

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

% Judgment reserved on : 15.03.2013
Judgment pronounced on : 18.03.2013

+ **LPA No.161/2013**

POWER GRID CORPORATION OF INDIA Appellant

Through : Mr. Goolam E. Vahanvati,
Attorney General with Mr. Pawan
Upadhyay, Ms. Sharmila
Upadhyay, Ms. Anisha Upadhyay,
Mr. Sarvjit Pratap Singh, Mr.
Ankit Sibble and Mr. Rohit Yadav,
Advs.

versus

EAST DELHI MUNICIPAL CORPORATION & ANR.

... Respondents

Through : Mr. Anoop Bagai, Adv. for R-1
Mr. Rajiv Ranjan Mishra, Adv. for
R-2/UOI

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V.K. JAIN**

V.K. JAIN, J.

1. The appellant – Power Grid Corporation of India is a Government Company is engaged in transfer of bulk electrical energy from generating power plants to electrical sub-stations located near demand centres and for this purpose, it has laid transmission towers in various parts of the country, including Delhi. Vide assessment order dated 2nd February,

2013, the Assessor and Collector of the respondent East Delhi Municipal Corporation held that such towers are included in the definition of “towers” given in Section 9(1) and 14 of Delhi Municipal Corporation Property Tax Bye Laws, 2004 and definition of ‘building’ given in Section 2(3) of Delhi Municipal Corporation Act, 1957 and accordingly, property tax is payable by the appellant in respect of such towers to the extent they fall in the jurisdiction of the appellant Corporation. A demand of Rs.38,81,48,253/- for the period from 1st August, 2007 to 31st March, 2013 was raised by the respondent in respect of the aforesaid towers. The appellant filed a writ petition challenging the very jurisdiction of the respondent to levy property tax in respect of the aforesaid towers and sought quashing of the assessment order dated 2nd February, 2013 and all subsequent proceedings. Since bank accounts of the appellant were attached by the respondent in order to recover Rs.38,81,48,253/-, the amount of property tax demanded by it from the appellant, an application was filed seeking refund of the aforesaid amount. The learned Single Judge vide impugned order dated 8th March, 2013, while issuing notice in the writ petition directed stay of the warrant issued by the respondent subject to the appellant depositing 50% of the tax which has been assessed. He further directed that the respondent will

re-deposit the banker's cheque in the account of the appellant and within three working days thereafter, the appellant will deposit the aforesaid 50% amount with the respondent.

2. In exercise of the powers conferred upon it under Sub-Section (1) of Section 481 read with Section 483 of Delhi Municipal Corporation Act, 1957, as amended by the Delhi Municipal Corporation (Amendment) Act, 2003, Bye Laws called The Delhi Municipal Corporation (Property Taxes) Bye Laws, 2004 were framed by MCD, with the previous approval of Government of NCT of Delhi. Section 9(1) of the aforesaid Byelaws defines towers as under:-

(1) "towers" shall include TV towers, cable towers, telecom towers or any other tower erected on the surface or top or on any other open space of a building;"

The contention of respondent no.1 is that the towers put up by the appellant, come within the purview of the above referred Byelaw. The aforesaid definition appears to have been necessitated on account of Section 14 of the said Byelaws which, to the extent it is relevant provides that the covered space in relation to a building shall, *inter alia*, include TV/Telecom Towers. Byelaw 14, in turn, relates to Section 116E of

MCD Act which prescribes the method of determining the annual value of any covered space in relation to a building and of vacant land.

3. Appearing for the appellant, the learned Attorney General contended that the expression “towers” as defined in Section 9(l) of the aforesaid Byelaws would include only such towers which are erected (1) on the surface of a building or (2) on the top of a building or (3) on any other open space of a building, meaning thereby if a tower has been put up outside a building, it would not be covered in the aforesaid definition. The learned counsel for the respondent, on the other hand, submitted that any tower on the space even if such surface be outside a building would also be included in the aforesaid definition.

Considering that the expression ‘tower’ appears to have been used only in Section 14 of the Byelaws and that section relates only to covered space in a ‘building’, prima facie, we are of the view that the definition given in Section 9 applies only in relation to such towers which are in or upon a ‘building’ and not to the towers, which are outside a building.

4. This was also the contention of the learned Attorney General that since Section 114 of DMC Act provides for levy of property tax only on lands and buildings and the towers laid by the appellant are not

“building” within the meaning of Section 2(3) of DMC Act and the land on which such towers have been laid does not belong to the appellant, no property tax can be levied in respect of such towers even if they come within the purview of Section 9(1) of the Byelaws. We are in agreement that in view of the provisions contained in Section 114 of DMC Act, property tax can be levied only on land or ‘building’, as defined in the said Act, and, therefore, the towers put up by the appellant would attract payment of property tax only if they are found to be ‘building’, within the meaning of Section 2(3) of the Act.

5. The expression “building” has been defined in Section 2(3) of MCD Act which reads as under:-

“Building” means a house, out-house, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or other material but does not include any portable shelter;”

The contention of the learned Attorney General was that the word “structure” in the aforesaid sub-Section should be read *ejusdem generis* with the word “house”, “outhouse”, etc. which precede the word “structure” in the sub-Section, particularly, when the definition given in

the sub-Section is exhaustive and not inclusive. The learned counsel for the respondent No.1, on the other hand, contended that any structure, irrespective of its nature and the purpose for which it is to be used, would be covered under Section 2(3) of the Act. In support of his contention, the learned counsel for the respondent referred to the decision of a Full Bench of this Court in **MCD versus Pradeep Oil Pvt. Ltd.,** AIR (2010) Delhi 119, the decision of a Division Bench in **United Taxi Operators Co-operative (Urban) Thrift & Credit Society Ltd. & Anr. versus Municipal Corporation of Delhi,** 2(1966) DLT 281 (DB) and the decision of a learned Single Judge in **Cellular Operators Association of India & Ors. v. Municipal Corporation of Delhi** 179 (2011) DLT 381.

