

CASE NO.:
Appeal (civil) 5898 of 1997

PETITIONER:
DELHI GOLF CLUB LIMITED & ANR.

Vs.

RESPONDENT:
N. D.M. C.

DATE OF JUDGMENT: 15/01/2001

BENCH:
S.P.Bharucha, Doraswamy Raju, Ruma Pal

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T.....T..J
J U D G M E N T

Raju, J.

The appellants, who had lost before the High Court, filed this appeal against the judgment of the Delhi High Court dated 14.7.97 in CWP No.2349 of 1995 since reported in AIR 1997 Delhi 347, whereunder the challenge made by the appellants to a demand raised by the respondent to the tune of Rs.4,37,56,295.90 on account of property-tax for the period from 1.4.69 to 31.3.95 in their house-tax bill dated 24.11.94, notice of demand dated 31.3.95 and a letter dated 13.6.95 came to be rejected. Having regard to the nature of issues raised, certain factual details need elaborate reference to properly deal with and appreciate the same. The Delhi Golf Club limited (hereinafter referred to as the Club) is a limited company incorporated under the Companies Act, 1956 with the object of promoting the game of Golf and for that purpose provide courses and grounds at New Delhi or elsewhere in the State of Delhi, to lay out and also maintain the same by providing club houses, pavilions, lavatories, kitchens, refreshment rooms, workshops, sheds and other conveniences for the use of its members and other persons either gratuitously or on payment of charges. The land measuring 183 acres situate in Wellesley Road, New Delhi, was being used by the New Delhi Municipal Committee (hereinafter referred to as the Municipal Committee) for running a Golf Course till 1950 and in the year 1950, the Municipal Committee handed over the said Golf Course to the Club. In the year 1952, a lease deed dated 10.12.52 was executed between the Municipal Committee and the Club under which the land together with old buildings existing thereon known as Golf Club with a plinth area of 3000 sq. feet and a new building identified as Office with plinth area of 450 sq. feet was granted on lease on an annual rent of Rs.200/- for land and Rs.50/- as rent for the old buildings and another Rs.50/- as rent for the new buildings. Due to some development and turn of events in the Ministry of Works Housing and Supply, Land & Development Office, Government of India, New Delhi, the entire property, noticed above, was taken over by the Central Government on payment of a sum of Rs.25,000/- as compensation for tools and plants as

evidenced by a letter dated 19.12.63. Simultaneously, the Land and Development Office by its letter dated 19.12.63 informed the Club about the said taking over and called upon them to pay a sum of Rs.25,000/- by means of a cheque towards the compensation for the tools and plants etc., which were in the possession and use of the Club. The Club has been making representations for grant of a regular lease of the land and the buildings or the super-structure standing thereon. Though, no formal lease deed as such was executed, the Government of India, Ministry of Works Housing and Supply, Land and Development Office, vide its letter dated 23.4.68 communicated the sanction of the President of India for the temporary allotment for the period upto 1980 of land measuring about 180 acres for the use of the Club on the terms and conditions set out therein. The Club was obliged to use the land and buildings for the bona fide purposes of the Golf Club and for no other purpose and was further obligated to pay rent from 8.11.63 at the rates more fully set out therein. A restriction on any further construction without the prior permission of the Government and without obtaining the prior approval of building plans from the Local Body as well as the Land and Development Officer was also imposed. All the trees standing on the land were declared to be the Government property which are not to be cut or removed without the prior approval of the Government. The lease was also stated to be a temporary one terminable within one month notice from either side, with an obligation to the Club, in case of such termination to restore and surrender possession. Certain other conditions regarding the manner of maintenance of the properties were also imposed and it is unnecessary to dwell at length on those conditions. The Club made the necessary payment as required in the letter dated 23.4.68.

