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

% *Judgment reserved on : 02.3.2017*

Judgment delivered on : 06.3.2017

\+ W.P.(C) 5087/2014 and C.M.No. 10152/2014

NALIN BHUSHAN CHANDIOK & ANR ..... Petitioners

Through Mr.R.P.Sharma, Mr. Vaibhav Mehra, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Geeta Malhotra, Advocate.

\+ W.P.(C) 5088/2014 & C.M. No.10154/2014

RAM LAL KAUSHALYA DEVI TRUST ..... Petitioner

Through Mr.R.P.Sharma, Mr. Vaibhav Mehra, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Geeta Malhotra, Advocate.

\+ W.P.(C) 5538/2014 & C.M. No.13753/2014

KANTA CHANDHIOK ..... Petitioner

Through Mr.R.P.Sharma, Mr. Vaibhav Mehra, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.Geeta Mehrotra, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 There are three petitioners before this Court. They all are aggrieved by the assessment order dated 30.3.2002. A direction has been sought to determine the assessment of the properties of the petitioners under the Unit Area Method as has been held by the Division Bench of this Court in 169(2010) DLT 352 (DB) *Municipal Corporation of Delhi Vs. Major General Inderpal Singh Kahai & Anr.* The second prayer seeks a quashing of the order dated 27.9.2002 (which was an order passed by the learned District Judge in appeal under Section 169 of the Delhi Municipal Corporation Act, 1957 (DMC Act) against the order dated 30.3.2002. The third prayer in the writ petition seeks a quashing of the order passed by the learned District Judge on 22.7.2013 which was on the application of the petitioner under Section 171 of the DMC Act (seeking a review of the order dated 27.9.2002).

2 All petitions are premised on the same submissions.

3 The averments in the petitions disclose that the petition is bordered largely on the provisions of Section 116(G) of the DMC (Amendment) Act, 2003. Submission is that after promulgation of the Unit Area Method, the DMC Act stood amended w.e.f. 01.4.2004 making the Unit Area Method applicable for the purpose of taxation within the municipal limits of Delhi. Section 116(G) was the transitory provision; sub-section (2) has been highlighted. Further averments in the petition disclose that an assessment /rectification order had been passed by the Assessing Authority qua the properties of the petitioners for seven years i.e. between the years 1989 to the year 1999; the rateable values have been fixed therein; this was under the provisions of the old Act i.e. before the Unit Area Method had been introduced in the DMC Act. The petitioners were aggrieved. They filed an appeal under Section 169 of the Old DMC Act which was listed before the District Judge. This appeal was dismissed on 27.9.2002. In November, 2002 the petitioners filed an application under Section 171 of the DMC Act (Old) seeking a recall of the order dated 27.9.2002. Attention has been drawn to the proviso to Section 171 of the DMC Act. Counsel for the petitioner submits that a

provision for review is adequately contained in the said Act. This application remained pending for 11 years and was finally disposed of on 22.7.2013.

4 The present petition (as noted supra) is premised on the provisions of Section 116 (G) of the DMC Act. Submission of the petitioner is that the review petition would amount to a continuation of the appeal and since there is a statutory power under Section 171 of the DMC Act to permit a review and recall an earlier order passed in appeal, the assessment had not yet become final in terms of Section 116(G)(2). Since the assessment of these properties were not yet finalized petitioner is entitled to the benefit of Ssection 116 (G)(2) of the Amended Act 2003; he accordingly seeks assessment under the Unit Area Method.

5 Counter affidavit had been filed to these averments. It is a short affidavit countering the stand taken by the petitioner. Para 4 of the affidavit states that under Section 116(G)(2) of the DMC (Amendment) Act, 2003 the petitioner cannot ask for an assessment under the Unit Area Method as the appeal stood dismissed on 27.9.2002 and a review cannot be placed on an equal footing as that of

an appeal; the benefit of Section 116(G)(2) would not be available to the petitioners.

6 Rejoinder has also been filed. This Court notes that in the rejoinder, the petitioners appear to have set up a new case. In the rejoinder it has been stated that the Corporation could not have passed a common assessment order (dated 30.3.2002), a separate notice had to be given for each year and this is clear from the provisions of Sections 124 to 127 of the DMC Act. These averments in the rejoinder show that this rejoinder is not in consonance with the averments in the writ petition; petitioners appear to be setting up a new case.

