

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

Reserved on: 20.03.2018
Pronounced on: 23.03.2018

+ **W.P.(C) 188/2018, C.M. APPL.772/2018**

MR. VED MARWAH

..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL (NDMC) AND ORS.

.... Respondents

+ **W.P.(C) 2198/2017**

SAURABH MALHOTRA AND ORS

..... Petitioners

Versus

NEW DELHI MUNICIPAL COUNCIL (NDMC) AND ORS.

.... Respondents

+ **W.P.(C) 3995/2017**

M/S. PEAREY LAL AND SONS (P) LTD.

..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL AND ANR..... Respondents

+ **W.P.(C) 4789/2017, C.M. APPL.20759/2017**

M/S. MEHRA JEWEL PALACE PVT. LTD.

..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL AND ANR..... Respondents

Through: Mr. B.B. Jain, Mr. Amitabh Marwaha and Mr. Abhay Jain, Advocates, in W.P.(C) 188/2018, W.P.(C) 2198/2017 & W.P.(C) 3995/2017.

Ms. Aastha Dhawan and Ms. Diksha Mathur, Advocates, for petitioner, in W.P.(C) 4789/2017.

Mr. Arjun Mitra, Mr. Abhishek Mishra, Ms. Kaskaran Kaur, Advocates, with Mr. Puneet Gupta, DEO and Mr. Hardeep Singh, Jr. Assistant, NDMC, in all matters.

Mr. Sanjeev Uniyal and Mr. Dhawal Uniyal, Advocates, for UOI, in W.P.(C) 188/2018.

Ms. Shreya Sinha and Mr. Amritesh Raj, Advocates, for UOI, in W.P.(C) 2198/2017.

Mr. Santosh Kumar Pandey, Advocate, for UOI, in
W.P.(C) 3995/2017.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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1. In all these petitions, although several grounds are urged, the common reliefs claimed are the quashing of notices under Section 72 of the New Delhi Municipal Act, 1994 (hereafter “the Act”); the assessment orders made pursuant thereto and the demands made by the respondent (NDMC). The petitioners also challenge the validity of Section 116(b) of the Act as arbitrary.

2. The New Delhi Municipal Council (NDMC) is a statutory local/municipal body constituted under the Act. As part of its functioning, it is entitled to assess and collect municipal property taxes in respect of each kind of property. The Punjab Municipal Act, 1911 was the precursor to the Act; Section 416(1) of the Act repealed that Act (of 1911). Section 63 of the Act authorizes the assessment and collection of municipal property taxes and reads as follows:

“63. Determination of rateable value of lands and buildings assessable to property tax.-(1) The rateable value of any lands or building assessable to any property taxes shall be the annual rent at which such land or building might reasonably be expected to let from year to year less a sum equal to ten per cent of the said annual rent which shall be in lieu of all allowances for cost of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent:

Provided that in respect of any land or building the standard rent of which has been fixed under the Delhi Rent Control Act, 1958 (59 of 1958) the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

(2) The rateable value of any land which is not built upon but is capable of being built upon and of any land on which a building is in process of erection shall be fixed at five per cent of estimated capital value of such land.

(3) All plant and machinery contained or situate in or upon any land or building and belonging to any of the classes specified from time to time by public notice by the Chairperson with the approval of the Council, shall be deemed to form part of such land or building for the purpose of determining the rateable value thereof under sub-section (1) but save as aforesaid no account shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building.”

3. Section 72 of the Act which is also relevant for the purpose of these proceedings reads as follows:

*“72. **Amendment of assessment list.**-(1) The Chairperson may, at any time, amend the assessment list*

(a) by inserting therein the name of any person whose name ought to be inserted; or

(b) by inserting therein any land of building previously omitted; or

(c) by striking out the name of any person not liable for the payment of property tax; or (d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

(e) by making or cancelling any entry exempting any land or building from liability to property tax; or

(f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident; or

(g) by inserting or altering an entry in respect of any building erected, reerected, altered or added to, after the preparation of the assessment list:

Provided that so person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the notice under sub-section (2) is given.

(2) Before making any amendment under sub-section (1) the Chairperson shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendment and consider any objection which may be made by such person.”

