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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on 19.11.2024

+ W.P.(C) 11736/2019, CM APPL. 48203/2019 & CM APPL. 38833/2021.

M/S INDRA SINGH AND SONS. PVT. LTD.Petitioner

Through: Mr. Amitabh Chaturvedi, Mr. Sangeeth Mohan K. and Mr. Ankit Monga, Advocates

versus

NEW DELHI MUNICIPAL COUNCILRespondent

Through: Mr. Sanjay Sharma, ASC for NDMC

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

CM APPL. 67158/2024 (for condonation of delay in filing rejoinder)

1. This is an application filed by the petitioner seeking condonation of 37 days delay in filing rejoinder.
2. For the reasons stated in the application and with the consent of learned counsel for the respondent, the application is allowed and delay is condoned.
3. The Registry is directed to place the rejoinder on record.

W.P.(C) 11736/2019 & CM APPL. 48203/2019 (for interim order) & CM APPL. 38833/2021 (for directions)

1. The petitioner has filed this writ petition, under Article 226 of the Constitution, assailing a demand of Rs. 2,22,12,090/- towards property



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tax in respect of property bearing No.17, Tughlaq Road, New Delhi.

2. I have heard Mr. Amitabh Chaturvedi, learned counsel for the petitioner, and Mr. Sanjay Sharma, learned counsel for the respondent-New Delhi Municipal Council [“NDMC”].

3. The impugned demand appears on an extract of the portal of NDMC, a printout of which has been annexed to the writ petition as Annexure P-1. The demand is predicated on two assessment orders, one dated 01.02.2016 and the other dated 16.10.2019. The rateable value computed in the two assessment orders has been tabulated in Column 10 as follows:

“		RV	From	AO Number	Dated
10	Rateable Value	47100	01/04/2004	4876/DD(T)	01/02/2016
		8480200	01/04/2010	4876/DD(T)	01/02/2016
		10176300	01/04/2013	4876/DD(T)	01/02/2016
		10176300	01/04/2019	GO/AO No.	16/10/2019
				142/JD(Tax)	”

4. Evidently, the assessment order dated 01.02.2016 provided for computation of the rateable value for three different periods, commencing from 01.04.2004, 01.04.2010 and 01.04.2013. A perusal of the said assessment order [Annexure P-10 to the writ petition] shows that, for the period from 01.04.2004, the rateable value proposed by NDMC was Rs. 47,100/-, based upon comparative rent basis. For the subsequent periods, NDMC carried out the assessments on the basis of NDMC (Determination of Annual Rent) Bye-laws, 2009 [“2009 Bye-laws”], by which the Unit Area Method [“UAM”] was introduced.

5. In the assessment order dated 01.02.2016, the petitioner’s contention has been noted, that it had challenged the 2009 Bye-laws as a member of the Association of the Concerned Citizens of New Delhi,



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which filed WP(C) 3348/2010 before this Court. NDMC, however, noted that this Court had not granted any stay against the 2009 Bye-laws, and that an interim order had been passed that in the event any tax is paid, which is ultimately found not to be payable, the Court can direct refund at the stage of final hearing. On this basis, the objections filed by the petitioner were rejected, and rateable value was computed at the rate of Rs. 84,80,200/- from 01.04.2010 to 31.03.2013, and Rs. 1,01,76,300/- from 01.04.2013 onwards. The said assessment order contains a detailed calculation, and applies the formula for calculation of rateable value, from which it is clear that the UAM had been applied.

6. The petitioner assailed the assessment order dated 01.02.2016 in a writ petition before this Court [WP(C) 3176/2017]. By order dated 17.04.2017, the petitioner was directed to deposit the tax arrears for three base years and relegated to the remedy of appeal. The order was challenged before the Division Bench in LPA No. 351/2017, but the appeal was withdrawn by order dated 09.05.2017.

