

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

%

Date of decision: 27th April, 2016

+

W.P.(C) No.5894/2005

N.D.M.C.

..... Petitioner

Through: Mr. Arjun Mitra and Mr. Abhishek
Misra, Adv.

Versus

M/S OM PARKASH & CO.

..... Respondent

Through: Mr. B.B. Jain and Mr. Sunil Magon,
Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 226 of the Constitution of India impugns the order dated 30th January, 2004 of the learned Additional District Judge (ADJ), Delhi allowing H.T. Appeal No.06/2004 preferred by the respondent with respect to the demand of Rs.5,73,000/- towards Property Tax for the year 2003-04 of property no.186, Jor Bagh, New Delhi.

2. Notice of the petition was issued and the petition has been languishing in this Court awaiting the judgment of the Supreme Court in appeal against the judgment of the Division Bench of this Court in *NDMC Vs. State Trading Corporation India Ltd.* (2006) 126 DLT 191. Supreme Court having vide judgment dated 3rd February, 2016 in Civil Appeal No.2772/2009 titled *State Trading Corporation India Ltd. Vs. New Delhi*

Municipal Council (AIR 2016 SC 1269) pronounced on the matter, the counsels have been heard.

3. The petitioner New Delhi Municipal Council (NDMC) claims to have issued notice dated 26th March, 2001 under Section 72 of the New Delhi Municipal Council Act, 1994 (NDMC Act) to the respondent proposing to enhance the rateable value (RV) of the property aforesaid of the respondent from that then existing of Rs.20,250/- less 10% to Rs.24 lacs less 10% with effect from (w.e.f.) the year 2000-2001, on market rent basis and citing the instance of the rent being fetched by property no.208, Jor Bagh, New Delhi.

4. According to the respondent, no such notice was received and hence the respondent did not have an opportunity to object thereto and the petitioner NDMC did not become entitled to enhance the RV w.e.f. the year 2000-2001 for which the notice under Section 72 of enhancement had to be necessarily served before expiry of the year on 31st March, 2001.

5. The Assessor & Collector of the petitioner NDMC vide Assessment Order dated 19th May, 2003 confirmed the increase in rateable value w.e.f. the year 2000-01 to Rs.24 lacs less 10% and raised the demand for additional tax on the respondent and upon receipt of which demand the respondent filed the appeal aforesaid under Section 115 of the NDMC Act

before the learned ADJ and which appeal was allowed vide the impugned order by setting aside and quashing the order of assessment of the petitioner NDMC and the demand impugned in the appeal.

6. It is the contention of the counsel for the petitioner NDMC that three points arise for consideration in this petition. Firstly, the effect of the learned ADJ having heard and decided the appeal without the respondent complying with the provisions of Section 116(b) of the NDMC Act i.e. of pre-deposit; secondly whether notice aforesaid under Section 72 was served on the respondent and lastly whether the learned ADJ was correct in setting aside the assessment.

7. I may in this regard notice that the learned ADJ has held that (i) since it was the case of the respondent that the notice under Section 72 was not served, the respondent was not liable to comply with Section 116(b) and to deposit the demanded amount before the appeal could be heard; and, (ii) that it was not necessary to decide the question of service of the notice because even if the notice was presumed to be served, the assessment on market rent basis when there was no change in the property was in any case bad.

8. The counsel for the respondent has at the outset stated that in the light of the judgment of the Supreme Court in *State Trading Corporation India*

Ltd. supra which is in favour of the respondent, this petition is in any case liable to be dismissed.

9. On enquiry the counsel for the respondent states that the property has always been self occupied and in the year 2000-01 was also self occupied.

10. The NDMC Act, in Section 63 thereof provides for determination of RV of lands and buildings assessable to property tax as under:

“63. Determination of rateable value of lands and buildings assessable to property tax. – (1) The rateable value of any lands or buildings assessable to any property taxes shall be the annual rent at which such land or building might reasonably be expected to let from year to year less a sum equal to ten per cent of the said annual rent which shall be in lieu of all allowances for cost of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent:

Provided that in respect of any land or building the standard rent of which has been fixed under the Delhi Rent Control Act, 1958 (59 of 1958) the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

3) All plant and machinery contained or situate in or upon any land or building and belonging to any of the classes specified from time to time by public notice by the Chairperson with the approval of the Council, shall be deemed to form part of such land or building for the purpose of determining the rateable value thereof under sub-section (1) but save as aforesaid no account shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building.”