4. In all these cases, the petitioners are owners of the assessable properties which were subject to the levy of property tax. On different dates, notices were issued and served, proposing to assess the properties or amend the assessment list to determine the rateable value upwards. The relevant facts, i.e. the names of the petitioners; the properties in question; the dates of the notice(including the periods for which the fresh assessment was to relate, including the periods for which the assessments were to be effective from); the dates when assessment orders were made and the dates of the demands are set-out for convenience in a tabular statement:

<i>Name of the Petitioner</i>	<i>Property in question</i>	<i>Date of the notice</i>	<i>Period for which assessments were to be effective</i>	<i>Date when assessments orders were made</i>	<i>Date of the demand</i>
<i>Ved Marwah</i>	<i>Flat No.A-2, 44, Amrita Shergill Marg, New Delhi</i>	<i>11.02.2002 31.03.2011 08.03.2017</i>	<i>2001-02 2010-11 2016-17</i>	<i>31.10.2017</i>	<i>01.11.2017</i>
<i>S.P.</i>	<i>Delson</i>	<i>10.02.2003</i>	<i>2002-03</i>	<i>13.12.2016</i>	<i>06.01.2017</i>

<i>Malhotra</i>	<i>Motor Workshop</i>				
<i>A.L. Malhotra</i>	<i>BF FF SF 3F Windsor Mansion Janpath</i>	<i>24.03.2011</i>	<i>2010-11</i>		
<i>Satyawati Malhotra</i>		<i>28.03.2015/ 30.03.2015</i>	<i>2014-15</i>		
<i>Vivek Malhotra</i>					
<i>The Secretary, Pearey Lal and Sons (P) Ltd.</i>	<i>Remaining area except (3105 sq. ft at 2nd Floor), Harsha Bhawan, E-Block, Connaught Place, New Delhi.</i>	<i>09.03.2006/ 31.03.2006</i> <i>19.03.2008/ 25.03.2008</i>	<i>2005-06</i> <i>2007-08</i>	<i>06.02.2017</i>	<i>15.02.2017</i>
<i>Mehra Jewel Palace Pvt. Ltd.</i>	<i>C-11 (incl. Mezz), Connaught Place</i>	<i>28.02.2003</i> <i>24.03.2006</i> <i>28.03.2007</i>	<i>2002-03</i> <i>2005-06</i> <i>2006-07</i>	<i>27.02.2017</i>	<i>17.03.2017</i>

5. All the petitioners complain that the completion of assessment proceeding or the revision of the assessment lists, after an inordinate period renders the exercise of power unreasonable. It is urged that the assessing officers do not have the power to adjudicate upon issues that are in fact stale or conclude proceedings after an inordinate delay in such a way as to result in manifold liability on the part of the property owners which they would be unprepared to bear. According to the petitioners, the assessments pursuant to any given notice – either proposing a first-time assessment of any property

or revision of the existing rateable value is to be completed within a reasonable period of not more than 3 years failing which the NDMC ceases to have any power to adjudicate upon such notices which should be considered stale.

6. Mr. B.B. Jain, learned counsel for the petitioners also submits that in all these cases, that even after receiving notices and filing their objections, the petitioners/assesseees continued to deposit property tax in accordance with the existing rateable value and the NDMC made no attempts to either adjudicate or indicate that the amounts were accepted without prejudice to its claim that the rateable value needed upward revision. It is furthermore submitted that in some cases, like in W.P.(C) 2198/2017 though the initial notice issued for the period 2003 onwards was never finally adjudicated, later, further notices under Sections proposing upward revision of rateable values for later periods were issued which too were adjudicated finally in 2017.

7. Learned counsel for the petitioners rely upon the objections filed to the assessment notices and the notices proposing amendment to the assessment list and state that NDMC did not afford proper hearing or opportunity to the assesseees and instead proceeded to pass final orders casting oppressive burdens upon the property owners, including individuals. It is pointed out that the NDMC also ignored the fact that for the period 2009 onwards, the method for determining the rateable value underwent a substantial change on account of introduction of “Unit Area” system. The drawing-up of a composite order based entirely upon the notional market rent that the property owner is likely to secure from a hypothetical tenant, could not have been applied in these circumstances.

8. Learned counsel rely upon the decision of the Supreme Court in *State of Punjab and Ors.v. Bhatinda District Co-op Milk P. Union Ltd* 2007 (11) SCC 363 and *Delhi Development Authority v Ram Prakash* 2011 (4) SCC 180. It is stated that in these cases, it was held that even if a statute does not indicate any limitation or a fetter (in point of time) requiring a statutory authority to adjudicate or complete proceeding with respect to Show Cause Notices issued, nevertheless, such statutory adjudicatory proceedings or processes should be completed within reasonable time and finally orders made.

