Shephali

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10304 OF 2022
WITH
INTERIM APPLICATION NO. 17767 OF 2022
AND
INTERIM APPLICATION NO. 17768 OF 2022

1. **MEP Infrastructure Developers Ltd.,**
B1-406, Boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai 400 042 through Mr Shashwat Singh, Group General Counsel.

2. **Sameer Apte,**
Chief Operating Officer of MEP Infrastructure and Developers Ltd, B1-406, Boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai 400 042.

...Petitioners

~ VERSUS ~

1. **South Delhi Municipal Corporation,**
   Through its Commissioner Office at:
   Dr Shyam Prasad Mukherji Civil
   Centre, Minto Road,
   New Delhi 110 003.

2. **Commissioner,**
   South Delhi Municipal Corporation,
   Office at: Dr Shyam Prasad Mukherji
   Civil Centre, Minto Road,
   New Delhi 110 003.

3. **Additional Commissioner,**
   Toll Tax Department,
   South Delhi Municipal Corporation,
   Office Dr Shyam Prasad Mukherji Civil
   Centre, Minto Road,
   New Delhi 110 003.

4. **Additional Deputy Commissioner, Toll Tax Department,**
   South Delhi Municipal Corporation,
   Office Dr Shyam Prasad Mukherji Civil
   Centre, Minto Road,
   New Delhi 110 003.

5. **The Assistant Commissioner,**
   Toll Tax Department,
   South Delhi Municipal Corporation,
   Office Dr Shyam Prasad Mukherji Civil
   Centre, Minto Road,
   New Delhi 110 003.

6. **State Bank of India,**
Dombivli West, Sant Palace,
Opp Babe Hall, MG Road, Thane,
Mumbai 421 201

7. **Dombivali Nagari Sahakari Bank Ltd,**
Amar Matru Shakti, CHS,
Opp Railway Station, Vishnunagar,
Dombivli (W), Mumbai 421 200

8. **Office of District Magistrate,**
B-1069, Chandivali Road, Yadav Nagar,
Chandivali, Powai, Mumbai 400 072.

9. **Office of Tahsildar and Executive magistrate, Kalyan,**
Near Mahatma Phule Police Station,
Murbad Road, Kalyan.

10. **Office of Tahsildar and Executive Magistrate, Kurla,**
Topowala College Building 1,
Sarojini Naidu Road, Mumbai 400 080

11. **Office of District Collector, Mumbai Suburban District,**
10th Floor, Administrative Building,
Near Chetna College, Government
Colony, Bandra (E), Mumbai 400 051

12. **Office of District Collector,**
Collector Office, Court Naka,
Thane (West), - 400 601

...Respondents

WITH

WRIT PETITION NO. 8677 OF 2022

Municipal Corporation Of Delhi,
Civic Centre, Minto Road,
New Delhi 110 003 **... Petitioner**

~ versus ~

1. **State of Maharashtra,**
   through the Principal Secretary,
   Revenue & Forest Department,
   Mumbai
2. **District Collector Thane District,**
   Collector Office, Court Naka,
   Thane (West), 400601
   Maharashtra
3. **The Kalyan Janata Sahakari Bank Ltd,**
   'Kalyanamastu', Adharwadi,
   Kalyan (W) 421301
4. **MEP Infrastructure Developers Ltd.,**
   B1-406, Boomerang, Chandivali Farm Road, Near Chandivali Studio, Andheri (East), Mumbai — 400042

... Respondents

Appearances

for the petitioner in WP 10304/2022, ("MEPIDL")	**Mr Venkatesh Dhond, Senior Advocate**, *with Rashmin Khandekar, Deepak Deshmukh,*

