Pradeep Oil Corporation vs Municipal Corporation Of Delhi & Anr on 6 April, 2011

Equivalent citations: AIR 2011 SUPREME COURT 1869, 2011 (5) SCC 270, 2011 AIR SCW 2534, 2011 (2) AIR KANT HCR 834, AIR 2011 SC (CIVIL) 1151, (2011) 4 CIVILCOURTC 791, (2011) 2 LANDLR 641, (2011) 4 SCALE 422, (2012) 113 CUT LT 335, (2012) 186 DLT 1, (2011) 5 MAD LW 57, (2011) 2 RENCR 285, (2011) 2 ALL RENTCAS 617, (2011) 4 CAL HN 1, (2011) 1 CLR 1013 (SC), (2011) 86 ALL LR 703, (2011) 5 MAD LJ 193, (2011) 102 ALLINDCAS 181 (SC), 2011 (2) KLT SN 95 (SC), 2011 (3) KCCR SN 298 (SC)

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Bench: Anil R. Dave, Mukundakam Sharma

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6546-6552 OF 2003

PRADEEP OIL CORPORATION ....Appellant

Versus

MUNICIPAL CORPORATION OF DELHI AND ANR ....Respondents

JUDGMENT

Dr. Mukundakam Sharma, J.

1. Whether an agreement for erection of oil storage tank together with pump house, chowkidar cabins, switch room, residential rooms and verandah for storing oil decanted from the railway tankers, which bring petroleum products to the site at which they are decanted, would amount to lease or license, is one of the several questions which falls for consideration in these appeals, which has arisen out of a Full Bench decision rendered by the High Court of Delhi at New Delhi while disposing a batch of petitions bearing Nos. LPA 53, 54, 55, 57 and 58/1987.

2. Before dwelling into the question of law involved hereinabove and in order to appreciate the contentions raised by the parties hereto, we may notice few basic fact which has resulted into filing of these appeals.

3. The appellant herein had been granted under the Government Grant Act separate and distinct licenses by the President of India acting through Superintendent of Northern Railway, Delhi for the purpose of maintaining depot for storage of petroleum products at a yearly license fee of Rs. 20,640/-

and Rs. 31,000/- per annum respectively.

4. Under the aforesaid grant, the appellant had been given the right to erect/construct `petroleum installation buildings' consisting of petroleum tanks, buildings and other conveniences for receiving and storing therein petroleum in bulk, and consequently possession of land has been given.

5. Consequent to the said agreement the administration granted `exclusive possession' of the said land to the appellant who entered the land for the purpose and the terms mentioned therein in the aforesaid agreement/grant. Consequently, the appellant submitted layout building plans for the construction of the oil depot and the standing committee of the Municipal Corporation of Delhi (in short "MCD") approved the layout plan for the construction of 10 oil storage tanks of petroleum products.

6. Subsequent to that the appellant raised various constructions comprising of an administration block etc. along with huge petroleum storage tanks for storing petroleum products. A boundary wall around the installations and the administrative block was also constructed. The nature of the construction which is stated to be wide range and extensive user, is more than 40 years old now.

7. The respondent MCD vide its Order dated 17.08.1984 passed an assessment order with regard to the property tax qua the aforesaid property and confirmed the rateable value proposed by it. The said assessment order was challenged by the appellant before the appellate Court/MCD Tribunal which vide its Order dated 12.7.1985 set aside the assessment order passed by the respondent MCD and held that the appellant is only a licensee in the property and is not a tenant, therefore, no property tax can be levied on the appellant under Section 20(2) of the Delhi Municipal Corporation Act, 1957 (in short "MCD Act"). Aggrieved by the aforesaid order of the appellate Court, the respondent MCD filed a writ petition. However, the said writ petition was dismissed by the Ld.

