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IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No.3913/2004 & CM.3212/2004

Reserved on : 11.3.2005

Date of Decision 25th July, 2005

MUNICIPAL CORPORATION OF DELHI .....Petitioner
Through: Ms. Amita Gupta and
Neelima Tiwari, Advocates.

Versus

M/S NORTH DELHI POWER LTD. ....Respondent
Through: Mr. Anil Panwar,Mr. Amar Gupta,
Mr. Mansoor Ali Shoket,Mr.Anupam
Verma, Advocates.

CORAM:

THE HON'BLE MR.JUSTICE S.RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment.?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J.

1. The Municipal Corporation of Delhi (MCD) has preferred this petition under

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Article 226 of the Constitution of India, challenging a decision of the Additional District Judge dated 3.1.2004. The Additional District Judge (hereinafter called "the Tribunal") had allowed an appeal filed by the respondent. The appeal was directed against an order of MCD, dated 26.3.2003, assessing a vacant plot, occupied by the said respondent, near sub station, Civil Lines; the rateable value fixed was Rs.58,53,960/- with effect from 1.4.2002.

2. The respondent (hereafter, "NDPL") is a Company; it was handed over certain activities pursuant to electricity reforms in Delhi. The erstwhile Delhi Vidyut Board (DVB) was dismantled, by virtue of the Delhi Electricity Reforms Act, 2000 (hereinafter called "the Reforms Act") Electricity generation, Transmission and distribution were unbundled. As a result, for the purposes of carrying out the various tasks or activities different sets of corporate entities were created. A transfer Scheme, known as "the Delhi Electricity Reforms (Transfer Scheme) Rules, 2001, was formulated under the Reforms Act.

3. The position taken by MCD in this case is that by virtue of Sections 119 and 120 of the Municipal Corporation of Delhi Act (hereinafter called the 1957 Act) the respondent is liable to assessment; and has to pay tax. The respondent, on the other hand, asserts that a joint reading of the provisions of the Reforms Act, the Transfer Scheme and 1957 Act lead to the conclusion

that it is merely a licencee of the properties; they continue to vest in the Government. Hence it is not liable to taxation.

4. The MCD passed an Assessment Order dated March 26, 2003 in respect of vacant plot near Sub Station, Civil Line Zone ("the property") which was intended for establishment of 66 KV Grid. The NDPL appealed to the Tribunal, which, by the impugned Order, held that the Respondent is not liable to pay property tax in respect of the said property as it is a licensee in respect of the property; and that the property is exempt from payment of property tax under Section 119(1) of the Delhi Municipal Corporation Act, 1957 ("the Act"). A brief narrative is necessary for a fuller appreciation and determination of the controversy in issue.

5. On January 6, 2001, the Government of NCT of Delhi (Department of Power) (hereinafter referred to as "GNCT") decided to un-bundle Delhi Vidyut Board ("DVB") into six successor companies, including three distribution companies. The Reforms Act, was notified on March 8, 2001; it had come into effect from November 3, 2000.

6. Section 15(1) of the Reforms Act provides as under :-

> *"With effect from the date on which a transfer scheme prepared by the Government to give effect to the objects and purposes of this Act, is published or such further date as may be specified by the Government (hereinafter referred to as "the effective date") any property, interest in property, rights and liabilities which immediately before the effective date belonged to the Board shall vest in the Government."*

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7. In exercise of the powers conferred by Section 15, 16 and 60 of the Reforms Act, the Delhi Electricity Reform (Transfer Scheme) Rules, 2001 was notified on November 20, 2001 by the GNCT through an order (hereafter referred to as the "Transfer Scheme"). Section 3(1) of the Transfer Scheme provides as under :-

> *"On and from the date of the transfer to be notified for the purpose, all the assets, liabilities and proceedings of the Board shall stand transferred to and vest in the Government absolutely and in consideration thereof the loans, subventions and obligations of the Board to the Government shall stand extinguished and cancelled, which shall be in full and final settlement of all claims whatsoever of the Board."*

8. Under the Transfer Scheme, the assets of DVB were classified as follows (Para 4[1]):-

"(a) Rights and interests in Pragati Power Project as set out in Schedule 'A';
(b) Generation Undertaking as set out in Schedule 'B';
(c)Transmission Undertaking as set out in Schedule 'C';
(d) Distribution Undertaking as set out in Schedule 'D';
(e) Distribution Undertaking as set out in Schedule 'E';
(f) Distribution Undertaking as set out in Schedule 'F';
(g) Holding Company with assets and liabilities as set out in Schedule 'G'.