While matters stood thus, the Municipal Committee served a notice dated 13.2.69 purporting to assess the property in the hands of the Club and proposed to assess the house/property tax under Section 65 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) in relation to the Golf area (open land) and the building standing thereon at the annual value of Rs.1,32,83,357.71. As required in the notice, the Club, though felt surprised, filed its objections contending that the proposed assessment was wrong, illegal, ultra vires and without jurisdiction since the Club was neither the owner nor a permanent lessee of the property in question to attract liability under Section 61 of the Act and that, in any event, the valuation was also arbitrary and based on merely surmises and conjectures. The purpose and objects of the Club which was meant for the development and protection of the game of Golf and the fact that it is a non-profit making enterprise, was also duly highlighted. Though an opportunity to make personal representation was also granted in the notice, counsel deputed along with the Accountant was said to have been not allowed to state anything, making the entire exercise a mere pretence. Thereupon, vide a letter dated 3.5.69, the Club was informed that the assessment has been finally settled and confirmed with an annual value of Rs.1,32,83,357.70 with effect from 1.4.69 vide Resolution No.19 (156) of the Ordinary Meeting of the Committee said to have been held on 26.3.69. On the service of the said proceedings on the Club on 5.5.69, an appeal was filed. In the meantime, on 8.10.69 a notice came to be issued calling upon the payment of Rs.16,60,420.68 as house tax for the period from 1.4.69 to 31.3.70 within 7 days from receipt of

the notice on threat of action under Section 80 (3) of the Act. While repudiating the said claims and demands through its counsel on 23.10.69, and faced with the threat of recovery proceedings by the Authorities of the Municipal Committee, the Club filed two Suits Nos.419/69 and 367/70 in the Court of Subordinate Judge, 1st Class, Delhi, in respect of the assessment years 1969-70 and 1970-71 seeking for permanent injunction restraining the Municipal Committee from realisation, demand or recovery of any amount as house-tax from the plaintiffs and/or enforcing the demands made as noticed above and/or from taking coercive measures for the realisation of the said amount in any manner. By judgment and decree dated 27.4.73, the suits were decreed as prayed for and it was held by the learned Judge that the Club had only a temporary lease of the property and, therefore, was not liable to be assessed to tax under Section 61 of the Act, that the suit was not barred under Section 86 of the Act and that the assessment was also not in conformity with Section 3 (1) of the Act. Aggrieved, the Municipal Committee pursued the matter on appeal before the District Court in RCA No.12976 and 130/76. The learned First Appellate Judge also concurred with the judgment and decree of the Trial Court and the appeals came to be dismissed on 5.3.77. Though the matter was further pursued before the High Court on second appeal in RSA Nos.206 & 207/77, the appeals came to be dismissed as withdrawn on 30.8.1985. An application filed seeking for review in CM No.1250/85 also came to be dismissed on 20.9.85.

Thereafter, the matter was under suspense for some time so far as the parties are concerned. Meanwhile, the Government of India, Ministry of Urban Development, Land & Development Office, by its proceedings dated 20.7.94 communicated its decision to allow the Club to use the land measuring about 179 acres beyond 31.12.90 for 20 years, i.e. from 01.01.1991 to 31.12.2010, subject to the terms and conditions more fully set out therein, of which the following may be mentioned as relevant and necessary for the purposes of this case:-

I. The period of temporary lease will be for a period of 20 years, i.e., from 1.1.1991 to 31.12.2010.

II. (I) The Delhi Golf Club shall be required to pay annual ground rent for 2.08 acres or area required as per building bye-laws for the covered area @ 5% of Rs.39 lakhs per acre.

(ii) The club shall pay the Licence Fee @ Rs.1,000/- per acre for the green area measuring 176.92 acres.

(iii) There will be complete ban of construction on green areas and prior permission of the Government would be necessary for any construction on 2.08 acres.

(iv) The Delhi Golf Club shall pay the property tax/service charges or any other taxes demanded by local bodies to pay the Government the equivalent amount (in case Government is billed by local bodies) for the entire land under their occupation. Though the property taxes for the period prior to 1.1.91 does not form part of the Current Lease Agreement, the Club shall, however, settle all issues pertaining to outstanding property tax etc. with NDMC as communicated to them vide their office letter dated 26.4.1993 and make necessary payments to NDMC in this

regard. Their will be no liability in Government of India whatsoever towards property tax.

III. The land shall be used for its bonafide activities of promoting the sport of Golf.

In the light of the above position, you are required to pay the following dues to this office on account of licence fee, ground rent etc. for the period from 1.1.91 to 31.12.1995.

A. Ground rent of area 2.08 acres @ Rs.4,05,600/-
P.A w.e.f. 1.1.91 to 31.12.95 Rs.20,28,000.00

B. Licence fees of area 176.92 acres @ Rs.1,76,920/-
P.A. w.e.f. 1.1.91 to 31.12.95 Rs.8,94,600.00

2. The Government shall reserve its right either to cancel the lease for the green area or terminate the lease for the covered area or both by giving six months notice in case it is decided to put the land to alternative use for a public purpose.

