$~6

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

\+ W.P.(C) 4293/2015

NADIM AHMED ..... Petitioner

Through Mr. B.B. Jain and Mr. Amitabh Marwah, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through Ms.0 1Amita Gupta and Mr. Zahid Hanief, Advs.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

<u>O R D E R</u>

% **14.02.2017**

The petitioner Nadim Ahmad is stated to be a licensee of the Government of India. The property in question is property bearing No.779 (old No.324), Ballimaran, Delhi. The contention of the petitioner is that the ownership of this property vests with the Government. It was a custodian property under the Administration of Evacuee Property Act, 1950 being an evacuee property. This property had been transferred to the Municipal Corporation of Delhi w.e.f. 02.07.1963 pursuant to which a communication dated 21.06.1966 had been addressed to the petitioner demanding arrears of rent which had been paid by the father of the petitioner. Since this property was earlier under the Slum and JJ Wing of the respondent/DDA, license fee was being paid to the Slum and JJ Wing of the Delhi Development Authority.

The father of the petitioner died on 11.12.1985. The license of the property was mutated in the name of the petitioner on 23.09.1997. The petitioner paid license fee to the Slum and JJ Wing of the MCD for the period 31.03.1997 which is evident from the communication dated 13.10.1997 (Annexure H). He continued to pay this license fee. The area where this property is situated was subsequently transferred to the Delhi Urban Shelter Improvement Board (DUSIB). This was w.e.f. 01.07.2011.

The petitioner relies upon a Resolution dated 16.04.2013 (Annexure 'J') of the Deputy Assessor and Collector, Department of MCD wherein as per his submission the properties of the DUSIB are required to pay service charges only; submission is that this circular clearly enunciates that till the time this property was under the control of the Slum and JJ Department of the MCD (being a part of the MCD) such properties would be exempted from tax. Since the property is now owned by the DUSIB the petitioner has to pay a service charges only; he cannot be burdened with property tax. Learned counsel for the petitioner has placed reliance upon a judgment of a Bench of this Court reported as ILR (1971) II Delhi *Dr. Shiv Lal Vs. Municipal Corporation*. Submission being that the tax has to be paid only by the owner and he does not fall in this category.

The demand by the respondent Corporation seeking property tax for the year 2004 to 26.03.2015 (date of the impugned demand) is wrong and illegal; the petitioner is not liable to pay any tax.

Counter affidavit has been filed by the respondent. The stand of the Department is that the status of the petitioner is that of a licensee; the impugned demand is legal; it is as per the provisions of Section 123-D of the Delhi Municipal Act, the petitioner is liable to pay tax. For want of knowledge, it is denied that the petitioner has paid any license fee to the JJ Department of the DDA. It is a matter of record that the petitioner had paid license fee for the period 01.04.1997 to 13.10.2004 to the Slum and JJ Department of the MCD. Contention of the respondent is that the Resolution dated 16.04.2013 relied upon by the petitioner clearly shows that the petitioner (being an allottee of the DUSIB) is required to pay property tax. This is clear from para 3 of the aforenoted Resolution.

Rejoinder has been filed by the petitioner.

Arguments have been heard.

It would first be useful to refer to extract Resolution dated 16.04.2013 (Annexure J). It reads herein as under:-

"No.Tax/HQ/2012/94 Dt. 16.04.13.

Minutes of the meeting held on 14.03.2012 at 11:30 AM in the Chamber of Commissioner, MCD, Dr. Shyama Prasad Mukharjee Civic Centre, Jawahar Nehru Marg, New Delhi on the issue of levy of property tax on properties belonging to DUSIB (formerly Slum and JJ Wing)

The meeting was attended by the following:-

1	*Commissioner, MCD*	*(In Chair)*
2	*Sh. M.S.A. Khan,*	*Assessor and Collector, MCD*
3	*Sh. Anil Agnihotri*	*Dy. Assessor and Collector (GRP), MCD*
4	*Sh. Ashok Bhatia*	*Director (Slum)*
5	*Sh. Ashish Bhardwaj,*	*Director (Slum)*

Following issues were discussed and resolved in the meeting:

1. *At the outset, it was apprised that the issue involved is levy of property tax on the properties belonging to the then Slum and JJ Department, MCD and now under the jurisdiction of Delhi Urban Shelter Improvement Board (DUSIB). The entire issue can be divided into two categories of properties as under:-*
   (i) Properties of DUSIB under its own use such as their offices.

