

CASE NO.:
Appeal (civil) 2766 of 2000

PETITIONER:
M/s K. Raheja Development Corporation

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 05/05/2005

BENCH:
S. N. Variava & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

This Appeal is against the Judgment of the Karnataka High Court dated 19th November, 1999.

Briefly stated the facts are as follows:

The Appellants carry on the business of real estate development and allied contracts. They are having their Office at Bangalore. They enter into development Agreements with owners of lands. Thereafter they get plans sanctioned. After approval of the plans they construct residential apartments and/or commercial complexes. In most cases before they construct the residential apartments and/or commercial complexes they enter into Agreements of Sale with intended purchasers. The Agreements would provide that on completion of the construction the residential apartments or the commercial complex would be handed over to the purchasers who would get an undivided interest in the land also. The owners of the land would then transfer the ownership directly to the society which is being formed under the Karnataka Ownership Flats (Regulation of Promotion of Construction, Sales, Management and Transfer) Act, 1974.

The question which arises for consideration is whether the Appellants are dealers and are liable to pay turnover tax under the Karnataka Sales Tax Act.

The Appellants filed returns showing Nil liability to pay tax on the footing that there was no transfer of any property in goods either by itself or by virtue of any works contract. The Adjudicating Authority did not accept their contention and passed an Assessment Order claiming tax.

Against the Assessment Order, the Appellants went in Appeal to the Additional Joint Commissioner of Commercial Taxes (Appeal). The Additional Joint Commissioner held that tax was payable as there was transfer of property in goods pursuant to a works contract.

Being aggrieved with the Order the Appellants filed an Appeal to the Karnataka Appellant Tribunal. The Appeal was partly allowed. It was held that the turnover could only be computed on the value of goods in the execution of the works contract.

The Appellants filed a Revision Petition to the Karnataka High Court which has been dismissed by the impugned Order. In the impugned Order it has been held that the matter has been examined in detail in the case of M/s. Mittal Investment Corporation vs. The Additional Commissioner of Commercial Taxes, Zone-I, Bangalore in S.T.A. Nos. 35 to 38 of 1998 decided on 24th September, 1999. On the principles laid down in that Judgment the Petition stood disposed off.

After the Appellants got leave in this Appeal a Review Application

was made in Mittal Investment Corporation's case (supra). Some clarifications have been issued by an Order dated 11th February, 2000.

Mr. Mehta submitted that as the Judgment in Mittal Investment Corporation's case has been reviewed this matter should also be sent back to the High Court. However, on a question from the Court, whether the Appellants were accepting the principles laid down in Mittal Investment Corporation's case the answer was that the Appellants wanted to agitate all the grounds including the ground that there was no works contract. Such a contention would stand concluded by the High Court Judgment in Mittal Investment Corporation's case even after the Order passed in the Review Application. No purpose would therefore be served in remitting the matter back to the High Court. Mr. Mehta was therefore asked to proceed in this Court itself.

Mr. Mehta drew the attention of this Court to relevant provisions of the Karnataka Sales Tax Act [hereinafter called the said Act].

Section 2(1)(k)(viii) defines a "dealer" as follows:

"2(1)(k) "dealer" means any person who carries on the business of buying, selling or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes \026

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(viii) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

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xxx"

Thus a person engaged in the business of transfer of property in goods, whether as goods or in some other form, involved in execution of a works contract would be a dealer.

Section 2(1)(u1) defines the words "taxable turnover" as under:

"2(1)(u1) "taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India."

Section 2(1) (v-i) is relevant. It defines a "works contract" as follows:

"2(1)(v-i) "works contract" includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any moveable or immovable property."

It is thus to be seen that under the Karnataka Sales Tax Act the definition of the words "works contract" is very wide. It is not restricted to a "works contract" as commonly understood, i.e., a contract to do some work on behalf of somebody else. It also includes "any agreement for carrying out either for cash or for deferred payment or for any other valuable consideration, the building and construction of any moveable and immovable property" (emphasis supplied). The definition would therefore take within its ambit any type of agreement wherein construction of a building takes place either for

cash or deferred payment, or valuable consideration. To be also noted that the definition does not lay down that the construction must be on behalf of an owner of the property or that the construction cannot be by the owner of the property. Thus even if an owner of property enters into an agreement to construct for cash, deferred payment or valuable consideration a building or flats on behalf of anybody else it would be a works contract within the meaning of the term as used under the said Act.

Section 5B provides for levy of tax on transfer of property in goods, whether as goods or in some other form, in the execution of the works contract. It reads as follows:

"5B. Levy of tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts.

Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (3C) of Section 5, but subject to sub-section (4), (5) or (6) of the said section, every dealer shall pay for each year, a tax under this Act on his taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract mentioned in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (3) of the said Schedule."