4. If the terms and conditions referred to above are acceptable, acceptance thereof alongwith the payment of above dues may be sent to this office within 30 days from the date of receipt of this letter failing which the terms communicated to you for the extension of temporary allotment will be withdrawn and cancelled without any further notice to you.

The other conditions also specifically provided for including the stipulated number of nominees from the Government of India on the Management Committee of the Club with full voting rights, preferential rights and priority to use upto the stipulated extent and requirement, the Government servants as also those who come to Delhi on tenure basis. It was followed by a further communication dated 20.6.95 informing about the complete ban of any construction on the land measuring 176.92 acres of green area and the restriction to use FAR of this green area for construction of the building. A formal lease deed evidencing the grant of temporary lease deed incorporating the terms and conditions governing the same was executed between the Club and the Government of India represented by the President on 5.8.96. The period of lease under the document was to commence from 1.1.91 and to be in currency for the duration of 20 years making it clear that any continuation beyond the expiry of the said period also has to be only on temporary basis. A perusal of the various clauses, 21 in number, with the relevant sub-clauses therein would go to show that except permitting the use of the land for the Club purposes stringent and strict conditions have been imposed therein regulating the relationship and respective rights of parties in and over the property in question.

At this stage, the Municipal Committee appears to have once again woke up by initiating proceedings and ultimately raised a demand in a revised bill No. dated 24.11.94 calling upon the Club to pay a sum of Rs.4,37,56,289.90.

The said sum was stated to include not only the arrears of House Tax due up to 3/94 but also the amount due for the year ending 3/95. A similar demand dated 5.12.94 appears to have been raised in the name of the Land and Development Officer in which, as against the column : Name of owner L & D.O., Nirman Bhawan, has been specified. In the orders of assessment also the name of the owner has been specified as Land and Development Officer, only.

On receipt of the demand dated 24.11.94 and the further communication dated 31.3.95 issued demanding payment of the amount on threat of coercive action, the Club has filed a Writ Petition No. CW 2349/95 in the High Court seeking for the relief noticed supra. The sum and substance of the challenge made to the levy and the threat of recovery of the tax from the Club is that the tax in question is leviable only on an owner of the property, which the Club is not, it being only a temporary lessee permitted with restricted use and enjoyment of the property for the objects of the Golf Club and that the question of liability to pay the property tax having been already decided in favour of the Club by Courts holding the Club to be not liable in the earlier proceedings filed before the Civil Court, the Municipal Committee which was a party to the same is bound by the principle of res judicata and, therefore, cannot make any demand of House/Property Tax from the Club. The Division Bench of the High Court by its judgment dated 14.7.97, though partly allowed the claim for 1969-70 and 1970-71, in view of the decision in the civil suits, repelled the challenge made by the Club on both the grounds and rejected the Writ Petition in other respects.

Shri T. R. Andhyarujina, learned Senior Advocate for the appellant-Club, contended that the learned Judges of the High Court committed an error in rejecting the plea of the Club based upon the principle of res judicata and in this connection, invited our attention to the decisions of the English Courts and of this Court, apart from the treatise in Text Books on the subject. Shri V.A. Mohta, learned senior counsel for the respondent, with equal force contesting the claim on behalf of the appellant-Club, brought to our notice certain decisions. We consider it unnecessary to adjudicate on this issue, since the claim can be decided even otherwise on merits, without detriment to the appellant-Club. We leave open the question relating to the applicability or otherwise of the principle of res judicata in relation to taxation matters to be decided in an appropriate case of necessity.

