*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   **Date of decision: 10th August, 2015.**

+   **<u>W.P.(C) 16767/2004</u>**

RESIDENT WELFARE ORGANISATION ..... **Petitioner**

Through: Mr. J.P. Sengh, Sr. Adv. with Mr. Baljit Singh, Mr. Ajai Kumar and Ms. Vanessa Singh, Advs. with Mr. Karnail Chand, A.R. of petitioner.

Versus

MUNICIPAL CORPORATION OF DELHI & ORS .....**Respondents**

Through: Ms. Amita Gupta, Adv. for MCD.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition seeks mandamus to the respondent Municipal Corporation of Delhi (MCD) to change the category of the colonies of, (i) Krishna Puri; (ii) Krishna Park; (iii) Krishna Park Extension; (iv) Mahavir Nagar (Old and New); and, (v) Ganesh Nagar to 'F' category for the purpose of assessment of property tax under the Unit Area Method.

2. It is the case of the petitioner, a Social Welfare Association of the residents of the said colonies:

(a) that under the Unit Area Method brought into force with effect from 1st April, 2004, for assessment of property tax, colonies /

localities of Delhi were classified into different categories;

(b) that the subject colonies, bounded by Najafgarh Road on one side, Outer Ring Road on the other side and Tilak Nagar on the third side are unauthorized colonies which have come up sometime in the years 1950 to 1955 and were under the domain of the Slum Department of MCD and were regularized / approved by the MCD vide Resolution dated 23rd July, 1970;

(c) that the subject colonies classified in category 'D' along with the colonies like Punjabi Bagh, Janak Puri, Narang Colony, Maya Enclave, Mayapuri, Raja Garden, Rajouri Garden, Tagore Garden etc., even though the residents of the subject colonies belong to the poorer strata of the society and are unable to bear the burden of heavier property tax levied on residents of colonies falling in category 'D'; in fact the subject colony of Krishna Puri was placed under a yet higher category 'C', comparing it with Chirag Co-operative House Building Society, Civil Lines, Dilkhush Bagh, Gujrawala etc.;

(d) that other unauthorized colonies which have been regularized, falling within the West Zone have been classified either under category 'F' or category 'G';

(e) that the petitioner on 5th July, 2004 represented to the Hardship and Anomaly Committee appointed under Section 116 K of the Delhi Municipal Corporation Act, 1957 (MCD Act);

(f) that the Hardship and Anomaly Committee recommended classifying the subject colonies of Krishna Puri, Krishna Park and Krishna Park Extension under category 'D' and the subject colonies of Mahavir Nagar and Ganesh Nagar under category 'E';

(g) that in accordance with the aforesaid recommendations, the category of Krishna Puri which was earlier classified as category 'C' was changed to category 'D' and the category of Mahavir Nagar and Ganesh Nagar which was earlier classified as category 'D' was changed to category 'E';

(h) that however even the Hardship and Anomaly Committee erred in not placing the subject colonies in category 'F';

(i) that the subsequent representations of the petitioner were of no avail.

3. The petition was entertained.

4. MCD filed a counter affidavit pleading, (i) that the Municipal Valuation Committee (MVC) was constituted under Section 116 of the MCD

Act to make recommendations on matters relating to classification of vacant lands and buildings in any ward of Delhi into colonies and groups of land and building and fixation of base value per unit area of vacant land and to consider objections under Section 116C; (ii) that the subject colonies were categorised by the MVC after conducting exhaustive public hearings as a part of its consultative process; (iii) that various factors viz. (a) notified land prices; (b) prevalent average rent; (c) age of the colony; (d) access to roads network; (e) type of settlement; (f) level of physical infrastructure; (g) accessibility of market; (h) availability of civil and social infrastructure; (i) economic status of occupants; and, (j) zone in which located etc. go into consideration for grouping of the colonies into homogenous groups; (iv) that before finalising the classification of colonies into various categories, advertisements were published in daily Newspapers and representations were invited from taxpayers, their associations and Resident Welfare Associations etc. and categorisation was finalised thereafter only; (v) denying that the subject colonies are to be categorised in category 'F'.