6. In **United Taxi Operators** (supra), the Municipal Corporation of Delhi was seeking to dismantle a petrol pump located in New Delhi, which ESSO, an oil company, had installed on an underground storage tank, on the ground that it had been built in contravention of Building Byelaws of the Corporation. The contention of the petitioners was that an underground filling station, with structure over the ground was not a building as defined in sub Section (3) of Section 2 of Delhi Municipal Corporation Act and, therefore, MCD had no authority to interfere with

the said structure. Holding the aforesaid structure to be a building as defined in sub Section (3) of Section 2 of the said Act, a Division Bench of this Court was of the view that though the expression “or any other structure, used in the said sub Section if read in isolation was wide enough to include a structure of the type in question, the question will have to be determined on the facts and circumstances of each case and the magnitude of the structure will also have a bearing on the meaning to be attributing to the word ‘building’. The Court, however, rejected the contention that the word ‘erection’ meant raising something from lower level to higher level. The petitioner before the Court contended that since the aforesaid underground tank was not used for human habitation or keeping or living human beings, it could not be termed as “building”. Rejecting the contention, it was held that accepting the said contention would amount to drawing an impossible artificial line which would destroy the very object of the Act since in such a case when a mezzanine underground celler used for storing grains would also be excluded from the purview of the Act, if the grains are drawn with the aid of a suction pump and no human being or animal enters there.

7. In **MCD versus Pradeep Oil Pvt. Ltd.** (supra), the issue before the Full Bench of this Court was whether the oil storage tanks would be building within the meaning of Section 2(3) of the aforesaid Act or not. The petroleum/ oil storage tanks erected by the respondent before this Court, rested on a foundation of sand having a height of more than 2 ft and there was a four inch thick asphalt layer (bituminous pitch) to retain the sand. The steel plats were spread on the asphalt layer and the tanks were put on the steel plates that acted as the bottom of the tanks and the tanks remained in the same position by virtue of their weight. In order to serve as storage for the oil, each tank had a staircase along the side and the tanks were connected with the pump house with the pipes for receiving the oil in the tanks. The Full Bench came to the conclusion that the tank having been permanently erected without being shifted from place to place were building within the meaning of the Act.

The decision of the learned Single Judge in **Cellular Operators Association of India** (supra), deals with levying fee for granting permission for installation of cellular towers on roof tops of building for providing cellular mobile phone services and, therefore, has no application to the case before us.

8. In **M.C. Mehta Vs. Union of India** [(2000) 6 SCC 399], the Supreme Court in the context of the ceiling of the building being used in contravention of building and land use laws, observed that the definition of the expression ‘building’ shows that it is very wide and encompasses any structure only excluding portable shelters.

9. We notice that the underground storage tank in **United Taxi Operators** (*supra*) as well as the storage tanks in **Pradeep Oil Pvt. Ltd.**, (*supra*), were meant for storage of goods, whereas the towers of the appellant are not meant either for living or for storage, but, we are also conscious of the fact that the writ petition filed by the appellant is still pending disposal before the learned Single Judge and, therefore, any firm view taken by us on the question as to whether the towers laid by the appellant constitutes ‘towers’ within the meaning of Section 9(1) of the Building Byelaws and/or “building” within the meaning of Section 2(3) of the Act or not, may influence his decision on the merits of the writ petition. We, therefore, refrain from taking a final view on the aforesaid issues. However, considering the decisions referred earlier by us, it would be difficult for us to outrightly accept the contention of the learned Attorney General which, in our view, requires a thoughtful and serious

consideration, taking into account the nature of the towers put up by the appellant and all the relevant provisions of MCD Act and Property Tax Bye Laws. We, therefore, are of the view that the issue raised by the learned Attorney General should be considered first by the learned Single Judge in the writ petition pending before him. Considering the facts that (i) though an appeal against the order of assessment is provided under Section 169 of DMC Act, but the appellant has not availed the remedy of appeal on account of the condition that such an appeal cannot be entertained without depositing all the taxes with the Corporation, (ii) the learned Single Judge has entertained the writ petition despite availability of the remedy of appeal, and (iii) the amount directed to be deposited by the appellant constitutes only 50% of the impugned demand and (iv) the attachment had already been effected before filing of the writ petition, we are of the view that the interim order passed by the learned Single Judge does not call for any interference by us. We, however, direct that in the event of writ petition being ultimately allowed and the impugned demand being quashed, the aforesaid amount shall be refunded to the appellant forthwith, along with interest on that amount at the rate of 12% per annum. We, however, make it clear that the observations made in this order will not affect the decision of the petition on merits.

10. Considering the importance of the issues involved in this petition and also the fact that such towers have been laid by the appellant not only in the jurisdiction of the respondent Corporation but also at various other places, we would request the learned Single Judge to hear the writ petition on merits and decide the same, as far as possible, within a period of three months from today. The appeal stands disposed of in terms of this direction.



V.K.JAIN, J

CHIEF JUSTICE

MARCH 18, 2013

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