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

\+ W.P.(C) 7190/2017 & C.M. Nos.29822-23/2017

AROON PURIE

..... Petitioner

Through Mr. Dhruv Mehta and Ms. Maninder Acharya, Sr. Advs with Mr. Setu Niket, Ms. Esha Mazumdar and Mr. Sahil Sood, Advs

versus

NEW DELHI MUNICIPAL COUNCIL & ANR

..... Respondents

Through Mr. Arjun Mitra, Adv for NDMC.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

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

% **22.08.2017**

The petitioner is aggrieved by the assessment order dated 18.03.2017 passed under Section 72 of the NDMC Act. This order relates to two notices which had been issued to the owner of the aforenoted building namely Mushtaq Ahmad. These notices are dated 31.03.2003 and 31.03.2011.

The petitioner before this Court is Aroon Purie. He is the lessess of Mushtaq Ahmad and the lease agreement between Mushtaq Ahmad and the petitioner lessess is dated 05.09.1967. In terms of the aforenoted registered lease deed, the company of the petitioner namely All India Finance and Commerce Pvt. Ltd was permitted to occupy these premises.

This writ petition is premised on the submission of the petitioner that notice of assessment proceedings had been issued by the respondent to the owner when the respondent was well aware of the fact that the property tax qua the aforenoted property was all along being paid by the petitioner. Attention has been drawn to the returns filed by the petitioner under Section 77 of the NDMC Act (page 106 of the paper book). This document reflects the stand of the petitioner which is that the aforenoted property is occupied by the occupier namely All India Finance and Commerce Pvt. Ltd. and the liability of property tax is upon the occupier. Contention of the petitioner is that the notices having been received by the owner, the owner deliberately did not defend the proceedings as this was a ploy on the part of the owner to oust the present petitioner from the property. The liability of the property tax (in terms of the assessment order dated 18.03.2017) has been foisted upon the petitioner who learnt about this order in July, 2017 when a notice to the said effect had been issued to him by the owner. Learned senior counsel for the petitioner points out that there is a clear distinction between the definition of 'owner' vis-a-vis 'occupier'; attention has been drawn to Sections 72 & 77 of the NDMC Act, 1994. Learned senior counsel for the petitioner has placed reliance upon a judgment of a Bench of this Court reported in 105 (2003) DLT 967 *Smt. Jayshree Kumar Vs. New Delhi Municipal Council* where the Court had noted that where a notice had not been issued in terms of Section 72 (2) of the said Act, the impugned assessment order could not be sustained. Submission being that in this case also, the petitioner was a co-lessee of the aforenoted property and this is reflected in para 2 of the said judgment. Learned senior counsel for the petitioner points out that even otherwise the Byelaws-2009 of the NDMC Act have now been struck down by a judgment of the Division Bench of this Court passed in W.P. (C) No.3348/2010 *Association of Concerned Citizens of New Delhi Vs. New Delhi Municipal Council & Others*. Attention has been drawn to the legal position culled out in para 61 of the aforenoted judgment wherein the Division Bench while striking down the Byelaws of the NDMC (dealing with the property tax qua the unit area method) had held that all property demands under the said impugned Byelaws are hereby invalidated and declared unenforceable. Learned senior counsel for the petitioner rightly points out that the notice dated 31.03.2011 thus become non-est.

This position cannot really be disputed by the learned counsel for the respondent. The Byelaws having been declared void and the judgment of the Division Bench noting that all tax demands under the aforenoted Byelaws having become invalidated, notice dated 31.03.2011 which was a notice relating to the aforenoted impugned Byelaws has necessarily to be set aside. It is accordingly set aside.

Qua the second part of the assessment order which relates to the notice dated 31.03.2003, learned senior counsel for the petitioner points out that this is a non-speaking and un-reasoned order. Submission of the learned counsel for the respondent on this score is that this part of the order is appealable and the petitioner having byepassed the limitation has now come to this Court in writ proceedings; he cannot be permitted to do so. Learned senior counsel for the petitioner points out that the assessment order dated

18.03.2017 is a composite order relating to the both the aforenoted notices; that apart the alternate remedy as canvassed by the learned counsel for the respondent is hardly an alternate remedy for the reason that it is onerous and burdensome in character as admittedly before a party can avail of it, it has to deposit the whole amount of tax and as has been held by the Apex Court in 1954 SCR 1122 *Himmatlal Harilal Mehta Vs. State of M.P. and two others*, such a provision can hardly be described as 'alternate remedy'.

Per contra, learned counsel for the respondent has placed reliance upon a judgment of the Apex Court in (1993) 1 SCC 22 *Shyam Kishore Vs. Municipal Corporation of Delhi* as also a judgment of the Division Bench of this Court in W.P. (C) No.2392/2017 *M/S Godfrey Phillips India Limited Vs. New Delhi Municipal Council & Ors*. Submission being that the petitioner can deposit the tax for the base year and this would not really be onerous. Learned counsel for the respondent additionally points out that the notice dated 31.03.2003 was given prior to the document relied upon by the petitioner (page 106 of the paper book) which is a document of the year 2005 wherein for the first time, it was brought to the notice of the respondent that the liability to pay property tax was upon the occupier.

This fact is disputed. Learned senior counsel for the petitioner points out that the records of the Department would clearly reflect that all along from the date of the lease between the owner and occupier (dated 05.09.1967), the petitioner in his capacity as an occupier has been paying the property tax. In rejoinder, learned senior counsel for the petitioner additionally points out that the principles of natural justice have been violated in the facts of the instant case and this is clearly reflected in the order dated 18.03.2017 which is an unreasoned order; it was well within the knowledge of the respondent that the petitioner in his capacity as occupier was paying the tax on behalf of the owner but no notice has been given to him.

The said order has been perused. Apart from this submission of the learned senior counsel for the petitioner, this Court notes that on the date when the order dated 18.03.2017 was passed, the two notices referred to in the said order were the notices dated 31.03.2003 and 31.03.2011. The notice of 31.03.2011 has been set aside to which the learned counsel for the respondent, (as already noted supra), can really have no objection. Qua the notice dated 31.03.2003, this Court notes and endorses the submission of the learned senior counsel for the petitioner that on the date when this order was passed (18.03.2017), it was well within the knowhow of the Department that the petitioner was filing return under Section 77 of the NDMC as an occupier and not as an owner as is reflected at page 106 of the paper book. Under Section 72 (2) unless a party has been given an opportunity of hearing, such an assessment order cannot be sustained and this has been reiterated in *Jayshree Kumar* (supra).

Assessment order dated 18.03.2017 is accordingly set aside. The petitioner is granted opportunity to appear before the Assessing Authority and plead his case and a reasoned order shall be passed by the Assessing Authority within a period of two weeks from the date of hearing to be granted to the petitioner. The petitioner shall appear before the Deputy Assessor and Collector at 10:30 on 29.08.2017.

Petition disposed of.

Order be given dasti under signatures of the Court Master.

INDERMEET KAUR, J

AUGUST 22, 2017
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