	Swati Singh & Vivek Dwivedi, i/b Naik Naik & Co.
FOR RESPONDENTS NOS. 1 TO 5 IN BOTH WP 10304/2022 ("MCD")	**Mr Gaurav Joshi, Senior Advocate**, *with Sanjay Vashishtha, Shreyas Shrivastava, Tanmay Bidkar & Yogesh Devnani.*
FOR THE PETITIONER IN WP/8677/2022 ("MCD")	**Mr Sanjay Vashishtha**, *with Shreyas Shrivastava, Tanmay Bidkar & Yogesh Devnani, Advocates.*
FOR RESPONDENT NO. 4 IN WRIT PETITION NO. 8677/2022 ("MEPIDL")	**Mr Deepak Deshmukh**, *with Swati Singh & Vivek Dwivedi, i/b Naik Naik & Co.*
FOR RESPONDENT NO. 3 KALYAN JANATA SAHAKARI BANK LTD IN WP 8677/2022	**Mr Vishal Pattabiraman**, *with Sonal Sanap, i/b Apex Law Partners.*
FOR RESPONDENT - STATE IN BOTH PETITONS	**Mr NC Walimbe, AGP**.

CORAM : G.S.Patel &
S.G. Dige, JJ.

DATED : 1st February 2023

ORAL JUDGMENT (*Per GS Patel J*):-

1. MEP Infrastructure Developers Limited ("**MEPIDL**") is at loggerheads with the Municipal Corporation of Delhi ("**MCD**"; previously the *South Delhi Municipal Corporation*). The dispute is about the recovery by the MCD of a large sum of money that it says is due from MEPIDL. Writ Petition No. 10304 of 2022 is by

MEPIDL ("**the MEPIDL Petition**"). Writ Petition No. 8677 of 2022 is by the MCD, ("**the MCD Petition**").

2. In the MEPIDL Petition, the prayers after amendment are these:

> "a. Issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate orders or directions calling for the records of the case pertaining to the Impugned Notices *(Exhibit-A-1 & A-2),* the Impugned Warrants of Distress *(Exhibit-C-1, C-2 & C-3)* the Impugned 2nd Set of Warrants of Distress *(Exhibit-OO-1, OO-2)* and Impugned Attachment Notices *(Exhibit-PP-1 & PP-2)* issued by Respondent No. 4, and after perusing the legality and propriety of the process, be pleased to quash and set aside the same;
>
> b. this Hon'ble Court be pleased to issue a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting the Respondents No. 9 to 12 from taking any action against the Petitioner pursuant to and/or in furtherance of and/or implementation of the Impugned Notices and Impugned Attachment Notices.
>
> c. this Hon'ble Court be pleased to issue a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India prohibiting the Respondents No. 6 to 8 from taking any action against the Petitioner pursuant to and/or in furtherance of and/or implementation of the Impugned Warrants of Distress;
>
> (c-1) this Hon'ble Court be pleased to issue a writ of mandamus, or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226

of the Constitution of India prohibiting the Respondents No. 11 and 12 from taking any action against the Petitioners pursuant to and/or in furtherance of and/or implementation of the 2nd set of Warrants of Distress and Impugned Attachment Notices."

3. MCD seeks these reliefs in its Petition.

"A. This Hon'ble Court be pleased to direct the Respondent No. 3 to recall its notices dated 04.01.2022 issued to the defaulter and declare the same as illegal and without the authority of law.

B. This Hon'ble Court be pleased to direct the Respondent No. 3 to refrain from issuing any letter, information, or communication, whether formally or informally to the defaulter that may pre-empt the defaulter into removing its money from the bank account maintained by the defaulter with Respondent No. 3.

C. This Hon'ble Court be pleased to direct the Respondent No. 2 to take appropriate penal action against the Respondent No. 3 for acting without the authority of law in issuing and pre-empting the defaulter by way of the notice dated 04.01.2022."

4. The MEPIDL Petition is against several Respondents, 12 in all, including the MCD, its Commissioners, two banks and then, importantly for our purposes, the District Magistrate at Chandivali, Powai, the Tahsildar Executive Magistrate, Kalyan, the Tahsildar Executive Magistrature at Kurla. Also joined as Respondents by an amendment are the District Collector Mumbai Suburban and the District Collector Thane. In the MCD Petition, the Respondents are

apart from the State of Maharashtra, the District Collector at Thane, one of the banks and MEPIDL.

5. A compact statement of facts may be taken from the MCD Petition. The MCD is a statutory body. Its governing statute is the Delhi Municipal Corporation Act, 1957 (**"the DMC Act"**). Amongst its various functions, the MCD collects toll tax from commercial vehicles entering Delhi from as many as 1024 toll gates or entry points around Delhi. This is said to be one of the principal sources of revenue for all municipal corporations of Delhi.