Mr. Mehta submitted that by virtue of the Agreement entered into by the Appellants with the owner of the property the Appellants became owners of the property even though a formal conveyance in their favour had not been executed. He took this Court through various provisions of the Agreement entered into by the Appellants with the owner of the property. He submitted that under such Agreements almost the entire consideration amount is paid to the owners and possession of the property is handed over to the Appellants. He submitted that by virtue of the principles laid down in Section 53A of the Transfer of Property Act the Appellants were the owners of the property. In support of this submission, he relied upon the Judgments of this Court in the cases of C.I.T. vs. Podar Cement Ltd. reported in (1992) 5 SCC 482 and Mysore Minerals Ltd. vs. C.I.T. reported in (1999) 7 SCC 106. In these cases, in the context of the Income Tax Act, it has been held that even though there is no formal conveyance the concerned party could be considered to be the beneficial owner. Mr. Mehta submitted that an owner cannot be said to carrying on a works contract on behalf of others.

Mr. Mehta next submitted that in any event the Appellants did not undertake any works contract for and on behalf of the intended purchasers. He submitted that the Appellants were themselves developing the property and selling flats or commercial complexes in that property. He submitted that in such type of activities no works contract was involved. Mr. Mehta submitted that in the Agreements with the intended purchasers there was a clause which provides that if all payments are not made then amounts paid can be forfeited and the agreement rescinded. He submitted that a person carrying out a works contract would have no right to forfeit or rescind the contract itself. He submitted that such a clause indicates that the Agreements are not agreements to carry out a works contract.

On the other hand, Mr. Hegde submitted that the definition of a 'works contract' in the said Act is an inclusive definition which is very wide. He submitted that any agreement wherein party has agreed to construct or build for cash, deferred payment or other valuable consideration would be covered by the definition of the term 'works contract' as used in the said Act. In support of his submission he relied upon the Agreements entered into by the Appellants with the various purchasers and submitted that these Agreements indicate that the Appellants are undertaking the construction of the building and the flats for and on behalf of the purchasers and that the same is for

valuable consideration to be paid in a differed manner. He submitted that except to the extent that the Appellants retain certain commercial premises or flats for themselves, the work carried out pursuant to such Agreements would amount to a 'works contract'. He submitted that the Appellants are liable to pay turnover tax on the transfer of property in goods involved in such works contract.

We have heard the parties, perused the various documents and considered the cases cited at the bar. As has been rightly submitted by Mr. Hegde the definition of the term 'works contract' in the said Act is an inclusive definition. It does not include merely a works contract as normally understood. It is a wide definition which includes "any agreement" for carrying out building or construction activity for cash, deferred payment or other valuable consideration. The definition does not make a distinction based on who carries on the construction activity. Thus even an owner of the property may also be said to be carrying on a works contract if he enters into an agreement to construct for cash, deferred payment or other valuable consideration. We, therefore, do not need to go into the question whether the Appellants are owners as even if the Appellants are owners to the extent that they have entered into Agreements to carry out construction activity on behalf of somebody else for cash, deferred payment or other valuable consideration, they would be carrying out a works contract and would become liable to pay turnover tax on the transfer of property in the goods involved in such works contract. Further under the said Act there is no distinction between construction of residential flats or commercial units. Thus, a works contract, within the meaning of the term in the said Act, can also be for construction of commercial units. For the purposes of considering whether an agreement amounts to a works contract or not, the provisions of the Karnataka Ownership Flats (Regulation of Promotion of Construction, Sales, Management and Transfer) Act, 1974 will have no relevance.

However as Mr. Mehta has argued on this aspect we record that reliance of the Judgments in Podar Cement Ltd. and Mysore Minerals Ltd. cases (supra) are of no assistance to the Appellants. Those are cases under the Income Tax Act. Those cases lay down that the term 'owner' must be given an interpretation in the context of the provisions of the Act. If that rational was to be applied then in the context of the Karnataka Sales Tax Act, the Appellants would not be owners as admittedly they do not have any registered sale-deeds in their hand. The Agreement relied upon by Mr. Mehta between the Appellants and the owners of the land is nothing but a development Agreement. Pursuant to such an Agreement, plan would be get sanctioned in the name of the owner of the property. It would be the owner of the property who would then execute a conveyance directly to the society of purchasers. All that the Appellants have is a possessory interest and a right to construct. Such rights do not constitute the person an owner of the property.

To consider whether the Appellants are executing works contract one needs to look at a typical Agreement entered into with the purchaser. The relevant clauses are clause (q), (r) of the recitals and clauses 1, 5(c) and 7, which read as follows:

"q) i) Construction of the said multi-storeyed building;

ii) Sale of the units in the aforesaid multistoreyed building to different persons in whose favour ultimately a Deed of Conveyance would be obtained by the Holders, directly from the Vendors, of an undivided fractional interest in the said land (i.e. the area of 5910.17 sq. metres described in the First Schedule hereunder written) and such owner of units would own, on ownership basis, the respective units on condition that an Agreement would be entered into between the Holders on the one hand and the persons

