

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4323 OF 2023

Municipal Corporation of Delhi	]	
Civic Centre, Minot Road,	]	
New Delhi 110 003.	] ..	Petitioner.
v/s.		
1 State of Maharashtra	]	
through the Chief Secretary,	]	
Mantralaya, Mumbai.	]	
2 District Collector,	]	
Thane District	]	
Collector Office, Court Naka,	]	
Thane (W), Mumbai 400 601.	]	
3 District Collector	]	
Mumbai Suburban District	]	
10 th Floor, Administrative Building,	]	
Near Chetna College, Government	]	
Cololny, Bandra (East),	]	
Mumbai 400 051.	]	
4 District Collector,	]	
Pune District	]	
New Collector, Office Building,	]	
Station Road, Opp: Sasoon Hospital	]	
Pune, Maharashtra 411 001.	]	
5 The District Collector,	]	
Aurangabad District	]	
Alamgir Colony, Maulana Azad	]	
Research Centre Road, Collector	]	
Office Campus, Aurangabad	]	
Maharashtra 431 003.	]	
6 The District Collector,	]	
Greater Mumbai, Old Custom House	]	
Shahid Bhagat Singh Road Marg,	]	
Fort, Mumbai, Maharashtra 400 001.	]	
7 MEP Infrastructure Developers Ltd.,	]	
2102, 21 st Floor, Plot No.62, Kesar	]	
Equinox, Sir Bhalchandra Road,	]	

Hindu Colony, Dadar (East),]
Mumbai 400 014.] .. Respondents.

Mr. Gaurav Joshi, Sr. Advocate with Mr. Sanjay Vashishtha, Mr. Shreyas Shrivastava, Ms. Tanisha Choudhary and Ms. Shilpa Joshi i/b. Mr. Shreyas Shrivastava, for the Petitioner.

Dr. Birendra Saraf, Advocate General with Mr. P. P. Kakade, Govt. Pleader with Mr. A. I. Patel, Addl. Govt. Pleader and Mr. S. B. Kalel, AGP for Respondent Nos. 1 to 6.

Mr. Pradeep Sancheti, Sr. Advocate with Mr. Darshit Jain, Mr. Deepak Deshmukh, Mr. Deepak Chitnis, Mr. Vivek Dwivedi and Mr. Vivek Dwivedi i/b. Naik Naik & Co. for Respondent No.7- MEP.

Mr. Sumit Kumar, ADC Toll Tax, Municipal Corporation of Delhi, present.

**CORAM: A.S.CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ.**

RESERVED ON : 5th DECEMBER, 2023.

PRONOUNCED ON : 12th JANUARY, 2024.

JUDGEMENT (Per FIRDOSH P. POONIWALLA, J):-

RULE. Rule made returnable forthwith and heard finally by consent of the parties.

2 By the present Petition, the Petitioner is seeking the following final reliefs :-

“(a) this Hon’ble Court be pleased to issue a writ of mandamus directing the Respondents to take steps as per law and discharge their statutory duty by executing the warrants of distress/ recovery certificates dated 26.11.2021, 20.12.2021, 22.12.2021, 21.02.2023, 27.02.2023 and 02.03.2023 issued by the Petitioner and more specifically mentioned in para 20 hereinabove.”

3 The Petitioner is a statutory body incorporated under the Delhi Municipal Corporation Act, 1957, (“the DMC Act”) having the

responsibility of monitoring, upgrading and developing civic amenities which are entrusted to it under the statute as detailed in the DMC Act. One of the functions with which the Petitioner is entrusted is Toll Tax Collection from the commercial vehicles entering Delhi from 124 toll points around Delhi, which is also one of the main sources of its revenue under Section 113 (2)(g) of the DMC Act.

4 Since the Petitioner does not have the man power to collect the Toll Tax and to monitor the huge daily cash collection of almost Rs.2.5 Crores per day from the said 124 toll points, the said work is given on contract basis to third parties under the Delhi Municipal (Toll Tax) Byelaws, 2007 (“the 2007 Bye-laws”) read with Section 113 of the DMC Act.

5 Respondent No.7 is one of the parties to which such a Contract was given. It is the case of the Petitioner that Respondent No.7 started making defaults and made delayed remittances to the South Delhi Municipal Corporation (“SDMC”) from the beginning itself, for which penalties were imposed upon it from time to time. That when huge defaults accumulated over a period of time, the Petitioner was compelled to issue various demand notices.

6 Respondent No.7 defaulted in payment of the due amount and the same is liable to be recovered under the DMC Act. In furtherance thereof, the Petitioner sought to recover a sum of Rs.3927,06,55,004/- towards dues under the DMC Act, which has (as on 30th April, 2022) become Rs.4970,81,91,077/- by calculation of interest/ penalty under the Contract Provisions.

7 It is also the case of the Petitioner that is duty bound and

under a statutory obligation to recover the said amounts due from Respondent No.7 on account of Toll Tax collection, which Respondent No.7 has failed and defaulted to deposit with the Government Exchequer. In exercise of such functions, the Petitioner has issued warrants of distress for attachment and sale of movable and immovable properties of Respondent No.7 for recovering the said dues as arrears of tax.

8 Since some of the properties of Respondent No.7 are situated outside the territory of the National Capital Territory of Delhi, including in Mumbai, Thane and Pune Districts of Maharashtra, which are within the territorial jurisdiction of this Court, the Petitioner sought the assistance of Respondent Nos.2, 3 and 4 to act on its request to attach properties of Respondent No.7 in its jurisdiction under the provisions of Section 5 of the Revenue Recovery Act, 1890 (“**the Revenue Recovery Act**”).