9. It is urged that Section 116(b) to the extent it compels an aggrieved assessee to deposit the entire arrears of property entire tax as a condition for hearing the appeal is unconstitutional and *ex-facie* arbitrary. Learned counsel submits that the remedy of an appeal would be efficacious if and only if the conditions made applicable for the hearing of the appeal given meaningful and real access to the party aggrieved, rather than render the remedy illusory. The requirement of compelling the assessee to deposit the entire arrears, or the whole of the disputed amount (on account of the statutory authority's failure to adjudicate the notices resulting in a huge demand spanning over a decade or more) is in effect compounding the omission of the authority or itself. In these circumstances, it is only this Court under Article 226 of the Constitution which can give real and effective remedy.

10. Learned counsel for the respondent NDMC, Mr. Arjun Mitra, submitted that in the year 2001, in fact the NDMC had framed a proposed bye-law requiring the AO's to complete the proceedings within three years. However, that proposed bye-law was never implemented or brought into force. Counsel for the NDMC urged this Court not to intervene but rather

pass an order facilitating the appellant's remedy under Section 116 of the Act. Learned counsel relied upon the judgment of the Supreme Court in *Shyam Kishore v. MCD* 1993 (1) SCC 22 and stated that as long as the assessee deposits the tax arrears relating to the base year (first year in the series of years for which demand is raised), the appeals can be heard.

11. It is urged next that the petitioners' grievance with respect to the method adopted for completing the assessment is untenable. It is stated that the statute in fact mandates that the rateable value of lands or buildings for the purpose of property tax shall be the annual rent at which said land or building shall reasonably be expected to be let from year to year.

12. It was submitted that this expression was the subject matter of considerable litigation and finally decided by the Supreme Court in *STC of India v. NDMC* AIR 2016 SC 1269 which upheld the NDMC's plea that the arm's length rent which can be fetched in respect of any given premises forms the basis for the fixation of the rateable value.

Analysis and Conclusions

13. The notices for revising the assessment list in all these cases were issued over a decade prior to the passing of final orders. In one case, it was 16 years; in others, it was 14 years. In two cases, the same property was subject to multiple notices for later periods, without finalization of rateable value, for the previous year. Clearly, the finalization of these cases after inordinate delay of 14 to 16 years was plainly unreasonable. Where such open ended power-like in the present case, in Section 72- was conferred upon a statutory authority, i.e. a sales tax authority official in Punjab, the Supreme Court had outlined the correct approach in *State of Punjab & Ors.*

v. *Bhatinda District Co-op Milk P. Union Ltd* 2007 (11) SCC 363 with respect to the limitations to exercise of such power. It was held that:

“5. In respect of the assessment for the year ending 31.3.2000, the assessment proceedings were completed relying on the return filed by the appellant on 20.3.2001. Indisputably, in terms of Section 11 of the 1948 Act, a period of three years has been prescribed as a period of limitation as contained under sub-section (3) of Section 11 for completing assessment from the last date for filing of return. Sub-section (6) of Section 11 reads as under :

_If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in case where such dealer has willfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, a sum not exceeding one and a half times that amount. Section 21 of the said Act provides for revision. Section 21 of the Act with which we are concerned herein reads as under: _

21. Revision-(1) The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit.

(2) The State Government may by notification confer on any Officer the powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) A Tribunal, on application made to it against an order of the Commissioner under sub-section (1) within ninety days from the date of communication of the order, may call for and examine the record of any such case and pass such orders thereon as it thinks just and proper.

(4) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

15. Sub-section (1) of Section 11 empowers the Commissioner to extend the period of three years for passing the order of assessment wherefor reasons are required to be recorded in writing subject, however, to the maximum period of five years. Ordinarily, therefore, a period of three years has been prescribed for completion of the assessment in terms of the provisions of the Act. We may also notice that in cases where an assessment order is to be reviewed, the same should be done within a period of one year.

16. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo moto power can be exercised at any time.

17. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

18. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years."

14. *Bhatinda (supra)* was noticed and followed subsequently in *Ram Prakash (supra)*. In a more recent decision *Ram Karan (D) by LR v. State of Rajasthan* 2014 (8) SCC 282, it was held that:

"38. State of Punjab & Ors v Bhatinda District Co-op Milk P. Union Ltd (supra) this Court held that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. However, what shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. In the present case, neither any objection was raised nor was any application filed by vendors for restoration of land in their favour. The suit was filed by the Tehsildar, Viratnagar after more than 31 years. No ground is shown to file such petition after long delay nor it was mentioned as to whether the vendors i.e. original landholders made any application for restoration of land in their favour."

39. In view of the matter, we hold that the suit being filed beyond the reasonable period was fit to be dismissed. The Additional Collector rightly dismissed the suit being barred by limitation."

