23

(5)

$~21 to 24

* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 919/2018**

JAMIA HAMDARD ..... Petitioner

Through Mr Sandeep Sethi, Senior Advocate with Mr Saket Sikri, Ms Ekta Sikri, Mr Vikalp Mudgal, Mr M.H. Zahidi, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR ..... Respondents

Through Ms Madhu Tewatia & Mr Adhirath Singh, Advocates.

22.

\+ **W.P.(C) 921/2018**

M/S JAMIA HAMDARD ..... Petitioner

Through Mr Sandeep Sethi, Senior Advocate with Mr Saket Sikri, Ms Ekta Sikri, Mr Vikalp Mudgal, Mr M.H. Zahidi, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR ..... Respondents

Through Ms Madhu Tewatia & Mr Adhirath Singh, Advocates.

23.

\+ **W.P.(C) 922/2018**

JAMIA HAMDARD ..... Petitioner

Through Mr Sandeep Sethi, Senior Advocate with Mr Saket Sikri, Ms Ekta Sikri, Mr Vikalp Mudgal, Mr M.H. Zahidi, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR ..... Respondents

6

Through Ms Madhu Tewatia & Mr Adhirath Singh, Advocates.

24.

\+ **W.P.(C) 924/2018**

JAMIA HAMDARD ..... Petitioner

Through Mr Sandeep Sethi, Senior Advocate with Mr Saket Sikri, Ms Ekta Sikri, Mr Vikalp Mudgal, Mr M.H. Zahidi, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ANR ..... Respondents

Through Ms Madhu Tewatia & Mr Adhirath Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **05.02.2018**

CM 3850/2018 in W.P. (C) 919/2018
CM 3868/2018 in W.P. (C) 921/2018
CM 3873/2018 in W.P. (C) 922/2018
CM 3884/2018 in W.P. (C) 924/2018

1. Allowed, subject to all just exceptions.

2. The applications are disposed of.

W.P. (C) 919/2018 & CM 3849/2018
W.P. (C) 921/2018 & CM 3867/2018
W.P. (C) 922/2018 & CM 3872/2018
W.P. (C) 924/2018 & CM 3883/2018

3. The petitioner has filed the above captioned petitions impugning a letter dated 11.12.2017 (hereafter 'the impugned communication') issued by

7

South Delhi Municipal Corporation (hereafter 'SDMC') calling upon the petitioner's bank – IDBI Bank (respondent no.2) – to remit a sum of ₹3 crores to SDMC, respondent no.1 in respect of the demand for assessment year 2006-07.

4. The essential dispute between the petitioner and the SDMC is with regard to the assessment of property tax. The petitioner is claiming that the assessments raised by the SDMC are erroneous inasmuch as the SDMC has also assessed tax on: (i) a mosque (which the petitioner asserts is also used by the public); (ii) on vacant land, which is maintained as playground; (iii) on a herbal garden (which the petitioner is required to maintain); and also a graveyard, which the petitioner asserts is exempt from levy of property tax. The petitioner also asserts that the area in question is not located in Hamdard Nagar but in Tughlakabad which falls in a different category for the purposes of assessment of tax and the tax is to be assessed at the rate of ₹200 per sq. mtr instead of ₹500/- .

5. It is stated that these issues were raised in respect of assessments for the year 2004-05, 2005-06 and 2009-10, which were subject matter of three appeals (Appeal numbers HTA Nos. 1, 2 & 3 of 2013) preferred before the Appellate Tribunal (Property Tax) (hereafter 'the tribunal'). The petitioner also made the requisite pre-deposit of the assessed tax for the purposes of maintaining the aforesaid appeals. While the said appeals were pending, demands were also raised by the SDMC for the years 2006-07, 2007-08, 2008-09 and 2010-11. These demands are subject matter of four separate appeals being Appeal nos. 197 to 200 of 2015, which were filed before the tribunal subsequently.

6. The tribunal had also declined to proceed with the appeals pertaining

(8)

to the year 2004-05, 2005-06 & 2009-10 (being Appeal nos. 1, 2 & 3 of 2013) vide order dated 28.12.2012 on the ground that the petitioner had not preferred appeals in respect of the assessment for other years. This decision of the tribunal was assailed by the petitioner in a Writ Petition No. 150/2015. The said petition was disposed of by directing the tribunal to decide the said appeals on the principle that each assessment year was a separate case and the tribunal could not dismiss the Appeal nos. 1, 2 & 3 of 2013 on the ground that the petitioner had not preferred appeals in respect of other years.

7. The petitioner thereafter filed appeals for the other years as well (Appeal no. 197 to 200/2015). It is also admitted that the SDMC had recovered a sum of ₹3,42,25,183/- as the tax assessed for those years.

