2) and Section 120(2) are set out herein below:

Section 116(2):

The rateable value of any land which is not built upon but is capable of being built upon and of any land on which a building is in process of erection shall be fixed at five percent of the estimated capital value of such land.

Section 120(2):

If any land has been let out for a term exceeding one year to a tenant and such tenant has built upon the land, the property taxes 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 a sub-tenant of such tenant.

6. From the above, it will be apparent that while Section 116(2) only provides for what the rateable value of vacant land capable of being built upon but not built or in the process of erection will be, Section 120(2) provides for who will be liable for property tax assessed qua land let out for

over one year. It provides that once such land has been built upon, the liability will be of the tenant. The Full Bench of this Court in ***Shashank Steel Industries (P) Ltd.*** (supra) has held that the liability for property tax of vacant land is of the lessor; the respondent MCD cannot reargue the matter before this Bench.

7. The counsel for the respondent MCD then invites attention to para 49 of the judgment of the Full Bench in ***Shashank Steel Industries (P) Ltd.*** where the earlier judgment of a Single Judge of this Court in ***Municipal Corporation of Delhi Vs. Peerless General Finance Company*** 1987 RLR 144 is quoted. Undoubtedly, the Single Judge of this Court held that “a reasonable consideration of the said provision 120(2) would be that when the building plans are passed and the lessor or the tenant starts construction thereon, then the liability to pay the tax would arise on that date” and that the Municipal Tax are levied primarily in order to augment the resources of the MCD who are required to provide municipal services and that it is in consonance with the policy that as and when the construction of a building on land commences the liability to pay a property tax shifts to the tenant who would thereafter be enjoying the municipal services which are offered by the Corporation. The counsel for the respondent MCD contends that the Full Bench has approved of the said view of the Single Judge in ***Peerless General Finance Company*** (supra). She contends that the liability for vacant land tax of land let out for a term exceeding a year, shifts to the

tenant the moment the sanction for construction is accorded.

8. I am unable to agree. The Full Bench though noticed the passage aforesaid in *Peerless General Finance Company*, nevertheless held that the question which had fallen for consideration in *Peerless General Finance Company* did not arise before the Full Bench and merely held that “and when conditions contained in Section 120(2) are satisfied, the liability to pay the property tax would be that of the lessee and not of the lessor”. It thus cannot be said that the observations in *Peerless General Finance Company* has the imprimatur of the Full Bench.

9. According to me the language of Section 120(2) does not permit an interpretation that the liability of the lessee for vacant land tax accrues immediately on sanction of the building plans and / or commencement of the construction. The legislature, in Section 120(2) has used the expression “tenant has built upon such land” and made the tenant of vacant land liable for tax only thereafter. The expression “the tenant has built upon such land” conveys that the process of building is complete. If the intent of the legislature had been to make the tenant of land liable for vacant land tax w.e.f. sanction for construction or commencement of construction, the expression used would have been “tenant has obtained sanction for construction” or “tenant has commenced construction.”

10. The liability for property tax in respect of land shifts to the tenant only when the assessment is of land and the building erected thereon. Thus till the building is capable of assessment, the liability for payment of property tax in respect of land does not shift to the lessee. Section 116(2) is quite clear in this regard. It provides that rateable value of any land on which the building is in the process of erection shall be as vacant land only. This aspect has also been examined by me recently in *M/s South Delhi Maternity & Nursing Home Vs. MCD* MANU/DE/3246/2010 where on a conspectus of case law it was held that the building would be assessable only from the date of the completion certificate or from the date of actual occupation whichever is earlier.

11. Though taking a view different from that of the Single Judge of this Court in *Peerless General Finance Company* (supra) I do not feel the need to refer the matter to a Larger Bench for consideration since I find Single Judges of this Court subsequent to *Peerless General Finance Company*, in *K.K. Enterprises Vs. Municipal Corporation of Delhi* 127 (2006) DLT 679 and in judgment dated 21st April, 2010 in W.P.(C) No.3347/1987 titled *P.N. Kumar Vs. Municipal Corporation of Delhi* to have taken the same view and which was followed by me also in *Manish Enterprises* (supra).

12. The other question which arises is whether this petition though impugning the demand made in September, 2010 should be entertained since the said demand is in pursuance to the assessment order made in the

year 2004 and which the petitioner has allowed to attain finality. It thus has to be considered whether inspite of the demand being illegal, the petition should at all be entertained having been filed belatedly. The petitioner pleads that the order of assessment pursuant to which the demand has been raised was never served on the petitioners and the respondent MCD itself was treating the same as subject to the outcome of the judgment of the Supreme Court in *Shashank Steel Industries (P) Ltd.* case (supra).

13. The counsel for the respondent MCD appearing on advance notice is unable to state whether the *ex parte* order was served on the petitioner or not.

14. However, need is not felt for reply / counter affidavit on this aspect also inasmuch as it is felt that the demand being contrary to the dicta of the Full Bench of this Court which received the imprimatur of the Apex Court in December, 2008 cannot in any case be sustained. It is significant that the respondent MCD itself did not insist upon recovery even though six years old. From the demand notices it does not appear that the property tax for any subsequent period is pending. There is thus merit in the contention of the petitioners that the said assessment was subject to the outcome of the judgment in *Shashank Steel Industries (P) Ltd.*

15. No counter affidavit having been invited, another doubt which arises is as to whether the demand is only for vacant land tax or also for the period

after the completion of construction. The counsel for the petitioner while asserting that the demand is only for the vacant land tax and by its tenor cannot be for the period after completion of construction nevertheless states that this Court may quash the demand insofar as it relates to vacant land tax leaving it open to the respondent MCD to recover the demand, if any, for land as well as building erected thereon.

16. The petitions are accordingly allowed. The assessment orders and the demand impugned in these petitions insofar as they relate to vacant land tax are quashed / set aside.

17. The petitions having been disposed of at an initial stage, no order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

20th December, 2010

‘gsr’

(corrected & released on 3rd January, 2011)