Single Judge of the Delhi High Court on 05.08.1986 holding that the petroleum storage tanks do not fall within the definition of building under the MCD Act. It was further held by the Ld. Single Judge that the grant in favour of the petitioner was a license and hence the petitioner is not liable for the payment of any property tax in respect of the land or the petroleum storage tanks. Challenging the aforesaid order of Ld. Single Judge, an LPA was filed and subsequently, the same was referred to a Full Bench of High Court. The Full Bench of the High Court vide its impugned judgment and order dated 17.09.2002 held that the petroleum storage tanks are a building and the petitioner was a lessee and not a licensee in the property in question.

8. It was forcefully argued before us by the learned counsel appearing for the appellant that no property tax is payable qua the property in question under the provisions of section 119 of the DMC Act read with Article 285 of the Constitution of India, as the property in question is a government property. It was further contended that the incidence to pay property tax qua the petroleum installations including the tanks cannot fall upon the appellant under section 120(2) of the DMC Act because the appellant is a mere licencee of government land having permission to construct and consequently having constructed thereupon is neither a tenant nor a lessee and the agreement in question does not create any leasehold right or tenancy in the favour of the appellant. In other words, the submission was that the agreement in question is a licence deed. It was further contended that the petroleum storage tanks/depots are not "buildings" and therefore not subject to property tax. It was also argued that the petroleum storage tanks/depots being plant and machinery are liable to be exempted under the provisions of section 116(3) of the DMC Act.

9. On the other hand, the learned counsel appearing for the respondent MCD submitted that the indentures in question are indeed a lease and not a licence. It was argued that the question as to whether such an oil storage tank would be building or not is no longer res integra in view of judgment of the Supreme Court in the case of Municipal Corporation of Greater Bombay v. Indian Oil Corporation, AIR 1991 SC 686. It has been further contended that that the question as to whether the indentures in question constitute lease or license so as to attract the provisions of Section 120 of the MCD Act would depend upon the construction thereof. It was urged that having regard to the nature of the interest conveyed, it would be erroneous to construe the instrument as a license as the land having been used for the purpose of construction of a building, the object thereof being clear, it could not have been construed to be a license and must be construed to be a lease.

It was further argued that it is not a case where it could be said that no interest in the land had been created by reason of the instruments in question.

10. Before addressing the rival contentions, it would be useful to reiterate few relevant provisions of the MCD Act.

> "2(3) "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".

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "2(24). "land" includes benefits to arise out of land, things attached to the each or permanently fastened to anything attached to the earth and rights created by law over any street:

> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "119. Taxation of Union properties.--(1) Notwithstanding anything contained in the foregoing provisions of this chapter, lands and buildings being properties of the union shall be exempt from the property taxes specified in Section 114:
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> Provided that nothing in this sub-section shall prevent the Corporation from levying any of the said taxes on such lands and buildings to which immediately before the 26th January, 1950 they were liable or treated as liable so long as that tax continues to be levied by the Corporation on other lands and buildings.
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> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "120(2). If any land has been let for a term exceeding one year to a tenant and such tenant has built upon the land, the property taxes assessed in respect of that land and the building erected thereon shall be primarily livable upon the said tenant, whether the land and building are in the occupation of such tenant or a sub- tenant of such tenant.
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> xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx "123. Property taxes a first charge on premises on which they are assessed.--Property taxes due under this Act in respect of any land or building shall, subject to the prior payment of the land revenue if any, due to the Government thereon be a first charge-
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> (a) in the case of any land or building held immediately from the Government, upon the interest in such land or building of the person liable for such taxes and upon the goods and other movable properties if any found within or upon such land or building and belonging to such person; and
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> (b) in the case of any other land or building upon such land or building and upon the goods and other movable properties/ if any, found within or upon such land or building and belonging to the person liable for such taxes."

11. We may also notice the language of Article 285 of the Constitution of India which reads as follows: -

> "285. Exemption of property of the Union from State taxation (1) The property of the Union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.
>
> (2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution

liable or treated as liable, so long as that tax continues to be levied in that State."

