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

% *Date of decision:* 24.09.2019

+ W.P.(C) 9301/2018

SOUTH DELHI MUNICIPAL CORPORATION..... Petitioner

Through Ms.Biji Rajesh, Adv. for Mr.Gaurang
Kanth, Adv.

versus

M/S NATIONAL RIFLE ASSOCIATION OF INDIA..... Respondent

Through Ms.Maity, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This Writ Petition is filed by the petitioner/South Delhi Municipal Corporation seeking to impugn the order dated 24.11.2017 passed by the Municipal Taxation Tribunal.
2. The case of the petitioner is that the respondent is a registered society under the Registration of Society Act XXI of 1860 and is the owner of the property 51-B Tughlakabad Industrial Area, New Delhi. In the said property the respondent's headquarter building has been constructed. Respondent took possession of the plot on 25.10.2002. Construction of the building was completed on 11.2.2008. The property of the respondent is used as an office building and no sports activity in the building has taken place. Hence, it is pleaded that the respondent is liable to pay building tax w.e.f. 11.2.2008.
3. It is the case of the petitioner that on scrutiny of the property tax returns filed it was noticed that respondent was using wrong use factor. Notice on 17.6.2013 was issued under section 123-D of the DMC Act. The Assessment order was passed in November 2013 whereby the building tax

was levied with use factor '4'.

4. The respondents thereafter filed an appeal before the Municipal Tax Tribunal for assessment years 2004-05 to 2012-13. By the impugned order the Tribunal held that the respondent is covered under the category of 'public purpose organisation' and hence directed the assessing authority to apply the use factor '2' and not use factor '4' while making the assessment.

5. I have heard learned counsel for the parties. Learned counsel for the petitioner has vehemently argued that under the Delhi Municipal Corporation (Property Taxes) Bye Laws 2004 under Rules 9(b)(ii) the respondent is running an office building and hence the use factor of 'building' would apply.

6. Learned counsel appearing for the respondents have relied upon a judgment of the Division Bench of this court in the case of ***Bar Council of India vs. South Delhi Municipal Corporation & Ors., 2018(247) DLT 673*** to contend that under similar circumstances this court had held that use factor "1" will apply for the building itself.

7. The impugned order held as follows:-

"10. It is evident from the bare reading of this bye-law that any society/institution set up for culture or sports, making no profit and spending its income for the benefit of the public, etc. shall be covered under this bye-law. The Assessing Authority has/had no material before it to conclude that the Appellant is not spending its income for the benefit of the public or sports. Moreover, there is no material on record from which the Assessing Authority could have concluded that the Appellant is not a '*public purpose institution*'. The Assessing Authority ought to have kept in mind that the land was 'allotted by the DDA on concessional rate for *public purpose institution* and that the building was allotted for raising the Headquarter building by the appellant and that the appellant has been

granted exception by the Income Tax Department.

11. We are convinced that the Assessing Authority has misinterpreted the objectives and the activities being carried on by the Appellant society. We are, also, convinced that the appellant is covered under the category of “*public purpose organization*” as provided in Property-Tax bye-law 9(i)(ii). The Assessing Authority ought to have applied Use Factor (UF) “2” and not Use factor (UF) “4” while making the assessment.”

8. Reference may also be had to Rule 9(b) of the Delhi Municipal Corporation (Property Taxes) Bye Laws 2004 which reads as follows:-

Rule 9(b)

“9. (b) “Business building” shall mean any Building or part thereof used for transaction of business or for keeping of accounts and records or for similar other purposes and such buildings shall include-

- (i) Offices (other than offices of Central Government, State Government and local bodies), banks, professional establishments, court houses, and libraries for the principal function of transaction of public business and keeping of books and records;
- (ii) Office buildings (premises) solely or principally used as office or for office purpose; and
- (iii) One and two star hotels, restaurants, lodges and guest houses.

Rule 9(i)(ii)

9(i) (ii) The purposes of public health, medical treatment, culture, or sports, ensured or organized by Government institutions or institutions wholly aided by the Government or the Corporation, or any other public institution such as a society making no profit, or a public charitable trust spending its income for the benefit of public, or patients, or sports persons, or similar other persons, charging them with a small or nominal fee and the fee being charged not to exceed such amount as may be specified by the Corporation from time to time as per laid down procedure, provided that the income or profit, if any, of such an institution is

in total redeployed and ploughed back for its expansion or improvement and no part thereof is in any way diverted for any other purpose whatsoever,”

9. Hence, under Rule 9(i)(ii) public purpose includes institutions or any public institution not making profit and spending its income for the benefit of sports persons. Respondent National Rifle Association of India would fall within the aforesaid parameters to apply the rule. Factually no dispute in this regard has been raised. There is no ground to apply rule 9(b) and treat the building as “Business Building”.

10. In this context reference may be had to the judgment of the Division Bench of this court in the case of ***Bar Council of India vs. South Delhi Municipal Corporation (supra)*** where the court held as follows:-

“14. In the present case BCI is a statutory professional body constituted under the Advocates Act, 1961. Its functions are set out under Section 6 of the Act, a perusal of which makes it evident that there is no scope for it to be considered a commercial organisation or related to a commercial activity. SDMC has erred in classifying the office building of BCI as a “business building”, subsequently attributing a Use Factor of 4, the same rate as a commercial entity. However, the discharge of BCI’s statutory duty is not comparable to a commercial activity; it is rather a social statutory activity performed for the furtherance of the legal profession. It would be unfair to subject the performance of such a duty to the same Use Factor as compared to a commercial enterprise using their building for the furtherance of their commercial and financial goals. An assessment of property tax on the highest degree of Use Factor substantially hinders and handicaps BCI’s ability to perform its statutory duties. As the function performed is for societal good, all necessary steps must be taken to facilitate its ability to discharge its duties. Therefore, for the purposes of conducting a fair assessment of property tax, the petitioner must be assessed on a Use Factor of 1 as is attributable to a public utility.”

11. Hence, as per the aforesaid judgment the discharge of duties like that being done by the respondent would not be a commercial activity. It would rather be a social activity for building up of sports and for the welfare of sportsman. Accordingly, it would fall within the aforementioned definition of Rule 9(i)(ii). There is hence no infirmity in the impugned order which would warrant this court interfering in the same.

12. Learned counsel for the respondent, at this stage, states that there is a typographical error in the impugned order dated 24.11.2017 and that the use factor directed as applicable is use factor 2 instead of use factor 4. It is submitted that use factor of public purpose organisation is 1 and not 2. She also submits that the same would follow on a perusal of the judgment of the Division Bench in the case of *Bar Council of India vs. South Delhi Municipal Corporation (supra)*.

13. Learned counsel for the petitioner submits that for institutions covered by public purpose organisation use factor would be 1.

14. Let the petitioners recalculate the property tax dues of the respondent in terms of the impugned judgment read with the judgment of the Division Bench *Bar Council of India vs South Delhi Municipal Corporation (supra)*. Petitioner will recalculate the property tax based on use factor 1.

15. Needful may be done within six weeks from today. After calculation, steps will be taken as per law.

16. There is no merit in the present petition. Same is dismissed.

JAYANT NATH, J.

SEPTEMBER 24, 2019/n