(ii)Properties of DUSIB which are allotted to others.

2. *It was explained that when the Slum and JJ Department was under MCD, the properties of the said department, being the properties of the MCD were exempt from property tax as per provisions of Section 115 (i) (viii) of the DMC Act. With the formation of DUSIB, this condition does not hold good and the properties which are under the direct use of DUSIB, now have become Government properties and are liable for service charges, in accordance with the various OMs of the Govt of India, the last one issued on 15/17th December, 2009, in compliance of the order dated 19.11.2009 of the Hon'ble Supreme Court in Civil Appeal No.9458-63/2003 titled as Rajkot Municipal Corporation & Others Vs. UOI & Others. Following this, with a view to determine the levy of service charges, the Corporation vide its Resolution NO.803 dated 13.12.2010 approved levy of service charges @ 75% of property tax for approved colonies, unauthorized reqgularized colonies including urbanized villages, unauthorized colonies, rural villages etc.*

3. *It was informed that with regard to the properties under Category (ii) above, the allottees of lands and buildings in Slum and JJ properties are liable to pay Property Tax under Section 114 of the DMC Act.*

4. *It was also informed that in view of the aforesaid changed circumstances, DUSIB is required to pay service charges w.e.f. the date of transfer of Slum and JJ Wing from MCD to the GNCTD in respect of each and every property (vacant land as well as built up structures) within the jurisdiction of MCD under Unit Area Method.*

Keeping in view of the above discussion, the representatives of DUSIB agreed that DUSIB will pay the service charges to the MCD and will apprise the Chairman, Public Grievance Commissioner accordingly."

This Circular issued by the Deputy Assessor and Collector of the MCD states that the levy of property tax which was earlier with the Slum and JJ Department of the MCD is now under the jurisdiction of the DUSIB. Two categories of properties have been enlisted. Para 3 states that the allottees of lands under category (ii) are liable to pay property tax under Section 114 of the said Act. Under category (i) the DUSIB is required to pay service charges.

Contention of the petitioner that the property belongs to the DUSIB and thus he is liable to pay service charges is negatived. The averments in the petition show that the petitioner is only an allottee of a land which was firstly owned by the Slum and JJ Department of the DDA; thereafter the Slum and JJ Department of the MCD; the Slum and JJ Department of the MCD has now transferred the jurisdiction relating to levy of property tax to the DUSIB. The petitioner was admittedly first paying license fee to the JJ Department of the DDA and thereafter the JJ Department of the MCD. His status, as per his own showing, is that of a licensee of the JJ Department of the MCD. This Resolution (dated 16.04.2013) states that the jurisdiction for levy of property tax from the Slum and JJ Department of the MCD has now been transferred to the DUSIB. The petitioner is thus admittedly an allottee of the DUSIB. In terms of para 3, he has to pay property tax. This is clearly mentioned in the Resolution. In fact the petitioner has himself relied upon the Resolution but his submission is that para 4 of the Resolution would be applicable to him as this property belongs to DUSIB. The petitioner is a distinct entity from the DUSIB; he is not the DUSIB; he is an allottee of the DUSIB.

This Court is thus not in agreement with this submission of the learned counsel for the petitioner. The petitioner clearly falls within the definition of 'owner' as envisaged under Section 2 (37) of the DMC Act.

This Court also notes that in the counter affidavit of the respondent; the respondent has detailed the similar properties which all paying property tax; there are 57 such properties. The petitioner wants to be singled out. He does not make any case.

The impugned order, in this background, suffers from no infirmity.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

FEBRUARY 14, 2017
A