12. It would be useful to examine at this stage the definition of "lease" and "license" as envisaged under Section 105 of the Transfer of Property Act, 1882 and section 52 of the Indian Easements Act, 1882 respectively.

Section 105 of the Transfer of Property Act, 1882 reads: -

> "105. Lease Defined.--A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

On the other hand, Section 52 of the Indian Easements Act, 1882 reads as:

> "License, defined.--Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called, a license."

13. A license may be created on deal or parole and it would be revocable. However, when it is accompanied with grant it becomes irrevocable. A mere license does not create interest in the property to which it relates. License may be personal or contractual. A licensee without the grant creates a right in the licensor to enter into a land and enjoy it. In Halsbury's Laws of England, 4th Edition, Vol. 27 at page 21 it is stated: -

> "license coupled with grant of interest: A license coupled with a grant of an interest in property is not revocable. Such a license is capable of assignment, and covenants may be made to run with it. A right to enter on land and enjoy a profit a prendre or other incorporeal hereditament is a license coupled with an interest and is irrevocable. Formerly it was necessary that the grant of the interest should be valid; thus, if the interest was an incorporeal hereditament, such as a right to make and use a watercourse, the grant was not valid unless tinder seal, and the license, unless so made, was therefore a mere license and was revocable but since 1873 the Court has been bound to give effect to equitable doctrines and it will restrain the revocation of a license coupled with a grant which should be, but is not, under seal."

14. Lease on the other hand, would amount to transfer of property. In Associated Hotels of India Ltd. v. R.N. Kapoor, [1960] 1 SCR 368, the following well established proposition were laid down by a Constitution Bench for ascertaining whether a transaction amounts to a lease or a license: -

"27. There is a marked distinction between a lease and a license. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time in consideration for a price paid or promised. Under Section 108 of the said Act, the lessee is entitled to be put in possession of the property. A lease is thereforee a transfer of an interest in land. The interest transferred is called the leasehold interest. The Lesser parts with his right to enjoy the property during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the Lesser. Whereas Section 52 of the Indian Easement Act defines a license.

Under the aforesaid section, if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a license. The legal possession, thereforee, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission his occupation would be unlawful. It does not create in his favor any estate or interest in the property. There is, therefore, clear distinction between the two concepts. The dividing line is dear through sometimes it becomes very thin or even blurred. Alone time it was thought that the test of exclusive possession was infallible and if a person was given exclusive possession of a premises, it would conclusively establish that he was a lessee. But there was a change and the recent trend of judicial option is reflected in Errington v. Errington 1952 (1) All ER 149, wherein Lord Denning reviewing the case law on the subject summarises the result of his discussion thus at p. 155:

"The result of all these cases is that, although a person who is let into exclusive possession is, prima facie to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy."

15. It is quite clear that the distinction between lease and license is marked by the last clause of Section 52 of the Easement Act as by reason of a license, no estate or interest in the property is created. In the case of Qudrat Ullah v. Municipal Board, Bareilly, (1974) 1 SCC 202 it was observed at p. 398 thus: -

"... If an interest in immovable property, entitling the transferors to enjoyment is created, it is a lease; if permission to use land without right to exclusive possession is alone granted, a license is the legal result."

(emphasis underlined)

16. A license, inter alia, (a) is not assignable; (b) does not entitle the licensee to sue the stranger in his own name;

(c) it is revocable and (d) it is determined when the grantor makes subsequent assignment. The rights and obligations of the lessor as contained in the Transfer of Property Act, 1882 are also

subject to the contract to the contrary. Even the right of assignment of leasehold property may be curtailed by an agreement.

17. In the present case grant has been made by the President of India in terms of Section 2 of the Government Grants Act, 1895 and the Transfer of Property Act, 1882 may have little bearing in the instant case. The former, i.e. the Government Grants Act, 1895 being a special statute would prevail over the general statute, i.e. the Transfer of Property Act, 1882. Accordingly, the rights and obligations of the parties would be governed by the terms of the provisions of Government Grants Act, 1895 whereunder the Government is entitled to impose limitations and restrictions upon the grants and other transfer made by it or under its authority.