9 The Petitioner had made separate written requests to Respondent Nos. 2 to 5 vide letters dated 23rd August, 2021, urging them to take immediate action against Respondent No.7 in realization of arrears of due amounts. However, due to the inaction on the part of these Respondents to take any steps towards attachment, the Petitioner had filed a Writ Petition in this Court, being Writ Petition No.7158 of 2021, which was allowed by this Court by an Order dated 27th October, 2021. Respondent No.7 has challenged the said Order dated 27th October, 2021 by filing a Review Petition before this Court, being Review Petition No. 9 of 2022, *inter alia*, on the ground that Respondent No.7 was a necessary party to Writ Petition No.7158 of 2021. However, no order has been passed in the said Review Petition staying the said Order dated 27th October, 2021 passed by this Court.

10 Respondent No.7 has also challenged the various warrants of distress issued by the Petitioner not only before this Court by filing Writ Petition No. 10304 of 2022 but also before the Delhi High Court by filing LPA 145 of 2021. In Writ Petition No.10304 of 2022 filed by Respondent No.7, in this Court, a status-quo order was passed by this Court on 14th January, 2022. However, subsequently, the said Writ Petition has been dismissed by this Court vide its judgement dated 1st February, 2023 and the status-quo order of 14th January, 2022 has been vacated.

11 The Petitioner has issued the following additional Warrants/ Recovery Certificates, providing details of various movable and immovable properties of Respondent No.7:

Sr. No.	Letter No.	Date
1	ADC/TT/HQ/2021/D-911	26.11.2021
2	ADC/TT/HQ/2021/D-917	
3	ADC/TT/HQ/2021/D-915	
4	ADC/TT/HQ/2021/D-916	
5	ADC/TT/HQ/2021/D-914	
6	ADC/TT/HQ/2021/D-918	
7	ADC/TT/HQ/2021/D-1006	20.12.2021
8	ADC/TT/HQ/2021/D-1014	22.12.2021
9	ADC/TT/HQ/2021/D-1015	
10	ADC/TT/HQ/2023/D-839	21.02.2023
11	ADC/TT/HQ/2023/D-840	
12	ADC/TT/HQ/2023/D-844	27.02.2023
13	ADC/TT/HQ/2023/D-845	
14	ADC/TT/HQ/2023/D-860	02.03.2023
15	ADC/TT/HQ/2023/D-861	

12 It is the case of the Petitioner that, despite making a request for attachment of the properties of Respondent No.7, as provided by Section 5 of the Revenue Recovery Act, Respondent Nos.1 to 7 failed to take any steps in that regard. In these circumstances, the Petitioner has filed the present Writ Petition.

13 Section 5 of the Revenue Recovery Act reads as under:-

“5:- Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities

Where any sum is recoverable as an arrear of land-Revenue of any public officer other than a Collector or by local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.”

Under Section 5, where any sum is recoverable as an arrear of land revenue of any public officer other than a Collector or by a local authority, the Collector of the District, in which that officer or local authority is situated, shall, on the request of the said officer or local authority, send a Certificate of the amount to be recovered to the Collector of another District. The main ground of dispute between the parties seems to be that firstly what is sought to be recovered by the Petitioner by issuing Recovery Certificates is not arrears of land revenue and secondly, that the request for recovery, under the provisions of Section 5 of the Revenue Recovery Act, has been made to Respondent Nos. 2 to 6 by a person other than the Collector. It is the case of the Respondents that, in these circumstances, Respondent Nos. 1 to 6 are not required to take any steps pursuant to the said Recovery Certificates.

14 Mr. Gaurav Joshi, the learned Senior Advocate appearing on behalf of the Petitioner, has made various submissions in support of the Petition. Mr. Joshi submitted that the Municipal Corporation of Delhi, i.e. the Petitioner, has been vested with all the powers in respect of land revenue for areas as notified under Section 507, read with Section 516, of the DMC Act and Section 150(3) of the Delhi Land Reforms Act, 1954 (“the Delhi Land Reforms Act”). In this context, Mr. Joshi submitted that Delhi had no legislature from 1954 and the Central Government used to legislate on various subjects relating to Delhi. Thereafter, even though the Constitution (Sixty Ninth Amendment) Act was passed in 1991, and Article 239 AA was inserted in the Constitution of India, Delhi continued to be a Special Union Territory with Parliament having special powers to legislate in its respect alongside the State legislature. The Parliament, in exercise of the said power, enacted the DMC Act. At the same time, there existed legislation in the form of the Delhi Land Reforms Act and the Delhi Land Revenue Act, 1954 (“the Delhi Land Revenue Act”), which dealt with territories in Delhi in respect of the land revenue administration.

15 Mr. Joshi pointed out that, by virtue of the provisions of Section 1(2) of the Delhi Land Revenue Act, the same did not extend to the areas specified in Section 1(2) of the Delhi Land Reforms Act. One of the areas which has been specified by Section 1(2)(a) of the Delhi Land Reforms Act are the areas which are, or may be, before the 1st day of November, 1956, be included in a Municipality or a Notified Area under the provisions of the Punjab Municipal Corporation Act, 1911 or a Cantonment under the provisions of the Cantonments Act, 1924.

16 Mr. Joshi submitted that, thus, even though there is a Land Revenue Administration in Delhi, by virtue of the provisions of the Delhi

Land Revenue Act, the said Act is inapplicable in respect of the areas which are included in municipalities.

17 Mr. Joshi further submitted that the said areas have been brought under the control of the Municipal Corporation of Delhi by virtue of the provisions of Section 150(3) of the Delhi Land Reforms Act, read with Sections 507 and 516 of the DMC Act. Thus, on the one hand, the Collector defined under the Delhi Land Revenue Act has no power or control to collect land revenue from the areas as notified under Section 507, on the other hand, the Municipal Corporation of Delhi, acting through the Commissioner (under Sections 54 and 59 of the DMC Act), has been vested with powers (under Section 113 of the DMC Act) to levy taxes to generate revenues, including tax on land and buildings and a toll tax.