While the 'distribution undertaking' as set out in Schedule 'F' comprised of

various assets such as 66 KV and 33 KV Grid Sub Stations, transmission line, various other installations, plant and machinery, roads, buildings etc. utilized for the purpose of distribution as detailed at Points I,II and III, the proviso to Para III, in Schedule F (which relates to the transfer of assets and liabilities to NDPL) prescribes that :

> *"Provided that notwithstanding I,II and III above and that the land was being used immediately before date of the transfer exclusively or primarily for the business of the transferee, no part of the land shall form part of the assets of transferred under these rules. The transferee shall be entitled to use such land as a licensee of the Government on payment of a consolidated amount of One rupee only per month during the period the transferee has the sanction or license or authorization to undertake the distribution business. As and when such license or sanction or authorization is revoked or cancelled or not renewed or the area of supply where the land is situated is withdrawn from the transferee, the license to the transferee in respect of such land shall stand cancelled."*

9. The MCD assails the impugned order of the tribunal, on the ground that NDPL is liable to municipal tax for the property as per Sections 120(1)(c) and 120(2) of the Act. MCD also relies upon Section 15(2) of the Reforms Act, to contend that the land was transferred by the Government to the NDPL, and the latter is therefore, liable to pay property tax.

10. It has been averred by MCD, and contended on its behalf by learned counsel, Ms. Amita Gupta, that the erstwhile DVB was paying tax in respect of the same land; there is no material change in circumstances to exempt the NDPL from such liability.

11. Learned counsel for MCD submitted that the NDPL could not claim immunity from taxation by relying upon Section 119 of the MCD Act, since provisions in Section 120 constituted an exception to that provision, and spelt out the conditions under which bodies and entities such as NDPL were liable to taxation. It was also submitted that the issue is covered by the decision of this court in 43(1991) DLT 601 : *International Airport Authority of India vs. Municipal Corporation of Delhi* (hereafter, the "*International Airport Authority case*"). It was also contended that the real character of the possession of the property by NDPL, was as a lessee, and not a license, even though the latter nomenclature was adopted in the transfer scheme. The counsel relied upon Section 15(1) of the Reforms Act, and stated that the arrangement termed as a license is of an indefinite period; the nature of business activity, viz distribution of electricity, envisioned a prolonged, as opposed to short-term use of the property. The description as a license fee, and the levy of nominal license fee did not detract from the real nature, of the arrangement, which is a "tenancy" or lease. The respondent in fact is in occupation for more than one year; it has no restriction upon the nature of enjoyment of property, nor is there any impediment in the Reforms Act or the Transfer scheme from putting up buildings, and using its materials. In short, apart from the description as license, the arrangement would be a "letting", of the premises.

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12. It is contended, on the other hand, on behalf of the respondent (which also filed written submissions) that it was issued a license, under the Reforms Act and the Transfer Scheme for the distribution and retail supply of electricity in North and North-West Delhi circles of National Capital Territory of Delhi. By virtue of clause 5(1) (f) of Transfer Scheme, assets defined as "distribution" assets as set out in Schedule 'F' to the Scheme stood transferred to the Respondent. The assets did not include land (including the said property). Ownership of lands continue to vest with the Government. In respect of distribution undertaking transferred to the Respondent, too, clause 5(3) (of the Transfer Scheme) provides that:

> *"The rights in the undertaking or the assets transferred to the transferee shall be subject to the restrictions and limitations, specified in these rules or in the applicable Schedule."*

13. It was, therefore contended on behalf of the respondent, that:

(i) The said property is a vacant plot;

(ii) The said property is intended for establishment of 66 KV Grid;

(iii) The said property is part of the land which never formed 'distribution undertaking' as set out in Schedule 'F' and the right, title and ownership in respect thereto remain with the Government;

(iv) The Respondent is entitled to use the land including the said

property as a licensee of the Government on payment of consolidated amount of one rupee per month during the period the Respondent has sanction/licence/authorization to undertake the distribution business.

