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

\+ W.P.(C) 5237/2014

NEW DELHI MUNICIPAL COUNCIL ..... Petitioner

Through: Mr. Arjun Mitra & Mr. Abhishek Misra, Advs.

Versus

SHANTA V. DOTIYA ..... Respondent

Through: Mr. Sunil K. Jain with Ms. Reeta Chaudhary & Mr. Shantanu Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.03.2016**

1. The petition impugns the order dated 26th April, 2013 of the Additional District Judge (ADJ) exercising appellate powers under Section 115 of the New Delhi Municipal Council Act, 1994, setting aside the order dated 16th July, 2009 of the assessing authority of the petitioner NDMC assessing the rateable value of property no.62, Babar Road, New Delhi of the respondent at Rs.8,32,400/- with effect from 1st April, 2006 subject to finalization of notice under Section 72 of the Act for open land under Section 63(2) of the NDMC Act dated 20th January, 2009.

2. The petition was entertained and a counter affidavit has been filed by the respondent.

3. The counsels have been heard.

4. What prevailed with the learned ADJ was the fact that there was no material for arriving at the rateable value.

5. The counsel for the petitioner states that the order dated 16th July, 2009 records that the rate was accepted by the son of the respondent and thus no reasons were given. He also states that if the matter is adjourned, the material on the basis of which the said rate was arrived at would be placed before the Court.

6. It is the contention of the counsel for the respondent that there can be no estoppel against the statute.

7. I may record that the primary reason given by the respondent for challenging the assessment order was that the assessment had to be on the basis of the law laid down in ***Dr. Balbir Singh Vs. Municipal Corporation of Delhi*** (1985) 1 SCC 167. However the Supreme Court in judgment dated 3rd February, 2016 in Civil Appeal No.2772/2009 titled ***State Trading Corporation India Ltd. Vs. New Delhi Municipal Council*** has held that the assessment of such properties has to be as per the reasonable rent in terms of Section 63 of the NDMC Act and not on cost basis as was the position in ***Dr. Balbir Singh*** supra.

8. I am of the opinion that though no fault can be found with the reasoning given of the learned ADJ but the learned ADJ erred in though setting aside the order not remanding the matter to the assessing authority of the petitioner NDMC for fresh assessment. It is felt that the order impugned be modified to the said extend only.

9. The counsel for the respondent also is agreeable thereto.

10. Accordingly, the petition is partly allowed by directing that the order of the learned ADJ shall stand modified to the extent that on setting aside of

the order dated 26th April, 2013, the matter shall stand remanded to the assessing authority of the petitioner for assessment afresh. The respondent to appear before the assessing authority of the petitioner on 2nd May, 2016 at 1500 hours for fresh assessment.

The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

MARCH 17, 2016
'gsr'..