6. The MCD says that it does not itself have in-house manpower to collect toll tax at these various collection points. It cannot monitor the quite considerable daily cash collections. The work is thus contracted out on a lumpsum basis to various third parties. This is done under the Delhi Municipal (Toll Tax) Bye-Laws 2007, which are to be read with Section 113 of the DMC Act.

7. According to the MCD, MEPIDL, a Mumbai-based enterprise, made a bid for collection of toll tax from all MCD toll gates/check posts at the many entry points into Delhi. The parties executed a contract on 28th September 2017. We note at the forefront that we are not concerned in these Petitions with the merits of the disputes arising from that contract. It is enough to note that the contract required MEPIDL to make a specified weekly remittance to the MCD. This was expressed also in terms of an annual remittance and was subject to a periodic enhancement. Other remittances were also to be made. According to MCD, an

amount of about Rs. 100 crores was to be paid monthly towards toll tax. The contract in question required MEPIDL to recover other charges such as environment compensation charges, and these too had to be remitted to the MCD.

8. MCD's case is that MEPIDL failed to make these remittances. A large amount fell due. The contract itself provided for a penalty. MCD imposed that penalty. It also served several demand notices amount by various communications from 3rd November 2017 till 14th February 2021.

9. There seemed to be no resolution to these disputes. MCD terminated the contract by a notice dated 16th March 2020.

10. The scene now shifts to MEPIDL's dispute about the termination and the MCD's demands. This took place in the Delhi High Court where MEPIDL filed a Writ Petition challenging the termination. That was dismissed on 9th April 2021. We are told there is a Letters Patent Appeal pending against that order. Again, this is not our concern except to the limited extent to note that the matter is squarely within the seisin of the Delhi High Court.

11. On 10th April 2021, according to the MCD, MEPIDL was indebted to the MCD in an amount of nearly Rs. 4,000/- crores. Mr Joshi for MCD says that figure has gone up considerably since.

12. The disputed question is this. MCD has set about recovering its claim. MEPIDL is not a Delhi-based enterprise. It has no assets

in Delhi. But it has considerable assets, both movable and immovable, within the jurisdiction of this Court. MCD has also moved in distraint and issued distress warrants. One of these was sought to be challenged by MEPIDL before the Delhi High Court. No stay was granted. MEPIDL says it has withdrawn that challenge petition to the distress warrant, a statement that MCD disputes.

13. This brings us now to the frame of the MEPIDL Petition because what MCD did was to move against MEPIDL's assets within the jurisdiction of this Court. It did so by requesting, in the manner that we will shortly describe, the local authorities to issue notices of attachment of MEPIDL's assets within this Court's jurisdiction. The request was for attachment of both movable and immovable properties. The movable properties seem to be bank accounts with one or the other of the Respondent banks. At least one of these banks has been unusually friendly to MEPIDL: rather than acting on the Tehsildar's notice demanding a freezing of the accounts, it invited MEPIDL to explain why that action should not be taken.

14. The argument by MEPIDL represented by Mr Dhond relates principally to the two notices at Exhibits "A1" and "A2" to the MEPIDL Petition. From the prayers that we have set out above, it is clear that the relief is also sought in respect of the warrants of distress. Mr Dhond clarifies that only one warrant of distress was challenged before the Delhi High Court. Mr Joshi says that the others have never been challenged elsewhere. In any case, Mr Dhond also says that the challenge to the warrants of distress is to

the extent that they seek to move against properties, both movable and immovable, within the jurisdiction of this Court. He also states that the challenge to a solitary warrant of distress filed before the Delhi High Court has been withdrawn. This is disputed.

15. We decline to enter into that controversy. For the reasons that follow, we decline to embark on an adjudication of the warrants of distress.

16. Exhibits "A1" and "A2" are at pages 56 and 59 of the MEPIDL Petition. Exhibit "A1" is dated 28th October 2021. This is a communication from the Tahsildar and the Executive Magistrate Kalyan to the Manager of the State Bank of India and the Manager of the Dombivli Nagari Sahakari Bank Ltd to freeze two accounts noted in that letter. Exhibit "A2" is of 16th November 2021. It notes that there is a Revenue Recovery Certificate and says that if the demand is not paid, the amount of the Revenue Recovery Certificate will be recovered as arrears of land revenue under the Maharashtra Land Revenue Code 1966.