(v) The period of license for the land including the said property is co-terminus with sanction/licence/authorization in favour of the Respondent to undertake distribution business and no prior notice of termination is required to be given.

14. It was also submitted that the Respondent is not liable to pay property tax in respect of the said property for the reasons that:

(a) The right, title and ownership of land utilized for the purpose of 'Distribution Undertaking' including the said property is vested in the Government and, therefore, by virtue of Section 119(1) of the DMC Act, no tax can be levied in respect of the said property.

(b) Section 120 has no application to the present case, in view of the judgment of the Supreme Court in (2001) 1 SCC 455: *Housing & Urban Development Corpn. Ltd. vs. MCD & Another* (hereafter, "*the HUDCO Case*").

(c) The issue is concluded by the Full Bench judgment of this court in 100 (2002) DLT 442 (FB) : *Municipal Corporation of Delhi vs. Pradip Oil Corporation and Anr* (hereafter "*the Paradip Oil Corporation case*), where the meaning of the term

possession, and license, had been considered, and the Court had concluded that whenever an arrangement like the present one is entered into, the owner is not divested of possession; hence, the respondent is not liable to pay property tax.

Provisions of the MCD Act

The relevant provisions of the MCD Act read as follows:

> *"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:*
>
> *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.*
>
> *(2) Where the possession of any land or building, being property of the Union, has been delivered in pursuance of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) to a displaced person, or any association of displaced persons, whether incorporated or not, or to any other person [hereafter in this sub-section and the proviso to sub-section (1) of section 120 referred to as the transferee], the property taxes specified in section 114 shall be leviable and shall be deemed to have been leviable in respect of such land or building with effect from the 7th day of April, 1958 or the date on which possession thereof has been delivered to the transferee, whichever is later, and such property taxes shall, notwithstanding anything contained in the proviso to sub-section (1) of section 126 or any other provision of this Act, be recoverable with effect from that day or date, as the case may be.*

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120. Incidence of property taxes.—

(1) The property taxes shall be primarily leviable as follows:--

(a) if the land or building is let, upon the lessor;

(b) if the land or building is sub-let, upon the superior lessor;

(c) if the land or building is unlet, upon the person in whom the right to let the same vests:

Provided that the property taxes in respect of land or building, being property of the Union, possession of which has been delivered in pursuance of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), shall be primarily leviable upon the transferee.]

(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 leviable upon the said tenant, whether the land and building are in the occupation of such tenant or a sub-tenant of such tenant.

***Explanation.**--The term "tenant" includes any person deriving title to the land or the building erected upon such land from the tenant whether by operation of law or by transfer inter vivos.*

(3) The liability of the several owners of any building which is, or purports to be, severally owned in parts or flats or rooms, for payment of property taxes or any instalment thereof payable during the period of such ownership shall be joint and several.

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121. Apportionment of liability for property taxes when the premises assessed are let or sub-let.—

(1) If any land or building assessed to property taxes is let, and its rateable value exceeds the amount of rent payable in respect thereof to the person upon whom under the provisions of section 120 the said taxes are leviable, that person shall be entitled to receive from his tenant the difference between the amount of the property taxes levied upon him and the amount which would be leviable upon him if the said taxes were calculated on the amount of rent payable to him.

(2) If the land or building is sub-let and its rateable value exceeds the amount of rent payable in respect thereof to the tenant by his sub-tenant, or the amount of rent payable in respect thereof to a sub-tenant by the person holding under the sub-tenant, the tenant shall be entitled to receive from his sub-tenant or the sub-tenant shall be entitled to receive from the person holding under him, as the case may be, the difference between any sum recovered under this section from such tenant or sub-tenant and the amount of property taxes which would be leviable in respect of the said land or building if the rateable value thereof were equal to the difference between the amount of rent which such tenant or sub-tenant receives and the amount of rent which he pays.

(3) Any person entitled to receive any sum under this section shall have, for the recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same.

