$~12

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

Date of Decision: 13th August, 2015

\+ **W.P.(C) 3694/2013 & CM No.6921/2013 (for stay)**

JAMIA MILLIA ISLAMIA ..... **Petitioner**

Through: Mr. B.B. Sawhney, Sr. Adv. with Mr. Amit George, Ms. Zeba Khair, Mr. Swaroop George & Mr. Aditya Shandliya, Advs.

Versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR. ..... **Respondents**

Through: Mr. Gaurang Kanth with Ms. Biji Rajesh & Ms. Eshita Baurah, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW,J

1. The petition impugns; i) the order dated 15th April, 2013 of assessment of property tax of the property of the petitioner University for the years 2010-11, 2011-12 and 2012-13 pursuant to a notice dated 2nd February, 2013 under Section 123D of the Delhi Municipal Corporation (DMC) Act, 1957; and, ii) demand raised in pursuance thereto.

2. Notice of the petition was issued and vide order dated 29th May, 2013, which continues to be in force, the respondent South Delhi Municipal

Corporation (SDMC) was restrained from taking coercive action against the petitioner. Counter affidavit has been filed by the respondent SDMC. The counsels have been heard.

3. The counsel for the respondent SDMC has at the outset contended that the writ petition is not maintainable owing to the alternative remedy available of statutory appeal to the Municipal Taxation Tribunal (MTT).

4. The senior counsel for the petitioner University, to meet the said objection, has contended that since a jurisdictional issue arises, the writ petition would be maintainable. It is argued that the powers under Section 123D of the DMC Act can be invoked only on the grounds specified in Clauses (a) to (d) thereof and not otherwise.

5. Section 123D of the DMC Act was invoked by the respondent SDMC stating that the petitioner University in the self-assessment for the said three years had paid the tax at the rate of 10% for commercial and at the rate of 7% for residential portion of the property, while the rate of tax applicable as per Notification dated 13th April, 2010 was 15% for commercial and 11% for residential portion of the property.

6. Attention of the senior counsel for the petitioner University has been invited to Clauses (b) and (c) of Section 123D of the DMC Act which

empower the Commissioner of the Municipality, to at any time, revise any assessment where the information furnished in the return of self-assessment is found to be incorrect and to reopen any assessment where it has been detected that there is a wilful suppression of information; similarly Clause (d) empowers imposition of penalty not exceeding 30% for giving wrong information or upon wilful suppression of facts being indulged in. It has been enquired from the senior counsel for the petitioner University, whether not the aforesaid stand of the respondent SDMC, if correct, amounts to self-assessment by the petitioner University being incorrect and / or the petitioner University indulging in wilful suppression.

7. The senior counsel for the petitioner University contends that since the website of the respondent SDMC admittedly was prescribing the same rates of taxation as prevalent in earlier years, till the self-assessment of 2012-13, the petitioner University cannot be found fault with.

8. The counsel for the respondent SDMC on the other hand has invited attention to a public notice issued on 13th April, 2010 published in the prominent newspapers of the city, giving the revised rates of tax.

9. In my view, error in assumption of jurisdiction should not be confused with mistake, legal or factual, in exercise of jurisdiction, as held in ***Smt.***

Shrisht Dhawan Vs. M/s Shaw Brothers (1992) 1 SCC 534 followed by Division Bench of this Court in ***Dr. Yashwant Singh Vs. Indian Bank*** MANU/DE/1628/2015. Following the same, the error, even if any of the SDMC, in invoking Section 123D, cannot be said to be suffering from jurisdictional aspect for the remedy of writ to be available.

10. The senior counsel for the petitioner University has then drawn attention to the last order dated 7th April, 2015 in this petition and contended that the notification recording the revised rates has not been placed on record.

11. Section 109 read with Section 114D of the DMC Act only require the Municipality to specify the rate of taxes from time to time and nowhere require the same to be notified. It thus cannot be said that without notification, the new rate cannot come into force.

12. Else, the effect if any of the website of the respondent SDMC continuing to show the old rates and the petitioner University having made the self-assessment on the basis thereof and it thus being not open to the respondent SDMC to contend that the petitioner is guilty of suppression or has furnished any incorrect information is to be adjudged in the fora statutorily prescribed therefor and is no ground for holding a writ petition to

be maintainable.

13. The senior counsel for the petitioner University has then contended that since the petitioner is a University, it should not be compelled to go in appeal and which would entail compliance with Section 170(b) of the DMC Act. The writ petition is sought to be maintained on the said basis.

14. I am afraid, the same cannot be a ground for entertaining a writ petition. If the same were to be permitted, then all concerned, instead of preferring the appeals and complying with Section 170(b) of the DMC Act, would be preferring the writ petition making the MTT constituted to hear the said appeals, redundant. If the petitioner University has any difficulty in complying with Section 170(b) of the DMC Act, a case therefor can be made out and pleaded before the MTT.

15. The senior counsel for the petitioner has next sought to peg his case on the order dated 13th April, 2015 of this Court in W.P.(C) No.187/2014 titled ***National Law University, Delhi Vs. South Delhi Municipal Corporation*** and contended that vis-a-vis another university, the writ petition was entertained and the matter remanded.

16. However a perusal of the said order shows that the controversy there, was of the property being of the Government and being exempt from

taxation under Section 119 of the DMC Act. That is not the case pleaded, at least in this petition, though the senior counsel for the petitioner states that the matter should be examined from the said aspect also.

17. The counsel for the respondent SDMC has per contra relied on ***Municipal Corporation of Delhi Vs. Tata Engineering & Locomotive Company Ltd.*** 128 (2006) DLT 300 where the Division Bench of this Court held the writ remedy, in the matter of property tax, to be not available owing to the alternative remedy available of appeal.

18. The senior counsel for the petitioner University next contended that even as per the 2010 rates, the petitioner University would fall under the residential and non-residential category and not under the Government Company and Statutory Corporation category, on which basis the order has been passed.

19. This is a matter for determination in appeal and a writ cannot be said to be maintainable for this reason as well.

20. The petition is therefore held to be not maintainable.

21. However since notice was issued and the petition has remained pending in this Court for nearly two years, it is ordered that subject to the petitioner preferring an appeal/s, on or before 15th September, 2015, the

same shall be entertained on its/their merits, without considering the bar of limitation.

22. The interim order in this writ petition shall continue till 15th September, 2015.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J.

AUGUST 13, 2015
'gsr'..