
(1981) 10 DEL CK 0030

In the Delhi High Court

Case No : Letter Patent Appeal No. 134 of 1977

Visual Builders Private Ltd.

APPELLANT

Vs

Delhi Municipal Corporation and Another

RESPONDENT

Date of Decision : 21-10-1981

Acts Referred:

Citation : (1982) 22 DLT 151

Hon'ble Judges : Rajinder Sachar, J;M.L. Jain, J

Bench : Division Bench

Advocate : D.R. Gupta, R.B. Datar and Lalit Bhardwaj, for the Appellant;

Judgement

Rajindar Sachar, J.

(1) This is an appeal against the judgment of the learned single Judge by which he dismissed the writ petition in which the appellant had challenged the demand of the property tax from it.

(2) An auction was held in Nehru Place with regard to Plot No. 95 on 28/11/1972. The appellant purchased the lease hold rights of the plot for Rs. 16,06,000.00. The appellant admittedly took over possession of the land on 5/03/1973. Thereafter it started construction on the plot and it is now a common case that a building stands on it since 1975. Notice was given to the appellant for assessment of property tax and after hearing his objection the Deputy Assessor & Collector by order dated 20/08/1975 assessed the rateable value at Rs.82,710.00 per annum with effect from 1/04/1974. The appellant, however, did not pay the amount demanded and a notice was issued to him by the Deputy Assessor & Collector on 29/12/1976 demanding a sum of Rs. 61,599.45 on account of arrears for the period ending 31/03/1977. The appellant thereafter filed the writ petition. The ground urged before the learned single Judge was that no lease deed had yet been executed and no conveyance deed had been made in its favor and Therefore, the appellant was not liable to pay any property tax. The learned single Judge found that the appellant was admittedly

inpossession of the land since the auction and it was never its case that it had notbid at the auction or that the D.D.A. had cancelled the auction in its favor.The learned single Judge, Therefore, found that the appellant was liable topay the property tax and he dismissed the writ petition. Hence this appeal.

(3) Before us Mr. Gupta again reiterates that in the absence of anylease deed the appellant is not liable to pay any property tax. Now Section 120 of the Delhi Municipal Corporation Act 1957 deals with the incidents ofproperty taxes and provides in Sub-section (2) that if any land has been letfor a term exceeding one year to a tenant and such tenant has built upon theland, the property taxes assessed in respect of that land and the buildingerrected thereon shall be primarily livable upon the said tenant. Theterms and conditions for sale by auction shows that perpetual lease holdrights were auctioned which were purchased by the appellant. Possession ofthe land was taken by the appellant on 5/03/1973. Plans for buildingwere submitted by the appellant and sanctioned subject to certain terms bythe D.D.A. as per its letter of 26/08/1973. It appears that a perpetuallease deed for being executed was sent to the appellant in 1974 as is clearfrom the letter of 19/09/1974, but the same was being delayed bythe appellant because they were wanting some amendments in the deed. Butit is important to note that in this letter of 19/09/1974 the appellants were at pains to point out that as they had paid full costs of land, thesuggestion of the D.D.A. that if deed is not stamped and returned within 15days it (DDA) will take steps in cancelling the auction was not correct andasking it to direct Dda officers not to pursue action for cancellation. It isimportant to note that the appellant is insisting on the legality and validity ofthe auction and there is no suggestion that auction held by D.D.A. was in anyway illegal. D.D.A. has also never taken the position that the auction whichhad taken place was not authorised. As a matter of fact in the writ petitionalso it was never the case that the auction was not legal or that no rightshave vested in the appellant in pursuance of an auction held by the D.D.A.because of the non-execution of the lease deed or that the ownership rightsin the land still belongs to the Union of India. The only remote referenceMr. Gupta the learned Advocate for the appellant, could point out was in paral4of the writ petition. But that relates to the objection of non-conveyance of land to the appellant. This had no remote connection even withthe suggestion now being put forward that the D.D.A. was not competent tottransfer this land by auction. The legal right of the Dda to dispose o theland in question is not doubted a writ. In our view even though ownershipof the land may remain with the Union of India the appellant ha undoubtedly obtained lease hold rights and even if there is no formal documentthere is no challenge to the rights of the appellant and it is answerable to payproperty tax. Mr. Gupta, however sought to refer to a judgment in VishalBuilders Pvt. Ltd. v. Delhi Development Authority (1977) Del 724, inwhich, while dealing with auction of some other plot in Nehru Place, AvadhBehari, J. has observed that possibly the auction of those plots was not validlydone because the D.D.A. had no authority to do so. The learned Judgerightly refused to apply the observation made in that case and to go on

to hold that the auction in favor of the appellant was illegal and transferred no rights for the simple reason that the said judgment was not a judgment in rem and obviously could not determine the rights of the parties in the present litigation. We must also note that the appellant had never taken the plea that the auction was illegal. In his enthusiasm to urge this point Mr. Gupta, no doubt, not sought to urge that because of judgment of Avadh Behari, J. It is possible to urge that the auction which was held and at which the appellant gave its highest bid was illegal and, Therefore, no liability to pay property tax. We are afraid, this desperate argument which seeks to deny liability to pay property tax on the plea of the appellant being a trespasser and unauthorised occupant would deserve a short shrift of rejection because this court will refuse to exercise its equitable jurisdiction in favor of a person who refuses to give up what he claims is illegal possession and yet will not pay property tax to which he has become liable because of the auction in pursuance of which alone he went in possession of the land. Even now Mr. Gupta is not taking the stand that the appellant is relinquishing or claiming no rights in the land. On the contrary he claims rights not only in the land but in the building constructed on it. But still the appellant has the iniquity that not to pay property tax to which he is undoubtedly liable as a lessee as provided in Section 120(2) of the Delhi Municipal Corporation Act. We are not sure that this plea which is against its own interest is properly taken. But that is his concern. This court cannot countenance such a plea which seems to hold as to what the appellant has, but without carrying on the responsibility which is only consequential of the appellant continuing to hold the land as a lessee. This is apart from the fact that the plea which requires examination of facts had to be taken when the writ petition was filed. It needs facts to be adjudicated. It cannot be sprung up in argument stage in the writ petition or the appeal. Without examining facts of the present case, reliance on Avadh Behari, J's judgment in some other case is of no avail. We are also broadly in agreement with the views expressed by the learned single Judge on other parts.

(4) We would, Therefore, agree with the finding recorded by the learned single Judge dismiss the appeal with costs which shall be assessed at Rs. 500.00.