18 Mr. Joshi submitted that, in respect of the aforesaid areas, the Delhi Land Revenue Act had no applicability, and the Collectors appointed thereunder would have no power of revenue administration in respect of urbanised areas. He submitted that if the arguments of the Respondents were accepted, there would be no authority which could be called as *“Officer in charge of Revenue Administration”* for the notified areas of Delhi. This obviously leads to an absurdity which must be addressed by purposive construction.

19 Mr. Joshi further submitted that the Delhi Land Revenue Act defines *“Collector”* as the *“chief officer in charge of revenue administration”*. He submitted that it is the nature of the function which determines who would be the Collector, rather than the nomenclature.

Evidently, the Delhi Land Revenue Act has no applicability in respect of the areas notified under Section 507 of the DMC Act. In the light of the same, there is no other authority except the Commissioner who could be termed as “*chief officer in charge of revenue administration*”.

20 In this connection, he drew our attention to Sections 54, 59 and 113 of the DMC Act, which make it clear that the Commissioner is vested with all the powers of the Municipal Corporation of Delhi for tax collection. He submitted that, for these reasons, the Commissioner is the chief officer in charge of revenue administration. He further submitted that it would amount to splitting hair in differentiating between ‘*revenue*’ and ‘*tax*’.

21 Mr. Joshi further submitted that there is another obvious corollary which flows that, in case any Collector outside Delhi issues a warrant for execution in areas notified under the DMC Act, the Collectors under the Delhi Land Revenue Act would not have any power over the said areas. In such a situation, it is very clear that it is the Commissioner who would have to act under Section 5 of the Revenue Recovery Act, read with Sections 156 to 158 of the DMC Act.

22 In support of his submissions that purposive construction should be given to the provisions of Section 5 of the Revenue Recovery Act, Mr. Joshi submitted that the Land Revenue System and the Revenue Recovery Act had their roots in the colonial era. Further, the conventional concepts of land revenue had given way to various kinds of urban taxes derived from lands and building as provided under Section 113 of the DMC Act. Thus, the Revenue Administration has to be seen in the light of such developments and changes over the years and must be given

purposive construction to avoid absurdity caused by literal interpretation.

23 In support of his submissions, Mr. Joshi relied upon the judgements of the Hon'ble Supreme Court in the case of ***Shamrao V Parulekar v/s. District Magistrate, Thana***¹, ***Tirth Singh v/s. Bachittar Singh and Others***² and ***Molar Mal v/s. Kay Iron Works (P) Ltd.***³.

24 Next, Mr. Joshi submitted that the issue raised by the Respondents is already decided by this Court and is hit by the principles of *res judicata*. He submitted that the Respondents are re-raising the same issues as raised by Respondent No.7 in Writ Petition No.10304 of 2022. He further submitted that all the issues raised in the Affidavits-in-Reply filed by the Respondents have been duly considered by this Court and the warrants have been duly upheld as valid. Respondent No.1 had at least two opportunities to raise the issues as have now been raised in the present Petition i.e. first in the proceedings under Writ Petition No.7158 of 2021 before this Court and secondly, in Writ Petition No.10304 of 2022 when the challenge was made by Respondent No.7 against the actions of the Petitioner. However, Respondent No.1 failed to raise the said issue at that stage and, therefore, now is barred by the principles of constructive *res judicata* from raising this issue. In support of his submission, Mr. Joshi relied upon the judgements of the Hon'ble Supreme Court in ***Devilal Modi v/s. Sates Tax Officer, Ratlam***⁴ and ***State of Uttar Pradesh v/s. Nawab Hussain***⁵.

25 Mr. Joshi further submitted that the actions of Respondent

1 AIR 1952 SCC 32

2 AIR 1955 SCC 830

3 2000 (4) SCC 285

4 AIR 1965 SCC 1150

5 1977 2 SCC 806

No.1 in challenging the warrants after two stages of litigation are highly capricious, illegal and call for deprecation. He submitted that these actions were merely helping Respondent No.7 by allowing it all the time and space to dispose of its assets. In this context, Mr. Joshi submitted that not a single rupee had been recovered by Respondent No.1 in a period of over nine months since the passing of the judgement dated 1st February, 2023 by this Court.

26 Further, Mr. Joshi submitted that the Commissioner is the chief officer in charge of revenue administration for the arrears notified under Section 507 of the DMC Act. The position of the Commissioner is higher in seniority as compared to that of the Collector. As per the provisions of Delhi Land Revenue Act, [(Section 3)(2)], the Deputy Commissioner is the Collector. He submitted that, in the light of Section 156 of the DMC Act, it is the Commissioner who is required to issue a warrant. There is a gap between the provisions of the DMC Act and the Revenue Recovery Act. In order to facilitate the issuance of Warrants/ Recovery Certificates by the Deputy Commissioner/ Additional Commissioner, within the powers of the Commissioner under Section 156 of the DMC Act, the Commissioner had, under the provisions of Section 491 of the DMC Act, delegated the power to the Deputy Additional Commissioner vide Notification dated 21st May, 2021. He submitted that this balances the requirements of Section 156 of the DMC Act with that of Section 5 of the Revenue Recovery Act.

27 Mr. Joshi then submitted that the dues of Respondent No.7 had been duly adjudicated and are recoverable as arrears of tax under Clause 12.5 of the Contract Act itself. In this context, he submitted that

the Municipal Corporation of Delhi had issued the Warrants after due adjudication as per due process of law. Respondent No.7 has been raising various issues with respect to loss of revenue of the toll plazas. Accordingly, a representation was entertained by a High Level Committee under clause 16.2 of the Agreement dated 28th September, 2017. Thereafter, pursuant thereto, the Municipal Corporation of Delhi issued various demand notices, which were challenged by Respondent No.7 in Writ Petition No.12483 of 2019 filed in the Delhi High Court. By an Order dated 26th November, 2019, the Delhi High Court directed that the said Writ Petition be treated as a representation on behalf of Respondent No.7 and that the Commissioner should conduct a re-adjudication of disputes in terms of clause 16.3. The Delhi High Court left it open for the Commissioner to nominate a retired judge of the High Court for such adjudication. Pursuant thereto, the Commissioner passed an Order dated 30th January, 2020, which was subsequently challenged in Writ Petition No.2241 of 2020, and, thereafter in LPA No. 145 of 2021. Both these proceedings were decided against Respondent No.7. Thus, it is a false claim made by Respondent No.7 that the amounts due to the Petitioner are under dispute.

