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

\+ W.P.(C) 15395/2024

KOTHARI AND ASSOCIATES AND ANR .....Petitioners

Through: Mr.Pankaj Bhagat, Mr.Sadre Alam and Mr.Ritwik Prasad, Advocates

versus

NEW DELHI MUNCIPAL COUNCIL .....Respondent

Through: Mr.Sanjay Sharma, Additional Standing Counsel, Mr.Anand K.Sharma, Advocate and Mr.Ankit Goyal, ALO (NDMC)

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **06.11.2024**

1. The petitioners have approached this Court under Article 226 of the Constitution of India, principally for the relief of de-sealing of premises bearing No. G-65, First Floor and G-88, Terrace Floor (combinedly known as G-65/88), Block-G, Outer Circle, Connaught Place, New Delhi - 110001. The petitioners claim to be the tenants of the said premises under one Smt. Gunwanti Devi.

2. Learned counsel for the New Delhi Municipal Council ["NDMC"] has taken instructions, and states that the premises is being sealed on account of property tax dues. He submits that there has been no recovery of property tax in respect of the said premises, resulting in an

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accumulation of dues exceeding Rs. 13 crores. NDMC has therefore attached the property by an order dated 11.03.2024 under exercise of powers under Section 102 of the New Delhi Municipal Council Act, 1994 ["the Act"].

3. I have heard learned counsel for the parties.

4. It appears that there is no statutory provision which enables the NDMC to seal a property on account of non-payment of property tax. The provisions for taxation are contained in Chapter VIII of the Act. Section 68 provides for recovery of property tax from the occupier by attachment, in accordance with Section 108 of the Act, of the rent payable by the occupier in the proportions stated therein. Section 69 provides that property tax will constitute the first charge on the property. The provisions for payment and recovery, contained in Sections 98 to 108 of the Act, enumerate the measures available to NDMC in the event of default in payment. These include imposition of penalty under Section 101 of the Act, recovery of the amount of taxes, costs and penalty under a warrant by attachment and sale of immoveable property under Sections 102 to 104 of the Act. NDMC is also empowered by Statute (Section 106 of the Act) to institute a suit for recovery. There is, however, no provision for sealing of the property on this ground.

5. Learned counsel for the petitioners draws my attention to an order dated 07.03.2024 in W.P.(C) 3075/2024 and connected matters, in which other properties in Connaught Place were sealed on the ground of arrears of property tax. The order records that learned counsel for NDMC, on instructions, stated that the premises would be de-sealed but reserved liberty to take further action for attachment of rent and other proceedings

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in accordance with the Act. Orders dated 11.03.2024 in W.P.(C) No. 3524/2024, and 14.03.2024 in W.P.(C) No. 3761/2024 are to similar effect.

6. With respect to the of Delhi Municipal Corporation Act, 1957 also, by a judgment dated 21.05.2021 in W.P.(C) No. 5432/2020, the Court noticed that the Corporation was empowered to recover tax *inter alia* by attachment and sale of immovable property, but in the absence of statutory power for sealing of properties for recovery of arrears of taxes, a sealing order was quashed.

7. Regardless of the contentions of the NDMC with regard to the accumulation of property tax dues in respect of the subject property, it cannot be disputed that recovery can only be undertaken in the manner provided by the statute. The Act, admittedly, contains no provision for sealing of property as a tool for enforcement of tax dues. In the orders dated 07.03.2024, 11.03.2024 and 14.03.2024 referenced above, NDMC itself accepted that the properties in question would have to be de-sealed. The present case is virtually identical.

8. Mr. Sharma, learned counsel for the NDMC has also taken instructions and confirms this position.

9. In these circumstances, I am of the view that the action of NDMC in sealing the properties occupied by the petitioners is *ultra vires* its powers under the Act.The writ petition is, therefore, disposed of with the direction that NDMC will de-seal the property and take consequential action, in terms of restoration of water and electricity connection, within a period of three days from today.

10. This order, however, does not not prejudice NDMC in any manner

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from taking such action as available to it under the statute, for recovery of the property tax dues in accordance with law.

11. No further orders are sought in this writ petition. The petition is therefore disposed of.

PRATEEK JALAN, J

NOVEMBER 6, 2024

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