18. In view of the aforesaid legal position with regard to the applicability of the Government Grants Act, we have considered the grant in question after hearing both the parties at length and perused the entire record.

19. A bare perusal of the grant in question reveals that in the grant, the appellant herein i.e. grantee has been described as licensee. But in our considered view the mere use of the word "licensee" would not be sufficient to hold the grant in question as a license. Simply using the word "licensee" would neither be regarded as conclusive nor determinative. In terms of Clause (1) of the said indenture the licensee was to have the use of a piece of land for maintaining a depot for petroleum goods received through railways but thereby his rights to deal with the property and the goods brought thereon had not been taken away. Clearly, an embargo has been placed as regards the user of the construction made thereon to the extent that the same would be used solely for the storage of petroleum products but such restriction by itself can also be imposed in a case of lease. The grant in question clearly states that the constructions are to be made as per specifications approved by the Chief Inspector of Explosives which condition was also otherwise governed by the provisions of Explosives Act. Further, the pipelines are required to be laid at railway levels or demised in favor of the grantee, where for expenses are to be paid by it. It further sates that the pipelines are to be laid underground in such a manner that vehicles can pass over that.

20. The present appellant i.e. licensee is required to pay the sum specified therein which has been described as 'rent' in terms of Clause 7. It further reveals that the licensee is also required to pay all taxes payable in respect of the said land for the time being found to be payable and proportionately and all cesses, and taxes in respect of the premises applicable to the land, tanks, works and conveniences if the same be not separately assessed in respect thereof. It further stipulates that the licensee shall not be entitled to assign, mortgage, sub-let or otherwise transfer the privileges without previously obtaining the consent in writing of the Administration.

The licensee shall not use the said land or any part thereof or permit the same to be used for worship, or religious or educational purposes or for any other purpose not specified in Clause 1 thereof but such a claim is not determinative. Clause (9) of the said indenture stipulates that either party would be entitled to terminate the license without assigning any reasons by giving to the other party at any time three calendar months' notice in writing. It is to be noted that even under Section 106 of the Transfer of Property Act, 1882 no reason is required to be assigned for determining the

lease.

21. Further, Clause 11 of the indenture in question provides that nothing contained herein be construed to create a tenancy in favor of the licensee of the said land but again in our considered view, the mere description of the grant in question is not decisive. Under the grant in question, the Administration has been given power under Clause 12 to re-enter upon and retake and absolutely retain the possession of the said land but the same could be permissible in law only upon determination of grant which would require 3 months' prior notice. It is to be noted that Clause 12 further stipulates that the licensee shall at all times keep the Administration indemnified against and shall reimburse it towards all claims, demands, suits, losses, damages, costs etc. which it may sustain or incur by reason of inconsequence of any injury to any person or to any property resulting from any explosion or leakage of any petroleum kept or placed by the licensee upon the said land.

22. Clause 14 of the indenture in question provides that the licensee shall follow all petroleum rules and regulations applicable to the construction, maintenance of petrol pump or stores and for public safety. It is significant to note that the aforesaid clause clearly provides that all taxes in respect of the said patrol pump, stores, buildings under the control of the licensee shall be paid by the licensee. However, the rights of the parties on determination of the grant have been specified.

23. The aforesaid clauses of the indenture in question clearly shows that a bundle of rights have been conferred upon the grantee i.e. the appellant herein.

24. It is well settled legal position that a deed must be read in its entirety and reasonably. The intention of the parties must also as far as possible be gathered from the expression used in the document itself.

25. In Union Bank of India v. Chandrakant Gordhandas Shah, (1994) 6 SCC 271, an instrument was held to be a deed of lease as the lessee was conferred right to exclusive possession where for various terms of the indenture which were taken into consideration for finding out whether the same was lease or a license. Similarly, In Vayallakath Muhammedkutty v. Illikkal Moosakutty JT 1996 (6) 665, where the defendant was given exclusive possession of the disputed premises for running a hotel but was not given the permission to sub-

lease the property, the document was held to be a license.

