

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision :- 24.04.2018

+ W.P.(C) 2882/2018 & CM Nos.11607-609/2018
NITIN GUPTA & ANR Petitioners

Through Mr.Jai Sahai Endlaw, Adv.
versus

NEW DELHI MUNICIPAL COUNCIL Respondent
Through: Ms.Malavika Trivedi, ASC
with Ms.Sriparna Choudhary,
Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner, who is the co-owner of property bearing Nos.1-7, 31-32 and 48-49 in block-F, has sought quashing of the assessment order dated 29.12.2017 passed by the respondent under Section 72 of the NDMC Act, whereby the rateable value in respect of the aforesaid property has been substantially increased w.e.f. 2002-03. The petitioner has also challenged the consequential demands raised by the respondent.

2. Learned counsel for the petitioner submits that the impugned assessment order has been passed after an inordinate delay. He submits that the petitioner was initially issued a notice dated 26.03.2001, after which he was granted a personal hearing in 2004, whereafter the respondent took no action till the issuance of another fresh notice dated 27.03.2008 under Section 72 of the Act, with a proposal to once again revise the existing rateable value to

Rs.1,08,91,854/- less 10% w.e.f. 01.04.2000 and Rs.2,70,00,000/- w.e.f. 01.04.2007 on the basis of comparable rent.

3. Mr.Endlaw further submits that the petitioner was thereafter given a personal hearing and certain information was sought from him in February 2011 by way of a notice under Section 77 of the Act, which was duly provided by the petitioners. He further submits that, though the petitioner had thereafter been granted time for personal hearing, the Assessment Officer was not present on the said date and therefore despite the petitioner's repeated requests, no personal hearing was ever given to him and the impugned assessment order was passed without even considering the written submissions given by the petitioner. He further submits that the impugned order overlooks the fact that the petitioner is only co-owner of the property and some of the portions of the said property are under different tenants who are enjoying protection under the Delhi Rent Control Act, as they are paying rent of less than Rs.3,500/- p.m. He, thus, contends that the impugned assessment order is wholly unsustainable and liable to be set aside by this Court without relegating the petitioner to the appellate remedy under the NDMC Act.

4. Mr.Endlaw relies on a decision dated 23.03.2018 of the Division Bench of this Court in the case of '**Ved Marwah vs. NDMC**', W.P.(C) No.188/2018, in support of his plea that such an assessment order which seeks to increase the rateable value at one-go for the last 15-16 years is not permissible, and is not only an abuse of process of law but also shows non-application of mind. He submits that, in such circumstances, this Court has quashed similar assessment orders in

writ proceedings itself. He, therefore, prays that the impugned order be set aside.

5. On the other hand, Ms.Malavika Trivedi, who appears on advance notice for the respondent, submits that there is no reason as to why the petitioner should not be relegated to the appellate remedy under Section 115 and 116 of the Act. She submits that the petitioner would have an adequate opportunity to raise all contentions before the Appellate Tribunal. Ms.Malavika Trivedi relies on a decision dated 15.01.2007 of this Court in the case of '**Ashish Malhotra vs. NDMC**', W.P.(C) No.60/2007, to contend that Article 226 is not meant to short circuit or circumvent the procedure. She submits that, once there is a specific remedy provided under the NDMC Act, there is no reason as to why the present petition should be entertained.

6. Ms.Trivedi also places reliance on a decision of the Supreme Court in Civil Appeal No.1281 of 2018 titled as '**Authorized Officer, State Bank of Travancore & Anr. vs. Mathew K.C.**', which deals with a case relating to Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, ('SARFAESI Act'), in support of her aforesaid contention. She, thus, submits that the impugned assessment order is just and proper and the same extensively deals with all the factual aspects of the matter. She draws my attention to Para 4 of the impugned order to contend that the assessing authority was conscious of the facts sought to be projected by the learned counsel for the petitioners before this Court.

7. Having heard the learned counsels for the parties at length and having considered the decisions relied upon by both sides, I find the

petitioner has raised certain vital questions of law especially as to whether the respondent can be permitted to revise the rateable value after such an inordinate delay and that too, without giving any opportunity of personal hearing to the petitioner.

8. However, in my considered view, despite certain important legal issues arising in the present case, there is no reason as to why the petitioner should not be relegated to the statutory appellate remedy provided under the Act. At this stage, learned counsel for the petitioner submits that the petitioner is willing to approach the Appellate Tribunal, but prays that the Tribunal be directed to entertain the petitioner's appeal on deposit of the tax liability in respect of the base year 2001-2002 only, which amount has been quantified in the assessment order itself at Rs.71,800/-. He further submits that, since the petitioner's appeal may now be time barred, the delay in filing the appeal may be condoned and the Tribunal may be directed to consider his appeal on merits.

9. Before dealing with this submission of the learned counsel for the petitioners, I deem it appropriate to refer Para 17 of the decision of this Court in the case of ***Ved Marwah*** (*supra*):-

“17. In view of the above reasoning, it is held the impugned final orders of assessment and the demands issued are clearly unreasonable and void. They are hereby quashed. Consequently, it is held that the NDMC is at liberty to rework the assessments in respect of the properties that are the subject matter of these proceedings, by issuing fresh notices for the periods commencing from 3 years prior to the date on which the final notices were issued, and finalize the assessments within reasonable time. In the event of grievance on the part of the assessee to such fresh assessment orders, it is open to them

to approach the appellate tribunal; provided they deposit the amount towards the tax liability for the base year.”

10. Having considered the observations of the Division Bench in the aforesaid case, I am inclined to accept the submission of the learned counsel for the petitioner to allow the petitioner to file the statutory appeal with a pre-deposit of the base year of 2001-02.

11. Accordingly, it is directed that if an appeal is filed by the petitioner within 15 days along with the pre-deposit for the base year 2001-2002, the Appellate Tribunal would consider the petitioners' appeal on its own merits by following the procedure as per law.

12. The petition is dismissed as withdrawn with liberty as prayed for granted. The pending applications also stand disposed of.

13. DASTI.

REKHA PALLI, J

APRIL 24, 2018

gm