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

\+ W.P.(C) 10297/2024 & CM APPL 42109/2024

RAJEEV VASUDEVA .....Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv. with Mr. Amitabh Chaturvedi and Mr. Sangeeth Mohan K. Advs.

versus

NEW DELHI MUNICIPAL COUNCIL .....Respondent

Through: Mr. Ashish Tiwari, ASC with Mr. Raghav Alok, Mr. Anurag Tiwari and Mr. Sahib Patel, Advs.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **30.07.2024**

1. Heard learned counsel appearing on behalf of the parties.

2. The instant petition has been filed seeking the following reliefs:-

> *"a) issue a writ of certiorari and/or appropriate writ, order or direction calling for the records of the Respondent NDMC pertaining to the assessment of property tax w.r.t property bearing No. 43, Prithvi Raj Road, New Delhi having Property ID No. P-9437 w.e.f. 01.04.2010 till date and for quashing and setting aside the Property Tax Bill bearing No.327510 dated 01.06.2024 (received on 13.06.2024) issued by the Respondent NDMC with respect to the said Property;*
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> *b) issue a writ of mandamus and/or appropriate writ, order or direction to the Respondent to immediately remove/take off/correct the illegal demand of Rs.7,03,56,015 towards property tax w.r.t. property bearing no. 43, Prithvi Raj Road, New Delhi having Property ID No. P-9437, as appearing on the website of Respondent New Delhi Municipal Council www.ndmc.gov.in under the link https://ptis.ndmc.gov.in: 854 3/property /view/Before View Property.do?propertyId=P-9437;*

c) issue a writ of mandamus and/or appropriate writ, order or direction to the Respondent NDMC to immediately provide a copy of purported assessment order dated 23.04.2024 as appearing on the website of Respondent NDMC www.ndmc.gov.in under the link https://ptis.ndmc.gov.in:8543/property/view/BeforeViewProperty.do?propertyId=P-9437

d) issue a writ of mandamus and/or appropriate writ, order or direction to the Respondent NDMC to forebear from demanding and/or from taking any coercive action to recover any amount towards property tax with respect to the said Property for the years 2010-11 to 2024-25 or for any further period on the basis of the property tax bill bearing No.327510 dated 01.06.2024 (received on 13.06.2024) and the purported assessment order dated 23 .04.2024 as appearing on the website of the Respondent NDMC; and

e) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. The matter was initially taken up for consideration on 26.07.2024 and the Court has passed the following directions:-

"CM APPL. 42110/2024 (Exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 10297/2024 & CM APPL. 42109/2024

1. Heard learned senior counsel appearing for the petitioner.

2. Issue notice.

3. Learned counsel appearing for the respondent-NDMC accepts notice. He is directed to file a reply subject to all rights and liberty including objections with respect to maintainability being reserved, within a period of four weeks from today.

4. Learned senior counsel appearing for the petitioner makes his submissions with respect to the grant of interim relief.

5. List for consideration on 30.07.2024.

6. The respondent-NDMC is directed to file a brief affidavit explaining the reasons as to why the prayer for interim relief made in the instant writ petition *may not be granted."*

4. In pursuance of the directions passed by the Court, the respondent-NDMC has placed on record its short affidavit, wherein, the following position has been taken:-

> *"3. That by filing the present Writ Petition, the Petitioner has challenged the Property Tax bill bearing No.327510 dated 01.06.2024, with respect to the property bearing No. 43 Prithvi Raj Road, New Delhi, having PID No. 9437 issues by the Respondent.*
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> *4. That it is submitted that the above-mentioned property tax bill was issued pursuant to the Assessment Order dated 23.04.2024, which decided three pending notices under Section 72 of the NDMC Act, 1994.*
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> *5. It is submitted that the Petitioner was issued three notices under Section 72 of the NDMC Act, dated 15.03.2011, 22.03.2014, and 27.03.2023.*
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> *6. It is submitted that the Unit Area Method was struck down by the Hon'ble Supreme Court vide Judgment dated 22.01.2019. Hence, all notices issued post-22.01.2019 under -Section 72 of the NDMC Act were issued by the Respondent on a comparable basis as per Section 63(1) of the NDMC Act. Accordingly, the Petitioner was also issued a notice dated 27.03.2023 proposing to increase the Rateable Value from Rs.71,62,000/- to Rs. 5,74,91,100/- w.e.f. 01.04.2022.*
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> *7. It is submitted that the notice dated 27.03.2023 clearly mentioned that the rateable value mentioned in the notice is a proposed rateable value and not final; it shall only be finalized after receiving objections from the assessee. The relevant part of the notice is reproduced herein below for reference:*
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>> *"5. This is the provisional proposed rateable value and the not the annual tax. The rateable value shall be finally fixed after receipt of the objections and investigation of the objections. It may be less or more than this provisionally proposed rateable value. The tax on the finally determined rateable value shall be payable as per the tax rates prescribed by the council from year to year".*
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> *8. It is submitted that the petitioner neither submitted any written objection nor appeared for a personal hearing despite notice from the Respondent to attend and file objections with respect to pending notices. Notice for a personal hearing was provided to the Petitioner through a letter dated 24.08.2023, and the Petitioner was also asked to bring all relevant documents necessary for determining the rateable value of the property. The Petitioner in his Writ Petition annexed the said notice as Annexure P-26 at page 285.*

9. That it is submitted that the Respondent cannot wait endlessly for the response of the Petitioner. Hence, the Respondent decided all the pending notices through the Assessment Order dated 23.04.2024 and finalized the rateable value of the subject property.

