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

\+ W.P.(C) 2678/2018, CM Nos. 10961/2018 & 10963/2018

FRIGORIFICO ALLANA PVT LTD ..... Petitioner

Through: Mr. B.B. Gupta, Sr. Adv. with Mr. Rajeev Bansal, Mr. Anuj Aggarwal, Mr. Tenzing Thinlay, Mr. Vidhi Gupta and Mr. Vinay, Advs.

versus

EAST DELHI MUNICIPAL CORPORATION & ANR ..... Respondents

Through: Ms. Mini Pushkarna, Standing Counsel for EDMC with Ms. Anushruti, Adv. for EDMC with Mr. K.K. Verma, Zoneal Inspector.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

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

% **03.04.2018**

1. The present petition has been filed by the petitioner with the following prayers:

> *"In the premise aforesaid, the petitioner most humbly prays that this Hon'ble Court may be pleased to:-*
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> *(i) issue an appropriate writ, order or direction thereby setting aside the impugned Order / Warrant of Distress dated 12.03.2018 (Annexure P-1) passed by Dy. Assessor & Collector (GRP/HQ), East Delhi Municipal Corporation, 419, FIE, Ground Floor, Udyog Sadan, Patparganj Ind. Area, Delhi – 110092, whereby attachment order of sum of Rs.15,89,38,841 (Rupees Fifteen Crores Eight Nine Lakhs Thirty Eight Thousand Eight Hundred & Forty One only) is issued against the petitioner on account of purported property tax dues against the Municipal Slaughter House, Ghazipur, Delhi, from all Bank Accounts, Securities and Deposits*

of all branches of HDFC Bank, Vijaya Bank, RBL in India;

(ii) issue an appropriate writ, order or direction thereby setting aside the impugned Rectification Order dated 28.02.2018 (Annexure P-2) passed under Section 176 of the Amended Delhi Municipal Corporation Act, 2003 by the respondents thereby it was declared that the petitioner is liable to pay Rs.15,89,38,841/- on account of property tax to the respondents;

(iii) issue an appropriate writ, order or direction thereby setting aside the impugned Assessment Order dated 21.02.2018 (Annexure P-3) passed by the respondents under Section 123D of the Amended Delhi Municipal Corporation Act, 2003 whereby it was declared that the petitioner liable to pay Rs.14,00,05,898/- on account of property tax to the respondents;

(iv) direct the respondents to refund the sum of Rs.50,16,078.83/- (Rupees Fifty Lakhs Sixteen Thousand Seventy Eight and Eighty Three Paisa only), as recovered by the respondents from the petitioner's accounts, purportedly on account of payment of property tax, along with appropriate interest thereupon;

(v) issue an appropriate writ, order or direction thereby declaring that the petitioner (i.e. FAL) is not liable to pay any property tax to the respondents upon the property known as Ghazipur Municipal Slaughter House, Ghazipur, Delhi – 110096;

(vi) allow the present writ petition with coast in favour of the petitioners; and

(vii) pass any such other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice and in favour of the petitioner."

2. In substance the challenge in the writ petition is to the assessment order dated February 21, 2018, rectification order dated February 28, 2018 and warrant of distress dated March 12, 2018 whereby the respondents have

made a claim for Rs. 15,89,38,841 on account of property tax / interest / penalty for the period ending March 31, 2017. Even though various grounds have been raised/pleaded by the petitioner in the writ petition, one of the grounds is that the assessment order is passed by the Assessor and Collector, Mr. Sanjay Kumar, IRPS, on a hearing granted to the petitioner by Mr. Vivek Pandey, IAS Assessor and Collector. It is the submission of Mr. B.B. Gupta, learned Senior Counsel for the petitioner that such procedure is not contemplated in law, in view of the judgment of the Supreme Court and this Court. He would rely upon the judgment of the Supreme Court in the case of ***Union of India (UOI) and Ors. vs. Shiv Raj and Ors. (2014) 6 SCC 564*** wherein (MANU/SC/0478/2014) wherein in paras 13 to 15 the Supreme Court held as under:

> *"13. This Court in Rasid Javed & Ors. v. State of U.P. & Anr., AIR 2010 SC 2275 following the judgment in Gullapalli (supra), supra held that a person who hears must decide and that divided responsibility is destructive of the concept of hearing is too fundamental a proposition to be doubted.*
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> *14. A similar view has been re-iterated by this Court in Automotive Tyre Manufacturers Association v. Designated Authority & Ors., (2011) 2 SCC 258, wherein this Court dealt with a case wherein the Designated Authority (DA) under the relevant Statute passed the final order on the material collected by his predecessor in office who had also accorded the hearing to the parties concerned. This court held that the order stood vitiated as it offended the basic principles of natural justice.*
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> *15. In view of the above, the law on the issue can be summarised to the effect that the very person/officer, who accords the hearing to the objector must also submit the report/ take decision on the objection and in case his successor decides the case without giving a fresh hearing, the*

order would stand vitiated having been passed in violation of the principles of natural justice."