14. In the present case, the finalization of assessment list or its revision, after over 12 years in all the cases, cannot be countenanced. It is clearly unreasonable and arbitrary and calls for interference.

15. As regards the second issue whether an appeal is an efficacious remedy, the Court is of opinion that there is merit in the argument. In *Mardia Chemicals v. Union of India* 2004 (4) SCC 311, it was held as follows:

“60. The requirement of pre-deposit of any amount at the first instance of proceedings is not to be found in any of the decisions cited on behalf of the respondent. All these cases relate to appeals. The amount of deposit of 75% of the demand, at the initial proceeding itself sounds unreasonable and oppressive more particularly when the secured assets/the management thereof along with the right to transfer such interest has been taken over by the secured creditor or in some cases property is also sold. Requirement of deposit of such a heavy amount on basis of one sided claim alone, cannot be said to be a reasonable condition at the first instance itself before start of adjudication of the dispute. Merely giving power to the Tribunal to waive or reduce the amount, does not cure the inherent infirmity leaning one-sidedly in favour of the party, who, so far has alone been the party to decide the amount and the fact of default and classifying the dues as NPAs without participation/association of the borrower in the process. Such an onerous and oppressive condition should not be left operative in expectation of reasonable exercise of discretion by the concerned authority. Placed in a situation as indicated above, where it may not be possible for the borrower to raise any amount to make the deposit, his secured assets having already been taken possession of or sold, such a rider to approach the Tribunal at the first instance of proceedings, captioned as appeal, renders the remedy illusory and nugatory.

61. In the case of Seth Nandlal (supra), while considering the question of validity of pre-deposit before availing the right of appeal the Court held “....right of appeal is a creature of the statute and while granting the right the legislature can impose conditions for the exercise of such right so long as the

conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory." (emphasis supplied). While making said observation this Court referred to the decision in the case of Anant Mills Co. Ltd. (supra). In both the above noted decisions this Court had negated the plea raised against pre-deposit but in the case of Seth Nandlal (supra) it was found that the condition was not so onerous since the amount sought to be deposited was meager and that too was confined to the landholding tax payable in respect of the disputed area i.e. the area or part thereof which is declared surplus by the Prescribed Authority (emphasis supplied) after leaving the permissible area to the appellant. In the above circumstances it was found that even in the absence of a provision conferring discretion on the appellate authority to waive or reduce the amount of pre-deposit, it was considered to be valid, for the two reasons indicated above. The facts of the case in hand are just otherwise.

62. As indicated earlier, the position of the appeal under Section 17 of the Act is like that of a suit in the court of the first instance under the Code of Civil Procedure. No doubt in suits also it is permissible, in given facts and circumstances and under the provisions of the law to attach the property before a decree is passed or to appoint a receiver and to make a provision by way of interim measure in respect of the property in suit. But for obtaining such orders a case for the same is to be made out in accordance with the relevant provisions under the law. There is no such provision under the Act.

63. Yet another justification which has been sought to be given for the requirement of deposit is that the secured assets which may be taken possession of or sold may fall short of the dues therefore such a deposit may be necessary. We find no merit in this submission too. In such an eventuality the recourse may have to be taken to sub-section 10 of Section 13 where a petition may have to be filed before the Tribunal for the purpose of making up of the short-fall.

64. The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that (i) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (ii) there is no determination of the amount due as yet (iii) the secured assets or its management with transferable interest is already taken over and under control of the secured creditor (iv) no special reason for double security in respect of an amount yet to be determined and settled (v) 75% of the amount claimed by no means would be a meager amount (vi) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75% of the undetermined demand. Such conditions are not alone onerous and oppressive but also unreasonable and arbitrary. Therefore, in our view, sub-section (2) of Section 17 of the Act is unreasonable, arbitrary and violative of Article 14 of the Constitution.”

16. In *Sunil Rai v. Municipal Corporation of Delhi & Ors* 48 (1992) DLT 621 (DB) after the judgment in *Shyam Kishore (supra)* a Division Bench of this Court had interpreted a provision identical to Section 116 (b) and held that the proper exercise of discretion by the appellate forum in cases where assessment orders are framed for a number of years, is to direct the assessee to deposit the disputed tax in respect of the base year and then to proceed to hear and decide the appeal in respect to the base year assessment and after deciding the said appeal the decision of the appeal in respect of the base year would automatically govern the assessment for the subsequent years. Adoption of such an approach, in the opinion of this Court, saves the provision of Section 116 of the Act.

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.

18. For the above reasons, the writ petitions are allowed; there shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

MARCH 23, 2018

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