122. Recovery of property taxes from occupiers.—

(1) On the failure to recover any sum due on account of property taxes in respect of any land or building from the person primarily liable therefor under section 120, the Commissioner shall recover from every occupier of such

land or building by attachment, in accordance with section 162 of the rent payable by such occupier, a portion of the total sum due which bears, as nearly as may be, the same proportion to that sum as the rent annually payable by such occupier bears to the total amount of rent annually payable in respect of the whole of the land or building.

(2) An occupier from whom any sum is recovered under sub-section (1) shall be entitled to be reimbursed by the person primarily liable for the payment, and may in addition to having recourse to other remedies that may be open to him, deduct the amount so recovered from the amount of any rent from time to time becoming due from him to such person."

15. In the present case, the lands were originally that of Delhi Vidyut Board; that organization was paying property tax. However, with the advent of the Reforms Act, the land vested in the first instance with the Government. The first limb of the submission made, therefore is that the title continues to vest in the Government, and by operation of Section 119, the respondent NDPL cannot be made liable for payment of property tax.

16. The contention of the MCD, on the other hand, is that the erstwhile DVB was paying tax; the NDPL is its successor, and therefore, bound by all its obligations, including the liability to pay property tax.

17. Section 119 exempts Union property from municipal taxation, under the Delhi Municipal Corporation Act. This provision is in line with the mandate of Article 285 of the Constitution of India, which grants Union

property immunity from taxation.

18. The terms of Section 119 carve out two exceptions; first, properties that were subject to taxation before 26th January, 1950 or properties that stood transferred under Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, with effect from 7th April, 1958, or from any other date, would be subject to taxation in the hands of the transferee, from any of the later of the two respective dates.

19. Learned counsel for MCD contended that in view of the judgment in *the International Airport Authority case,* the respondent NDPL is liable to pay property tax. That judgment was concerned with the interpretation of the expression "vesting" under Section 12 (1)(a) of the International Airports Authority Act. The property, before vesting in the Authority, had vested with the Central Government. Hence, the Authority claimed benefit of Section 119 (1) of the MCD Act. The court repelled the contention, and held that by virtue of Section 12(1) (a), whatever had vested with the Central Government, vested with the Authority; hence it could not claim exemption from taxation. As would be evident from the facts, and the provisions of law, the property itself vested with the Authority, a statutory corporation. Hence, there was no question of application of Section 119(1) of the Act.

The Supreme Court had occasion to interpret Section 119 of the

Act, in the *HUDCO case*. The court held as follows:

> *"6. It is clear from a reading of sub-section (1) of Section 119 that lands and buildings which are the properties of the Union are exempt from property tax. Mr. M.L. Varma, learned Senior Counsel appearing for the respondents, however, contended that under sub-section (2) of Section 119 when possession of the land is given to any person then property tax can be recovered from that person"*
>
> *"7 . In our opinion, on a correct reading of Section 119(2), the aforesaid consequence does not follow. Sub-section (2) of Section 119 provides that where possession of the land or building being the property of the Union has been delivered in pursuance of Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act to (a) a displaced person, or (b) an association of displaced persons, or (c) to any other person, then the property tax can be recovered from the person in possession. It is clear that the expression "to any other person" can only be that person to whom possession has been delivered in pursuance of the provisions of Section 20 of the Displaced Persons (Compensation and Rehabilitation) Act. This obviously is not the position in the present case. Possession was not given to the appellant under the said Act and, therefore, sub-section (2) of Section 119 does not come into play."*
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> *"8. From the aforesaid discussion, it clearly follows that the land in question being exempt from tax by virtue of Section 119(1) of the Act as it is the property of the Union and furthermore even under Section 120(1) no tax in respect of land could have been levied in the present case on the appellant prior to the same being let to them in 1997."*

It is clear that the question of whether the NDPL is liable under Section 119(2) would have to be answered in the light of the above ruling. That provision, by way of an exception to the Union property's immunity from taxation, in my

considered view, can have no application.