3. He would rely upon the judgment of the Division Bench of this Court in the case of ***M/S. DCM Limited vs. Municipal Corporation of Delhi and Ors.*** in ***C.W.P.3807/1997*** decided on April 03, 1998 wherein a Division Bench of this Court while dealing with the similar provisions of the DMC Act relatable to property tax in paras 24 and 25 has held as under:

> *"24. The next point is regarding hearing given by one officer while the order was passed by another officer. In this context the facts are not in dispute. The admitted position is that the petitioner's representative was heard on the basis of the objections filed by the petitioner by one officer while the objections were decided by another officer. According to the learned counsel for the petitioner on the face of it this procedure is repulsive and repugnant to the basic principles of natural justice and the impugned order has to be quashed on this ground alone. On the other hand the learned counsel for the Corporation tried to justify this procedure followed by the Corporation by stating that the present is not a case of any oral evidence where demeanor of a witness may be of any significance. The decision of the case is based on material on record. The petitioner had filed detailed objections as well as written submissions in support thereof. The order has been passed by the Assessing Authority on the basis of notice, reply to the notice, objections, written submissions on behalf of the assessee and other relevant documents on record. All the arguments advanced by the petitioner are contained in the replies. In short, it is submitted that the entire material was before the Assessing Officer and he passed the order after looking into the same.*
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> *25. In support of this submission the learned counsel for the counsel for the respondent relied on certain decisions. First he cited Ossein and Gelatine Mfrs. Association Vs. Modi Alkalies & Chemicals Ltd., (1989) 4 S 264. This was a case of grant of*

licence to manufacture ossein and gelatine in the State of Rajasthan. The appellant Association had represented against grant of licence to the respondent. They had made written representations in this behalf. Oral hearing was given to them by an officer of the Govt. Final order granting permission to respondent was passed long after by another officer. In these facts it was held that there was no violation of principles of natural justice. In our view this case has no application in the facts of the present case. This was a case of purely administrative inquiry whereas the case we are dealing with is one requiring discharge of quasi judicial functions. The requirement of oral hearing to be given to the assessee is implicit in view of the statutory provisions. Section 124(5) which deals with objections to the assessment list clearly provides for an opportunity of hearing to the party affected. Section 126 which has been applied in the present case, as noticed earlier, contains a mandatory requirement of notice and also provides for an opportunity to the assessee to file objections to the proposal. It also enjoins on the Commissioner to consider the objections of the assessee in response to the notice under section 126. In fact the learned counsel for the respondent admitted that the Corporation gives an opportunity of oral hearing in all such cases. When the requirement of oral hearing is conceded, the right cannot be rendered meaningless in this manner, i.e. hearing by one officer and order by another officer. The right of hearing has to be given some meaning and has to be made effective which can be possible only if the officer who gives oral hearing also passes the final order."

4. On this submission of Mr. B.B. Gupta, Ms. Mini Pushkarna, learned Standing Counsel appearing for the EDMC on instruction from Mr. K.K. Verma, Zonal Inspector state, the respondents are ready and willing to grant a fresh hearing to the petitioner and the said hearing shall be granted by the present Assessor and Collector.

5. According to her, hearing shall be de-novo by the said officer, who shall pass a fresh order without being influenced by the orders dated February 21, 2018 and February 28, 2018 passed by him. The said submission is taken on record. I accordingly set aside the orders dated February 21, 2018, February 28, 2018 and March 12, 2018 and further direct the representative of the petitioner to appear before the Assessor and Collector on April 26, 2018 at 11:00 A.M. The petitioner shall be at liberty to submit such documents as it wants to rely upon, other than already submitted on record of the respondents. The Assessor and Collector shall pass an order as expeditiously as possible.

The writ petition is disposed of.

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In view of the order passed in the writ petition, the applications have become infructuous.

Dasti.

V. KAMESWAR RAO, J

APRIL 03, 2018/*aky*