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

\+ W.P.(C) 9960/2024, CM APPLs. 40822/2024 & 40824/2024

DLF LTD .....Petitioner

Through: Mr.Rajiv Nayar, Sr.Adv with Mr.B.B.Gupta, Mr.Abhishek S. and Ms.Devika Mohan, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL AND ORS .....Respondents

Through: Mr.Sanjay Sharma, ASC with Mr.Raghav Alok and Mr.Anand K.Sharma, Advs for NDMC.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **07.08.2024**

1. The petitioner in the instant writ petition seeks for quashing of bill dated 01.06.2024, which was directed to be paid by 22.06.2024.

2. Learned senior counsel appearing for the petitioner confines his submission to the extent of showing that the impugned bill is predicated on the assessment order dated 13.03.2024, which itself is wholly perverse and unsustainable in law. He submits that without going into the controversy on merit, if the assessment order is shown to be unsustainable, the same must be set aside.

3. While taking this Court to the aforesaid assessment order, he points out that the order apparently premised on the ground that neither the assessee had appeared for hearing nor any objection against the notice issued under Section 72 of the New Delhi Municipal Council Act, 1994 (NDMC Act, 1994) was received by the Department. In juxtaposition with the assertion

recorded in the order dated 13.03.2024, he points out from paragraph no.6 of the short affidavit filed on behalf of the respondent-NDMC, that as per the respondent-NDMC's own showing, the objection dated 30.04.2013 was explicitly received by the respondent-NDMC.

4. In view of the aforesaid submissions, the Court expressed its opinion about sending the matter back to the NDMC for fresh decision.

5. Learned counsel appearing for the respondent-NDMC, on the other hand, submits that the impugned decision is justified on the premise that in pursuance of various other notices, the petitioner has never furnished any reply. He further submits that the petitioner has not been able to satisfy as to why the alternate remedy has not been resorted to. He further submits that under the facts of the present case, the respondent-NDMC is acting strictly in accordance with law and unless the merit of the matter is examined, the Court may not remit this matter back to the respondent-NDMC.

6. I have considered the submissions made by learned counsel for the parties and perused the record.

7. For the sake of clarity, the interim assessment order dated 13.03.2024 is extracted as under:-

> *"Order u/s-72 of the NDMC Act-1994*
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> *A Notice dated 25.03.2013 u/s 72 of the NDMC Act-1994 was issued to the recorded owner with a proposal to revise Rateable Value at Rs. 51,49,89,800/- w.e.f. 01.04.2012 onwards on Comparable Rent basis.*
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> *2. For disposal of said notice, hearings were provided to the recorded owner on 24.11.2023 and 14.12.2023. Neither the Assesse has appeared for hearing nor has any objection against the notice issued u/s 72 of the NDMC Act been received by the department. Therefore, NDMC is constrained to issue this assessment order on the basis of information available on record, as the matter cannot be kept pending perpetuity.*

3. Accordingly, the RV w.e.f. 01.04.2012 is finalized as under:-

Period	*RV Fixed.*
01.04.2012 to 31.03.2015	*Rs. 51,49,89,800/-*
01.04.2015 to 31.3.2018 (15 % escalation)	*Rs. 59,22,38,200/-*
01.04.2018 to 31.3.2021 (15 % escalation)	*Rs. 68,10,74,000/-*
01.04.2021 onwards (15 % escalation)	*Rs. 78,32,35,100/-*

This order decides Notice dated 25.03.2013 issued u/s 72 of the NDMC Act-1994.

4. Assessed accordingly and issue revised bill. "

8. The stand taken by the respondent-NDMC in paragraph no.4 of its short affidavit reads as under:-

> *"That in the entire writ no specific statutory provision of law has been casted upon under which the petitioner claim for challenging the tax bill by touching the question of facts in the writ jurisdiction nor any violation of law has been specified by the petitioner for which the writ jurisdiction under article 226 can be invoked on the contrary the writ is not maintainable as the alternative remedy by way of an appeal is provided in the act itself thus In view of the specific provision of appeal being provided, the writ jurisdiction under Article 226 of the Constitution of India may not be permitted to be invoked in the present case."*

9. The self contradictory assertions are clearly irreconcilable. The respondent-NDMC is unable to justify the apparent contradictions in its affidavit filed before the Court and the recitals made in the assessment order. It is thus seen that the impugned order dated 13.03.2024 stands vitiated on account of recording a perverse factual finding and on non-consideration of the reply which was admittedly received by the respondent-NDMC.

