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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 16.03.2017

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W.P.(C) 8467/2015

FOUNDATION FOR ORGANISATIONAL RESEARCH &
EDUCATION FORE SCHOOL OF MANAGEMENT

..... Petitioner

Through Mr. Rakesh Khanna, Senior Advocate
with Mr. Vinod Kumar, Mr. R. K.
Joshi, Mr. Saurabh Joshi, Ms. Mahima
Rathi, Ms. Shefali Jain and Mr.
Bushra Kazim, Advocates

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR.

..... Respondents

Through Mr. Mukesh Gupta, Standing Counsel
with Mr. Pranay Jain, Advocate for
SDMC

Mr. Dhanesh Relan, Ms. Isha Garg
and Mr. Amit Mehta, Advocates for
DDA

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR
INDERMEET KAUR, J. (oral)

1 The petitioner before this Court is the Foundation of
Organisational Research and Education Fore School of Management
(herein after referred to as the FORE) located at Qutub Institutional

Area, New Delhi. On 10.10.2008 respondent no.1 / South Delhi Municipal Corporation had issued a notification for fixing of rates to be applied for conversion of mix land use and other charges for enhanced Floor Area Ratio (FAR) arising out of MPD-2021. The said notification interalia reads as under:

6	<i>(g) Additional FAR charges for institutional plots i.e. including hospital plots.</i>	<i>(a) 50% of the updated Zonal market rate of institutional properties for those disposed by auction as well as for those properties which were allotted to Private Parties. This is not applicable to those institutions which were allotted land @ Rs. 1 for whom no such charges is recommended.</i>
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2 This notification was the subject matter of challenge before a Division Bench in a batch of writ petitions. Lead matter being WP(C) No. 9572/2009 titled South Delhi Education Society vs. DDA & Anr. During the pendency of that petition the respondent / SDMC raised a demand on the petitioner for a sum of Rs. 2,10,27,645/- as the additional FAR charges. This demand was honoured by the petitioner vide payment receipt dated 28.03.2012.

3 During the pendency of these petitions (before the Division Bench) a clarificatory notification dated 17.07.2012 was issued by the DDA. Relevant extract of the said notification reads herein as under:

“... No additional FAR charges to be recovered from educational societies / healthcare and social welfare societies having income tax exemption..”

4 The batch of writ petitions pending before the Division Bench (WP(C) No. 9572/2009 & Ors.) were disposed of on 20.07.2012. The contention of the petitioner in those cases was that they are entitled to a refund of the FAR charges which had been paid by them in view of the modified notification of the Department dated 17.07.2012. This prayer of the petitioner had been acceded to. Relevant extract of the order passed by the Division Bench in WP(C) No. 9572/2009 & Ors. read as follows:

“ In view of the above notification it is absolutely clear that no additional FAR charges are to be recovered from the Educational Societies / Health care and Social Welfare societies having income tax exemption. As such no additional FAR charges would therefore be recoverable from the present petitioners. If any of the petitioners have made deposits in this Court pursuant to any order passed by this Court the same shall be returned to the respective petitioners. In case of any Bank Guarantees that may have been furnished on account of directions of this Court in view of the additional FAR charges, the petitioners concerned would also be entitled to have the same revoked.”

5 The petitioner being similarly placed has accordingly filed the present writ petition seeking a refund of the FAR charges which had been paid by him on 28.03.2012. Submission being that in view of the

clarificatory notification issued by the Department dated 17.07.2012, he is entitled to this refund.

6 Counter affidavit was filed by the respondent. Submission is that the notification dated 17.07.2012 would be prospective and not retrospective. The petitioner is also outside the period of limitation. The present petition having been filed in August, 2015 and money having been deposited by the petitioner in March, 2012 this petition praying for refund of money would be outside the period of limitation. Learned counsel for the respondent has also drawn attention of this Court to an order passed by this Court on 03.09.2015. Attention has also been invited to the judgment of the Apex Court reported as *(2011) 2 SCC 439 titled Godavari Sugar Mills Ltd. Vs. State of Maharashtra & Ors.* This judgment has been highlighted by the learned counsel for the respondent to support his submission that in all cases refund cannot be ordered automatically; it would depend upon the facts and circumstances of each case. The learned Single Judge on 03.09.2015 had prima facie noted that in view of the judgment supra (Godavari Sugar Mills Ltd) the present petition is not maintainable. Moreover the hurdle of limitation has also not been crossed by the petitioner. Additional submission being that payment made by the petitioner in March, 2012 not being under any demur or protest this case has a distinguishable feature qua the judgment relied upon by the petitioner of the learned Single Judge in WP (C) 1149/2013. Petitioner is not entitled to a refund.

7 In rejoinder learned senior counsel for the petitioner disputes these submissions. His submission is that this petition entails not only a refund of money which has been deposited by the petitioner but also his additional submission (which is borne out from his grounds of appeal) is that the benefit of the notification dated 10.10.2008 followed by a clarificatory notification dated 17.07.2012 is available to the petitioner and this having a retrospective operation the petitioner is entitled to the refund of his money. Learned senior counsel for the petitioner additionally points out that he is covered by judgment of a learned Single Judge of this Court delivered in WP (C) No. 1149/2013 (22.11.2013) which judgment has been upheld by the Division Bench as also the Apex Court.