17. Mr Dhond maintains that the Writ Petition squarely lies within the jurisdiction of this Court. He invites attention to Article 226 (2) of the Constitution of India. We reproduce Article 226 of the Constitution.

> "**226. Power of High Courts to issue certain writs.—**
>
> (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any

Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day,

stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."

(*Emphasis added*)

18. It is true that the Respondent Tehsildar is within the jurisdiction of this Court and that the properties in question, both movable and immovable, are also within the jurisdiction of this Court. According to Mr Dhond, since the action is brought against those properties, it can safely be said that the cause of action, or at least a part of it, arises within the jurisdiction of the Court. It makes no difference that the demand on which the impugned action is based originates from outside the jurisdiction of this Court.

19. Mr Joshi for his part says that this is a misreading of Article 226(2). The entirety of Article 226 confers an equitable and a discretionary power on the High Court to issue a high prerogative writ remedy. Sub-article (2) was introduced by the 15th amendment as Article 226(1-A) and then, by the 42nd Amendment, in its present form. It allows High Courts to exercise their discretionary jurisdiction even when the originating authority is beyond that High Court's jurisdiction. But this does not mean that in every case, a High Court *must* exercise its jurisdiction, i.e., that the equitable discretion is taken away. Article 226(2) is an expansion of a High Court's writ jurisdiction, not a fetter on it. Surely equitable considerations must be a factor. It is his submission that there is really no jurisdictional remit of this Court to be exercised under Article 226(2). The act of the Tahsildar in issuing the impugned

notices are purely ministerial acts, giving effect to a Revenue Recovery Certificate and to the warrants of distress. Those warrants were all issued in Delhi under a Delhi statute. No part of the cause of action relatable to the warrants of distress arises within the jurisdiction of this Court; and, therefore, there is no call for interference with the impugned notices.

20. Mr Joshi is at some pains to submit that we should not enter into the merits of the case, i.e., the actual dispute as MCD's claim and MEPIDL's liability. We agree it is not for us to decide whether that debt is or is not due and whether the claim of the MCD is or is not justified. There is no dispute that there are warrants of distress and that these have been issued from Delhi.

21. Jurisdictionally, the warrants of distress and the impugned notices are distinct. The impugned notices are based on the warrants of distress. The notices originate in this Court's jurisdiction. The warrants of distress do not. The fact that the warrants of distress resulted in the impugned notices does not, in and of itself mean that we should exercise our discretion in regard to those distress warrants.

22. Mr Dhond would next have it that unless it is shown that the claim of the MCD is revenue, no revenue authority can purport to exercise powers for recovery of the amount claimed as "arrears of land revenue". It is his case that this is a money claim, pure and simple. At best it is a tax. It is in no sense, he submits, recoverable as arrears of land revenue.

23. To understand the controversy, we must consider certain provisions of the applicable statute. There is, first, the DMC Act. There are also the Delhi Municipal Corporation (Toll Tax) Bye-Laws 2007 ("**the Toll Tax Bye-Laws**"). The DMC Act has a separate chapter on taxation, Chapter VIII. Section 113 sets out the taxes to be imposed by the Corporation under the Act. The list includes a tax on vehicles under sub-section (1). Under sub-section 2(g) of section 113, tolls are specifically enumerated as one species of tax. Then sub-section (3) says that the taxes specified in sub-sections (1) and (2) are to be assessed and collected in accordance with the provisions of this Act and the Bye-Laws made thereunder.