28 Mr. Joshi further submitted that, in any case, the Commissioner, under Section 175 of the DMC Act, is empowered to assess any person liable to pay any tax. Thus, once it is established that the Commissioner was within its power to pass the said Order dated 30th January, 2020, there remains no doubt that the amounts are not under dispute. If at all Respondent No.7 disputes these amounts, it is required to file a case before the Civil/ District Judge under Section 169 of the DMC Act, which it has failed to do till date.

29 Mr. Joshi submitted that, once it is established that dues are duly adjudicated, the Commissioner is entitled to recover these amounts by way of coercive measures, as already agreed by Respondent No.7 under Clause 12.5 of the said Agreement. He submitted that Clause 12.5 of the said Agreement refers to the mechanism provided under the DMC Act i.e. under Section 455 of the DMC Act.

30 Mr. Joshi submitted that, thus, the Commissioner is vested with powers both under the contract as well as under the DMC Act to assess any person liable to pay any tax. In exercise of such power, and under the directions of the Delhi High Court, the Commissioner passed a detailed and reasoned order dated 30th January, 2020, and, thereafter, issued demand notices under Section 153 of the DMC Act. Thereafter, upon failure of Respondent No.7 to pay the said dues, the Collector issued Warrants under Section 156, read with Section 455, of the DMC Act and Clause 12.5 of the Contract.

31 In conclusion, Mr. Joshi submitted that this Court be pleased to allow the present Writ Petition.

32 Dr. Birendra Saraf, the learned Advocate General, appearing on behalf of Respondent Nos. 1 to 6, vehemently opposed the granting of any reliefs in the present Petition. The learned Advocate General submitted that the Petitioner seeks enforcement of Warrants of distress/ Recovery Certificates purported to be issued under Section 5 of the Revenue Recovery Act. He submitted that the objections of Respondent Nos. 1 to 6 is that notices, of which enforcement is sought in the Petition, have not been issued by the designated authority under the Revenue Recovery Act and as such no cognizance can be taken of the same. In this

context, the learned Advocate General referred to the provisions of Sections 3 and 5 of the Revenue Recovery Act. He submitted that Section 5 dealt with a situation where certain amounts are recoverable as arrears of land revenue by any public officer other than a Collector or by a local authority. He submitted that Section 5 provides that if any such sum is recoverable as land revenue by any public officer other than the Collector or by any local authority, the Collector of the District, in which the office of that officer or authority is situated, shall, on request of such an officer or authority, proceed to recover amounts as if they were arrears of land revenue which had accrued in his own district and may send a Certificate of such amounts to be recovered to the Collector of another District as if the sum were payable to himself.

33 The learned Advocate General submitted that Section 5 thus contemplates a situation whether the amount is not payable to the Collector but to some other public officer or local authority. He submitted that Section 5 contemplates a difference between a local authority and a Collector. He further pointed out that a Collector under Section 2(2) of the Revenue Recovery Act is defined to mean the chief officer in charge of the land revenue administration of a District.

34 The learned Advocate General referred to the provisions of the DMC Act and submitted that the Commissioner of the Delhi Municipal Corporation is, at the highest, a Municipal Authority for the municipal area governed by the Municipal Corporation and is not a Collector.

35 The learned Advocate General submitted that, in any case, the Warrants of Distress/ Recovery Certificates in the present case have not been issued by the Commissioner but by the Additional Deputy

Commissioner (Toll Tax) (SDMC). He submitted that there is nothing to demonstrate that the said Additional Commissioner is the chief officer in charge of the revenue administration. Further, he submitted that Section 5 of the Revenue Recovery Act does not contemplated any delegation. He submitted that, even if the power to delegate under Section 3(2) of the Revenue Recovery Act is applicable to Section 5 of the Revenue Recovery Act, it required an express delegation by the chief officer in charge by an order in writing delegating the duties under Section 3(2) of the Revenue Recovery Act. From the express language of Section 3 (2), it is apparent that the delegation under Section 3(2) has to be in writing and the delegation has to be expressly to discharge the duties under Section 3 of the Revenue Recovery Act. He submitted that no such delegation by the Commissioner to the Additional Deputy Commissioner (Toll Tax) had been placed on record. On this ground also, the Warrants of Distress/ Recovery Certificates issued were not in accordance with the Revenue Recovery Act.

36 The learned Advocate General submitted that the contention sought to be raised was that the Delhi Land Revenue Act is not applicable to the municipal areas covered by the DMC Act. He submitted that, assuming the same to be correct, it would not grant the Municipal Commissioner, leave alone the Additional Deputy Commissioner, the status of the chief officer in charge of the land revenue administration of the District. He submitted that it is settled law that, when a statute requires anything to be done in a particular way, it should be done in that manner or not at all. He submitted that the contention that, since the Delhi Land Revenue Act is not applicable to the municipal areas of Delhi, the property tax levied by the Municipal Corporation ought to be treated as land revenue, is equally erroneous. He submitted that the municipal tax

cannot be equated to land revenue which may be levied by the Government. In any case, the Additional Deputy Commissioner who has issued the notice is of the “*Toll Tax Department*” and not of the “*Property Tax Department*”.