20.The next question is whether the NDPL is liable to pay tax, by virtue of provisions of Section 120 of the MCD Act. Section 120(1) visualizes three situations where tax can be recovered, and delineates the primary liability upon persons concerned, in those situations. The first two, concern properties which are let or sub-let; the liability in such cases is upon the lessor or superior lessor, as the case may be. The third situation, covered by clause (iii) is where the premises are unlet; the liability is upon the person *"entitled to let"*. The question which has to be considered is whether the respondent NDPL had a "right to let"; in short, whether, it had some interest in the land, which enabled it to let the property. This question has to be examined, along with the provision of section 120(2), since both involve the issue of "letting" or "tenancy"

21.Section 120(2) states that 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 theron shall be primarily leviable upon the said tenant, whether the land and building are in the occupation of such tenant or a sub-tenant of such tenant. The explanation expansively defines "tenant" as follows:

> *"Explanation. - The term "tenant" includes any person deriving title to the land or the building erected upon such land from the*

tenant whether by operation of law or by transfer inter vivos."

The question that arises, therefore, is whether the respondent NDPL is a "tenant".

22.The counsel for MCD contended that the term "tenant" has to receive a liberal interpretation; the nomenclature of a particular legal relationship is immaterial, the contents and intent of the parties who enter into it is relevant. Thus, even if an arrangement is called "license" it may, in reality, be a lease, and vice versa.

23.Counsel for NDPL, on the other hand, contended that a plain reading of the Section 120(2) leads to the conclusion that in order for the said provision to be attracted, there must be a lease/tenancy. In the present case, the land utilized for the purposes of the 'distribution undertaking' including the said property were permitted to be used by the Government under a statutory licence. As such, there is no question of Section 120 sub-section (2) being attracted and the Respondent being held liable to pay property tax in respect of the said property.

24.In the case of 78(1999) DLT 584 (DB)*: Gas Authority of India Ltd. Vs. Municipal Corporation of Delhi,* a Division Bench of the Court held as follows:

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"46. For the purpose of petitioner's business, the pipeline is used by it for the purpose of transportation of gas from the bowls of the earth ultimately to Haryana and U.P. Applying the functional text, as applied in the aforementioned cases, at the most pipelines, which have been laid beneath the land, will have to be treated as a 'plant' contained in or situated upon the land. Holding gas pipelines to be plant, until such a plant is specified by a public notice by the Commissioner, with the approval of the Standing Committee, as envisaged in Sub-section (3) of the Section 116 of the Act, the same shall not be deemed to be forming a part of such land for the purpose of determining the ratable value thereof. In other words, pipeline has to be wholly excluded while determining the ratable value of the land as the petitioner is not owner of the land, being only a licensee, there was no question of having issued any notice to the petitioner for the purpose of determining the ratable value of the pipelines, namely, the plant.

"47. In view of the above, we are of the view that the pipeline, being a plant, the petitioner would not be liable for tax merely on the ground that the same has been laid within the Municipal limits of Delhi, by virtue of arrangement with the private owners, Railways and Government, which arrangement is nothing, but amounts to a licence. Liability for taxation, if any, would be only on the respective owners of land, through whose land the pipeline is passing and not that of the petitioner, as the same would be a plant for the purposes of carrying on petitioner's business and value of the same, in the absence of any Notification issued under Sub-section (3) of Section 116 will have to be excluded while determining the ratable value of the land, in case the same is liable for tax in the hands of the owner of lessor. Consequently, the petition is allowed. The impugned order and demand are quashed and set aside.."

25. In the *Paradip Oil case*, the Full Bench had occasion to deal with the issue of who is a tenant, under Section 120(2) of the MCD Act. The court noticed several judgments, including decisions of the Supreme Court, as also Section 52 of the Easements Act, while analyzing the distinction between the

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expression "lease" and "license". The court held that

"37. Whether a document creates a license or lease, would inter alia, depend upon certain interpreted criteria, which are:

i. to ascertain whether a document creates a license or lease, the substance of the document must be preferred to the form;

ii. that real test is the intention of the parties-whether they intended to create a lease a license;

iii. 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 position continues with the owner, it is a license; and

iv. if under the document the party gets exclusive possession of the property, prima facie, he is considered to be tenant; but circumstances may be established which negative the intention to create a lease."