> "9. .... this Court has indicated that for a consideration as to whether a document creates a license or lease, the substance of the document must be preferred to the form. It is not correct to say that exclusive possession of a party is irrelevant but at the same it is also not conclusive. The other tests, namely, intention of the parties and whether the document creates any interest in the property or not are important considerations."

26. In Om Parkash v. Dr. Ravinder Kumar Sharma, 1995 Supp.(4) SCC 115, a deal was held to be a license where the keys of the premises was to be taken in the morning and returned in the evening

and a portion thereof was occupied by the mother of the licensor.

27. In Swarn Singh v. Madan Singh, 1995 Supp.(1) SCC 306 it was held: -

> "3. On a careful consideration of the above arguments, we feel that there is no substance in any one of them. To our mind it is very clear that the right granted under the above document is nothing but a license. Our reasons are as under:
>
> (1) the nomenclature of the document is license.

Of course, we hasten to add that nomenclature is not always conclusive;

(2) the document in question in no unambiguous terms says that the possession and control shall remain with the owner. This is a clear indication of the fact that no interest in immovable property has been conferred on the grantee. If it were to be a case of lease under Section 105 of the Transfer of Property Act, there must be an interest in the immovable property. On the contrary, if it were to be a license under Section 52 of the Easements Act, no such interest in immovable property is created. The case on hand is one of such.

(4) No doubt there is a statement in the document that "I shall not sublet it to further anybody else.

This is nothing more than an affirmation of the requirement that the licensee must use the property. No doubt under Section 52 of the Easements Act, license is personal but where an affirmation is made that such an affirmation cannot alter the relationship of the parties as Lesser and lessee. In this view factually the case Capt. BVD' Douza v. Antonio Fausto Fernandes, Quoted from the judgment and order dated 3.5.1993 of Andhra Pradesh Admn. Tribunal at Hyderabad in OA No. 47322/91 and 5668/92, is distinguishable."

28. In Lilawati H. Hiranandani v. Usha Tandon, AIR 1996 SC 441, an assignment made to the effect that the owner permitted the licensee to occupy a portion with no right or interest created in his favor and also undertaken to vacant the premises within one month, was held to be a case of license.

29. In view of the aforesaid well settled legal position, whether a particular document will constitute "lease" or "license"

would inter alia depend upon certain factors which can be summarized as follows: -

> (a) whether a document creates a license or lease, the substance of the document must be preferred to the form;
>
> (b) the real test is the intention of the parties -- whether they intended to create a lease or a license;

> (c) if the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a license; and
>
> (d) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.

30. Reverting back to the factual situation of the case at hand, admittedly, the appellant is in possession of the buildings in question since 1958. They have been permitted to raise huge constructions and the nature of construction is of wide range. An administration block along with tanks for storing petroleum had been constructed. A boundary wall around installations and administrative block had also been constructed. Admittedly, the grantee is in exclusive possession over the lands in question along with construction thereon without any let or hindrance from the Administration. Further, the appellant had been continuously carrying on their business without any interference from any quarter whatsoever since 1962. As in the instant case, exclusive possession has been granted, as discussed hereinbefore, there is a strong presumption in favour of tenancy. That being the case, it is for the appellant to show that despite the right to possess the demised premises exclusive; a right or interest in the property has not been created. The burden therefore would be on the appellant/grantee to prove contra.

31. The aforesaid burden is not discharged in the present case rather for the purposes resisting its eviction from the suit land in the proceeding initiated under the Public Premises Unauthorized Occupants Eviction Act, the appellant has taken the stand pleading non-applicability of the Indian Easement Act and has themselves termed the arrangement as a tenancy by describing the fee as rentals. The said factor is also a vital factor as on the own showing of the appellant the arrangement was nothing but a lease. The appellant therefore cannot take up a plea by which they approbate and reprobate at the same time.