37 The learned Advocate General submitted that the stand of the Petitioner that there is no Collector in Delhi who can execute or issue any certificate under the Delhi Land Revenue Act, is belied by various decisions which have, in fact, considered various situations where the power under Sections 3 and 5 of the Revenue Recovery Act were exercised by the Collector of Delhi. In this context, the learned Advocate General relied upon the decision of the Delhi High Court in *Delhi Peasants Co-operative Multipurpose Society Ltd. v/s. The Collector and Others*⁶, *Express Newspaper (P) Ltd. v/s. Collector of Delhi and Others*⁷ and *M/s.Callipers Naigai Ltd. v/s. Government of NCT of Delhi & Others*⁸. He submitted that, from the aforesaid, it is apparent that there are Collectors in Delhi discharging powers under Sections 3 and 5 of the Revenue Recovery Act. The declaration of the Commissioner of the Municipal Corporation or his subordinate as the chief officer in charge of land revenue administration of a District would tantamount to denuding the concerned officers of their power under the Revenue Recovery Act. The learned Advocate General submitted that it was pertinent to note that the Petitioner had not been able to demonstrate or indicate even one instance in the past where the Commissioner of the Municipal Corporation of Delhi had entertained any Recovery Certificate issued by any other Collector under Sections 3 or 5 of the Act.

6 1970 SCC Online Del 220

7 ILR (1970) Delhi 821

8 ILR(2004) I Delhi 74

38 Mr. Sancheti, the learned Senior Advocate appearing on behalf of Respondent No.7, also vehemently opposed the granting of any reliefs in this Petition. Mr. Sancheti submitted that the Recovery Certificates sought to be notified are not issued under Section 5 of the Revenue Recovery Act. In this context, he submitted that the term “*District Collector*” must be understood in the context of the Revenue Recovery Act. He submitted that the Revenue Recovery Act defines the Collector as the chief officer in charge of the land revenue administration of a district. He submitted that Section 5 mandates that the Recovery Certificates must be issued by the Collector of a District, in which the office of a local authority, who seeks to recover the amount, is situated. He submitted that there are subtle differences in the terminology under Sections 3 and 5 of the Revenue Recovery Act. Section 3 pertains to recovery by the Collector itself where as Section 5 pertains to recovery by other authorities. While Section 3 authorizes the Collector to delegate his powers to other persons, Section 5 does not permit/ authorize such delegation. He submitted that, thus, it was clear that any authority which seeks to recover any amount under the Revenue Recovery Act, by way of land revenue, must apply to the concerned Collector of the District where the office of the authority is situated, and the Collector, in turn, after making due enquiry etc, may issue such a Certificate. The Collector also may in turn send the Recovery Certificate to the Collector of another District where the property of the persons concerned, from whom recovery has to be made, is situated.

39 Mr. Sancheti submitted that what is important is that the requisite Certificate must be issued under the signature and seal of the concerned District Collector himself without any delegation. He submitted

that, in the present case, the purported Recovery Certificates have been issued under the signature and seal of the Assistant Deputy Commissioner of the Municipal Corporation of Delhi and not the District Collector. He submitted that the District Collector and the Municipal Corporation were two distinct authorities.

40 Further, Mr. Sancheti submitted that it is settled law that, when the law required that a particular act must be done in a particular fashion, it must be done only in that manner and in no other manner. In support of his submission, Mr. Sancheti relied upon the judgements of the Hon'ble Supreme Court in:-

- (i) ***Dr. H. S. Rikhy & Others v/s. New Delhi Municipal Committee***⁹;
- (ii) ***M. I. Builders v/s. Radhey Shyam Sahu & Others***¹⁰; and
- (iii) ***Babu Verghese & Others v/s. Bar Council of Kerala & Others***¹¹.

41 Mr. Sancheti next submitted that the Petitioner attempted to show that since there was no rural area and agricultural land, there was no machinery for the recovery of land revenue. He submitted that this argument was also fallacious. He submitted that the District Collector had the authority and had the requisite wherewithal to recover land revenue or any other dues which in law are permitted to be recovered as arrears of land revenue. In contrast, the Commissioner of the Municipal Corporation of Delhi is, *inter alia*, to recover the dues of the Corporation under the machinery provided under the DMC Act. Mr. Sancheti submitted that it is wrong to suggest that the Commissioner of the Municipal Corporation of Delhi had been conferred authority to recover land revenue, which power is available only to the Collector. He submitted that

9 AIR 1962 SC 554

10 (1999) 6 SCC 464

11 (1999) 3 SCC 422.

this suggestion/ submission was not backed by any Government Notification/ statutory enactment. Further, Mr. Sancheti submitted that the Commissioner for recovering revenue is separate and distinct from the Commissioner of a Municipal Corporation. He submitted that, in Maharashtra, there is a Commissioner for recovery of revenue whereas there is a separate Commissioner under the Mumbai Municipal Corporation Act. Both these officers are separate and distinct.

42 Further, Mr. Sancheti submitted that, in the present case, no request has been made to the concerned District Collector for issuing any Recovery Certificate under Section 5 of the Revenue Recovery Act. In this context, he submitted that the purported Recovery Certificates have been issued by the Municipal Corporation of Delhi through its Assistant Deputy Commissioner. Hence, this is not a case where a separate local authority i.e. Municipal Corporation of Delhi has applied to the concerned District Collector for issuance of a Recovery Certificate. This is a case where, in fact, the same public officer/ concerned authority itself has issued the purported Recovery Certificates.

43 Mr. Sancheti next submitted that, under Section 5 of the Revenue Recovery Act, there is no power conferred on the District Collector to delegate/ sub-delegate powers to any other person. He submitted that Section 3 of the Revenue Recovery Act pertains to delegation of authority by the Collector. He further submitted that it is settled law that delegation of authority is not valid in law unless the statute expressly permits the same. In this context, he relied upon the judgement of the Hon'ble Supreme Court in ***Sahni Silk Mills Ltd. v/s.***

Employees' State Insurance Corporation¹² .

44 Mr. Sancheti further submitted that there was no actual delegation of power for issuance of the purported Recovery Certificates. In this context, Mr. Sancheti submitted that, to support delegation of charge by the Commissioner in favour of the Assistant Deputy Municipal Commissioner, the Petitioner had relied upon the document at page 387 of the Rejoinder. The said document only conferred authority under Section 491 of the DMC Act to sign or execute any such warrant or document as prescribed in the schedule to the DMC Act. Mr. Sancheti submitted that such a document does not confer any authority on the Assistant Deputy Commissioner to issue a Recovery Certificate under Section 5 of the Revenue Recovery Act.