5. The petitioner filed a rejoinder to the aforesaid counter affidavit.

6. Vide orders dated 6th October, 2005 and 19th April, 2006, finding *prima facie* merit in the plea of the petitioner of disparity between the subject

colonies and other colonies placed in the same category, the respondent MCD was directed to file a further affidavit.

7. MCD in the additional affidavit dated 9th May, 2006 *inter alia* stated that the Assessment and Collection Department has no role in the exercise of decision making of the Hardship and Anomaly Committee which has exclusive jurisdiction under Section 116K of the MCD Act.

8. Rule was issued on 31st March, 2009 and the earlier interim order dated 15th October, 2004 to the effect that the payment of property tax by the residents of the subject colonies would be subject to refund in the event of the petition succeeding, made absolute.

9. Another additional affidavit dated 26th March, 2008 of the respondent MCD is found on record. It is *inter alia* stated therein that the MVC, after considering the factors of capital value of land, annual rental value, age of colony, road on which the colony is located, infrastructure (physical), type of colony, proximity to commercial market, level of service (social infrastructure), economic status of occupants and location of colony, gives weightage to the colony and the various colonies / localities / areas have been categorised from 'A' to 'G' in a descending order on the point scale. The assessment of various colonies on the said scale is enclosed to the said

affidavit.

10. The petitioner also from time to time has been filing further affidavits.

11. Vide orders in this petition directions were issued for production of the original records giving marking / particulars as per the criteria laid down for categorisation of colonies. An affidavit of July, 2015 was handed over in the Court stating that the records of the MVC are not available. It is further stated that the matter regarding re-classification / re-categorisation of Krishna Puri colony was placed before the third MVC and a hearing was given on 2nd January, 2011 and after detailed discussion it was found that the points given in the index, for the subject colonies, are as per ground reality, are correct and that no change in the categorisation is required.

12. The counsel for the respondent MCD during the hearing, has also handed over a file containing copies of the report of the third MVC.

13. The counsel for the petitioner has also handed over a reply along with synopsis of its submission along with annexures.

14. The petitioner, in the synopsis of submissions, besides reiterating the pleadings has sought to draw adverse inference for non-production of the records which the respondent MCD was directed to produce, being the minutes of the MVC and has controverted the points given to the subject

colonies under the various heads. It is further contended that as per the report of the Expert Committee, grouping of colonies / localities had to be in homogenous groups and the grouping of the subject colonies in categories 'D' and 'E' aforesaid along with other colonies in the said categories is not homogenous.

15. A perusal of the records produced by the respondent MCD shows that the third MVC, in its meeting held on 23rd February, 2011, on the contentions aforesaid of the petitioner and other bodies representing the residents of the subject colonies, asked the Town Planning Department of the MCD to re-check, if the parameters which were claimed by petitioner and others to be wrong were actually so, as well as whether any discrepancy exists in the subject colonies and the other colonies as was pointed out by the petitioner and others.

16. The minutes of the 43rd Meeting of the third MVC on 25th March, 2011 record that the Town Planning Department had informed that the points given in the matrix for the subject colonies were as per ground reality and correct and no change was required and the third MVC agreed with the same and hence decided that no change in categorisation of the subject colonies was required.

17. The adjudication of the controversy raised essentially raises the question of extent of judicial review under Article 226 of the Constitution of India. Judicial review of the executive / administrative decisions, as the decision to place the subject colonies in categories 'D' and 'E', as they are placed and not in category 'F' as the petitioner desires, is an executive / administrative decision. The judicial review thereof extends to the decision making process only and not to the merits of the decision. As far as the decision making process is concerned, neither has the petitioner pointed out violation of any rule / procedure required to be followed for decision making nor have the principles of natural justice been breached. The petitioner and / or residents of the subject colonies have been given sufficient opportunity and all their contentions have been considered.

