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

% ***Date of Decision: 16th December, 2024***

\+ W.P.(C) 17030/2024 & CM APPL. 72153-72154/2024

R.S. JUNIOR MODERN SCHOOL .....Petitioner

Through: Mr. B.B. Gupta, Senior Advocate with Mr. Saurabh Malhotra and Mr. Karan Jain, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL (NDMC) & ORS. .....Respondent

Through: Mr. Sanjay Sharma, Addl. Standing Counsel with Mr. Ankit Goel, ALO for R-1
Ms. Avni Singh, Standing Counsel for GNCD with Mr. Gourav Mundia, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T ***(oral)***

CM APPL. 72154/2024 (exemption)

Exemption allowed, subject to all just exceptions.

W.P.(C) 17030/2024 & CM APPL. 72153/2024

1. Learned counsel for respondent no.1/New Delhi Municipal Council (NDMC) appears on advance notice.

2. Admittedly, earlier the main school i.e. Modern School had filed a writ petition under Article 226 of the Constitution of India.

3. Such writ petition was registered as W.P. (C) 7296/2011.

4. Modern School had challenged two notices therein, both of which were dated 09.02.2011.

5. Modern School Delhi had claimed that it owned and run various schools, one of which was Modern School, Barahkhamba Road, New Delhi

and another was R.S. Junior Modern School, Humayun Road, New Delhi (petitioner herein). One such notice was meant for Modern School and the other was meant for R.S. Junior Modern School and these facts have been averred in the abovesaid earlier writ petition and also in prayer (iv) of the aforesaid writ petition. Notice issued under Section 72 of NDMC Act, 1994 pertaining to the R.S. Junior Modern School having number as 2010-2011/6197 dated 09.02.2011 is found mentioned in prayer of said writ petition i.e. W.P. (C) 7296/2011.

6. Averments made in para 5, 19B(d) and prayer (iv) of said earlier writ petition read as under:-

> *"5. The present writ is being preferred by petitioner herein challenging the constitutional validity of the New Delhi Municipal Council Rateable Value Bye-laws, 2009, as amended (Bye-laws) as well as being violative of Article 14 of the Constitution of India and ultra vires of the provisions of the NDMC Act, 1994 and two notices both dated 09.02.2011 under Section 72 of NDMC Act, 1994 issued by the respondent no. 1 to petitioner under the aforesaid Bye-laws, enhancing the existing rateable value of Modern School, Delhi from Rs. 7,49,900/- to Rs. 19,84,90,995/- and that of Raghubir Singh, Junior Modern School from Rs. 6,04,900/- to Rs. 3,41,15,300/- w.e.f. 01.04.2010 respectively. The increase in the rateable value is almost 25 times the former case and 54 times in the latter, which makes the same violative of Article 14 of the Constitution.*
>
> …………….
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> *19.B (d) That much to the shock and surprise of petitioner, petitioner was served with a notice 9.2.2011 u/s 72 of the NDMC Act 1994 (Annexure P-11), inter alia, allegedly provisionally proposing to increase the existing annual rateable value of Rs.6,04,900/- p.a. to an alleged provisionally proposed annual value of Rs.3,41,15,300/- w.e.f. 01.04.2010 for the reason "AS PER NDMC NEW ANNUAL RENT BYE-LAWS, 2009". The increase in rateable value is almost 56.39 times. Petitioner filed objections dated 14.03.2011 on 14.03.2011 (Annexure P-12).*
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> ………………
>
> *Prayer*
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> ……………..
>
> *(iv) Issue a writ of certiorari or any other writ, order or direction in the nature thereof setting aside/quashing two notices both dated 09.02.2011*

(Annexure P-6 & P-11) being P.O.R. No. Notice U/S 72/2010-2011/6196 & P.O.R. No. Notice U/S 72/2010-2011/6197."

7. Admittedly, the impugned order herein i.e. order dated 06.09.2024 has been passed by NDMC, based on the same earlier notice under Section 72 of NDMC Act, 1994 for the year 2010-2011/6197 (*sic*) dated 08/09.02.2011.

8. The petitioner School, in the earlier round, had challenged the constitutional validity of New Delhi Municipal Council (Determination of Annul Rent) Bye-laws, 2009. These Bye-laws were also challenged by several other petitioners and by virtue of a common order dated 10.08.2017 passed by learned Division Bench of this Court, the aforesaid bye-laws were held *ultra vires* NDMC Act. The conclusion and directions are contained in Para-60 to 64 of the judgment which read as under: -

> *"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.*
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> *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.*
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> *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.