6 Arguments have been heard and record has been perused.

8 What this Court has to essentially decide is whether the review petition which had been filed by the petitioner in November, 2002 (under Section 171 of the DMC Act against the order (dated 27.9.2002) of the dismissal of his appeal and was pending at the time when the Unit Area Method was introduced by the DMC Act, 1957 as amended in 2003) and thus whether the transitory provision of Section 116 (G)(2) can work to the benefit of the petitioners.

9 Admittedly, in view of the various judgments laid down by the courts of law an appeal is deemed to be a continuation of the original proceedings and where an appeal is pending against an assessment order, the assessment is deemed to be not "finalized" within the meaning of Section 116(G)(2) of the DMC Act. This has been reiterated by the Division Bench of this Court in 169(2010) DLT 253 (DB) *MCD Vs. Major General Inderpal Singh Kahai and Anr.* Relevant extract reads herein as under:

"9. It is clear from the third proviso to Section 169(1) of the DMC Act that even where an assessment if finalized, but an appeal is pending, an assessee is entitled to ask for a decision in the appeal on the annual value basis. In other words, even at an appellate stage, an assessee is empowered to ask for a decision on the basis of the annual value of the property."

10 The question which has been addressed before this Court is whether a review petition filed against the dismissal of the appeal and admittedly pending at the time when the Amendment Act, 2003 (w.e.f.01.4.2004) was introduced; whether the pendency of that review petition would also tantamount to a non-finalization of the assessment in terms of Section 116 (G)(2) of the said Act.

11 Relevant would it be to extract Section 171 of the DMC Act. It reads as follows:

171. Finality of appellate orders.- The order of the Municipal Taxation Tribunal confirming setting aside or modifying an order in respect of any rateable value or assessment or liability to assessment or taxation shall be final.

Provided that it shall be lawful for the Municipal Taxation Tribunal upon application or on its own motion, to review any order passed by it in appeal within three months from the date of the order".

12 Relevant would it be to also extract the provisions of Section 116(G)(2) of the DMC Act; it reads as under:

....

"(2)Notwithstanding anything contained in sub-section(1), where assessment has not been finalized in respect of a vacant land or covered space of a building or both, on the date of the commencement of the Delhi Municipal Corporation (Amendment) Act, 2003 the assessee may have such land or building or both, as the case may be, assessed on the basis of the annual value."

13 The proviso to Section 171 clearly states that an order passed in appeal is subject to a statutory review, the rider being that the review petition has to be filed within three months. In this case the appeal under Section 169 of the DMC Act has been dismissed on 27.9.2002.

The review petition was filed within the statutory period of three months i.e. in November, 2002. It is an admitted fact that the review petition was pending at the time when Unit Area Method was introduced in 2004 under the DMC Act (Amendment) Act 2003. It was finally decided on 13.4.2013.

14 The intention of the Legislature as carried out in the proviso Section 171 of the DMC Act is clear. It provides that the Appellate Court may reconsider its decision if a petition seeking review of its order is preferred within three months. This reconsideration was yet pending at the time when the amendment of 2003 was introduced. "*Review literally and even judicially means re-examination or a reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility.*" (***1993 Supp (4) SCC 595 S.Nagraj & Ors. Vs. State of Karnataka and Anr.***).

15 A combined reading of the proviso to Section 171 of the DMC Act with section 116(G)(2) of the said Act persuades this Court to hold that this transitory provision of Section 116 (G)(2) of the DMC Act would come to the aid of the petitioner.

16 Since the review petition was pending before the learned District Judge it can in no manner be said that the assessment had been "finalized" qua the properties of the petitioners; the Amendment Act of 2003 has come into force during the pendency of these review petitions. The petitioners were thus entitled to take benefit of assessment on the basis of annual value i.e. under the "Unit Area Method".

17 The prayers made in the petitions are allowed. The case of the petitioner now be considered on annual value in terms of the DMC Act (Amendment) Act, 2003. The petitioners are directed to appear before the Competent Authority on 15.3.2017.

18 The assessment order in terms of the Unit Area Method shall be passed by the Competent Authority within a period of three months thereafter.

19 Petitions disposed of in the above terms.

INDERMEET KAUR, J

MARCH 06, 2017/ndn