

CASE NO.:
Appeal (civil) 5043 of 2001

PETITIONER:
Indian Red Cross Society

RESPONDENT:
New Delhi Municipal Committee & Ors.

DATE OF JUDGMENT: 28/04/2003

BENCH:
Ruma Pal & B.N. Srikrishna.

JUDGMENT:

J U D G M E N T

RUMA PAL, J.

The appellant-Society is a charitable organisation. In 1930, it was granted a permanent lease of premises No. 1, Red Cross Road, New Delhi. Between 1975-77 the appellant constructed a building on the premises. The building consists of a basement, ground floor and five floors above the ground floor. A portion of the building is used by the appellant for the purposes of its Headquarters and its various offices which include a Blood Bank, St. John's Ambulance Brigade, Maternity and Child Welfare Bureau and also the Hindkusht Nivaran Sangh. The balance portion of the building is rented out by the appellant. It is the appellant's case that the rent is utilised wholly for charitable purposes. The appellant has claimed exemption from payment of house tax in respect of the building for the years 1977-78 to the present day.

Prior to 1994, house tax in respect of properties in Delhi was imposed under the Punjab Municipal Act, 1911. The Punjab Act was repealed by the New Delhi Municipal Council Act, 1994 (briefly the NDMC Act) as far as New Delhi is concerned with effect from the day that the respondent No. 1 Council was established under Section 3 read with Section 416(1) of the latter Act. According to the appellant, it had, till that time, paid some amounts of money towards the demands raised by the respondent No.1 on account of property tax and had also applied to the respondents for grant of exemption. According to the appellants, there was no response to the appellant's representation. The appellant filed a Writ Petition before the High Court at Delhi specifically impugning two bills raised by the Municipal Corporation dated 20.7.90 and 31.5.91 which were for the sums of Rs.69,14,792.71 and Rs.6,13,492 respectively. Interim protection was given to the appellant No.1 by the High Court and the demands were stayed. The appellant then filed eight more writ petitions before the High Court questioning the subsequent demands on account of property tax raised by the respondent No. 1 in respect of the appellant's building. The writ petitions were heard and disposed of by the High Court by directing the appellant to make a fresh representation to the Director (Tax) of the respondent No.1 who was required to consider and dispose of the same. Liberty was also granted to the appellant to re-agitate the grounds on which the writ petitions were filed in the event the decision of the Director (Tax) went against the appellant.

The appellant made a representation pursuant to the order of the High Court. This was disposed of on 26.2.2001 by the Assistant Secretary (Tax). The Assistant Secretary noted that he was examining the claim for exemption only for the period 1991-92 to 2000-2001. The position under the Punjab Municipal Act, 1911 was examined and it was found that the appellant had filed an application claiming exemption under that Act only in respect of the self-occupied portion of the building. The Municipal Committee which was the competent authority under Section 70 of the Punjab Act had resolved to grant exemption from payment of property tax under the Punjab Act in respect of the self-occupied portion of the building. The resolution of the Committee was approved by the State Government. The exemption was granted upto the year 1990-91. The order also stated that there was no application for exemption by the appellant for 1991-92 to 1993-94 as such no resolutions had been taken by the Committee.

The Assistant Secretary then considered Sections 60, 61 and 62 of the NDMC Act, 1994 and noted that exemption could be granted, if at all, under the provisions of the NDMC Act in respect of that portion of the building occupied by the appellant and used for charitable purposes. Although the Assistant Secretary was of the view that even the portion occupied by the appellant did not qualify for exemption as the premises were not used exclusively for charitable purposes, nevertheless as the Committee under the Punjab Act had given exemption to the self-occupied portion treating the same as used for charitable purposes, "the same intention is allowed to continue". With respect to the appellant's claim for exemption in respect of the rented portion of the premises, the Assistant Secretary was of the view that it was not permissible under Section 62(2) of the NDMC Act. It was said that "the user of the income from the building is wholly irrelevant for the purposes of grant to a building". The claim of the society was rejected because it was said that to accede to the claim would have far reaching consequences. It was said that "although the income may get exemption in income tax but in the Municipal Act, there is no such concept of granting exemption to the property just because that income is being utilised for charitable purposes". Decisions of the Delhi High Court and of this Court were considered in coming to the conclusion that no exemption for the portion in occupation of the tenants is available as the portions were not used for charitable purposes. An apprehension was expressed that if the interpretation sought to be placed by the appellant-society were accepted, then any society could claim exemption on the ground that rental income would be used for charitable purposes. This, according to the Assistant Secretary, was not the intention of the legislature. Accordingly it was held that no exemption could be granted under Section 62(1)(a) read with Section 62(2) in respect of the portion of the building which had been rented out by the appellant. However, exemption was to be allowed for the self-occupied portion if the appellant continued to be supported through voluntary contributions and did not generate surpluses year after year. On the basis of the statements made to this effect by the appellant, the Assistant Secretary granted exemption for the self-occupied portions for the period 1991-92 to 2000-2001. It was also stated that the society would have to claim exemption every year and satisfy the conditions required for exemption every year.