64. With the above observations, the writ petitions and pending applications are disposed of but in the circumstances with no order as to costs."

9. Thereafter, NDMC preferred an appeal which was registered as SLP (C) No. 23186-23213/2017 and the Hon'ble Supreme Court, vide judgment dated 22.01.2019, while observing that they were in the agreement with High Court, held those Bye-laws *ultra vires* under the provisions of NDMC Act. It was also observed by Hon'ble Supreme Court that 95% of the assessee were agreeable to pay the tax as per those Bye-laws of 2009 and they had even paid the taxes on that basis and, therefore, while exercising powers under Article 142 of the Constitution of India, the Hon'ble Supreme Court further observed that those assessee who had paid tax as per the bye-laws of 2009, their assessment would not be re-opened. However, it was also specified that these would not apply to the respondents therein i.e. those assessee who were the writ petitioners before this Court and with respect to their cases, directions given by this Court shall prevail.

10. The grievance in the present writ petition is two-fold.

11. Firstly, it was not appropriate on part of the NDMC to have persisted with the same notice under Section 72 of NDMC Act which stands invalidated in view of the specific directions contained in the aforesaid order passed by this Court, which has also attained finality in terms of the directions given by Hon'ble Supreme Court on 22.01.2019. Secondly, even if any such action is assumed to be maintainable, the representations had been given by the concerned school and for the reasons best known to

NDMC, these have not even been considered.

12. To make things worse, it is mentioned in the impugned order that neither the hearing was attended by anyone nor any response had been received till date.

13. Learned counsel for petitioner submits that exhaustive objections were given on 14.03.2011 and were reiterated on 19.12.2015 and on 05.01.2023.

14. Learned counsel for respondent no. 1/NDMC submits that the process of amending NDMC Act is underway and, in all fairness, submits that NDMC Act has not yet been amended.

15. While being conscious of the aforesaid specific directions contained in the aforesaid order dated 10.08.2017 passed by learned Division Bench of this Court and judgment dated 22.01.2019 of Hon'ble Supreme Court, the sole request made by NDMC is now to the effect that petitioner-school may, at least, be directed to make payment of the property tax at the earlier rateable value of Rs. 6,04,900/-.

16. Learned counsel for petitioner, on instructions, submits that property tax calculated on the above-said eralier rateable value of Rs. 6,04,900/- has already been paid. However, by way of abundant caution, it is also undertaken that in case of any arrears, it shall be ensured that such arrears, calculated on the aforesaid rateable value of Rs. 6,04,900/-, are cleared within two weeks from today.

17. Learned counsel for respondent no. 1 also submits that he leaves it to the discretion of this Court to pass appropriate orders in the present writ petition, particularly in view of the aforesaid specific directions given by learned Division Bench and Hon'ble Supreme Court.

18. Quite clearly, there is manifest error on the part of the New Delhi

Municipal Council to take up the same notice under Section 72 of NDMC Act, 1994 and then to dispose of it on the basis of Bye-laws of 2009 which has been held *ultra vires* by the Hon'ble Supreme Court also.

19. Evidently, the impugned order is based on same notice and quite apparently, the value seems to have been assessed as per Bye-laws of 2009, as there is no change in the value.

20. Moreover, the impugned order seems cryptic as it is not decipherable and comprehensible as to on what basis the rateable value was decided as Rs. 3,41,15,300/-. Interestingly, as noted, the above value is the one which was proposed in the notice, which has already been invalidated, and the same rateable value has been recommended, without specifying any reason.

21. The specific directions of this Court as well as of Hon'ble Supreme Court have already been extracted above and since the Bye-laws have been held *ultra vires*, it was not appropriate on the part of NDMC to have assessed rateable value based on those very Bye-laws, without amending NDMC Act.

22. Need I say and reiterate- what can't be done directly, cannot be done incorrectly either.

23. Moreover, NDMC should have considered the representations made by the school.

24. For the reason best known to NDMC, these were not even considered.

25. Aforesaid action is, therefore, not sustainable from any angle whatsoever.

26. Resultantly, the Assessment Order u/s 72 of the NDMC Act, 1994 dated 06.09.2024-A.O. No. T.I-(12)/1679 DD (Tax)/2024 which is based on invalidated notice 2010-2011/6197 dated 08/09.02.2011 and consequential

actions, if any, are quashed and set aside.

27. Needless to say, NDMC would always be at liberty to issue fresh notice under Section 72 of NDMC Act, 1994, while keeping in mind the aforesaid specific directions given by the Hon'ble Supreme Court.

28. The writ petition stands disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

DECEMBER 16, 2024/*dr*