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

\+ LPA 790/2014, CM APPL.20477 & 20479/2014

SOUTH MUNICIPAL CORPORATION OF DELHI ..... Appellant
Through: Mr. Ajjay Aroraa with Mr. Kapil Dutta, Advocates.

versus

GAKKO BUNKA EDUCATION SOCIETY ..... Respondent
Through: Mr. Mohit Kumar Shah, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **22.03.2016**

The issue which the appellant/Corporation urges in this appeal is the correctness of the Single Judge's opinion that the respondent/writ petitioner, a Society promoted to manage the school established for catering to the requirement of Japanese nationals in the Embassy of Japan was entitled to refund towards the excess Floor Area Ratio ("FAR") charges paid by it. The Single Judge accepted the Society's writ petition and directed the refund.

The respondent Society was set up by the Embassy and Government of Japan to manage the day to day affairs of the school which caters to staff and employees working in the Embassy of Japan. The Society entered into a Memorandum of Understanding ("MOU") dated 30.12.2003 which delineated certain responsibilities on it in the task of managing the affairs of the School. In order to obtain clearance for construction, the MCD had required deposit of additional FAR charges which were deposited in accordance with the calculations made at the relevant time. The Society had been issued an income tax exemption certificate on 18.03.2005 and was registered under Section 12A read with 12AA of the Income Tax Act. It also secured exemption under Section 80G of the Act. The Delhi Development Authority ("DDA") which had initially indicated the excess FAR charges, by a Notification dated 17.07.12 stated that no additional FAR charges could be recovered from educational institutions, health care and social welfare societies which possess income tax exemption. The Society, therefore, applied for refund. The appellant/Corporation resisted the demand contending that the Society could not claim the benefit of exemption for various reasons. It was contended that the school was essentially that of the Embassy of Japan and consequently the refund could not have been made.

The learned Single Judge firstly noticed that the Society's responsibility was only for administration of the school and the administration and overall supervision of the additional construction. However, the property was that of the Embassy of Japan. The terms of the MOU clearly defined the scope of the job that the Society had to discharge. The Single Judge noticed that the Principal of the Japanese school rather than the Society had applied for sanction of the building plan - which clearly established that the Society does not own the land - (which appears to have been allotted to the Government of Japan). The Single Judge took note of the fact that tax exemption certificates were on the record and the Society which had paid the amount fell squarely within the terms of the Notification dated 17.07.2012.

It is argued on behalf of the appellant/Corporation that the impugned judgment is erroneous because the differentiation between the Embassy of Japan and the Society was not taken into account. It was highlighted that the ownership of the building and the plot is that of the Japanese Government whereas the Society which is a separate entity claims to have paid the amount. Counsel also endeavoured to submit that when the amounts were deposited, there was no exemption and consequently the later Notification of 17.07.2012 would not have conferred a benefit which never existed in the first place.

This Court is of the opinion that the Corporation's submissions are groundless. That the land for the purpose of constructing the school was allotted to the Embassy of Japan which represents a sovereign nation is not in dispute. There cannot be any dispute that the Government of Japan itself *per se* would not be governed by all provisions of the Income Tax Act or any of the other laws so far as it concerns imposition of taxes. If these are kept in mind, all that was sought was for permission to carry out additional construction. The 17.07.2012 notification is clear in that. All classes of Institutions which are exempt from paying income tax were not required to pay any FAR charges. In the present case, the FAR charges were demanded on 05.03.2013 and undoubtedly paid, i.e., after the issuance of the Notification. Such being the circumstance, there is no merit in the contention that the exemption could not have been a retrospective effect. What is apparent is that the amount was recovered despite the Notification of 17.07.2012 on suspicious and flimsy grounds. The Notification did not differentiate between those classes of Institution which were *per se* exempt (such as the Government of Japan) and the Society that was a beneficiary under the Income Tax Act. In case of either interpretation, both the Embassy of Japan and the writ petitioner Society were entitled to claim exemption and the benefit of Notification. Plainly, the Corporation had no defence despite which it chose to contest the writ petition and is now in an entirely misconceived manner pursuing the present appeal.

For the above reasons, the appeal is dismissed as without merit. The appellant shall pay costs quantified @ Rs.50,000/- (Rupees fifty thousand) to the respondent within four weeks from today. The amount shall also be refunded within the said period.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 22, 2016
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