The appellant then filed an application for reviving the writ petitions which had been disposed of earlier by the High Court. Although this application was allowed by the High Court, the writ petitions were dismissed with the observation that the appellant was at liberty to discharge its liability to the

respondent No.1 by instalments. The appellant has preferred this appeal by way of a Special Leave Petition.

The appellant relied on the decision of this Court in *Municipal Corporation of Delhi v. Children Book Trust* 1992

(3) SCC 390 to contend that since it is a charitable organisation and the entire building is used for charitable purposes, it is not liable to pay property tax under Section 62 of the NDMC Act, 1994 in respect of the entire building including the rented portion at all. In the alternative it has been submitted that if the appellant is liable to pay property tax, the power to grant exemption had not been properly exercised by the respondent No.1 under the provisions of Section 124 read with section 72 (e) of the NDMC Act.

Learned counsel appearing for the respondents contended that Section 62 of the NDMC Act explicitly made buildings which were not self-occupied by a charitable organisation, subject to house tax. It was further submitted that the decision relied upon by the appellant was not applicable to the appellant's case. As far as the alternative submission of the appellant is concerned, it is the respondents' contention that there was no power under the NDMC Act to grant exemption in an individual case. Exemption could only be granted to a class of similarly situated bodies or persons.

The appellant has in the meanwhile cleared all the outstanding demands of the respondent No. 1 and continued to apply for exemption from payment of property tax in respect of the entire building. Two of the applications dated 17th May 2001 and 20th August 2001 have been brought on record. An order passed by the Advisor (Revenue) of the NDMC dated 22nd March 2002 limited to the question of fixation of the rateable value of the rented portion for the purposes of house tax has also been brought on record. The order records that the self-occupied portion of the building has been exempted from payment of property tax. However, it is clear from the body of the order that it was not passed in response to the appellant's application for grant of exemption to the appellant under the provisions either of the Punjab Act or the NDMC Act. Under the Punjab Act, the tax on all property was imposed under Section 61. The statute itself did not allow for any specific exemption in respect of any class of property and left it to the discretion of the Committee or the State Government to grant exemption in the circumstances prescribed. The "Committee" has been defined in Section 3(4) as the Municipal Council or a Nagar Panchayat, as the case may be, constituted under Section 12 of the Act. Section 70 of the Punjab Act provided for the 'Power of the Committee in regard to taxes'. Sub-section (2) of Section 70 provided: "A Committee, by a resolution passed at a special meeting and confirmed by the State Government, may

(a) provide that all or any persons may be allowed to compound for taxes imposed under sub-clauses (c), (d) and (e) of clause (1) and under clauses (2) and (3) of section 61:

(b) abolish, suspend or reduce in amount any tax imposed under the foregoing sections; or

(c) exempt in whole or in part from the payment of any such tax, any person or class of persons or any

property or description of property."

Apart from the power of the Committee under the aforesaid provisions, the State Government was given power under Section 71 by order to :
"exempt in whole or in part from the payment of any such tax any person or class of persons or any property description of property.

If at any time it appears to the State Government on complaint made or otherwise, that any tax imposed under the foregoing sections is unfair in its incidence or that the levy thereof or of any part thereof is injurious to the interests of the general public, it may require the committee to take within a specified period measures to remove the objection: and, if within that period the requirement is not complied with to the satisfaction of the State Government the State Government may by notification suspend the levy of the tax or of such part thereof until the objection has been removed."

