$~2

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

\+ W.P.(C) 10958/2024 & CM APPL 45227/2024

JEY KAY (P) LTD. .....Petitioner

Through: Mr. B.B. Gupta, Sr. Adv. with Mr. Amitabh Marwah and Mr. Achal Gupta, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL .....Respondent

Through: Mr. Yoginder Handoo, Mr. Ashwin Kataria and Mr. Hari Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **13.08.2024**

1. This Court on 08.08.2024 has passed the following directions:-

"1. Heard learned senior counsel appearing for the petitioner.
2. Learned senior counsel appearing for the petitioner submits that the impugned order dated 27.05.2024 itself recites that two notices dated 25.03.2019 and 27.03.2023, were issued under Section 72 of the New Delhi Municipal Council Act, 1994 to the petitioner and the respondent-NDMC did not receive reply of both the notices. Learned senior counsel has pointed out from the record that the replies to both the notices were duly sent and received by the respondent-NDMC on 24.04.2019 and 08.05.2023 respectively.
3. Notwithstanding the aforesaid, he further submits that even thereafter, there has been further exchange of correspondence between the petitioner and the respondent-NDMC.
4. He, therefore, submits that the impugned order is completely perverse and has been passed with mala fide intend.
5. The Court in W.P. (C) 9960/2024 has also considered almost similar controversy where despite there already being a reply on record, duly submitted by the occupier/ owner, the impugned order therein, recorded

that no reply was submitted by the occupier/ owner. The Court, in the said case, set aside the impugned order and sent the matter back to the respondent-NDMC for fresh disposal.
6. In the instant case again, the same situation exists. The Court is of the view that the order has been passed by the concerned authority, either on account of mala fide intent or due to incompetency of the Officer concerned. Wholly mechanical approach is not only detrimental to the interest of the individual but to the NDMC as well. The same results in unnecessary and avoidable litigation.
7. Before taking any adverse decision in the matter, the Court finds it necessary to direct the respondent-NDMC to explain as to why the orders are being passed without looking at the concerned records. It be noted that this is the third consecutive matter where almost similar anomaly has been observed.
8. Let the respondent-NDMC explain the aforesaid circumstances and file a brief affidavit before the next date of hearing. The Affidavit be filed by the officer higher than the one who has passed the impugned order.
9. List on 13.08.2024.
10. In the meantime, there shall be stay of the Assessment Order dated 27.05.2024 and all consequential actions."

2. The affidavit on behalf of the respondent-NDMC has been placed on record, sworn by Mr. Parag K. Singh, Director-Tax, NDMC. The paragraph Nos. 5 to 9 of the affidavit reads as under:-

"5. Insofar as the present case is concerned, I have perused the record and have found that the Petitioner had sent objection dated 22.04.2019 received on 26.04.2019, objection on 08.05.2023 and reply dated 10.01.2024 in response to the various notices. It is further respectfully submitted that the record reveals that a hearing was also granted to the Authorised Representative on behalf of the Petitioner on 10.01.2024.

6. Prior thereto, a reply dated 18.12.2023 had also been received in response to the notice dated 08.12.2023 issued by the NDMC and the submissions made by the Authorised Representative of the Petitioner appears to also have been recorded.

7. Contrary to the above, however, it is most humbly submitted that the order dated 27.05.2024, records that no objection had been received from the owner as well as none appeared on 18.12.2023. I have asked for an explanation in this regard from Mr. Hari Singh, who has given his explanation stating that numerous orders had to be passed in a time bound manner due to which some orders have been passed inadvertently as the *record file were not readily traceable and in view of the order passed in the case of **Ved Marwah judgment** notices had to be decided in time bound manner. The mistake does not appears to be on account of any malafide and for reason that numerous orders had to be passed on account of reasons stated above. I have also asked the Deputy Director concerned to review the orders passed by him to see if any such mistake has happened in other orders and take remedial measures in this regard.*

8. It is respectfully submitted that the order dated 27.05.2024 also gives liberty to the assessee to provide correct area/rental details along with supporting documents even after passing of the order dated 27.05.2024 which will be considered. It is further submitted that the Respondent-NDMC has till date not acted upon the order dated 27.05.2024 passed under Section 72 of the NDMC Act and no demand notice has not been issued pursuant to the same.

9. It is respectfully submitted that the Respondent-NDMC in view of the aforesaid will be issuing notices of hearing to the Petitioner and pass fresh orders under Section 72 of the NDMC Act after giving proper hearing to the petitioner. "

3. In view of the aforesaid, since the respondent-NDMC itself admits its mistake and is willing to take corrective measures, the impugned order dated 27.05.24 stands set-aside. The respondent-NDMC shall abide by the averments made in paragraph No.9 of the aforesaid affidavit.

4. Let the fresh notice of hearing be given to the petitioner. The petitioner on receiving the notice, shall be given liberty to file fresh representation/objections, which shall be dealt with in accordance with law.

5. The petition stands disposed of in the aforesaid terms alongwith pending application. All rights and contentions are left open.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 13, 2024
p'ma