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

\+ W.P.(C) 4612/2020

BHABANI PIGMENTS PRIVATE LIMITED .....Petitioner

Through: Mr Anirudh Wadhwa, Advocate.

versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Mr Gaurang Kanth, Standing Counsel for SDMC.

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CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 28.07.2020

1. The hearing was conducted through video conferencing.

CM APPLN. 16675/2020 (Exemption)

2. Allowed, subject to all just exceptions. The application stands disposed off.

CM APPLN. 16676/2020 (Court fee)

3. Exemption allowed, subject to the condition that the applicant/petitioner will file the duly sworn/attested affidavit and the requisite Court fee within 72 hours from the date of resumption of the regular functioning of this Court.
4. The application stands disposed-off.

W.P.(C) 4612/2020 & CM APPLN. 16674/2020 (Interim reliefs)

5. Issue notice.
6. Mr Gaurang Kanth, the learned Standing Counsel accepts notice on behalf of the respondent/SDMC.
7. At joint request of the parties, the petition is taken up for disposal.
8. The petitioner's grievance is that: i) the respondent – Corporation has

erred both on facts and in law by reopening the property tax assessment, dating back to the year 2004 i.e. for the past 16 years; ii) the petitioner has all along been paying tax for the property, on self-assessment basis; iii) the Corporation has, for reasons best known to it, reopened the assessment under Section 123D of the DMC Act (Amendment), 2003, without specifying the reasons and iv) it has imposed a demand of Rs.28,24,812/- toward arrears of property tax alongwith interest for the period 31.03.2004 to 2020.

9. Mr Gaurang Kanth, the learned Standing Counsel for the Corporation submits that the issuance of the fresh notice and reassessment is with just cause. On an inspection by the Corporation on 27.12.2019, the Zonal Inspector found difference in the user, than what was claimed by the petitioner. The latter has all along contended that the user of the building right from 2004, has remained the same. However, since the site inspection found a different user, the corresponding user factor would be applicable from 2004 because the petitioner has admitted through its property tax returns that the user remained the same all along. More importantly, the payment of tax was only on the basis of self-assessment and not on the basis of the assessment done by the Corporation. It is contended that therefore, there is a sound justification for reopening of the assessment by notice dated 28.10.2019 and consequent reassessment order dated 06.03.2020 under sections 123A and 123D of the DMC Act.

10. The petitioner contends that the show cause notice is bad in law, as it does not state the extent of the ‘wrong area covered’; ‘wrong occupancy factor’, etc.; the notice only lists the ‘assessment factors’

and is shorn of any details; it does not specify what is wrong in the self- assessment carried out by the petitioner/assessee. It is submitted that therefore, the petitioner was unable to respond fully to the aforesaid notice and the order was passed without hearing him.. The petitioner had sent his representation with respect to the previous payments and a certificate was issued by the Corporation stating that there was no property tax dues against the petitioner.

11. In view of the above, lest the petitioner be rendered remediless and there be a denial of natural justice, the assessment order dated 06.03.2020 shall be treated as notice under Section 123D of the DMC Act, to which the petitioner may file its reply within a period of two weeks from today. The petitioner shall be given an opportunity of being heard in two weeks thereafter. The assessment of the Corporation shall be communicated to the petitioner within two weeks after conclusion of the hearing.

12. As per the fresh assessment, property tax payable for the entire period is Rs.27,72,746/-, out of which Rs.11,56,064 has already been paid; the outstanding amount is Rs.16,16,682/- and the balance Rs.12,08,130/- is the interest amount.

13. Insofar as the assessment has been made and recomputed by the Corporation on a factor of 4, and not on the basis of 2 and 3 as assessed by the petitioner, let the petitioner deposit, without prejudice to its rights and contentions, an amount of Rs.5 lacs within two weeks. This shall be subject to the final order passed by the Corporation. Fresh assessment, as may be, will take into account the amounts deposited by the petitioner.

14. The petition, along with pending application, stands disposed-off in above terms.
15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

JULY 28, 2020/*rd*