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

\+ W.P.(C) 2404/2017

KAVITA GUPTA & ORS ..... Petitioners

Through: Mr. Subhash C. Jindal, Advocate

versus

NEW DELHI MUNICIPAL COUNCIL & ORS ..... Respondents

Through: Mr. Arjun Mitra, Advocate with Mr. Mahavir, Jr. Assistant.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

% **15.03.2017**

1. The present petition has been filed by the petitioners praying *inter alia* for quashing an order dated 08.02.2017 passed by the respondents/NDMC, rejecting their claim for extension of vacancy remission due to non-receipt of prior intimation with regard to the vacancy of flat No.3, 14th Floor, Vijaya Building, Barakhamba Road New Delhi, as stipulated in the NDMC Act, 1994.

2. The undisputed facts of the case, as set out in the petition, are that the subject flat was purchased by Shri Rattan Kumar Gupta, the predecessor-in-title of the petitioners, who is also the recorded owner thereof. Shri Rajesh Gupta, the brother of Shri Rattan Kumar Gupta expired on 14.11.2003. Thereafter, a family settlement took place on 27.05.2008, whereunder Shri Rattan Kumar Gupta and his wife, Smt. Uma Gupta relinquished their shares in the subject flat in favour of the family members of late Shri Rajesh Gupta, the petitioners herein, who became 1/3rd owners each of the subject flat. On 29.7.2008, the subject flat was transferred by the Builder in its records, in the name of the petitioners.

3. The petitioners have averred that the subject flat had remained under the tenancy of M/s Vian Infrastructure Limited with effect from October, 2006 till 28.02.2009. Thereafter, the flat remained vacant for a period of five and a half years, from 01.03.2009 to 02.09.2014. Admittedly the vacancy position was not communicated to the respondent/NDMC. The flat was finally let out to M/s Flywheel Logistics P. Ltd. on 03.09.2014. After one year, on 09.09.2015, the petitioners approached the respondents/NDMC for the first time for seeking vacancy remission for the period from 01.03.2009 to 02.09.2014, which request has been turned down by the impugned order dated 08.02.2017.

4. It is the contention of Mr. Jindal, learned counsel for the petitioners that as the subject flat had remained vacant and unproductive of rent for over 60 days as contemplated in Section 110 of the NDMC Act, the petitioners are entitled to grant of vacancy remission irrespective of whether they had informed the respondent/NDMC about the said position in writing.

5. The aforesaid submission is however disputed by Mr. Mitra, learned counsel for the respondents/NDMC, who appears on advance notice. He relies on the provisions of Sections 112 and 114 of the NDMC Act to state that for claiming any vacancy remission, a notice in writing is required to be given to the Chairperson, NDMC stating inter alia that the subject space had remained vacant and unproductive of rent and only thereupon, can a request for vacancy remission be entertained.

6. Chapter VIII of the NDMC Act deals with various aspects of taxation. The relevant provisions relating to remission or refund of tax, partial remission or refund of tax, circumstances in which remission or refund can be claimed, the nature of buildings that are deemed to be vacant and the

notice required to be given on every occupation of vacant land or building are Sections 110, 111, 112, 113 and 114 of the Act, that are reproduced hereinbelow for ready reference:-

> "**110. Remission, or refund of tax** - (1) If any building together with land appurtenant thereto has remained vacant and unproductive or rent for sixty or more consecutive days, the Chairperson shall remit or refund, as the case may be, two - thirds of such portion of the property tax assessed on the rateable value thereof ,as may be proportionate to the number of days during which the said building together with the land appurtenant thereto has remained vacant and unproductive of rent.
> (2) If any land, not being land appurtenant to a building, has remained vacant and unproductive of rent for sixty or more consecutive days, the Chairperson shall remit or refund, as the case may be, one half of such portion of the property tax assessed on the rateable value thereof, as may be, proportionate to the number of days during which the said land has remained vacant and unproductive of rent.
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> **111. Power to require entry in assessment list of details of buildings** - (1) For the purpose of obtaining a partial remission or refund of tax, the owner of a building composed of separate tenements may request the Chairperson, at the time of the assessment of the building, to enter in the assessment list, in addition to the rateable value of the whole building, a note regarding any detail of the rateable value of each separate tenement.
> (2) When any tenement, the rateable value of which has been thus separately recorded has remained vacant and unproductive of rent for sixty or more consecutive days, such portion of any tax assessed on the rateable value of the whole building shall be remitted or refunded as would have been remitted or refunded if the tenement had been separately assessed.
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> **112. Notice to be given of the circumstances in which remission or refund is claimed** - No remission or refund under

section 110 or section 111 shall be made unless notice in writing of the fact that land, building or tenement has become vacant and unproductive of rent has been given to the Chairperson, and no remission or refund shall take effect in respect of any period commencing more than fifteen days before delivery of such notice.