7. The petitioner filed an appeal before the Appellate Tribunal in terms of the aforesaid orders [Appeal No. 12/2017]. During the pendency of the appeal before the Appellate Tribunal, WP(C) 3348/2010 came to be decided, alongwith a batch of other writ petitions challenging the UAM. This Court held that the 2009 Bye-laws were *ultra vires* the powers of NDMC under the NDMC Act, 1994. The operative directions contained in the judgement of the Division Bench dated 10.08.2017, relevant for the adjudication of this writ petition, are as follows:

“ Conclusions and directions

60. The Court accordingly strikes down the new impugned Bye-laws as being ultra vires the NDMC Act as they are in excess of the scope and



ambit of the powers vested in the NDMC under Section 388 (1) A (9) of the NDMC Act.

61. Consequently, **the Court invalidates all actions taken by the NDMC under the new impugned Bye-laws in terms of levy, assessment, collection and enforcement of demand of property tax.** All property demands made under the new impugned Bye-laws are hereby invalidated and declared unenforceable

62. In terms of the interim order passed by the Court, referred to hereinbefore, the **excess of the tax deposited has to be refunded but the determination of such excess will have to await the making of the assessments in accordance with the extant provisions of the NDMC Act.** Such refund of excess tax deposited would be in accordance with the law and together with the interest payable thereon in terms of the NDMC Act. It will be open to the individual tax payers to seek appropriate remedies in regard to refund together with interest at the appropriate stage after completion of the assessment in terms of the extant provisions of the NDMC Act.

63. The other grounds of challenge are left open to be urged if and when the NDMC Act is amended to bring about the change in the determination of the rateable value. The Court expects the NDMC and the legislature to consider the additional grounds of challenge to the new impugned Bye-laws while considering the changes to the NDMC Act.”¹

8. In view of this judgement, the Appellate Tribunal allowed the petitioner’s appeal against assessment order dated 01.02.2016, and remanded the matter back to NDMC to decide afresh in terms of the said directions. It was noted in the order of the Appellate Tribunal, that a special leave petition had been filed by NDMC, which was pending before the Supreme Court at that stage.

9. The NDMC’s appeal against judgment dated 10.08.2017 [Civil Appeal Nos. 903-930/2019] was ultimately decided by a judgement of the Supreme Court dated 22.01.2019. The Supreme Court affirmed the view taken by this Court with respect to the validity of the Bye-laws, but passed the following further directions:

¹ Emphasis supplied.



“ 89) One last but very significant aspect is still required to be dealt with. The declaration of Impugned Bye-laws as ultra vires has created a difficult situation. These Bye-law were framed in the year 2009. They were struck down by the High Court vide impugned judgment dated 10th August, 2017. They held the field from 2009-2017. While issuing notice in these Special Leave Petitions on 22nd September, 2017, in respect of the direction of the High Court to pass re-assessment order, this Court observed that it would be open to the NDMC not to pass such re assessment orders. That interim order has prevailed during the pendency of these appeals. **Further, as already noted above, 95% of the assesseees are agreeable to pay the tax as per Byelaws 2009.** They have even paid the taxes on that basis. In these circumstances, to upset the appercart completely may not be appropriate. In such a peculiar situation, in exercise of powers under Article 142 of the Constitution, we direct that **those assesseees who have paid the tax as per Bye-Laws, 2009, their assessments shall not be reopened. Another reason for taking this course of action is that these assesseees are satisfied with the assessments under Bye-laws, 2009. However, it will not apply to the respondents herein, namely, those assesseees who were the writ petitioners in the High Court. In their cases, the direction given by the High Court in the impugned judgment shall prevail.**”²

10. It is clear from the extract of the demand challenged in this petition that a further assessment order was apparently passed by NDMC on 16.10.2019, after the aforesaid judgements of this Court and the Supreme Court. That assessment order has not seen the light of day. The petitioner has specifically averred in the writ petition that no copy of the assessment order dated 16.10.2019 was provided to it, and NDMC has also not placed the said order on record.

11. While issuing notice on this writ petition on 06.11.2019, the Court also noted this submission of the petitioner, and granted an interim order against coercive action. NDMC was also granted an opportunity to file a counter affidavit, and further opportunities for this purpose were granted by orders dated 29.03.2022, 24.01.2023, 26.05.2023 [upon payment of

² Emphasis supplied.



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costs], 06.12.2023 and 20.08.2024. The counter affidavit was filed only on 24.08.2024, and that also does not contain the assessment order dated 16.10.2019.

