$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
46.
\+ **W.P.(C) 10396/2015**

MOHD. AKMAL & ORS. ..... Petitioners
Through: Mr. B.B. Jain with Mr. Amitabh Marwah and Mr. Abhay Jani, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS ..... Respondent
Through: Ms. Madhu Tewatia, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R
% **28.07.2016**

CM No. 3418/2016

1. Since the amendment has been allowed by the order dated 22nd July 2016, this application does not survive.

W.P.(C) 10396/2015 & CM No. 26011/2015 (for stay)

2. The principal challenge in this petition is to an assessment order dated 10th August 2015 passed by the Deputy Assessor and Collector, City Zone, North Delhi Municipal Corporation, Assessment and Collection Department, City Zone. The Petitioners seek a declaration that in relation to property No. 5225 (New), Ward No.VI, Ballimaran, Delhi-110006 none of the Petitioners is exigible to pay property tax as they are only licensees of the Union of

India. Their contention is that the property in question is an evacuee property. The Petitioners also seek the quashing of a consequential demand notice dated 10th December 2015 issued under Section 154(1) of the Delhi Municipal Corporation Act, 1957 ('DMC Act').

3. By way of the amended writ petition an additional prayer is made for declaring Section 170(b) of the DMC Act to be unconstitutional. However, as far as this prayer is concerned, it hinges upon the existence of an assessment order adverse to the Petitioners. The Court, for reasons hereafter discussed, is of the view that this prayer need not be considered at this stage.

4. A perusal of the impugned assessment order dated 10th August 2015 reveals that the case of the Petitioners was that they are licensees of property No. 5225 (New) falling in Ward No.VI, Ballimaran, Delhi-110006 admeasuring 42.50 sq.mtrs. on the ground floor only. They claim to be doing business of footwear by the name of Kashmir Chappal (P) Ltd. since the year 1980 and prior thereto were working in the name of 'Kashmir Chappal Stores'. Their case has been that since they are not the owners of the property, they cannot be made liable to pay property tax and that the liability is of the owner of the property.

5. The impugned assessment order dated 10th August 2015 notes the above submissions but does not deal with them. It simply states that the site was got inspected on 10th July 2015 through the area AZI and that he reported that the property consisted of a ground floor, mezzanine floor, first floor, second floor and another mezzanine floor and that the whole construction

has been supported with T-iron and Agra Stone. The order notes that the ground floor and mezzanine floor seem to be constructed prior to 1960 and that the year of construction of the remaining floors cannot be ascertained. It states that the whole property is under commercial use. The order then proceeds to fix the annual value for the various portions aggregating to Rs.8,49,366 with effect from 1st April 2004.

6. In short, the assessment order is completely silent on the principal contentions of the Petitioners against whom the order has been passed. There are numerous questions that arise from the said impugned order of assessment. The principal question is: who is the owner of the property? The other questions are: what is the nature of the building? what is the precise area occupied by the Petitioners herein? There is a site plan given for the property No. 5225 (New), Ward No.VI, Ballimaran, Delhi-110006 by the Petitioners. However, there is no verification whether this in fact is the correct site plan. There is also nothing stated on the contention of the Petitioners that it is an evacuee property for which licence fee is being paid to the Government of India. Some of the documents placed on record seem to suggest that it could be a Wakf property. There appears to be no proper enquiry conducted by the North Delhi Municipal corporation on th above aspects.

7. With so many unanswered questions, it is difficult to sustain the impugned assessment order dated 10th August 2015. It is accordingly set aside. Resultantly, it will be open to the Respondent North Delhi Municipal Corporation to undertake, in the first place, a proper enquiry into the above

questions by determining the correct location of the property at No. 5225 Ballimaran, Delhi-110006, its nature, its ownership and the occupants of its specific portions. The enquiry will address all the issues that have been highlighted in this order. It is only thereafter that the assessment proceedings will be initiated *de novo* in accordance with law. With the impugned assessment order having been set aside, it is obvious that the consequential demand notice dated 10th December 2015 does not survive and it is accordingly set aside.

8. No further directions are called for in this petition and it is disposed of as such. The application is also disposed of.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 28, 2016
dn