8 Arguments have been heard. Record has been perused.

9 The petitioner is a non profit managment institution. It has been working with the object of developing new domains of managerial thought. It is exempted from paying tax under the Income Tax Act in terms of section 80G. The petitioner is running under the name of FORE School of Management functioning from B-18, Qutub Institutional Area, New Delhi. The FAR available to the petitioner was decided in terms of the MPD-2021. There was a long standing demand to increase the FAR. Being an educational / social welfare society having an income tax exemption, no additional FAR charges are to be recovered from him. The notification dated 10.10.2008 (highlighted supra) as also the subsequent notification dated

17.07.2012 have been perused. The fact that the petitioner is covered by the notification dated 17.07.2012 is in fact not disputed.

10 This Court notes that the learned Single Judge while dealing with WP(C) No. 1149/2013 had a similar issue raised before it. The contention of the petitioner in that case was also for the return of the money which had been paid to the Department as additional FAR charges. The Court had held that the second notification dated 17.07.2012 was applicable to the case of the petitioner and the payment deposited by him on 24.09.2009 (prior to the notification dated 17.07.2012) was liable to be refunded to him as this notification would have a retrospective operation. Admittedly this judgement has been upheld by the Division Bench while disposing of LPA No. 107/2014 decided on 30.04.2014. The retrospective operation of the notification dated 17.07.2012 had been upheld. The SLP filed against that order was also dismissed on 15.09.2014. All this is a matter of record.

11 The petitioner is definitely entitled to a parity. His case is no different from the case decided by the Single Judge. In that case the money had been paid prior to the notification dated 17.07.2012; it had been deposited on 24.09.2009; the notification had come subsequently on 17.07.2012. In the instant case also the petitioner had deposited the money before the Department in March, 2012; this notification (dated 17.07.2012) followed later. The petitioner not having protested at the time when he had made this payment, this Court is of the view that this cannot be a hurdle. This protest infact emanates from the

averments made in the petition. It was admittedly during the pendency of the writ petitions (before the Division Bench WP(C) No. 9572/2009 & Ors.) that this demand of a sum of Rs. 2,10,27,645/- was raised upon the petitioner; this was on 08.07.2010. The petitioner had honoured this demand on 28.03.2012. The very fact that this payment was made after almost two years by itself shows that the petitioner was aggrieved by this demand raised upon him. Merely because there is no document to show that this payment was made under protest, an inference cannot be drawn that the petitioner had made no such protest. That apart the Division Bench having categorically held that the notification dated 17.07.2012 would have a retrospective operation and the benefit of the same must accrue to the persons who had made payment for the additional FAR; this Court is of the view that the benefit of that order must enure in favour of the petitioner as well. In fact the guiding principle which was in the mind of the Division Bench to interpret as to whether the notification dated 17.07.2012 would have a prospective or a retrospective operation was culled out in para 16 of the order passed by the Division Bench. The relevant extract reads herein as under:

“Of the various rules guiding how a legislation has to be interpreted, is the rule, that unless a contrary intention appears a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. If we do something today, we do it keeping in view the law of today and in force and not tomorrow’s backward

adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. The principle of law is lex prospicit non respicit: law looks forward not backward. As was observed in the decision retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect.”

12 This Court is of the view that the benefit of the retrospective operation of the aforementioned notification must accrue to the benefit of the petitioner as well.

13 On the ground of limitation learned senior counsel for the petitioner submits that a writ petition is not specifically guided by the law of limitation and for this proposition he had relied upon a judgement of the Apex Court reported as (2016) 3 SCC 422 KV Ramachandra Raje Urs (Dead) by legal representative Vs. State of Karnataka and Ors. On the aspect of limitation, the Apex Court was of the following view.

“Time and again it has been said that while exercising the jurisdiction under Article 226 of the Constitution of India the High Court is not bound by any strict rule of limitation. If substantial issues of public importance touching upon the fairness of governmental

action do arise, the delayed approach to reach the Court will not stand in the way of the exercise of jurisdiction by the Court. Insofar as the knowledge of the appellant – writ petitioner with regard to the allotment of the land to Respondent 28 Society is concerned, what was claimed in the writ petition is that it is only in the year 1994 when Respondent 28 Society had attempted to raise construction on the land that the fact of allotment of such land came to be known to the appellant –writ petitioner.”

14 This Court notes that the present writ petition has been filed on 24.08.2015. The notification is dated 17.07.2012. Even if the law of limitation is strictly applied (which would be applied to a suit and not applicable to a writ petition) there would be delay of only 38 days. This Court has ample powers to deal with this aspect of limitation and the Court in the instant case is of the view that the interest of justice demands that the prayer has to be answered in favour of the party; the question of delay would not be a hurdle.

15 Petition is allowed. The petitioner is entitled to a refund of the amount paid by him i.e. Rs. 2,10,27,645/- . This amount be refunded to the petitioner within a period of 8 weeks from today failing which this amount shall be returned to him with interest at 9% per annum.

16 Petition is disposed of in the above terms.

17 Order dasti under signatures of Court Master.

INDERMEET KAUR, J

MARCH 16th, 2017/A