24. We turn to Sections 156, 157 and 158 of the DMC Act:

> "**156. Recovery of tax—**
>
> (1) **If the person liable for the payment of the tax does not, within thirty days from the service of the notice of demand, pay the amount due, such sum together with all costs and the penalty provided for in section 155, may be recovered under a warrant, issued in the form set forth in the Eighth Schedule, by distress and sale of the movable property or the attachment and sale of the immovable property, of the defaulter:**
>
> Provided that the Commissioner shall not recover any sum the liability for which has been remitted on appeal under the provisions of this Act.
>
> (2) Every warrant issued under this section shall be signed by the Commissioner.
>
> **157. Distress—**
>
> (1) **It shall be lawful for any officer or other employees of the Corporation to whom a warrant issued**

under section 156 is addressed to distrain, wherever it may be found in any place in Delhi, any <u>movable property or any standing timber</u>, growing crops or grass belonging to the person therein named as defaulter, subject to the following conditions, exceptions and exemptions, namely:—

(a) the following property shall not be distrained:—

(i) the necessary wearing apparel and bedding of the defaulter, his wife and children and their cooking and eating utensils;

(ii) tools of artisans;

(iii) books of account; or

(iv) when the defaulter is an agriculturist his implements of husbandry, seed, grain and such cattle as may be necessary to enable the defaulter to earn his livelihood;

(b) the distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible equal in value to the amount recoverable under the warrant, and if any property has been distrained which, in the opinion of the Commissioner, should not have been distrained, it shall forthwith be released.

(2) The person charged with execution of a warrant of distress shall forthwith make an inventory of the property which he seizes under such warrant, and shall, at the same time, give a written notice in the form set forth in the Ninth Schedule, to the person in possession thereof at the time of seizure that the said property will be sold as therein mentioned.

158. Disposal of distrained property and attachment and sale of immovable property—

(1) When the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is, when added to the amount to the recovered, likely to exceed its value, the Commissioner shall give notice to the person in whose possession the property was at the time of seizure that it will be sold at once, and shall sell it accordingly by public auction unless the amount mentioned in the warrant is forthwith paid.

(2) If the warrant is not in the meantime suspended by the Commissioner, or discharged, the property seized shall, after the expiry of the period named in the notice served under sub-section (2) of section 157, be sold by public auction by order of the Commissioner.

(3) When a warrant is issued for the attachment and sale of immovable property, the attachment shall be made by an order prohibiting the defaulter from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge, and declaring that such property would be sold unless the amount of tax due with all costs of recovery is paid into the municipal office within fifteen days from the date of the attachment.

(4) Such order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode and a copy of the order shall be affixed on a conspicuous part of the property and upon a conspicuous part of the municipal office and also, when the property is land paying revenue to the Government, in the office of the collector.

(5) Any transfer of or charge on the property attached or any interest therein made without written permission of the Commissioner shall be void as against all claims of the

Corporation enforceable under the attachment.

(6) The surplus of the sale-proceeds, if any shall, immediately after the sale of the property, be credited to the Municipal Fund, and notice of such credit shall be given at the same time to the person whose property has been sold or his legal representative and if the same is claimed by written application to the Commissioner within one year from the date of the notice, a refund thereof shall be made to such person or representative.

(7) Any surplus not claimed within one year as aforesaid shall be the property of the Corporation.

(8) For every distraint and attachment made in accordance with the foregoing provisions, a fee of such amount not exceeding two and-a-half per cent. of the amount of the tax due as shall in each case be fixed by the Commissioner, shall be charged, and the said fee shall be included in the costs of recovery."

(*Emphasis added*)

25. Section 156(1) mentions recovery under a warrant issued in a form set out in the Eighth Schedule by distress and sale of immovable property or the attachment and sale of the immovable property of the defaulter. Section 157(1) is a provision on which Mr Dhond lays much emphasis. This speaks of a distraint. According to Mr Dhond, therefore, Section 157(1) controls and limits Section 156(1): a distress warrant must be confined to property of the descriptions set out in that sub-section *and which is located in Delhi*. Then Section 158 deals with the disposal of property that is already distrained and also deals with the attachment and sale of immovable property.

26. Mr Dhond's submission does not commend itself to us. Section 157 is an empowering provision. It only says that it is *lawful* for an MCD employee who is in receipt of a warrant to distrain any *movable* property or any standing timber growing crops or grass subject to certain conditions exceptions and exemptions. It is not possible we think, to read Section 157 as constraining the ambit, amplitude and operation of Section 156 which does not contain any such geographical limitation. Importantly, the Eighth Schedule referred to in Section 156 also does not provide for any such geographical restriction or limitation.

