

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

% *Judgment reserved on : 06.05.2011*
Judgment delivered on: 11.05.2011

+ **R.S.A.No. 97/2008**

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mrs. Amita Gupta and
Mr. Parveen Kumar,
Advocates.

Versus

RAMJAS FOUNDATION CHARITABLE TRUST Respondent
Through: Mr. Atul Nigam,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1 This appeal has impugned the judgment and decree dated 23.10.2007 which had endorsed the finding of the trial judge dated 06.08.1985 whereby the suit filed by the plaintiff Ramjas Foundation Charitable Trust with a prayer that the defendant be restrained from seeking recovery of the property tax with respect

to the building of Ramjas School, Pusa Road, New Delhi be declared null and void had been decreed in favour of the plaintiff.

2 Three suits had been filed by the plaintiff seeking restraint against the defendant from recovery of property tax demands.

- (i) The first suit was suit no. 370/82 for the recovery of Rs. 33117/- and for a period up to 31.03.1983.
- (ii) The second suit was suit no. 501/81; in this case, demand was Rs. 31117/- for the period up to 31.03.1981.
- (iii) The third suit was suit no. 92/80 for the recovery of Rs. 34749/- for the assessment year 1979-80.

3 In the written statement, the defense was that the suit was barred by time as the order fixing the ratable value at Rs. 1,08,750/- p.a. w.e.f 01.01.1975 was passed on 10.01.1977; intimation was given to the assessee on 15.01.1977; it was duly acknowledged by him vide letter dated 09.02.1977. The plaintiff was even otherwise not the recorded owner of the property; the bar of Section 169-170 of the Delhi Municipal Corporation Act, 1957 (hereinafter read as Delhi Municipal Corporation Act) and Section 477-478(1) were operational. On merits, it was stated that the plaintiff society had been constructed in the year 1971 after the possession of the plot had been granted in their favour in 1964. Construction of this building had come to the knowledge of

the defendant only in 1975-76 i.e. on 26.03.1976; plaintiff had not informed the defendant. Notice under Section 126 proposing to determine the rateable value of the plaintiff society at the rate of Rs. 2,81,830/- per annum w.e.f 01.04.1975 had been served upon the principal of the society. Objections had been invited on or before 05.05.1976. Objections had been filed on 08.04.1976 without disclosing the locus standi of the objector. Call letter dated 14.12.1976 was given to the Principal of the plaintiff for appearing before the Assessing Officer; authorized representative of the plaintiff had appeared on 27.12.1976; the case had been adjourned to 30.12.1976. Vide assessment order dated 10.01.1977, the rateable value at Rs. 1,08,850/- p.a. w.e.f. 01.04.1975 was determined after considering all the objections of the objector. This was communicated to the plaintiff vide letter dated 15.01.1977 duly received by the plaintiff vide his letter dated 09.02.1977. No exemption was permissible as plaintiff's property did not qualify for exemption under Section 115 (4) of the DMC Act; premises being used for a school were not per se exempted from the levy of general tax; merely because the trust was running an educational institution; did not make it a charitable purpose; no relief to the poor, either financially, educationally or medically was provided by the plaintiff qua the

suit property. In fact, the plaintiff was charging heavy fee from the students; school was running a business. Exemption was not permissible.

4 On the pleadings of the parties, the following 7 issues were framed:-

1. Whether the plaintiff has locus standi to file the present suit? OPP
2. Whether the plaintiff is exempted from payment of property tax? OPP
3. If the answer of issue No. 2 is affirmative, whether the demand of Rs. 34749/- towards property tax is legal and within jurisdiction. If not its effect? Onus on parties.
4. Whether the suit is barred by time under Section 478/(2) of the DMC Act as alleged in para 1 of the preliminary objections of HS? OPD
5. Whether the suit is not maintainable under Section 471/478 of the DMC Act ? OPD
6. Whether the suit is not maintainable under Section 169/170 of the DMC Act read with Section 41 (h) of the S.R. Act? OPD
7. Relief.

5 Court was of the view that Section 128 of the DMC Act which relates to the change of title is not attracted. The contention of the plaintiff and the testimony of PW-1 coupled with the decision rendered in the two suits i.e. suit no. 9/84 and 580/78 (previous suits) between the same parties wherein the defendant had been restrained from levying property tax on the plaintiff's society, had been relied upon by the trial court to decree the suit of the plaintiff. Court was of the view that the plaintiff's society is

entitled to exemption under Section 115 (4) of the DMC Act. It was noted that the judgment Ex. PA (delivered in the aforementioned two suits was on 10.07.1974) which had recorded the finding that the plaintiff's society is entitled to exemption has attained a finality; it would operate as res judicata; even otherwise exemption was permissible in view of the evidence led by the plaintiff. Applicability of Section 169-70 of the DMC Act was also adverted to. It was held that it had no application. Suit of the plaintiff was accordingly decreed.

6 In appeal, this finding was endorsed.

7 This is a second appeal. It had been admitted and on 28.07.2010, the following substantial questions of law had been formulated:-

(1) Whether the courts below had illegally allowed a 'general tax' exemption to Ramjas Foundation Charitable Trust under Section 115 of Delhi Municipal Corporation Act, 1957?