(desiring to acquire on ownership basis an unit in such multi-storeyed building) on the other hand and it would be an essential, integral and basic concept, term and condition of the proposed transaction (which would be by way of a package deal not capable of being segregated or separated or terminated one without the corresponding effect on the other) that K. Raheja Development Corporation as the Land-holder would agree to sell to such persons an undivided fractional interest in the said land described in the First Schedule hereunder written on condition that they i.e. M/s K. Raheja Development Corporation as Developers on behalf of and as Developers of such person would construct for, as a unit ultimately to belong to such person a unit or units that would be so mutually selected and settled by and between K. Raheja Development Corporation and the person concerned;

[emphasis supplied]

r) The Prospective Purchaser is interested in acquiring ownership rights in respect of unit/s Nos. 1101 on the eleventh floor/s of the said multi-storeyed building named 'Raheja Towers' and also car parking space/s No./s nil in the basement/ground floor of the said building (hereinafter referred to as 'the said Unit')"

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1. As and by way of a package deal :

a) K. Raheja Development Corporation, (as Holders) agree to sell to the Prospective Purchaser an undivided 0.42% share, right, title and interest in the said land described in the First Schedule hereunder written (with no right to the Prospective Purchaser to claim any separate sub-division and/or right to exclusive possession of any portion of the said land) for a lump sum agreed and quantified consideration of Rs.3,25,000/- (Rupees three lacs twenty five thousand only) to be paid by the Prospective Purchaser to the Holders at the time and in the manner stated in Clause 2 hereof;

b) K. Raheja Development Corporation, (as Developers) agree to build the said building named 'Raheja Towers', having the specifications and amenities therein set out in the Second Schedule hereunder written and as Developers for the prospective Purchaser, the Developers shall build for and as unit/s to belong to the Prospective Purchaser, the said premises (details whereof are set out in the Third Schedule hereunder written) for a lump sum agreed and quantified consideration of Rs. 5,07,000/- (Rupees five lacs seven thousand only) to be paid by the Prospective Purchaser to the Developers at the time and in the manner set out in Clause 3 hereof. The said premises shall have the amenities set out in the Fourth

Schedule hereunder written.

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5. The undermentioned terms and provisions are express conditions to be observed, performed and fulfilled by the Prospective Purchaser, on the basis of which this Agreement has been entered into by the Holders/Developers and the due and proper fulfillment whereof are to be conditions precedent to any title being created and / or being capable of being documented by the Prospective Purchaser in the aforesaid fractional interest in the land described in the First Schedule hereunder written and/or in the said premises:

- a)
- b)
- c) The overall control and management of the project and the development and completion of the said building shall be with the Developers and furthermore the Developers are and shall continue to be in possession of the said land and building and shall be entitled to a lien thereon and that the Prospective Purchaser shall not be entitled to claim or demand from the Holders possession of any portion of the said land or to claim or demand from the Developers possession of the said premises unless and until the Prospective Purchaser has paid in full through the Holders the full consideration money payable to the Holders under Clause 2 above and the full consideration money payable to the Developers under Clause 3 above.
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7. If the Prospective Purchaser commits default in payment of any of the instalments of consideration aforesaid on their respective due dates (time being the essence of the contract) and/or in observing and performing any of the terms and conditions of this Agreement, the Holders/Developers shall be at liberty, after giving 15 days notice specifying the breach and if the same remains not rectified within that time, to terminate this Agreement, in which event, a sum equivalent to 10% of the amounts that may till then have been paid by the Prospective Purchaser to the Holders and the Developers respectively shall stand forfeited. The Holders and the Developers shall, however, on such termination, refund to the Prospective Purchaser the balance amounts of the instalments of part payment, if any, which may have till then been paid by the Prospective Purchaser to the Holders and the Developers respectively but without any further amount by way of interest or otherwise. On the Holder/Developers terminating this Agreement under this Clause, they shall be at liberty to dispose off the said Unit/s and the said fractional

interest in the land to any other person as they deem fit, at such price as they may determine and the Prospective Purchaser shall not be entitled to question such sale, disposal or to claim any amount from them."

Thus the Appellants are undertaking to build as developers for the prospective purchaser. Such construction/development is to be on payment of a price in various instalments set out in the Agreement. As the Appellants are not the owners they claim a "lien" on the property. Of course, under clause 7 they have right to terminate the Agreement and to dispose off the unit if a breach is committed by the purchaser. However, merely having such a clause does not mean that the agreement ceases to be a works contract within the meaning of the term in the said Act. All that this means is that if there is a termination and that particular unit is not resold but retained by the Appellants, there would be no works contract to that extent. But so long as there is no termination the construction is for and on behalf of purchaser. Therefore, it remains a works contract within the meaning of the term as defined under the said Act. It must be clarified that if the agreement is entered into after the flat or unit is already constructed, then there would be no works contract. But so long as the agreement is entered into before the construction is complete it would be a works contract.

In this view of the matter, the Judgment of the High Court to the extent that it confirms with the above-mentioned view stands confirmed. We do not approve the observations in Mittal Investment Corporation's case (supra) which are contrary to the view expressed above. As on the main aspects we agree with the High Court Judgment, we see no reason to interfere.

The Appeal stands dismissed. There will be no order as to costs.