As far as the NDMC Act is concerned, property tax is leviable on lands and buildings in New Delhi under Section 60(1)(a) read with Section 61(1). Section 62 which has been construed in the impugned order by the Assistant Secretary, is quoted:

"62(1) Save as otherwise provided in this Act, the property tax shall be levied in respect of all lands and buildings in New Delhi except : -

(a) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by a society or body for a charitable purpose:

Provided that such society or body is supported wholly or in part by voluntary contributions, applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members.

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

(b) lands and buildings vested in the Council, in respect of which the said tax, if levied, would under the provisions of this Act be leviable primarily on the Council;

(c) agricultural lands and buildings (other than dwelling houses).

(2) Lands and buildings or portion thereof shall not be deemed to be exclusively occupied and used for public worship or for a charitable purpose within the meaning of clause (a) of sub-section (1) if any trade or business is carried on in such lands and buildings or portion thereof or if in respect of such lands and buildings or portions thereof, any rent is derived.

(3) Where any portion of any land or building is exempt from the property tax by reason of its being exclusively occupied and used for public worship or for a charitable purpose such portion shall be deemed to be a separate property for the purpose of municipal taxation."

If one analyses the relevant clauses of Section 62(1), lands and buildings or portions of lands and buildings are exempt from property tax if they are:

- (i) exclusively occupied by a society or body for a charitable purpose;
- (ii) such society or body is supported wholly or in part by voluntary contributions;
- (iii) the said society applies its profits, if any or other income in promoting its objects and does not pay any dividend or bonus to its members,

It is clear that under Section 62(1) of the NDMC Act, if the appellant-society fulfils these three conditions it is entitled as a matter of right to be exempted from payment of property tax. Where the Assistant Secretary erred, was in treating the right to exemption in respect of the self-occupied portions of the appellant's building as a matter of discretion. It is not. It is a matter of right provided of course of the conditions laid down in Section 62(1) are fulfilled by the society. Sub-section (2) of Section 62, however, carves out two exceptions to this exemption, namely if (a) any trade is carried out in such lands and buildings, or (b) in respect of any portion of such land or building or portion thereof any rent is derived. In such a case, under sub-section (3), the portion of the land or building exclusively occupied and used for charitable purposes under Section 62(1) and the portion, which is excepted under sub-section (2) are deemed to be separate properties for the purpose of municipal taxation. Thus the statutory exemption under Section 62(1) is not available to the society if the building is not self-occupied but is rented out. The section does not make any allowance even if the rental income is used for charitable purposes. The phrase 'for a charitable purpose' only qualifies self occupation under Section 62(1)(a). The appellant's claim for the benefit of such statutory exemption under Section 62 of the Act in respect of the rented portion of the building is, therefore, untenable and the Assistant Secretary had rightly rejected it.

The appellant's reliance on the decision of this Court in *Municipal Corporation of Delhi V. Children Book Trust and Anr.* (supra) is misplaced although in that decision, this Court had construed Section 115(4) (5) and (6) of the Delhi Municipal Corporation Act, 1957 which are verbatim the same as Sections 62(1), (2) and (3) of the NDMC Act. There the Court had disposed of two appeals. The first appeal was filed by the Corporation against the Children Book Trust and the second

was by the Safdarjung Enclave Education Society against the Corporation. As far as the appeal filed by the Children Book Trust was concerned, a portion of the premises occupied by the Trust was rented out to a Press. The Municipal Corporation had sought to levy property tax under the Delhi Municipal Corporation Act, 1957 in respect of the entire premises. The Trust filed a writ petition claiming total exemption from payment of property tax under Section 115 (4) of the 1957 Act before the High Court at Delhi. The writ petition was allowed by the learned Single Judge who held that the Trust was entitled to claim total exemption from payment of tax under Section 115(4) of the 1957 Act except in respect of that portion which was rented out. However, the learned Judge held that even from the rental value, the Trust was entitled to claim exemption in the proportion of the income accruing to it from the publication of children's book which was held to be a charitable purpose. The Division Bench partly allowed the Municipal Corporation's appeal holding that in view of the mandatory provisions of Section 115(4) of the New Delhi Corporation Act, exemption from the payment of property tax could not be allowed in respect of the area which was rented out or not occupied by the Trust itself for charitable purposes within the meaning of the 1957 Act. The further appeal of the Municipal Corporation before this Court was dismissed. It is to be noted that the Court was only considering the Municipal Corporation's appeal in respect of the portion of the premises which had not been rented out by the Trust. As far as the rented portion was concerned, the Court noted "Admittedly, no exemption could be claimed concerning this portion. It is the other portions which are otherwise relevant for the purpose of this case".