(2) Whether the judgment dated 10.07.1984 in Suit Nos. 9/84 and 580/78 will not operate as res judicata?

8 On behalf of the appellant, it has been urged that the two courts below have committed a perversity; suit of the plaintiff had been decreed firstly on the ground of res-judicata by relying upon the earlier judgment delivered in suit No. 9/1984 and 580/1978 by Justice O.P. Dwivedi (the then learned District & Sessions Judge)

delivered on 10.07.1984. It is pointed out that the impugned judgment relying upon this judgment to apply the doctrine of res-judicata is an illegality as this judgment had returned a finding only upto the assessment years 1978 whereas the present suits had been filed for subsequent years. It is further submitted that there was no evidence before the court below to grant an exemption to the plaintiff under Section 115(4) of the DMC Act (which deals with a charitable purpose); not a single document had been produced by the plaintiff to substantiate his case. It is submitted that each fiscal year has to be treated as an independent year and even presuming that the Court in the judgment delivered on 10.07.1984 had returned a finding that Ramjas Foundation Charitable Trust was performing a charitable purpose, it was for the assessment years upto 1978 and for subsequent years, the plaintiff had to establish his case that it was running a charitable trust. For the submission that each fiscal year has to be treated as an independent assessment year, learned counsel for the appellant has placed reliance upon the judgment reported in JT 2007 (11) SC 131 Municipal Corporation of City of Thane Vs. Vidyut Metallies Ltd. & Anr. It is pointed out that the finding returned in the impugned judgment granting exemption from general tax to the plaintiff on the ground that

Ramjas Foundation Charitable Trust was running a school for a charitable purpose is a perversity and is liable to be set aside.

9 Arguments have been countered. It is pointed that the impugned judgment suffers from no perversity. The impugned judgment had rightly relied upon the judgment delivered on 10.07.1984 in suit No.9/1985 and suit No.580/1978; this judgment has not been challenged; it has since attained a finality. This judgment has recited that the plaintiff society is running a school for a charitable purpose; this finding could not have been assailed again; even evidence adduced by the plaintiff remained un rebutted. The defendant had not produced any evidence in defence. The impugned judgment calls for no interference.

10 There are two findings against the appellant. Both the courts below were the last fact finding courts. In a second appeal, findings of fact can be interfered only if there is a perversity. The averments in the plaint have been perused. There were three suits which had been filed by the plaintiff namely

- (i) suit No. 92/1980
- (ii) suit No.504/1981 and
- (iii) suit No. 370/1982.

The first suit sought restraint against the defendant corporation for recovery of Rs.34,749/- for the assessment year 1979-80 which was an illegal demand raised by the department upon the plaintiff.

The second suit was sought a restraint to the illegal demand of Rs.33,117/-raised upon the plaintiff for the year up to 31.03.1981.

The last suit was sought a restraint against the illegal demand of Rs.33,177/- raised on the plaintiff up to the period 31.03.1983.

The three suits as is evident from the plaint have been filed for three different periods.

Suit No.9/1985 and suit No.580/1978 had been decided by a common judgment delivered on 10.07.1984. The first suit i.e. suit No. 9/1985 had been filed for the recovery of Rs.60,000/- which the defendant had alleged illegally collected towards the payment of property tax and for which the plaintiff had sought refund. It was coupled with a prayer that the levy of tax on the plaintiff on the ground that education is a charitable purpose and is exempt from general tax. The second suit i.e. suit No. 580/1978 had been filed by the plaintiff seeking a permanent injunction restraining

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the defendant from recovering the balance amount i.e. the amount raised upon the plaintiff. This suit was of the year 1978. In the present suit plaintiff has averred that he had been exempted from general tax; on 27.03.1976, an illegal demand had been raised upon him by the defendant; the plaintiff had been coerced to pay sum of Rs.60,000/- which he had paid on 16.02.1978; this amount of Rs.60,000/- which has been paid by the plaintiff was for the property tax up to the period ending 31.03.1978; this has been specifically averred in para 5 of the complaints of the three suits.

11 The judgment of 10.07.1984 while disposing of the two suits i.e. suit No.9/1985 and suit No.580/1978 had dealt with exemption from general tax only up to 31.03.1978; this is evident not only from the averments in the present suits but also the averments made in the earlier suits as also recorded in the judgment of 10.07.1984. The notice which had been impugned before the Court of Justice O.P. Dwivedi was a notice dated 27.03.1976. In that case issues No. 4 & 5 had been framed which are relevant for the purpose of this appeal and read as under:-

“(iv) Whether the suit is barred by time under Section 478 (2) of the DMC Act as alleged in para 1 of the preliminary objections of HS? OPD

(v) Whether the suit is not maintainable under Section 471/478 of the DMC Act? OPD”

12 Evidence had been led by the respective parties. The court had noted that the audit reports (Ex.P-1 to Ex. P-9) for the years 1974 to 1978 had been produced by the plaintiff company as also donations made by the plaintiff for the year 1973-74 totaling a sum of Rs.61,300/- were sufficient evidence led by the plaintiff to prove his case. The evidence adduced was for the period 1973-78.