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"61. Why the document has been termed as a license despite the fact that there by a right in property is created, is not for the Court to answer, particularly, when the deed is an old one. The owner of the property, be it the Central Government or otherwise, would always be keen to see that it is not involved in unnecessary litigation. The common knowledge is that the owner of the property is always a stronger side. The grantee at a relevant point of time was merely a company incorporated under the Companies Act. It had not become a Public Sector Undertaking. It was interested in obtaining a grant for a long time so as to facilitate storage of all petroleum products. Further purpose of transportation of petroleum products from the wagons to its storage tank, land is other than belonging to railway administration was not available. Company dealing in petroleum products would not have any option other than to succumb to the diktats of the officers of the Railway Administration. If the respective of the labelling of the documents its purpose is served, so far as the interest of the companies concerned, the same would not matter to it. It has been seen from the conduct of the parties that the arrangement between them was not to be a short term but a long-term one. The structures still exist and the grandees having been allowed to carry on business without hindrance since 1958, which clearly point out the intention of the parties that the

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transaction involved transfer of right in property. The question may also have to be considered from another angle. So far as a third party like DMC is concerned, it had no say in the matter. It entered into the agreement between the administration and the grantee. It could realise the property tax which is compensatory nature, only in the event the agreement is construed to be a lease and not otherwise. Further purpose of gathering the intention of the parties we must also apply our mind from this angle.

The MCD renders services. The benefit of such services are a taken by all concerned, viz the owner of the land of building. Even the person who is in possession of the land of building, whether legal or illegal, takes benefits of such services rendered by the MCD. The MCD further purpose of realisation of tax is not concerned with the relationship of the parties. It is concerned only with imposition and recovery of tax in accordance with law.

62. Tax is payable on our lands and buildings. The exceptions thereof have been enumerated in the Act itself. Section 119 of the Act is one of such provisions. Such an exemption clause, as is well known, must be construed strictly. Section 119 would apply if the lands and buildings are the properties of Union of India the corporation has lee right to live with the property tax in terms of Section 114 of the Act in the manner as specified therein.

63. By reason of the agreement in question the buildings do not belong to the administration. They belong to the grantees. Oil tanks are buildings within the meaning of the said Act as has been held by the Apex Court. Section 119 of the act therefore would not apply to the building in question. The grantees are therefore, liable to pay tax although ownership of the land may belong to the administration. Section 115 provides that the general tax shall be payable in respect of lands and buildings. Such lands and buildings may be unlawful 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 may belong to the government or a statutory body but the occupier of the apartment are liable to pay tax. If the person encroaches upon somebody's lands and constructs buildings thereon, he would also be liable to pay tax. Once it is held that the grantees were liable to pay tax, the possibility that the term 'license' had been used so as to avoid the payment of tax cannot also be ruled out."

The NDPL relied upon the following observations of the Court, which held that one of the litigants before it was a licensee, and not a tenant :

> *"68... The grantee is merely to pay occupation fee and not the rent. There also does not exist any clause as regards requirement to serve three months' notice for termination of tenancy. As by reasons of such an agreement neither any rent is payable nor any notice is required to be served for the purpose of determination of the tenancy....."* (At para 68 of the Judgment)

26. The above discussion would show that there is no hard and fast rule to determine whether a transaction amounts to letting of premises under a lease, or where it amounts to a license. The tests indicated, in para 37 in *Paradip Oil's case (supra)* are indicative, as the Full Bench itself had ruled; they cannot be considered exhaustive. The contention of NDPL is that it is a licensee, because:

a) the 'distribution undertaking' above stood transferred to the it and the land including the said property was specifically excepted from the distribution asset as set out in Schedule F to the Transfer Scheme, by virtue of proviso to Points I, II and III;

b) It is obliged to pay license fee for the land including the said property utilized for the purpose of 'Distribution undertaking';

c) no obligation has been cast upon it to pay any rates, taxes etc. in respect of the said land.

d) The said licence is co-terminus with the sanction/authority/licence granted in favour of the it to distribute electricity.

e) No notice is required for revocation of licence of the land including the said property utilized for the purpose of 'distribution undertaking'.