11. Supreme Court in *State Trading Corporation India Ltd.* supra has held (i) that since the provision of standard rent under the Delhi Rent Control Act, 1958 had been struck down in *Raghunandan Saran Ashok Saran (HUF) Vs. Union of India* (2002) 95 DLT 508 (DB), no reliance could be placed on the proviso under Section 63(1) of the NDMC Act; (ii) that in any case since the standard rent of the premises of the State Trading Corporation India Ltd. had never been fixed under the Delhi Rent Control Act, the State Trading Corporation India Ltd. was not entitled to invoke the same; (iii) that since the NDMC Act contains a provision and procedure under Section 63 for calculating the annual rent, one need not refer at all to New Delhi Municipal Council Bye-laws (which were framed when the area now governed by the NDMC Act was governed by the Punjab Municipal Act, 1911) and that the bye-law 12 of the said bye-laws was apparently inconsistent with the provisions of the NDMC Act and it is impermissible to refer to the bye-laws framed under the Punjab Act in view of specific provisions made under the NDMC Act providing for the levy, assessment and collection of property tax; (iv) that under Section 63 of the NDMC Act the only basis for fixation of rateable value is annual rent at which the land

or building might reasonably be expected to be let from year to year, subject to deductions provided under the Act; (v) if the property is let out, the actual rent payable by the tenant to the landlord is available for verification by the Assessing Officer; (vi) where the property is self occupied, the annual rent will have to be fixed on the basis of what the landlord might reasonably expect to get from a hypothetical tenant; (vii) such fixation has to be made only as per the NDMC Act; and, (viii) it is for the Assessing Officer to make the fixation in accordance with law.

12. I am of the view that the first of the aforesaid questions which according to the counsel for the petitioner NDMC arises for consideration, is now no longer relevant after the appeal has already been adjudicated by the learned ADJ whose decision is under challenge in this petition and it would be an academic exercise to decide whether the learned ADJ was right in hearing and deciding the appeal without deposit of the disputed amount.

13. Similarly, the learned ADJ having chosen not to decide the aspect of service of the notice and having proceeded to decide the appeal on the assumption that the order of assessment was bad even if the notice had been served on the respondent and the respondent had objected thereto, at this

stage it would not be appropriate to go into the question of service of the notice.

14. That brings me to the question whether the decision in *State Trading Corporation India Ltd.* supra is in favour of the respondent or in favour of the petitioner NDMC as contended by the respective counsels.

15. The counsel for the respondent has contended that since the property is self occupied and was constructed way back in 1960s, the rent which the respondent can expect the property to fetch can only be the standard rent and not anything in excess thereof. He thus states that the RV as existing on the date of the notice, of Rs.20,250/- does not require any enhancement.

16. I am however unable to agree. A complete reading of the judgment of Supreme Court leaves no manner of doubt that for self occupied properties and about which there can be no possibility of doubt are capable of fetching rent in excess of Rs.3,500/- per month and above which rent the provisions of Delhi Rent Control Act w.e.f. 1st December, 1988 do not apply, the question of the landlord reasonably expecting to fetch only the standard rent does not arise; rather Supreme Court has expressly negated the same by holding that since the provision of standard rent in the Delhi Rent Control Act itself has been struck down and since no standard rent referred to in the

proviso to Section 63(1) of the NDMC Act was fixed qua the property, no reliance could be placed thereon.

17. The counsel for the respondent on enquiry confirms that the standard rent of the property of the respondent also was never fixed by the Rent Controller under the Delhi Rent Control Act except by the petitioner NDMC as part of the exercise of assessment of RV.

18. In this view of the matter the corollary argument of the counsel for the respondent, of the concept of standard rent having been incorporated in Section 63 of the NDMC Act, striking down thereof in Delhi Rent Control Act would be irrelevant, is also of no avail.

19. I therefore hold that the RV of the property of the petitioner has to be on the basis of the rent which the property in the relevant year was reasonably expected to be let at and cannot be on the basis of standard rent on which basis the learned ADJ appears to have proceeded.

20. The counsel for the respondent has then contended (i) that the petitioner NDMC w.e.f. the year 2009 has brought in NDMC Rateable Bye-laws, 2009 and the property at best has to be assessed in terms thereof; (ii) that no particulars of property no.208, Jor Bagh, New Delhi compared with rent whereof the proposal for increase in RV of the property of the

respondent was mooted were supplied to the respondent and the respondent in the absence thereof is not able to deal therewith; and, (iii) that the property no.208, Jor Bagh, New Delhi as learnt is let out to the Canadian Embassy and is being used for commercial purpose and is a newly constructed property and cannot be compared to the residential property of the respondent constructed in 1960s.

21. I am afraid that these questions cannot be gone into at this stage. All that can be observed is that the order of the learned ADJ holding the assessment order of the petitioner NDMC assessing the RV of the property of the respondent on the basis of rent which it is capable of fetching, by comparing with rent fetched by other similar properties to be bad for the reason of the property being liable to be assessed on standard rent basis, cannot be sustained and has to be set aside and the matter remanded to the Assessing Authority of the petitioner NDMC for fresh assessment in accordance with law after taking into consideration the aforesaid contentions of the counsel for the respondent.

22. It is further directed that subject to the respondent seeking inspection of the file of the property tax of 208, Jor Bagh, New Delhi for the year 2000-01, the inspection thereof as well as of any other property with which the

petitioner NDMC may compare the property of the respondent shall be given to the respondent.

23. The petition is thus allowed. The impugned order dated 30th January, 2004 of the learned ADJ setting aside the assessment order pertaining to the property of the respondent for the year 2000-01 is set aside and the matter is remanded to the Assessing Authority of the petitioner NDMC for assessment afresh in accordance with law. The respondent/its representative to in this regard appear before the Assessing Authority of the petitioner NDMC at 1500 hours on 12th May, 2016.

The petition is disposed of.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J.

APRIL 27, 2016

‘pp’ ..