13 It is a settled proposition that every fiscal year has to be treated as an independent assessment year; this is also not been disputed by learned counsel for the respondent. The Supreme Court in the judgment of Municipal Corporation of City of Thane (Supra) had noted:-

“In tax matter, strict rule of res-judicata as envisaged by Section 11 of the Code has no application; as a general rule, each year’s assessment is final only for that year and goes not govern later years, because it determines the tax for a particular period. It is open to the Revenue/Taxing Authority to consider the position of the assessee every year for the purpose of determining and computing the liability to pay tax or octroi on that basis is subsequent years. A decision taken by the authorities in the previous year would not estop or operate as res-judicata for subsequent year.”

14 The fact finding arrived at in the judgment of 10.07.1984 (Ex.PA) related only up to the year 31.03.1978. The present suits related for subsequent years; the matter in issue in the earlier suits and matter in issue in the subsequent suits was not the same; applicability of the doctrine of res-judicata was an illegality.

The finding returned in the impugned judgment applying this doctrine is thus a perversity; it is set aside.

15 The second ground on which the suit of the plaintiff was decreed was the evidence which has been led by the plaintiff to establish his submission that the plaintiff society had been running a charitable trust; it was for a charitable purpose. One witness has been examined on behalf of the plaintiff. Admittedly no documentary evidence had been led. Oral version of PW-1 had been adverted to. Testimony of PW-1 has been perused. Part of his testimony relates to the resolution authorizing him to depose on behalf of the society. Relevant extract related to the submission that the society was running the school for a charitable purpose. Relevant extract of his version reads as under:-

“The main purpose of the society is to promote and provide of the education in Delhi and New Delhi. There are 15 schools in Delhi and one college in Delhi. All the members of the society are honourary members and do not get any honarium or profits of any kind and all the funds of society are spend for the purpose of education. The tuition fee collected from the student is similarly employed for its promotion and education. Any other benefits received from any sources i.e. donation is also used for the purpose of providing education.”

16 Cross-examination of PW-1 has also been perused. Specific suggestion has been given to him that he was not running the school on charitable lines but on commercial lines. PW-1 had

admitted that he not produced the balance-sheet; he denied that admission in the school is allowed only to children of affluent class of persons. This was the sum total evidence which have been led to return a finding that the plaintiff has been able to prove his that it was running an education society for charitable purpose which entitled him to grant of exemption from general tax.

17 A 'charitable purpose' has been defined under Section 115 (4) of the DMC Act. It reads as under:-

"115. Premises in respect of which property taxes are to be levied:-

(4) Save as otherwise provided in this Act, the general tax shall be levied in respect of all lands and building in Delhi except:-

(a) xxxxxxxxxxxxxxxxx

Explanation:- 'Charitable purpose' includes relief of the poor, education and medical relief but does not include a purpose which relates exclusively to religious teaching."

18 The Supreme Court in the case of Municipal Corporation of Delhi Vs. Children Book Trust (1992) 3 SCC 390 has held that education per se is not charitable. It had noted as under:

"We have already seen that merely because education is imparted in the school, that by itself, cannot be regarded as a charitable object. Today, education has acquired a wider meaning. If education is imparted with a profit motive, to hold, in such a case, as charitable purpose, will not be correct. We are inclined to agree with Mr. B. Sen, learned counsel for the Delhi Municipal

Corporation in this regard. Therefore, it would necessarily involved public benefit.”

19 Admittedly there was no documentary evidence with the plaintiff. Except his bald statement which has been noted hereinabove and which had been refuted by the defendant; there was no other evidence to substantiate the stand of the plaintiff that he was running the trust for a charitable purpose. No record had been produced by the plaintiff society i.e. his balance-sheet, statement of account or any other document to substantiate his submission that the school was being running for charitable purpose. The onus is always upon a party to the case to prove his case before he is entitled to the grant of relief. The Supreme Court has noted in the case of Children Book Trust that running of a school is per se not charitable; imparting education sans an element of public benefit or philanthropy is not per se charitable; secondly the society must be supported wholly or in part by voluntary contribution; lastly, the society must utilize its income in promoting its objects and must not pay any dividend or bonus to its members. Tax liability of a registered society running a recognized private unaided school should be considered in the light of the above conditions as well as the relevant provisions of Delhi School Education Act and the Rules framed thereunder;

transfer of funds by the school to the society even in the name of contribution would amount to transfer by the society to itself and therefore cannot be considered for the purposes of exemption. Applying these guiding principles to the case of the appellant, it is clear that the plaintiff had not fulfilled this test entitling him to exemption. The finding in the impugned judgment holding that the plaintiff was working for a charitable purpose is a perversity.

20 Substantial questions of law are answered in favour of the appellant and against the respondent. Appeal is allowed. Suit is dismissed.

MAY 11, 2011
Ss/a

INDERMEET KAUR, J.