10. It is submitted that the subject property was assessed at Rs. 207 per sq. foot per month; and as per the record available with the Respondent, the total area of the subject property was 25,716.196 square feet. Hence, the rateable value of the property was fixed at 25,716.196 207 * 12 - 10% = Rs. 5,74,91,000/-.*

11. That it is submitted that while comparing the RV of the subject property, the Respondent considered the RV of the· property situated at 1, Amrita Sher Gill Marg. The notice issued under Section 72 of the NDMC Act to the property situated at 20, Barakhamba Road is attached here as Annexure-Rl. It is submitted that the above notice was dated 25.03.2019, and the notice was issued to the Petitioner in the year 2022; l hence, the notice was sent considering a 5% increase every year.

12. It is further submitted that the Assessment Order duly records that if the assessee wants any rectification, they may provide supporting documents to substantiate their claim within a period of 30 days, and the Respondent will consider the same. The relevant part of the order is reproduced herein below for reference:

> *"However, if the assessee provides the correct area/ rental details alongwith supporting documents, within a period of 30 days from the date of issue of this order, case shall be considered accordingly."*
> *Copy of the assessment order is attached hereas Annexure-R2.*

13. That even after 30 days of the receipt of the Assessment Order, when the Petitioner did not submit any objection, the Respondent issued the property tax bill.

14. That it is submitted that from the above, it is clear that the Petitioner, by filing the present writ petition, is trying to avoid its tax liability.

15. It is further submitted that the Hon'ble Division Bench ; of this Court in V.P. Agarwal; W.P. (C) No. 15009 of 2023 held that the NDMC Act provides complete machinery for the assessment of tax, and the assessee is not permitted to abandon that machinery and invoke the writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution. The relevant paragraph of the said judgment is reproduced herein below for reference.

> *" 7. This Court in the judgment of VedMarwah(supra) has held that the finalisation of the assessment proceedings after a delay of more*

than ten years was unreasonable and thus, liable to be set aside. In such cases of inordinate delay in finalisation of assessment proceedings what needs to be seen by the appellate authorities is that on whose account the proceedings were delayed. In cases where the assessees have fulfilled their obligations by submitting their 'objections and supporting documents to the authorities and it is the authorities who are delaying the adjudication process, then the assessees cannot bePenalised for inaction of the authorities. However, this adjudication involves deciding disputed questions of facts, which cannot be done by this Court in writ proceedings. The petitioner is thus, required to raise his objections before the appellate authorities."

8. This Court is also of the opinion that as the NDMC Act provides a complete machinery for assessment of tax, assessee is not permitted to abandon that machinery and invoke jurisdiction of High Court under Article 226. This Court is of the view that the present case does not fall under the exceptional ground on which a writ petition is maintainable at this stage in tax matters."

5. The respondent-NDMC has taken a categorical stand that despite issuing three notices dated 15.03.2011, 22.03.2014 and 27.03.2023 to the petitioner under Section 72 of the New Delhi Municipal Council Act, 1994 (hereinafter 'NDMC Act'), the petitioner failed to submit any reply. Consequently, in the absence of any objections from the petitioner, the respondent-NDMC issued the assessment order dated 23.04.2024, and subsequently raised the bill that is the subject matter of the instant petition.

6. Learned counsel for the respondent-NDMC justifies this action and further contends that any grievance regarding order dated 23.04.2024 issued under Section 72 of the NDMC Act should be redressed through alternate legal remedies.

7. On the other hand, learned Senior Counsel appearing on behalf of the petitioner, takes this Court to the reply dated 13.04.2011 which has been placed on record at page No. 303 of the writ petition to indicate that the reply to the first Show Cause Notice dated 15.03.2011 was submitted by the petitioner. He further takes this Court to the second reply dated 25.04.2014 at page No.310 of the writ

petition and has also pointed out from page No.323 that even the reply to the last notice dated 27.03.2023 was also submitted by the petitioner on 24.04.2023. It is thus seen that the notices have been duly replied by the petitioner as under:-

Notice Date	**Reply Date**	**Page Number of reply in Petition**
15.03.2011	13.04.2011	303
22.03.2014	25.04.2014	310
27.03.2023	24.04.2023	323

8. He, therefore, submits that the impugned action is against the principles of natural justice and the respondent-NDMC has not considered the reply at all submitted by the petitioner pursuant to the three notices.

9. The Court has considered the aforesaid submissions and is of the opinion that in the instant case, the respondent-NDMC completely ignored the reply placed on record by the petitioner. It is not the case of the respondent-NDMC that it has reached a certain conclusion after considering the reply. The respondent-NDMC appears to have taken an unequivocal stand that no reply at all has been received, which is factually incorrect. There is no explanation of the same in the brief affidavit placed on record by the respondent-NDMC. Therefore, the inevitable conclusion which comes to the fore is that the principles of natural justice stand violated.

10. In view of the aforesaid, the Court finds it necessary to set aside the order dated 23.04.2024 and consequential bill dated 01.06.2024 and remit the matter back to the respondent-NDMC for a fresh consideration, with due regard to the three replies submitted by the petitioner dated 13.04.2011, 25.04.2014 and 24.04.2023.

11. With the aforesaid observations, the writ petition is allowed and stands disposed of along with pending application.

PURUSHAINDRA KUMAR KAURAV, J

JULY 30, 2024
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