45 Mr. Sancheti next submitted that there was no constructive *res judicata*. Mr. Sancheti submitted that the Petitioner had sought to rely upon the judgement of this Court in Writ Petition No. 10304 of 2022 to raise the contention of constructive *res judicata*. He submitted that this contention was misconceived. Mr. Sancheti further submitted that the concept of constructive *res judicata* had limited application in proceedings under Article 226 of the Constitution of India. Further, he submitted that the issue raised in the earlier Writ Petition was whether the contractual dues under the toll agreement can be recovered as land revenue or not. On the other hand, the issue that arises in the present Petition, regarding the provisions of Section 5 of the Revenue Recovery Act, had not been raised/ decided in the earlier Writ Petition. Mr. Sancheti further submitted that there is no estoppel against the law. In this context,

12 (1994) 5 SCC 346.

he relied upon the judgements of the Hon'ble Supreme Court in **Dr. Rikhy (supra)** and **M. I. Builders (supra)**. Further, Mr. Sancheti submitted that the disputes in the present Petition were purely based on a legal issue as to whether the purported Recovery Certificates are legal, valid and enforceable in law under the Revenue Recovery Act, and whether the authority purportedly issuing the same is the authority prescribed under the Revenue Recovery Act. He submitted that, on this aspect, the principles of *res judicata* had no application whatsoever.

46 Mr. Sancheti also made some submissions on the merits of the claim made in the Recovery Certificates. Since the same are not within the scope of this Writ Petition, we have not referred to those submissions herein.

47 In our view, the following two issues arise for our consideration in this Petition:-

(A) Whether the Recovery Certificates sent to Respondent Nos. 2 to 6 (Collectors of various Districts in Maharashtra), have been sent by a Collector as defined in the Revenue Recovery Act; and

(B) Whether the sums sought to be recovered by the Petitioner, which is a legal authority, are recoverable as arrears of land revenue.

48 Sections 2, 3 & 5 of the Revenue Recovery Act are relevant for the purpose of deciding this matter and therefore are set out herein below:-

“2:- Definitions – In this Act, unless there is something repugnant in the subject or context, -

(1) “district” includes a presidency-town;

(2) “Collector” means the chief officer in charge of the land revenue administration of a district, and

(3) “defaulter” means a person from whom an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue is due, and includes a person who is responsible as surety for the payment of any such arrear or sum.”

“3 Recovery of public demands by enforcement of processes in other districts than those in which they become payable –

(1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule, stating -

(a) the name of the defaulter and such other particulars as may be necessary for his identification, and
(b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it [or by any officer to whom such Collector may, by order in writing, delegate this duty], and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district.”

“5:- Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities. - Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.”

Findings on issue (A):-

49 Section 2(2) of the Revenue Recovery Act defines the Collector as meaning the chief officer in charge of the land revenue administration of a district. Section 2 (1) gives the definition of a “*District*”, which is an inclusive definition, and includes a presidency-town. In our view, if the definition of a “*District*” under Section 2(1) of the Revenue Recovery Act includes a presidency-town, it would definitely include a city like Delhi. Therefore, the question, that arises for our consideration, is whether the Recovery Certificates have been issued by the chief officer in charge of the land revenue administration of Delhi. This leads to a further question as to what is the land revenue administration of Delhi. In our view, the land revenue administration of Delhi would be the administration in Delhi which is concerned with collecting revenue in respect of lands.

50 By virtue of the provisions of Section 1(2) of the Delhi Land Revenue Act, it does not apply to areas specified by Section 1(2) of the Delhi Land Reforms Act. Under Section 1 (2) (a) of the Delhi Land Reforms Act, one of the areas specified are areas which are included in a Municipality or a Notified Area. For these reasons, the Delhi Land Revenue Act does not apply to areas included in a municipality in Delhi. The sequitur of the same is that the revenue administration of areas included in a municipality in Delhi are not covered by the Administration provided by the Delhi Land Revenue Act i.e. Collectors appointed under that Act.

51 The question that then arises for our consideration is which Administration is concerned with land revenue administration in the

municipal areas in Delhi which are covered by the DMC Act. Section 113 of the DMC Act provides for levying of taxes by the Corporation under the said Act. Section 113 provides for imposing of taxes on lands and buildings in the municipal areas in Delhi. In other words, Section 113 of the DMC Act deals with revenue to be collected from the land, i.e. land revenue.

52 This leads us to the further question as to who is in charge of administration of those taxes. Section 59 of the DMC Act shows that the Commissioner of the Delhi Municipal Corporation is in charge of administration of taxes as provided in Section 113 of the DMC Act. Section 59 of the DMC Act reads as under:-

“59:- Functions of the Commissioner

Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which confers, any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also -

(a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force;

(b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and other municipal employees other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them and subject to any regulation that may be made in this behalf, dispose of all questions relating to the service of the said officers and other employees and their pay, privileges, allowances and other conditions of service;

(c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damage to any property of the Corporation, or danger to human life,

take such immediate action as he considers necessary and make a report forthwith to the Standing Committee and the Corporation of the action he has taken and the reasons for the same as also of the amount of cost, if any, incurred or likely to be incurred in consequences of such action, which is not covered by a budget-grant;
(d) subject to any regulation that may be made in this behalf, be the disciplinary authority in relation to all municipal officers and other municipal employees.”

53 By virtue of the provisions of Section 59 of the DMC Act, the entire executive power for the purpose of carrying out the provisions of the DMC Act vests in the Commissioner. The provisions of Section 59 clearly show that it is the Commissioner who is in charge of the land revenue administration in the municipal areas of Delhi. Section 59 makes it clear that the Commissioner is the chief officer in charge of the land revenue administration in Delhi.

