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

Date of Decision 02/06/2022

+ **W.P.(C) 9128/2022, CM APPL. 27473/2022 & CM APPL. 27472/2022**

IN THE MATTER OF:

KISHAN CHAND WADHWA ..... Petitioner

Through: Mr. Pawanjit S. Bindra, Sr. Advocate with Ms. Rishika Arora and Mr. Bhuwneshwar, Advocates.

Versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Mr. Kunal Mimani, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of Assessment Order dated 10.03.2021 bearing No. TAX/CNZ/2021/1324 issued under Section 123D of the Delhi Municipal Corporation Act, 1957 (hereinafter, referred to as the *'Act'*) by the respondent, whereby the annual value of petitioner's plot bearing *No. E-6, B-1 Extn. Mohan Cooperative Industrial Estate, New Delhi – 110044* is sought to be enhanced to Rs.3,44,100/- with effect from 01.04.2004 to 31.03.2020.

2. Mr. Pawanjit S. Bindra, learned Senior Counsel for the petitioner, submits that the respondent had initially issued notice dated 22.01.2021 bearing No.TAX/A&C/2020-21/CNZ/6822 to the petitioner, an 80-year-old senior citizen, stating that he had failed to furnish self-assessment property tax returns (hereinafter, referred to as the *'SAPTRs'*) alongwith the payment for the years 2004-05 onwards. Vide letters dated 16.02.2021 and 25.03.2021, the petitioner brought to the notice of the respondent that he had duly filed the SAPTRs for the relevant period and as the property in question was lying vacant, the same was assessed accordingly. In this regard, copies of the returns were also attached alongwith the letter(s).

It is contended that despite the aforesaid, the respondent passed the impugned assessment order against the petitioner, seeking to reopen assessment after a period of 17 years. It is also contended that there was encroachment over the property in question by *jhuggi dwellers,* against which the petitioner approached this Court vide CS(OS) 1644/2003, and the said encroachment came to be removed only upon execution of warrants of possession issued in favor of the petitioner, in terms of order dated 28.01.2016 passed by this Court in Ex.P. 356/2012.

3. Mr. Kunal Mimani, learned counsel for the respondent/SDMC, on the other hand, has disputed the submissions made on behalf of the petitioner.

4. Mr. Bindra has further contended that under Section 169 of the Act, the impugned assessment order is appealable before the Municipal Taxation Tribunal (hereinafter, referred to as *'the*

Tribunal'). As such, the petitioner was in the process of filing an appeal before the Tribunal, however, the same is not functional.

In response, learned counsel for the respondent, on instructions, has submitted that all the posts in the Tribunal, as on date, are lying vacant. However, requisite steps for constitution of the Tribunal are underway and would be taken expeditiously.

5. Mr. Bindra has also referred to judgment dated 20.12.2021 passed by a Co-ordinate Bench of this Court in Mother Dairy Fruit and Vegetable Pvt. Ltd. *v.* East Delhi Municipal Corporation, **W.P. (C) 14585/2021** where, subject to the petitioner continuing to pay property tax as per the base assessment year of 2004, it was directed that no coercive steps be taken against it.

Learned Senior Counsel, on instructions, submits that the present petitioner shall continue to pay property tax in the manner adopted so far. He also seeks liberty for the petitioner to pursue appropriate remedy before the Tribunal as and when the same becomes functional.

6. In view of the submissions made on behalf of the parties, the present petition is disposed of with a direction to the petitioner to continue to pay property tax in the manner adopted so far, as undertaken by him. The petitioner shall also be at liberty to approach the Tribunal within four weeks of commencement of its functioning.

7. Subject to the petitioner filing/pursuing an appeal before the Tribunal in the time permitted and continuing to pay property tax in the abovementioned manner, no coercive steps be taken against him till listing of the appeal. It is clarified that continuation of interim protection thereafter shall be subject to the orders to be passed by the Tribunal. Miscellaneous applications are disposed of as infructuous.

8. Needless to state that this Court has not gone into the merits of the contentions raised on behalf of either of the parties. As such, the rights and contentions of the parties shall remain reserved.

(MANOJ KUMAR OHRI)
JUDGE

JUNE 02, 2022
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