32. In Street v. Mountford, 1985 Appeal Cases 809, it was held that when exclusive possession is granted in lieu of only rent payable therefore, the presumption that the instrument is that of a lease becomes stronger. In the present case the Administration has also option to revise the rent. Had it been a case of mere right to use the property, such provision would not have been there.

Further, the manner in which the rent is to be paid is also important. It is to be paid annually in a case of a license pure and simple, the indenture would not normally contain a claim that rent would be paid annually.

33. In Capt. B. V. D'Souza v. Antonio Fausto Fernandes, [1989] 3 SCR 626 , this Court observed:

> "However, this cannot answer the disputed issue as it creates a license or lease, the substance of the document must be referred to the form, As was observed by this Court in Associated Hotels of India Ltd. v. R.N. Kapoor, [1960] 1 SCR 368 , the real test is the intention of the parties -- whether they intended to create a lease or license.

> If an interest in the property is created by the deed it is a lease but if the document only permits another person to make use of the property "of which the legal possession continues with the owner" it is a license. If the party in whose favor the document is executed gets exclusive possession of the property prima facie he must be considered to be a tenant: although this factor by itself will not be decisive. Judged in this light, there does not appear to be any scope for interpreting Ex. 20 as an agreement of leave and license."

34. It is true that there are indeed certain restrictions which have been imposed by the Administration with regard to the construction of the building storage tank, etc., but in our considered view such restrictions are not decisive for the purpose of determining as to whether a document is a lease or license as such restrictions could also be imposed in case of a lease as well. In Glenwood Lumber Co. Ltd. v.

Philips, 1904-1907 All ER (Reprint) 203, it was held:

> "In the so-called license itself it is called indifferently a license and a demise, but in the Act it is spoken of as a lease, and the holder of it is described as the lessee. It is not, however, a question of words, but of substance. If the effect of the instrument is to give the holder an exclusive right of occupation of the land though subject to certain reservations or to a restriction of the purposes for which it may be used, it is in law a demise of the land itself."

35. We may also notice the undisputed fact that in the present case the parties have agreed that for the purpose of determination of the agreement three calendar months' notice had to be given. Undoubtedly, such clause in the document in question has a significant role to play in the matter of construction of document. Clearly, if the parties to the agreement intended that by reason of such agreement merely a license would be created such a term could not have been inserted.

36. It is well settled legal position that a license can be revoked at any time at the pleasure of the licensor. Even otherwise, unless the parties to the agreement had an intention to enter into a deed of lease the Administration would not have agreed to demise the premises on payment of rent in lieu of grant of exclusive possession of the demised land and further stipulated service of three months' notice calling upon either party to terminate the agreement. In view of the same, the argument advanced by the learned counsel of the appellant that a stipulation having been made in the agreement itself that by reasons thereof the grantee shall not be a tenant and thus the deed must be construed to be a license cannot be accepted. In our considered view, such a clause may at best be one of the factors for construction of the document in question but the same by itself certainly be a decisive factor.

37. The next question which needs to be addressed in view of the aforesaid well settled legal position is whether the agreement in question should be interpreted as lease or license having regard to the object sought to be achieved by the provisions of DMC Act.

38. By reason of the provisions of the DMC Act, the MCD is required to render several services as specified therein for the purpose whereof, tax is required to be imposed both on land as also on building. The definition of "land" and '"building" as provided in the DMC Act must be given its full effect. As mentioned hereinbefore in the case of Municipal Corporation of Greater Bombay case (supra), even an oil tanker has been held to be building.

39. The tax is imposed upon the holders of land and building by the MCD which is compensatory in nature. The word "letting out" in the context of the grant therefore must receive its purposive meaning. The MCD renders services and the benefits of such services are being taken by all concerned, viz., the owner of the land or building. Even a person who is in possession of a land or building, whether legal or illegal, takes benefits of such services rendered by the MCD. The MCD for the purpose of realization of tax is not concerned with the relationship of the parties. It is concerned only with imposition and recovery of tax which is payable on all lands and buildings in accordance with law.