27. Even otherwise, the submission cannot be accepted. For, if what Mr Dhond says is correct then the result is, inevitably, absurd and untenable. It means, *one*, that the MCD can never engage a contractor from outside Delhi or who has no property in Delhi, because then the MCD has no means of recovery. *Two*, that if the MCD does engage a contractor from outside Delhi, i.e., one who has no property in Delhi, then the MCD simply cannot proceed against that property in recovery. *Three*, that a contractor from outside Delhi who has no property in Delhi is more or less immunized from any recovery. *Four*, the DMC has no viable recourse against such a contractor. *Five*, that any attempt to recover against any property outside Delhi is *unlawful*.

28. Therefore, the submission also involves injecting a non-existing word into Section 157(1): it means reading that section as:

> "It shall ***ONLY*** be lawful for any officer or other employees of the Corporation to whom a warrant issued under section 156 …"

29. From any perspective, this is not a tenable manner to read the statute. The phrase "shall be lawful" has two purposes. First, it is clarificatory: it tells us what is permissible. Second, it introduces important safeguards for the debtor in Section 157(1)(a)(i) to (iv) and Section 157(1)(b). The domestic distraint, within Delhi, is limited to movable property and standing crops, etc., and even this is made—

> "subject to the following **conditions, exceptions and exemptions**, namely …"

And then follow the various provisions of sub-section (a)(i) to (a)(iv) and (b).

30. Section 157(1) does not, therefore, control or limit Section 156 at all.

31. The Toll Tax Bye-Laws are framed under the DMC Act. Bye-Law 2(1)(c) defines Toll Tax to be the tax imposed on commercial vehicles entering Delhi. Bye-Law 3 says the vehicles that are liable to pay toll tax and the tax rates. Bye-Law 6 sets out the method of collection of Toll Tax. Then there are provisions for penalty, closing transactions at the end of the day and crediting daily proceeds of the Toll Tax and so on.

32. Next, we come to Section 455 of the DMC Act:

> "**455. Mode of recovery of certain dues— In any case not expressly provided for in this Act or any bye-law made thereunder any due to the Corporation on account of any charge, costs, expenses, fees, rates or rent or on any other account under this Act or any such bye-law**

> **may be recoverable from any person from whom such sum is due <u>as an arrear of tax under this Act</u>**:
>
> Provided that no proceedings for the recovery of any sum under this section shall be commenced after the expiry of three years from the date on which such sum becomes due."
>
> (*Emphasis added*)

33. Clearly, Section 455 must be read with Section 156 and the Eighth Schedule. Therefore, it follows that an 'arrear of tax' can be recovered in the manner set out in Section 156—

> "by distress and sale of the movable property or the attachment and sale of the immovable property…"

There is no geographical limitation in Section 455 or Section 156.

34. Our attention is then invited to the provisions of the Revenue Recovery Act 1890. Section 3(1) says that where there are arrears of land revenue or a sum returnable as arrears of land revenue and the amount is held by the defaulter against property in a district other than that in which the arrears accrued or the sum is payable, the Collector may send to the other collector of the other district, a certificate stating the name of the defaulter and other particulars and the amount that is payable. This, in other words, is the revenue recovery certificate that led to the impugned notices. Section 3(3) says that receiving Collector *shall* (the word is not "may")), on receiving the certificate, proceed to recover the amounts stated therein as if it were an arrears of land revenue which had accrued in his own District.

35. What this tells is that if an amount is recoverable as arrears of land revenue in one district, that recovery may be effected in another district by the issuance of a revenue recovery certificate. Mr Dhond argues that the toll tax claimed by the MCD is not an arrear of land revenue at all. It is, simply, a tax and it is recoverable as an arrear of tax under the Act. So says Section 455, he submits, and there is no way in which arrears of tax can be read to be arrears of land revenue. But this argument divorces Section 455 from Section 156 and the Eighth Schedule entirely; and that, as we have noticed, is untenable.

36. Indeed, it is Mr Dhond's submission that the MCD claim is not even a tax but it is simply a contractual debt alleged to be payable under a signed contract. What the MCD has therefore tried to do, Mr Dhond submits, is to elevate a contractual debt first to the level of a tax and then to the level of land revenue. Neither of these subsequent stages, he submits, is permissible in law.