8. In the meanwhile, the petitioner approached this Court by way of writ petitions (W.P. (C) No. 7647 to 7651 of 2015), *inter alia*, praying that the tax demanded for the assessment years 2006-07 to 2010-11, which was subject matter of appeal in Appeals nos. 197 to 200 of 2015, be stayed. The Court after hearing the said petitions passed an order dated 08.03.2016 directing as under:-

> "(I) The Tribunal is requested to take up HTAs No. 1/MTT/2013 to 3/MTT/2013 for hearing as expeditiously as possible and to decide the same on or before 08th July, 2016.
>
> (II) The parties are directed to appear before the Tribunal in this regard on 18th March, 2016 for fixing of a date of hearing and are directed not to take any unnecessary adjournments before the Tribunal;
>
> (III) The amount of Rs.3.47 crores already recovered by the respondent SDMC by attachment of the bank accounts of the petitioner shall remain with the respondent SDMC, subject to

(9)

the adjudication of the dispute as to the tax for the relevant years;

(IV) If the respondent SDMC is found liable for refund thereof, it shall be liable for interest thereon as may be determined;

(V) However, recovery of further demand for the assessment years to which HTAs No. 197/MTT/2015 to 200/MTT/2015 pertain is stayed till 31st July, 2016 i.e. till after the last date for adjudication of HTAs No.1/MTT/2013 to 3/MTT/2013;

(VI) If the petitioner is ultimately found liable to pay the tax, it shall also be liable for interest thereon in accordnace with law.

(VII) The time for compliance of provisions of Section 170(b) of the MCD ACt vis-a-vis HTAs No. 197/MTT/2015 to 200/MTT/2015 is extended till 15 days after the decision of HTAs No. 1/MTT/2013 to 3/MTT/2013."

9. Admittedly, the petitioner's appeal – appeal no. 1 to 3 of 2013 – have been rejected by an order dated 17.03.2017 passed by the tribunal. The said order is now impugned in three writ petitions – W.P. (C) nos.9145/2017, 9170/2017, 9198/2017 – which are now pending consideration before this Court.

10. It is apparent from the plain reading of the order dated 08.03.2016 that the petitioner is now obliged to make a pre-deposit of tax for the period covered under the four appeals being Appeal nos. 197 to 200 of 2015 in the event the petitioner wishes to pursue with the said appeals. This is so because the appeals preferred by the petitioner in respect of years 2004-05, 2005-06 & 2009-10 (Appeal nos. 1,2 & 3 of 2013) have not met with any success.

11. It is in the aforesaid context that the petitioner has filed the present petitions seeking reliefs, which are similarly worded. The reliefs as sought for by the petitioner are set out below:-

> "a. Issue a writ of certiorari and/or a writ in the nature of certiorari and/or any other appropriate writ and/or Order and/or Direction thereby quashing the letter dated 11.12.2017 bearing No. Tax/HQ/SDMC/2017-18/D-1527 issued by the Respondent No.1 to Respondent No.2 i.e. IDBI, Kalkaji, New Delhi; and
>
> b. Issue a writ of mandamus and/or a writ in the nature of mandamus and/or any other appropriate Writ and/or Order and/or Direction thereby directing the Respondents to not take any further action in lieu of the impugned letter dated 11.12.2017; AND/OR
>
> c. Issue a writ or mandamus and/or a writ in the nature of mandamus and/or any other appropriate Writ and/or Order and/or Direction thereby directing the Respondent No.1 to not take any steps for recovery of additional demand for any assessment year till the pendency of the writ petitions being W.p. (C) Nos. 9145/2017, 9170/2017, 9198/2017."

12. One the of the principal grievances raised by the petitioner is that the SDMC is seeking to adjust the sum of ₹ 3,42,25,183/- which was collected as the property tax for the years 2006-07, 2007-08, 2008-09 and 2010-11 against the interest claimed in respect of assessment years 2004-05, 2005-06 and 2009-10. Ms Madhu Tewatia, the learned counsel appearing for the SDMC does not dispute that the said amount was collected against the tax due for assessment years 2006-07, 2007-08, 2009-10 and 2010-11. This is also observed in the order dated 08.03.2016 passed by this Court in W.P.(C) No. 7647/2015. Plainly, the said adjustment would be impermissible. If the

11

said amount has been collected as tax for a particular year, it is not open for the SDMC to adjust the same for any other purpose.

13. In this view, the petitioner's claim that the amount of ₹3,42,25,183/- cannot be adjusted towards interest due for the assessment years 2004-05, 2006-07, 2009-10 is merited.

14. Mr Sandeep Sethi, the learned Senior Counsel appearing for the petitioner states, on instructions, that the petitioner would voluntarily deposit a sum of ₹2,86,55,000/- being the remaining amount of tax due (principal amount) for the assessment years 2006-07, 2007-08, 2008-09, 2010-1, within a period of three weeks from today. And, the SDMC be restrained from recovering the amount from the petitioner's bank

15. With the payment of the said amount, the petitioner would have complied with the condition of pre-deposit for its appeals - Appeal nos. 197 to 200 of 2015 - to be heard by the tribunal.

16. In view of the above, subject to the petitioner making the pre-deposit, as stated today, it is directed that the impugned communication dated 11.12.2017 will not be given effect to. This is without prejudice to all the rights and contentions of the parties.

17. These petitions are disposed of with the aforesaid directions.

VIBHU BAKHRU, J

FEBRUARY 05, 2018
pkv