113. What buildings, are to be deemed vacant - (1) For the purposes of sections 110 and 111 no land, building or tenement shall be deemed vacant if maintained as a pleasure resort or town or country house or be deemed unproductive or rent if let to a tenant who has continuing right of occupation thereof, whether he is in actual occupation or not.
(2) The burden of proving the facts entitling any person to claim relief under section 109, 110 or section 111, shall be upon him.

114. Notice to be given of every occupation of vacant land or building - The owner of any land, building or tenement in respect of which a remission or refund of tax has been given under section 110 or section 111, shall give notice of the re-occupation of such land, building or tenement within fifteen days of such re-occupation."

7. Section 110 of the NDMC Act contemplates that wherever a building has remained vacant and unproductive of rent for sixty or more consecutive days, two-thirds of such portion of the property tax assessed on the rateable value thereof, in proportion to the number of days during which the said building has remained vacant and unproductive of rent, shall be remitted or refunded by the NDMC. A similar benefit is extended to any land not appurtenant to a building that has remained vacant or unproductive of rent for sixty or more days.

8. Section 112 of the NDMC Act stipulates that a notice in writing must be issued to the respondents/NDMC in respect of the subject

land/building/tenement for claiming any remission or refund under Sections 110 or 111 of the Act. The said provision further clarifies that no remission or refund be granted in respect of any period commencing more than 15 days prior to the date of delivery of such a notice.

9. Section 114 clarifies that wherever remission or refund of tax has been given to the owner of any land/building/tenement under Section 110 or Section 111 of the Act, he shall give a notice of re-occupation within a period of fifteen days of such a re-occupation.

10. From the above provisions, it is clear that an owner of a building is entitled to vacancy remission or refund of tax on fulfilment of three conditions, namely, that the property remains vacant, that it is unproductive of rent and a notice in writing bringing on record the said factual position is given to the respondent/NDMC.

11. In the present case, admittedly, the petitioners did not take any steps after the previous tenant had vacated the flat on 28.02.2009, to inform the respondents/NDMC about the fact that the subject flat was lying vacant and that they were entitled to grant of vacancy remission. The first letter addressed by the petitioners to the respondent/NDMC for seeking vacancy remission was dated 09.09.2015, which was after one year reckoned from the date when the subject flat was let out to M/s Flywheel Logistics P. Ltd., with effect from 03.09.2014.

12. In such circumstances, the request letter dated 09.09.2015 addressed by the petitioners to the respondents/NDMC for seeking vacancy remission, is of no consequence. If the petitioners desired to avail of vacancy remission, they ought to have acted with alacrity and on the earlier tenant vacating the flat on 28.2.2009, they should have approached the

respondents/NDMC by giving a notice in writing expressing their intention to seek vacancy remission, as contemplated under Section 112 of the NDMC Act. It is the petitioners' plea that the flat had remained vacant for over five years. But in all this duration, they never apprised the respondent/NDMC about the said position. In fact they took no steps even after the flat was let out on 3.9.2014. Rather, they waited for another year before writing a letter to the respondent/NDMC, for extension of vacant remission in respect of the flat from 01.3.2009 to 2.9.2014. Given the above legal position, the respondent/NDMC has rightly rejected the said request.

13. Coming to the second relief prayed for by the petitioners, which is for issuing directions to the respondents/NDMC to mutate the subject flat in their names, learned counsel for the respondents/NDMC states that immediately on the petitioners clearing the outstanding dues towards property tax, amounting to a sum of Rs.6,24,048/-, the respondents/NDMC shall process their application.

14. Counsel for the petitioners assures the court that the aforesaid amount shall be deposited by the petitioners within four weeks. On receipt of the aforesaid amount, the respondents/NDMC shall take steps to mutate the subject flat in favour of the petitioners, preferably within four weeks therefrom.

15. The petition is disposed of.

HIMA KOHLI, J

MARCH 15, 2017
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