54 For all the aforesaid reasons, in our view, for the purposes of Section 5 of the Revenue Recovery Act, the Commissioner of the Municipal Corporation of Delhi is the Collector. For all the reasons given above, we are not able to accept the arguments to the contrary submitted by the Respondents.

55 In our view, to hold that Section 5 of the Revenue Recovery Act only applies to a Collector appointed under the Delhi Land Revenue Act or persons designated as “Collector” would lead to an absurdity. If such an interpretation is given to the term “Collector” in Section 5 of the Revenue Recovery Act, then, in respect of the land revenue, i.e. taxes in respect of the lands in the municipal areas of Delhi governed by the DMC Act, there would be no Collector who would be able to make a request as provided under Section 5 of the Revenue Recovery Act. It would also lead

to the further absurdity that, if under the provisions of Section 5 of the Revenue Recovery Act, a Certificate has to be sent to recover amounts in respect of properties situated in the municipal areas of Delhi, then, there would be no “*Collector*” under Section 5 of the Revenue Recovery Act to whom such a Certificate can be sent. In our view, this clearly shows that the submissions of the Respondents lead to an absurdity and that is one more reason why they cannot be accepted.

56 However, in the present case, the Recovery Certificates have not been issued by the Commissioner. They have been issued by one Hemant Kumar Fozdar as the Additional Deputy Commissioner, South Delhi Municipal Corporation and as an Additional Deputy Commissioner (Toll Tax) (SMDC). In these circumstances, it is the submission of the Respondents that, even if the Commissioner is considered as the Collector for the purposes of Section 5 of the Revenue Recovery Act, he cannot delegate the powers given to him under Section 5 of the Revenue Recovery Act, and further that he has actually not delegated such powers to any person.

57 We are unable to accept the aforesaid submissions of the Respondents. Section 5 of the Revenue Recovery Act provides that the Collector may send a Certificate of the amount to be recovered to the Collector of another district “*under the forgoing provisions of this Act*”, which includes Section 3 of the Revenue Recovery Act. Section 3 (2) of the Revenue Recovery Act provides that the Certificate shall be signed by the Collector making it or by any Officer to whom such Collector may, by order in writing, delegate this duty. On a combined reading of Sections 3 and 5 of the Revenue Recovery Act, we have no doubt in our minds that, even under the provisions of Section 5 of the Revenue Recovery Act, the

Collector may delegate the power of issuing a Recovery Certificate to any officer by an order in writing. Therefore, we are unable to accept the submissions of the Respondents that, under the provisions of Section 5 of the Revenue Recovery Act, there is no power to delegate the power of issuing Certificates.

58 Further, by an Order dated 21st May, 2021 (which is produced at page 387 of the paper book of the Petition), the Commissioner has actually delegated such power to the said Hemant Kumar Fozdar. Although, it is true that, as submitted by the Respondents, the said Order dated 21st May, 2021 does not specifically state that the power to issue a Recovery Certificate under Section 5 of the Revenue Recovery Act is delegated, it authorizes/ delegates Mr. Hemant Kumar Fozdar to sign or execute any such warrant or document as prescribed in the schedule to the DMC Act and to direct to distrain/ attach all the movable and immovable properties of Respondent No.7, and thus, in our view, definitely delegates to him the power to sign and issue the Recovery Certificates under Section 5 of the Revenue Recovery Act.

59 In the aforesaid circumstances, and for all the aforesaid reasons, we hold that the Recovery Certificates, which have been sent to Respondent Nos.2 to 6, and which are the subject matter of the present Petition, have been issued and signed by the said Hemant Kumar Fozdar as a delegate of the Commissioner, and the same complies with the provisions of Section 5 of the Revenue Recovery Act.

Findings on issue B:-

60 It is a requirement of Section 5 of the Revenue Recovery Act that the Certificate to be sent by a Collector to the Collector of another

district, has to be in respect of a sum recoverable as arrears of land revenue.

61 In the present case, through the Recovery Certificates sent to Respondent Nos. 2 to 6, the Petitioner is seeking to recover toll tax. The question is whether that toll tax can be recovered as arrears of land revenue.

62 In this regard, a reference can be made to Section 113 of the DMC Act which reads as under:-

“113:- Taxes to be imposed by the Corporation under this Act

(1) The Corporation shall, for the purposes of this Act, levy the following taxes, namely:-

- (a) property taxes;*
- (b) a tax on vehicles and animals;*
- (c) a theatre-tax;*
- (d) a tax on advertisements other than advertisements published in the newspapers;*
- (e) a duty on the transfer of property; and*
- (f) a tax on buildings payable along with the application for sanction of the building plan.*

(2) In addition to the taxes specified in sub-section (1), the Corporation may, for the purposes of this Act, levy any of the following taxes, namely:-

- (a) an education cess;*
- (b) a local rate on land revenues;*
- (c) a tax on professions, trades callings and employments;*
- (d) a tax on the consumption, sale or supply of electricity;*
- (e) a betterment tax on the increase in urban land values caused by the execution of any development or improvement work;*
- (f) a tax on boats; and*
- (g) tolls.*

(3) The taxes specified in sub-section (1) and sub-section (2) shall be levied, assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder.”

63 Section 113 (2)(g) of the DMC Act provides for levying of toll tax. Section 113 (3) further provides that taxes recovered under subsections (1) and (2) of Section 113 shall be levied, assessed and collected in accordance with the provisions of the DMC Act and the bye-laws made thereunder.

64 Section 156 of the DMC Act provides for recovery of taxes, including toll tax, and reads as under:-

“156- Recovery of tax

(1) If the person liable for the payment of the tax does not, within thirty days from the service of the notice of demand, pay the amount due, such sum together with all costs and the penalty provided for in section 155, may be recovered under a warrant, issued in the form set forth in the Eighth Schedule, by distress and sale of the movable property or the attachment and sale of the immovable property, of the defaulter:

Provided that the Commissioner shall not recover any sum the liability for which has been remitted on appeal under the provisions of this Act.