37. We do not think it is possible to accept this submission. We do not need to examine the contract or its termination or interpret the contractual provisions. MEPIDL was collecting and remitting toll. The question, therefore, is not whether MEPIDL was doing so under contract but what is it that it was collecting and remitting because it is this amount that is sought to be recovered. Toll is undoubtedly a tax. It is so defined. The statute so says. Even the Bye-laws make this abundantly clear. This completely answers the first aspect of the matter; and there is no question of limiting the recovery to a contractual debt. The second limb of the argument,

that it is only a tax and not land revenue and cannot be recovered as land revenue, to our mind unacceptably isolates Section 455 from Section 156 and the corresponding Eighth Schedule. Section 455 has two operative words. *First*, it speaks of a mode. Then it speaks of "*certain dues*". Section 455 is a sort of residuary provision. It applies in any case not otherwise provided in the DMC Act or any Bye-law. The ambit of Section 455 is to cover any charge, cost, expenses, fees, rates, rent or any other account. Thus, even this goes against Mr Dhond because any claim would, under Section 455, be "a certain due" — including what Mr Dhond says is a mere contractual claim. This too can be recovered as an arrear of tax. That takes us directly to Section 156. Now that Section makes it abundantly clear that the tax due can be recovered under an Eighth Schedule warrant by distress and sale of movable property or the attachment and sale of immovable property of the defaulter. There is no geographical restriction in Section 156 limiting the action to assets in Delhi.

38. This takes us to Mr Dhond's submission that the Tehsildar was required to "satisfy himself" before issuing either of the impugned notices. We have understood this to mean that the Tehsildar ought to have embarked on some sort of quasi-judicial enquiry, perhaps even going into the question of statutory interpretation and reconciling these provisions. We do not believe this is correct at all. One reason is the Revenue Recovery Act. Once the Tehsildar or the Collector has received the Revenue Recovery Certificate, he necessarily had to act on it. Section 3(3) of the Revenue Recovery Act is unambiguous in that regard. There is no question of discretion in the hands of the Tehsildar.

39. Mr Joshi submits that toll is nothing but a form of land revenue. It is a tax for the use of land, i.e., for the use of a road by a vehicle. Land revenue is not defined in the Revenue Recovery Act. We do not think it is necessary to pronounce finally on this aspect of the matter in light of the view that we have taken that the action of the officer is correct in accordance with law.

40. There is a final reason not to accept Mr Dhond's submission. Cutting through all this jurisprudential argumentation, one thing appears to us to be perfectly plain. Now that it has failed to get any protection from the Delhi High Court, MEPIDL has set about trying to stymie all recovery proceedings by assailing a ministerial order and thus reducing even the proceedings in the Delhi High Court to an idle formality. We are having none of it. At the very least, the comity of Courts requires us to defer to the Delhi High Court in this regard. It is not shown to us unequivocally that the Tehsildar has acted illegally, unlawfully or in any manner that warrants the exercise of our discretion in issuing a high prerogative remedy. Merely because it is uncomfortable for MEPIDL is not a ground to interfere. If this is a purely contractual dispute, as Mr Dhond himself suggests it is, then MEPIDL's remedies lie elsewhere and not in our Writ Court.

41. Reliance is sought to be placed on the decision of a learned Single Judge, Badar Durrez Ahmad J as he then was, of the Delhi High Court in *Callipers Naigai Ltd & Ors v Government of NCT of Delhi & Ors*[1] on the question of territoriality and jurisdiction. While

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1 2004 SCC OnLine Del 63.

we agree with the decision and judgment of the learned Single Judge, we believe that the present case stands on a slightly different footing. The point here is not whether this Court has jurisdiction, especially territorial jurisdiction under Article 226(2) of the Constitution of India, but whether that jurisdiction is *required* to be exercised on the facts and in the circumstances of this case. As we have noted, almost everything in this case militates against the exercise of jurisdiction in favour of MEPIDL.