In the appeal of the Education Society, the Education Society claimed an exemption in respect of premises owned by it where a school was being run. The Society had filed a writ petition challenging an assessment order of the Municipal Corporation. The writ petition was dismissed by the High Court. The Education Society then preferred an appeal before this Court. The contention which was raised before this Court was that the Society was running the school which was in occupation of the premises and that the giving of education was a charitable purpose and, therefore, the society was entitled to exemption under the provisions of Section 115(4) of the Act. This Court held that the Society could not be said to be occupying the building. "The School being a separate entity, premises occupied by the school will belong to it and not to the society. Therefore, the society cannot claim to be in exclusive occupation and use of the land and building in question." It was also held that although the imparting of education may be a charitable purpose, the Society would have to further show that education was the primary objective and not the making of profit. It was also held that unless the society was supported wholly or substantially by voluntary contributions, in view of the proviso to Section 115(4)(a), [Section 62(1)(a) of the NDMC Act] exemption from payment of property tax could not be claimed. None of these findings are relevant for our present purpose. There is no dispute that the appellant-Society before us exclusively occupies a portion of the premises for a charitable purpose and otherwise fulfils the conditions required for exemption from property tax in respect of such portion. We are, in this appeal, unlike in the appeals in the Children Book Trust, only concerned with the balance portion of the building which has been rented out by the appellant. It is true that this Court in Children Book Trust made an observation that: ".if the profits or income of trade or business is devoted to a charitable purpose and no part thereof is

distributed among the members as dividends or bonus, then that trade or business is a means to an end. It is charity.

But, if there is a trade or business carried on in a land or building and its profits are not applied to a charitable purpose, sub-section (6) says that that part of the land or building where a trade or business is carried on or from which rent is derived, will be subject to tax."

However, these observations were made in the context of Section 115(4) [Section 62(1) of the NDMC Act] which envisages societies occupying the subject premises, making profit or deriving income. The proviso to sub-Section 4, clause (a) requires such profits or income to be utilised in promoting the objects of the society and not to be paid by way of dividend or bonus to the members of the society. It was in that connection that the Court made the observation quoted above. The observation would not be relevant to a situation where property is not in occupation of the Society at all but is rented out.

Coming to the alternative case of the appellant viz., the grant of exemption in respect of the tax leviable on the rented portions, although, the Assistant Secretary did not have any other option but to consider the appellant's claim for exemption in view of the direction of the High Court, no discretion is conferred under Section 62 of the NDMC Act on the Assistant Secretary for granting any exemption to the assessee from any portion of the taxes leviable except to the extent the statute itself provides.

Section 72(1)(e) on which the appellant has relied provides:

"72(1) The chairperson may, at any time, amend the assessment list

(e) by making or cancelling any entry exempting any land or building from liability to property tax; "

This section also does not confer any discretion on the Chairperson to exempt any property from payment of tax. All that it does is to empower the Chairperson to give effect to any exemption otherwise granted, by amending the Assessment List. The power and discretion to grant exemption under the NDMC Act has been conferred on the Council under Section 124.

Section 124 provides:

"The Council may, by resolution passed in this behalf, exempt either wholly or in part from the payment of any tax levied under this Act, any class of persons or any class of property or goods."

The respondents are correct in their submission that under Section 124, as far as the present controversy is concerned, the Council's power must be exercised, if at all, in favour of a class of persons or a class of property. This power may be contrasted with the Punjab Municipal Act where exemption may have been allowed, even in respect of an individual by the Committee under Section 70(2)(c) and the State Government under Section 71.

Therefore, while dismissing the appellant's appeal in so

far as it has claimed statutory exemption under Section 62 in respect of the rented portion of the building, we grant the liberty to the appellant-Society to apply to the Council for exemption from payment of taxes leviable in respect of the rented portion. It would be open to the Council to resolve under the provisions of Section 124 to exempt all persons who are similarly situated as the appellant-society on the application of the appellant. The Council will dispose of the appellant's representation after giving the appellants an opportunity of being heard.

There will be no order as to costs.

JUDIS