



NEW YORK CITY LAW DEPARTMENT
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For Immediate Release

UNITED STATES COURT OF APPEALS DECLARES CITY TAX CASE AGAINST INDIA AND MONGOLIA CAN PROCEED

CASE PROCEEDS UNDER FEDERAL SOVEREIGN IMMUNITIES ACT

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New York, April 27, 2006 – The United States Court of Appeals for the Second Circuit yesterday affirmed a lower court decision which ruled that United States courts have jurisdiction to hear a suit brought by the City that seeks to affirm the City's right to tax property owned by India and Mongolia and used to house staff of their Missions to the United Nations. The City alleges that India owes more than \$23 million in back taxes on portions of its 26-story building in midtown Manhattan located at 235 E. 43rd St., and Mongolia owes more than \$2 million on portions of its 6-story building on the Upper East Side located at 6 E. 77th St. India's tax arrears date back to 1991 and Mongolia's date back to 1980.

This decision, *City of New York v. Permanent Mission of India, et al.*, 05-4260 and 05-4263, did not deal with whether India and Mongolia actually owed the taxes in question, but rather with whether the United States courts have jurisdiction to resolve this dispute between the City and two sovereign nations. In a decision of first impression in the Second Circuit (i.e., the federal court of appeals that has jurisdiction over New York), the Court held that it did have jurisdiction because the taxes concerned "rights in immovable property," and were thus exempt from the immunity that foreign sovereigns enjoy under the Foreign Sovereign Immunities Act. India and Mongolia had argued that such exemption was limited to cases in which ownership or possession were directly at issue, and that that was not the case here. Rejecting that argument in an opinion by Judge Robert Katzmann, the Court concluded that the immovable property exception to sovereign immunity includes any rights that arise "directly out of the foreign country's rights to or use of the property." Judge Katzmann wrote that "a foreign state cannot assume the benefits of ownership . . . while simultaneously disclaiming the obligations associated with them. When owning property abroad, a foreign state must follow all the same laws that pertain to private owners of such property, except to the extent that it can point to specific exceptions" in treaties or other sources of law.

At the request of the Court, the United States Justice Department and the Department of State had submitted a joint position statement in which they argued that the Foreign Sovereign Immunities Act should be construed to bar the suit, and contended that foreign policy interests militated against entertaining it. The Court declined to defer to the federal Government's position, stating that as the dispute "appears to revolve around the proper interpretation of a treaty," it "is well within the competence and authority of the federal courts and is not a non-justiciable political question."

New York City Corporation Counsel Michael A. Cardozo praised the decision. "The Court carefully and correctly construed the governing statute," he said. "The decision is particularly important because it makes clear that foreign states must follow the same rules as everyone else regarding the ownership of real estate in New York City."

The appeal was argued by Norman Corenthal of the New York City Law Department. City attorneys John Low-Beer and Kristin Helmers also worked on the appeal. Additional work was done by City attorneys Brad Snyder, Judson Vickers, Vincent D'Orazio, Robert Paparella and Gil Nahmias.

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