10. Reliance can be placed upon the decision of the Supreme Court in the case of ***Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India***[1], wherein, following principles were elucidated with respect to a fair and

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[1] (1976) 2 SCC 981

proper hearing which ought to be accorded by the administrative authorities before taking a decision:-

> *"6. ....If courts of law are to be replaced by a administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced,* ***it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process.*** *The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law........."*

11. It can be seen from the aforesaid principle laid down in the case of ***Siemens Engg. (supra)*** that before arriving at a decision, the administrative authorities are expected to give a thoughtful consideration to the material submitted by the person likely to be affected by the decision. In the case at hand, the replies submitted by the petitioner were not given any consideration at all, much less a meticulous consideration.

12. Recently, a Co-ordinate Bench of this Court in the case of ***Puri Investment v. NDMC***[2], had an occasion to deal with a similar controversy, wherein, the replies submitted by the petitioner therein relating to Section 72 of the NDMC Act, 1994 were not considered before passing the order. In the said case, the Court was of the view that such an action on behalf of respondent-NDMC tantamounts to infraction of principles of natural justice. The relevant paragraphs of the said decision read as under:-

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[2] 2024 SCC OnLine Del 3109

"6. It is quite evident from a perusal of the aforesaid Annexure P-3 that objections were duly submitted by the petitioners. However, the order under Section 72 of the NDMC Act wrongly records that no objections have been received by the department. ***It is evident, therefore, that the order under Section 72 of the NDMC Act has been passed without complying with the principles of natural justice.***

7. In view of the aforesaid, at this stage, learned counsel for the respondents submits that without prejudice to the rights and contentions of the respondents, the order dated 15.11.2023 under Section 72 of the NDMC Act, be treated as withdrawn.

8. It is agreed by the respective counsel for the parties that the respondent/NDMC shall pass a fresh order taking into account the contentions raised by the petitioners in the present petition, and after affording an opportunity of hearing to the petitioners. It is directed accordingly.

9. Respective counsel for the parties are also in agreement that a hearing shall be afforded to the petitioners by the concerned Director (Tax) of the respondent/NDMC on 01.05.2024 at 03:00 pm. A fresh order under Section 72 of the NDMC Act shall be passed within a period of four weeks thereafter.

10. Since, the impugned sealing/attachment action has been taken on the basis of the order dated 15.11.2023 passed under Section 72 of the NDMC Act which stands withdrawn, the sealing notice and the attachment action qua the property in question shall also be withdrawn forthwith. The seals that have been put by the respondent/NDMC on the property in question shall be removed within a period of one week from today.

11. Needless to say, upon conclusion of the aforesaid exercise and passing of a fresh order under Section 72 of the NDMC Act, the respondent/NDMC shall be entitled to take further steps, in accordance with law, for recovery of any arrears of property tax. Likewise, if the petitioner is aggrieved with the aforesaid exercise, it shall be at liberty to avail the statutorily prescribed appellate remedy and/or such remedy as may be available to it under law."

13. In the instant case, since the Court has recorded a finding that the impugned order dated 13.03.2024 stands vitiated on account of non-consideration of the reply, which admittedly was received by the respondent-NDMC. Therefore, it is not necessary to look into other aspects and instead,

the Court finds it necessary to send the matter back to the respondent-NDMC for fresh disposal.

14. Learned senior counsel appearing for the petitioner submits that keeping in mind the aforesaid limited aspect, if the matter is being remitted back to the respondent-NDMC, the Court may reserve his right to raise other aspects regarding sustainability of the impugned decision to be raised before the respondent-NDMC.

15. In view of the aforesaid, the instant petition stands disposed of with the following directions :-

i. The assessment order dated 13.03.2024 and the consequent bill dated 01.06.2024 are, hereby, set aside.

ii. The respondent-NDMC is directed to revive the matter at the stage of notice issued under Section 72 of the NDMC Act, 1994.

iii. The petitioner shall file a fresh representation taking all objections as may be permissible in law, within 10 days from today.

iv. The respondent-NDMC shall consider the earlier filed reply and also the one which is proposed to be filed by the petitioner and it shall pass a fresh order after affording an opportunity of hearing in person to the petitioner.

16. Accordingly, the instant writ petition is allowed along with pending application.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 7, 2024/MJ