The next ground of challenge is based on the taxability of the property in question in the hands of the appellant-Club. Section 61 of Act enables the Municipal Committee to impose the various category of taxes enumerated therein. The power to levy the House/Property Tax in question is traceable to clause (a) which refers to a tax payable by the owner of building and lands not exceeding fifteen percent of the annual value. In dealing with this aspect of the matter, the High Court seems to have proceeded on the basis of the definition of the word owner with reference to the dictionary and other meanings of the word in its generic sense as also upon the alleged object assumed to be underlying Section 61 (1)(a), i.e., to tax all persons who possess and use the land within municipal limits for the reason that any one possessing land and using the same does make use of municipal services. First of all, the levy is

not a fee to be viewed as referable to the availing of municipal services. Further, the levy envisaged under Section 61(1)(a) is property tax levied qua ownership of the property within the municipal limits and income therefrom, not a service tax payable for the service rendered to the person in occupation of the land or building. That apart, the Act itself has a definition of its own rendering it unnecessary to delve into general connotation of the word and Section 3 (11) defines owner to include the person for the time being receiving the rent of land and buildings, or either of them, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose or who would so receive the same if the land or building were let to a tenant. In contrast, clause (e) and (ee) of sub-section (1) of Section 61 specifically enables the levy of tax envisaged therein on the occupier for availing of civic services and amenities. That apart, the proviso to clause (a), in stipulating that in the case of lands and buildings occupied by tenants in perpetuity the tax shall be payable by such tenants, declares the legislative intent in specific and unmistakable terms as well as by necessary and inevitable implication that tenants of the category other than tenants in perpetuity are outside the purview of Section 61 (1)(a) of the Act. Therefore, no tenant other than one holding a lease in perpetuity can be saddled with any liability to tax qua his status as a mere tenant under Section 61(1)(a) of the Act. Periodical leases with provision therefor and actual such renewals from time to time cannot be affixed with the character of leases in perpetuity merely because cumulatively considered the lessee might be in physical possession for long, particularly when there is no vested right of renewal as such in the lessee. The Government of India in the Ministry of Urban Development, the lessor, is the indisputable owner of the property leased in favour of the Club and they have not done anything which could even indicate slightly of the grant of their rights of ownership in favour of the Club. The respondent-Local Authority, therefore, cannot act in a manner which is likely to even cast a cloud around the title, ownership and right to possession of the Government of India. Consequently, the view expressed by the High Court that the Club would constitute owner for purposes of the levy in question, does not either sound to reason or can be said to be in conformity with the statutory provisions in force and, therefore, does not merit our approval.

The incidental question that also needs reference and consideration is as to whether the appellant-Club can be held or said to hold the property in question as a tenant in perpetuity. Even a cursory perusal of the orders sanctioning the lease as well as the terms and conditions of the lease would make it beyond any doubt that the lease in question is merely a temporary allotment/temporary lease and the further stipulation that any continuance, beyond even the expiry of 20 years for which the temporary lease has been granted shall also be a lease on temporary basis leaves the matter beyond any controversies whatsoever. The various clauses in the lease deed restricting and regulating the mode and character of enjoyment by the lessee and the specific stipulation reserving absolute power in the lessor to terminate the lease and resume possession as and when required on giving a notice for the stipulated period militates against the lease being characterised as one in perpetuity. In the light of the above, the respondent has

no legal authority or jurisdiction to levy the House/Property Tax against the appellant-Club in its capacity merely as a tenant in respect of the property, which is the subject-matter of the lease. The fact that certain constructions have been put up by the Club or that while so applying to the Municipal Body for permission to put up such constructions, the appellant-Club represented itself to be an owner is besides the point and wholly irrelevant in the matter of consideration of levy and collection of House/Property Tax on the property of the leasehold and which is the subject-matter of the lease on the Club qua its position and status as a mere lessee. In respect of the vacant land or land over which constructions have been put up by the owner of the land and all the buildings which were themselves the subject-matter of lease granted in favour of the appellant-Club, the appellant cannot be assessed to House/Property Tax in question or saddled with any liability therefor. The Club was not in the present case sought to be made liable only in respect of constructions put up by it and held by it during the period of subsistence of the lease. We do not, therefore, decide whether the Club can be made so liable.

For the reasons stated above, we allow the appeal and set aside the judgment of the Division Bench of the Delhi High Court under challenge and consequently hold -

a) That the appellant-Club is not liable to be levied with or directed to pay House/Property Tax in respect of the vacant land and land and buildings put up by the lessor and owned by it and let to the Club as part of the demised property;

b) That the question of taxability of the appellant-Club in respect of buildings/structures put up by it on the leasehold land is left open;

c) This judgment relates to the levy and collection of only House/Property Tax from the Club, directly under Section 61(1) (a) and not of any other class/category of taxes which may be levied under the Act and in accordance with law; and

d) The Club is entitled to costs in these proceedings which we fix at Rs.25,000/-.