12. The only point urged in the counter affidavit filed by NDMC is that a rectification order has been passed on 05.02.2021, rectifying the rateable value on the basis of rectification in the area of the property, and a further assessment order has been passed on 20.04.2021 fixing the rateable value at Rs. 67,68,700/- w.e.f 01.04.2020. The NDMC seeks to rely upon para 89 of the judgment of the Supreme Court to contend as follows:

“.....

***In a nutshell , those properties who have not opposed the Unit Area Method in any forum and have been paying the taxes in Unit Area Mehtod³ can still be assessed in UAM.**”⁴*

13. I am not persuaded that paragraph 89 of the judgement of the Supreme Court applies to the petitioner’s case. It may first be noted that the impugned demand is based upon two assessment orders, dated 01.02.2016 and 16.10.2019. The assessment order dated 01.02.2016 itself records that the petitioner opposed the applicability of the UAM but its opposition was rejected on the ground that this Court had not stayed the operation of the Bye-laws during the pendency of the writ petition. This is, thus, not a case of the petitioner accepting the assessment at UAM at any stage. In fact, the petitioner’s appeal against the very same assessment order was allowed by the Appellate Tribunal in Appeal No. 12/2017, specifically on the basis of the judgement dated 10.08.2017. The

³ Reproduced as in original.

⁴ Emphasis supplied.



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assessment order was therefore set aside, and NDMC was directed to decide the matter afresh, in view of the directions contained in the judgment dated 10.08.2017.

14. As noticed above, the second assessment order has not been placed before this Court. It is therefore impossible for the Court to determine conclusively whether the order had been passed on the basis of the comparable rent method or UAM. Suffice it to say that the rateable value fixed in the assessment order dated 16.10.2019 is Rs. 1,01,76,300/-, which is exactly the same figure as was fixed in the assessment order dated 01.02.2016 for the period 01.04.2013 onwards, applying the UAM. The petitioner has pointed this out *inter alia* in paragraph 2 of the writ petition, inferring that the order dated 16.10.2019 was also passed on the basis of the 2009 Bye-laws. This inference has not been disputed in the counter affidavit.

15. Instead, the counter affidavit proceeds on the basis that the rectification order dated 05.02.2021 rectifies the assessment order dated 16.10.2019, and the petition has thus been rendered infructuous. This contention is found to be misconceived, on a perusal of the rectification order itself which clearly states, both in paragraph 1 and in the operative portion in paragraph 8, that the rectification was purportedly of the assessment order dated 01.02.2016. The assessment order dated 01.02.2016 had already been successfully appealed by the petitioner, and the order of rectification thereafter was, therefore, utterly meaningless.

16. The order dated 20.04.2021 referred to in the counter affidavit is for a subsequent period and is not the subject matter of the present writ petition.



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17. In these circumstances, the position that emerges is that, both the assessment orders on the basis of which the impugned demand was computed were *ultra vires* the powers of NDMC. The assessment order dated 01.02.2016 has already been set aside in a duly constituted appeal, and the assessment order dated 16.10.2019 was also apparently on the basis of the UAM. The assessment order dated 16.10.2019 was passed after the UAM had already been set aside by this Court, and the said judgement upheld by the Supreme Court. The NDMC's contention that the rectification order dated 05.02.2021 alters the landscape in any way is also meritless.

18. Once the assessment orders are thus determined to be unlawful, the impugned demand also cannot stand. The writ petition, therefore, succeeds and the respondent-NDMC is restrained from proceeding on the basis of the impugned demand calculated under the assessment orders dated 01.02.2016 and 16.10.2019. It is free, however to undertake reassessment in accordance with law, consistent with judgement of this Court dated 10.08.2017 and the judgment of the Supreme Court dated 22.01.2019.

19. Mr. Chaturvedi states that certain recoveries have been made, which are liable to be refunded to the petitioner. Mr Sharma states that, if any excess amount is recovered, the same will be refunded after re-assessment.

20. The writ petition alongwith the pending applications, is disposed of in the aforesaid terms.

PRATEEK JALAN, J

NOVEMBER 19, 2024/SV/AD/