18. A Six Judge Bench of the Supreme Court, as far back as in ***Hari Vishnu Kamath Vs. Syed Ahmad Ishaque*** AIR 1955 SC 233 held that certiorari will not issue in the cloak of an appeal in disguise; it exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of jurisdiction where shown. It was further held that for a writ of certiorari to be issued, it should be something more than a mere error. Again, in ***Damoh Panna Sagar Rural Regional***

Bank Vs. Munna Lal Jain (2005) 10 SCC 84 it was held that the High Court would not interfere with the decision unless it is illogical or suffers from procedural impropritory or shocks the conscience of the Court in the sense that it is in defiance of logic or moral standards; the Court would not go into the correctness of the choice open to the person vested with the power to make such choice and the High Court should not substitute its decision over that of the said person. Reference may also be made to ***Style (Dress Land) Vs. Union Territory, Chandigarh*** 1999 (7) SCC 89, concerned with a challenge to the increase effected by the Central Government in rent of commercial premises let out by it. It was held that while exercising the powers of judicial review, the Court can look into reasons given by Government in support of its action but cannot substitute its own reasons; the Court can strike down an executive order, if finds the reasons assigned are irrelevant and extraneous; the Courts are more concerned with the decision making process than the decision itself. Finding the increase effected to be not suffering from the vice of arbitrariness and guided by reason and not humour, whim, caprice or personal predictions of the persons entrusted with the task on behalf of the State and further finding that the power in that regard has been exercised for public good instead of being abused and the matter having been considered objectively at all levels, the challenge was dismissed.

19. Similarly, in ***Nirmala J. Jhala Vs. State of Gujarat*** (2013) 4 SCC 301 it was held that the parameter of Court's power of judicial review of administrative action or decision is limited. An order can be set aside, if it is based on extraneous grounds or when there are no grounds for passing it or when the grounds are such that no one can reasonably arrive at the opinion. The Court cannot sit as a Court of appeal but it merely reviews the manner in which the decision was made. The Court will not clearly exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from *mala fide*, dishonest / corrupt practise. If the authority is found to have acted in good faith, neither the question, as to whether there was sufficient evidence before the authority can be raised / examined nor the question of re-appreciating the evidence to examine the correctness of the order under challenge arises. The jurisdiction of judicial review is circumscribed and confined to correct errors of law or procedural error if any resulting in manifest, miscarriage of justice or violations of principles of natural justice.

20. The senior counsel for the petitioner, inspite of opportunity given to

file written submissions, has failed to bring the case within any of the aforesaid parameters of judicial review.

21. It is not for this Court to interfere with the assessment and findings of the MVC and of the Hardship and Anomaly Committee both of which have examined the grievances urged by the petitioner with respect to the various factors which go into the placing of the colony in one or the other category. This Court is neither capable of nor is empowered to substitute its own opinion and assessment of the various factors vis. of capital value of land, annual rental value, age of colony, road on which the colony is located, infrastructure (physical), type of colony, proximity to commercial market, level of service (social infrastructure), economic status of occupants and location of colony with respect to the subject colonies.

22. The Supreme Court recently in ***Siemens Aktiengeselischaft and Siemens Ltd. Vs. DMRC Ltd.*** *(*2014) 11 SCC 288 has reiterated that the Court does not have the expertise to correct the administrative decision and that if a review of the administrative decision is permitted, it will be substituting its own decision, without the necessary expertise which itself may be fallible. It was further observed that quashing decisions may impose heavy administrative burden on the administration and lead to increased and

unbudgeted expenditure and all this go into the modern trend towards restraint in judicial review of administrative action.

23. The senior counsel for petitioner relies heavily on the orders dated 6th October, 2005 and 19th April, 2006 supra in this proceeding whereby a *prima facie* view was expressed that the subject colonies are not at par with the other colonies in the same category. However, the said *prima facie* observations, to elicit response to the doubts arising in the course of adjudication of this petition, cannot be relied upon at the stage of final hearing of the matter.

24. I am therefor of the view that there is no merit in the petition. The petitioner is not entitled to the relief claimed.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 10, 2015
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<u>PS:</u> *This judgment dictated in open Court awaited filing of synopsis by counsel for petitioner; though synopsis was filed but correction of judgment went on backburner. The judgment is released on 17th November, 2015.*