42. Mr Joshi relies on the recent three-Judge bench decision of the Supreme Court in *Jalkal Vibhag Nagar Nigam & Ors v Pradeshiya Industrial and Investment Corporation*.[2]This discussed *inter alia* the nature of levy under Section 52 of the UP Water Supply and Sewerage Act, 1975. There was a dispute as to whether the levy was a tax on land and buildings. The Supreme Court *inter ali*a observed that there has been a gradual obliteration of the distinction between a tax and a fee at a conceptual level. It approved the earlier authorities that there is no generic difference between a tax and a fee, and held that the practical and constitutional distinction between the two has eroded. A fee may also be a compulsory exaction. It may also carry an element of compulsion. The point that Mr Joshi makes is that it is not the label that one attaches to it but it is the nature of the levy that is of relevance. *Jalkal Vibhag* was distinguished in *Kerala State Beverages Manufacturing & Marketing Corporation Ltd v Assistant Commissioner of Income Tax*.[3] The Revenue seems to have argued in *Kerala State Beverages* that, following *Jalkal Vibhag*, there is *no distinction at all,*

2 2021 SCC Online 960.

3 (2022) 4 SCC 240.

ever, between a fee and a tax. This argument was repelled. The Supreme Court in *Kerala State Beverages* held that it is a settled principle of interpretation that where the same statute uses different terms and expressions, the legislature is referring to different things. It also held that *Jalkal Vibhag* maintains and does not take away the basic constitutional distinction between a 'fee' and a 'tax'. Mr Joshi's point is that the statute defines toll as a tax. Merely because it is collected under a contract will not change the nature of the levy, or make it something other than a tax. MEPIDL was, plain and simple, MCD's tax collector. The amount in MEPIDL's hands was tax — by statute. It remained a tax, and this tax had to be remitted to the MCD. It could not become 'consideration' or 'damages' or a contractual debt of any other kind. This was always tax due to the MCD. It was due from the drivers/owners of commercial vehicles entering Delhi, and it was payable to the MCD. MEPIDL was only 'harvesting' the tax collections. It was a tax, and remains a tax, says Mr Joshi; and Section 455 and 156 of the DMC Act show how this can be recovered — i.e., against movable and immovable property even outside Delhi. We believe this submission is perfectly correctly placed.

43. We see no reason, finally, to exercise our discretion at all in regard to the several distress warrants that had been issued. It is undoubtedly plain that MEPIDL had in fact challenged one such distress warrant in Delhi. There may be a controversy about whether it is withdrawn or not withdrawn but we do not see how MEPIDL can literally take its chances in one High Court and then try again in another High Court in this manner. The entire trajectory of this is to be deprecated. When a principle challenge

against the termination fails and while an appeal is pending, one distress warrant is challenged in Delhi only to be allegedly later withdrawn and other distress warrants are now brought before this Court.

44. These are reasons for us to refuse to exercise our Article 226 discretion which is after all undoubtedly equitable. Granting relief to MEPIDL would, we believe, be entirely inequitable in the facts and circumstances of the case.

45. To put it a little colloquially and to put a lid on it, we made it clear to Mr Dhond that in any such matter involving a matter of commerce or even high commerce, it is now our almost invariable practice to first ask that the amount be deposited. Mr Dhond is clear that he is unable to do anything of the kind. If that be so, then to his request that we grant him a writ, we must answer in the same coin, that we too are unable to do anything of the kind.

46. The MEPIDL Petition is dismissed.

47. As to the MCD Petition, the challenge here is to a notice issued by the Kalyan Janata Sahakari Bank on 4th January 2022 to MEPIDL asking it to show cause why the account should not be frozen. The action of the Bank is indefensible. The bank has no authority in law to invite suggestions and objections from a defaulter against whom there is a Revenue Recovery Certificate. Once the Tahsildar has issued a notice to freeze the account, the bank must

comply, and it is then for the defaulter to apply to a Court or an authority to have that account released from freezing.

48. Accordingly, in the MCD Petition we issue Rule, make it returnable forthwith and make Rule absolute in terms of prayer clauses (a) and (b). Prayer (c) is of course not seriously pressed by Mr Joshi.

49. The Petitions are disposed of in these terms. Mr Joshi presses for costs. We believe that he has quite enough to recover. There will be no order as to costs.

50. The Interim Applications are infructuous and are disposed of accordingly.

51. Mr Dhond seeks an extension of an earlier protection. To grant that would be to undermine everything we have just said. The application is refused.

(S. G. Dige, J) **(G. S. Patel, J)**