(2) Every warrant issued under this section shall be signed by the Commissioner.”

65 Further, Section 455 of the DMC Act provides for recovery of such tax as arrears of tax under the DMC Act and reads as under:-

“455:- Mode of recovery of certain dues

In any case not expressly provided for in this Act or any bye-laws made thereunder any due to the Corporation on account of any charge, costs, expenses, fees, rates or rent or any other account under this Act or any such bye-law may be recoverable from any person from whom such sum is due as an arrear of tax under this Act:

Provided that no proceedings for the recovery of any sum under this section shall be commenced after the expiry of three years from the date on which such sum becomes due.”

66 Further, Clause 12.5 of the Agreement entered into between the Petitioner and Respondent No.7 reads as under:-

“12.5:- The Commissioner, SDMC shall, without prejudice to any of the other rights and remedies that the SDMC has under this Agreement, be entitled to recover from the Contractor all amounts due to or recoverable by SDMC from it, under this Agreement as arrears of taxation as per the DMC Act and Applicable Law governing the recovery of taxes.”

67 Thus, Clause 12.5 of the Agreement also permits recovery of toll tax as an arrears of tax as per the DMC Act.

68 Therefore, in our view, it is clear that the toll tax sought to be recovered through the said Recovery Certificates is recoverable as arrears of tax.

69 The question that arises is whether the said sum that is sought to be recovered by the Petitioner as arrears of tax can be equated with a sum recoverable as arrears of land revenue under Section 5 of the Revenue Recovery Act. In our view, the answer to that question is in the affirmative. Section 5 of the Revenue Recovery Act does not permit recovery only of arrears of land revenue, but permits recovery of any sum which may not be arrears of land revenue but is recoverable as arrears of land revenue. Therefore, Section 5 is not limited to recovery of only arrears of land revenue but applies to any sum that is recoverable as arrears of land revenue.

70 *The Revenue Recovery Act does not define the term “land revenue”.* However, the long title and Preamble of the Revenue Recovery Act provide that the Revenue Recovery Act has been enacted to make

better provisions for recovering certain public demands. Therefore, the scope, object and purpose of the Revenue Recovery Act is to facilitate recovering of public demands through out India. The evil sought to be remedied by the Revenue Recovery Act is obstructions in recovering public demands through out India.

71 Keeping the aforesaid in mind, in our view, a sum recoverable as arrears of land revenue under Section 5 of the Revenue Recovery Act includes a sum recoverable as arrears of tax. Keeping in mind the purpose of the Revenue Recovery Act, no distinction can be made between the two. In our view, any other interpretation would not only defeat the purpose of the Revenue Recovery Act, but would lead to an absurdity i.e., just because the DMC Act and the Agreement between the parties provides for recovery of toll tax as arrears of tax, the same would not be covered by Section 5 of the Revenue Recovery Act, and if it provided for recovery of toll taxes as arrears of land revenue, it would be covered by Section 5.

72 That the provisions of a statute should be given such a purposive interpretation is laid down by the Hon'ble Supreme Court in various judgments. It would be sufficient for us to refer to paragraph 10 of the judgement of the Hon'ble Supreme Court in the case of **Shamrao V. Parulekar (supra)**, which succinctly lays down the law, and reads as under:-

“10:- But we wish to found deeper than this. It is the duty of courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one construction will lead to an absurdity while another will give effect to what commonsense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same

sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided. See the speech of Lord Wensleydale in Grey v/ Pearson quoted with approval by the Privy Council in Narayana Swami v. Emperor, also Salmon v. Duncombe. The rule is also set out in the text books: See Maxwell on the Interpretation of Statutes, 9th Edn, pp. 236 and Caries on Statute Law, 5th Edn. p.89-93. The meaning of Section 3 is quite plain and only desperate hair splitting can reduce it to an absurdity. Court should not be astute to defeat the provisions of an Act whose meaning is, on the face of it, reasonably plain. Of course, this does not mean that an Act, or any part of it, can be recast. It must be possible to spell the meaning contended for out of the words actually used. We hold that there is no difficulty of construction.”

73 For the aforesaid reasons, Issue “B” will have to be answered in the affirmative. Therefore, we held that the sum sought to be recovered by the Petitioner is recoverable as arrears of land revenue.

74 In the light of our aforesaid findings, we are not required to deal with the various judgements referred to by the parties, and we are accordingly not dealing with the same.

75 In the light of our aforesaid findings, we have not dealt with certain arguments of the parties, including the submission of the Petitioner on constructive *res judicata*.

76 In the aforesaid circumstances, and for all the aforesaid reasons, we pass the following order:-

(i) Writ Petition is allowed in terms of prayer clause (a) thereof, which reads as under:-

“(a) This Hon’ble Court be pleased to issue a writ of mandamus directing the Respondents to take steps as per law and discharge their statutory duty by executing the

warrants of distress/ recovery certificates dated 26.11.2021, 20.12.2021, 22.12.2021, 21.02.2023, 27.02.2023 and 02.03.2023 issued by the Petitioner and more specifically mentioned in para 20 herein above.”

- (ii) Rule is made absolute in the aforesaid terms;
- (iii) In the facts and circumstances of the case, there shall be no order as to costs.

(FIRDOSH P POONTWALLA,J.)

(A.S. CHANDURKAR,J.)

77 At this stage, Mr. Sancheti, the learned Senior Advocate appearing on behalf of Respondent No.7, seeks stay of the operation of the Judgement for a period of four weeks. This request is opposed by the learned Counsel for the Petitioner on the ground that, it would further delay execution of the Warrants of Distress/ Recovery Certificates. Considering that, in the judgement, we have interpreted the provisions of the Revenue Recovery Act, the Judgement shall operate after a period of four weeks from today.

(FIRDOSH P POONTWALLA,J.)

(A.S. CHANDURKAR,J.)