The exceptions thereof have been enumerated in the Act itself. Section 119 of the MCD Act is one of such provisions.

Such an exemption clause, as is well known, must be construed strictly. Section 119 of the MCD Act would apply if the lands and buildings are the properties of Union of India. The MCD has the right to levy the property tax in terms of Section 114 of the MCD Act in the manner as specified therein.

40. By reason of the agreement in question, the buildings in question do not belong to the Administration. Admittedly, it belongs to the grantee i.e. appellant herein. As discussed hereinbefore, the Oil tanks has been construed as buildings for the purposes of tax. Therefore, Section 119 of the MCD Act would not apply to the building in question. That being the case, the grantee/appellant is liable to pay tax although the ownership of the land may belong to the Administration. Section 115 of the MCD Act clearly provides that the general tax shall be payable in respect of lands and buildings. Such lands and buildings may be in lawful occupation of the owner. The occupation of the said building may be lawful or unlawful. Even in a case where apartments are constructed on the land belonging to the Government or a statutory body but the occupier of the apartment is liable to pay tax. If a person encroaches upon somebody's lands and constructs buildings thereupon, he would also be liable to pay tax. Once it is held that the grantee were liable to pay tax, the same becomes payable from the date of accrual of the liability. The said position is also fortified from specific stipulation in the agreement that the liability to pay all taxes including municipal taxes is on the grantee.

41. The learned counsel for the appellant has placed strong reliance on the decision of this Court in HUDCO v. MCD;

(2001) 1 SCC 455 to contend that land belonging to the government is immune from the payment of property tax by virtue of section 119(1) of the DMC Act and Article 285 of the Constitution of India. In the HUDCOs case vacant land of the government, prior to execution of the lease deed in favour of HUDCO, was sought to be taxed and that no building had been constructed by HUDCO. HUDCOs

own case was that interest in land could pass only on execution of lease and construction thereon under section 120(2) of the MCD Act. MCD had invoked Section 120(1) DMC Act to fasten liability on HUDCO and not under Section 120(2) DMC Act after construction was made by HUDCO and lease deed executed bythe government. In that case, this Court has held that vacant land belonging to the Government was not taxable by virtue of section 119 DMC Act and Article 285 of the Constitution of India. However, in our considered view, the case at hand is totally different. The HUDCO judgment dealt with the case where vacant land belonging to the lessor/Government and in regard whereto no lease deed had been executed and no construction had been made by the lessee/HUDCO. The land belonging to the central government was sought to be taxed under section 120(1) of the DMC Act which fastens liability on the lessor. Since land belonged to UOI the same was exempted from payment of tax until the lease deed was executed and construction made thereon by HUDCO-under Section 120(2).

42. Incidence to pay tax under section 120(2) DMC Act is with regard to a composite assessment of land and buildings as section 120(2) talks of a composite assessment only. In the present case vacant land or property of Railways is not sought to be taxed as was in the case of HUDCO Vs. MCD under section 120(1) DMC Act, but property tax/Composite Assessment is sought to be made on the installations/stotage depots having been constructed by the appellant-by virtue of Section 120(2) DMC Act. It is important to notice that w.e.f. the date of execution of lease deed and construction made thereon by HUDCO, HUDCO has been paying the property tax. HUDCOs case is therefore not applicable.

43. In view of the aforesaid discussion, we are of the considered view that the document in question constitutes lease in favor of the appellant-grantee; and accordingly liable to pay taxes.

44. In view of the same, we find no merit in the present appeal, accordingly, the same is liable to be dismissed and hence dismissed. No order as to costs.

.....J [Dr. Mukundakam Sharma] .....J [Anil R. Dave] New Delhi, April 6, 2011