28. There can be no dispute that the transfer scheme expressly uses the term "license fee"; the arrangement is co-terminus with the license granted to carry on distribution activity, and the amount payable for the arrangement is Re.1/- and payable as "license fee". The application of the authorities, shows that these factors require examination, and the appellation "license" or "license fee" does not conclude the issue. The following factors or features also emerge, in relation to the transaction:

i] the arrangement is part of a package by which all distribution assets of the erstwhile DVB have been made over to NDPL, for carrying on distribution of electricity;

ii] The period of "license" to the land is co-terminus with the license to carry on the business. The NDPL has not placed any material on record to show that this license is tenuous, or finite. On the other hand, the very nature of the activity would show that the license is necessarily long term;

iii] termination of basic distribution license would have to be preceded with some notice;

iv] The prescription of Re.1/- as the amount payable cannot be a conclusive factor, since, as was mentioned in the *Paradip Oil case* all factors, including the conduct of parties, have to be considered.

v] No restriction upon the use of the land/ property has be shown; this would lead to the inference that the NDPL is free to use it for distribution purposes, including raising of constructions on the land, and exercising all the rights of a lessee;

vi] exclusive possession of all distribution assets, including occupation of lands, was given, without reservation (save the description of the transaction as license, in the *Proviso* to clause III in Schedule F of the Transfer scheme).

In my considered opinion, therefore, the transaction amounted to a tenancy falling within Section 120(1) whereby the premises entitled the NDPL to "let" the properties under Section 120(1)(c). To the extent Section 120(2) is applicable upon construction of buildings or structures, the NDPL would also be liable to property tax, under that provision.

29. There is, in my opinion, one more reason in support of the conclusion that the NDPL is liable under the Delhi Municipal Corporation Act. The transfer scheme Rules, by Rule 2(c) defines "board" as the DVB, constituted under Section 5 of the Electricity Supply Act, 1948. Rule 5(2), which occurs after sub-rule (1) – which talks of delineation of assets in favour of the various DISCOMS – provides that on transfer and vesting of the undertakings, the respective transferee shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements, and other instruments of whatever nature, relating to the respective undertakings and assets and liabilities transferred to it, to which the Board was a party, subsisting or having effect on

the date of the transfer, in the same manner as the Board was liable immediately before the date of the transfer. All pending proceedings against the Board, by virtue of Rule 8, do not abate; they continue against the transferee(s) as if they stand in place of the Board. In the case of doubts and difficulties differences arise in regard to the transfers under the rules, the decision of the Government is final. These provisions, in my opinion, establish that the NDPL is an effective, and full successor in respect of all matters relating to liabilities, and assets, under Schedule F. The nature of proceedings described under Rule 8 are wide enough to cover proceedings under the 1957 Act. There is no conclusive material to establish that the Reforms Act or the transfer scheme ruled out liability of the NDPL from municipal taxation; no determination of the Government to that effect appears to have been elicited, or granted under Rule 12. Hence, there is intrinsic material in the rules, indicating that NDPL is liable to property tax.

30. There is yet another reason which impels me to conclude that NDPL is liable to pay tax. The use and enjoyment of the property, for the purpose of carrying on distribution activity, undoubtedly is with it. The NDPL is neither a wing, or state agency; its mandate is to carry on business in distribution activity on the basis of rules framed, and tariffs fixed by the authorities under the Reforms Act, and the Electricity Act, 2003. The erstwhile DVB, a statutory

agency, was paying property tax. Its activities have been re-organized, and one such activity has been handed over to the NDPL, in respect of which it holds 51% of the stake. Having regard to the objects of the Act, it would be inconceivable that the property is used, occupied, business of distribution of electricity permitted, and yet the corporate entity doing the job is under no obligation to pay property taxes.

31. In view of the foregoing discussion, I am of the considered view that there was no intention to create a licence in respect of the land including the said property utilized for the purpose of 'distribution undertaking'; the intention was to create a tenancy, with all concomitant rights under the law. The records are not clear as to whether, and when any building was put up by the respondent NDPL. It would therefore, be appropriate that the matter is remanded to the assessing authority empowered to enquire in that regard, and pass proper orders on the quantum of liability, whether towards vacant land tax, and/ or towards other property taxes due under the Delhi Municipal Corporations Act, 1957.

32. The writ petition is accordingly allowed, in terms of para 31. The Deputy Assessor and Collector, MCD shall take up the issue and pass appropriate orders on the nature, and extent of liability of the NDPL after giving it notice, and opportunity of hearing. He shall pass a reasoned, speaking

(31)

order. This exercise shall be concluded within four months from today.

DATED: 25th July, 2005

(S. RAVINDRA BHAT)
JUDGE