



2025:DHC:11905



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 29th July, 2025

Pronounced on: 24th December, 2025

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CRL.L.P. 18/2019

STATE

(NCT of Delhi)

.....Petitioner

Through: Mr. Utkarsh, APP for the State with
SI Naresh Kumar, P.S.: Anti
Corruption Branch.

versus

SURBHI VARSHNEY

W/o Sh. Neeraj Varshney

R/o E-862, Saraswati Vihar Pitampura,

Delhi-110034

.....Respondent

Through: Mr. Riyaz A. Bhat and Mr. Ujjwal
Bazaria, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CRL.L.P. 18/2019

1. Criminal Leave Petition under Section 378(3) of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*) has been filed on behalf of the Petitioner against the Judgment dated 22.10.2018 of Ld. Special Judge-07 (PC Act Cases of ACB, GNCTD), Tis Hazari Courts, Delhi in FIR No. 43/2007, registered at Police Station Anti-Corruption Branch, Delhi.



2. It is submitted that the impugned judgment is based on imagination, presumptions, conjectures and surmises and therefore cannot withstand judicial scrutiny.
3. Ld. Trial Court erred in ignoring that the accused, while posted as Joint Assessor & Collector, reviewed a finalized assessment order dated 29.03.2004 during the pendency of an appeal under Section 169 of the Delhi Municipal Corporation Act, 1957 (*hereinafter referred to as 'DMC Act'*) Act, thereby committing criminal misconduct under Section 13(1)(d) of the Prevention of Corruption Act, 1988 (*hereinafter referred to as 'PC Act'*) and conferring unlawful pecuniary advantage of approximately Rs.4.5 crores to the Assessee.
4. Ld. Trial Court failed to appreciate that Section 116G(2) of the DMC Act was inapplicable as the assessment had already been finalized and was under challenge; the Order dated 29.03.2004 was neither interlocutory nor pending assessment.
5. It is submitted that there was no authority, direction, or jurisdiction for reopening the assessment when the matter was *sub judice*, resulting in a wrongful loss of Rs. 4,53,61,016/- to MCD. The Prosecution led cogent and sufficient evidence to establish abuse of official position, misuse of authority, and conferment of undue benefit without public interest, which was wrongly discarded.
6. It is submitted that the DMC Act provides no power of review once an appeal is pending, and the Ld. Trial Court failed to appreciate binding precedents governing lack of jurisdiction to reopen assessments.
7. *Hence, the Leave to Appeal is sought.*



8. For the reasons stated in the Leave Petition, the same is allowed and disposed of accordingly.

CRL.A...../2025 (to be numbered)

9. Criminal Appeal under Section 378 of Cr.P.C, has been filed on behalf of the Appellant, State to challenge the Judgment dated 22.10.2018 whereby the Respondent, Ms. Surbhi Varshney has been acquitted for the offence under Section 7/13(d) read with Section 13(2) of the Prevention of Corruption Act (*hereinafter referred to as "PC Act"*) in FIR No. 43/2007, registered at Police Station Anti Corruption Branch, Delhi.

10. The ***brief facts of the case*** are that on the Complaint was made by **Mr. A.K. Ambasht**, Assessor and Collector, MCD, Lajpat Nagar, III, New Delhi, the present FIR was registered. He stated in his Complaint that the **Respondent, Ms. Surbhi Varshney**, Jt. A&C, House Tax Department, Lajpat Nagar, New Delhi, in connivance with the owner, namely, Mr. R.T. Arora, of Plot No. W16, Greater Kailash II and along with the other officers of the House Tax Department, had reassessed the said Property under the Unit Area Method and reduced the total amount of property tax from over Rs.5 Crores to Rs.37.67 Lakhs by wrongfully opening the Assessment case for which she was not competent without the Orders of the Court or the A&C or the Commissioner, MCD. It was stated that the reassessment had been done unauthorisedly by her, to benefit the house owner Mr. R.T. Arora, thereby causing wrongful gain to the owner and wrongful loss to the MCD.

11. It was further stated that the Respondent thus, by abusing her position as a public servant committed the offence under Section 13(1)(d), 13(2) of the PC Act. He further stated that the Order dated 29.03.2004 of Sh. Peeyush Jain, the then Jt. A/C was on merit and final and no one could review the



same except for a typographical mistake or only if there was any Court Order.

12. Further, Mr. R.T. Arora, owner in his Affidavit dated 16.10.2004, had also confirmed that he shall withdraw the Case pending in the Court of Ld. ADJ, filed against the Order dated 29.04.2003, passed by Sh. Peeyush Jain. The Prosecution thus, claimed that it was established that the Respondent had rectified the Order dated 29.03.2004 of Sh. Peeyush Jain, without the Order of the Court while the matter was *sub-judice*.

13. During the investigations, statement of Mr. P.S. Tomar, the then Addl. Commissioner (Revenue) Assessment and Collection Department Headquarters, Lajpat Nagar, New Delhi, was recorded who stated that the Order passed by **Sh. Peeyush Jain**, the then Jt. Assessor and Collector, had decided the House Tax on the 'rateable value method', which was full and final unless and until some new facts were brought on record, the Order could not have been reviewed. No such facts had been brought on record. The Assessing Authority should have reconsidered the Case only after ensuring that the owner of the Property, had deposited 20% of the total outstanding dues. Also, a Site Inspection Report was necessary requirement before any reassessment, could be made. Both these necessary requirements that is site inspection and deposit of 20% of the total outstanding dues, were not complied and thus, the Order of the Respondent, was not as per the guidelines and instructions. She was not entitled to review the Final Order of assessment dated 29.03.2004 and thus, she committed the offences under P.C. Act. The beneficiary, Mr. R.T. Arora expired in the year 2006 and therefore, no further investigations were carried out against him.



14. After completion of the investigations, the Charge-Sheet was filed against the Respondent on 08.10.2013. The cognizance was taken on the Charge-Sheet *vide* Order dated 24.11.2013.

15. The Charges under **Section 13(2) read with Section 13(1)(d) of P.C. Act**, was framed against the Respondent *vide* Order dated 12.02.2014, to which she pleaded not guilty and claimed trial.

16. Prosecution in support of its case, examined 18 Prosecution Witnesses.

17. **PW-1, Mr. U.B. Tripathi**, Secretary, Delhi Jal Board deposed that the ACB had sought a legal opinion in respect of the Order passed by **PW 6 Sh. Peeyush Jain** and the matter was referred to Law Headquarters, MCD Department for clarification/opinion. The legal opinion **Ex. PW-1/A** was obtained and forwarded to ACB.

18. **PW-18, Mr. Pradeep Srivastav**, Chief Vigilance Officer, MCD, deposed that in 2007, he was posted as Chief Vigilance Officer, MCD and had conducted an enquiry into the major bungling, which was going on in the Department in regard to the assessment of the House Tax. He further deposed that the Respondent had wrongly opened the assessment case of the property in question causing huge monetary loss to MCD. His Enquiry Report is **Ex.PW-18/A**.

19. **PW-2, Mr. K.C. Meena**, who was then posted as Deputy Assessor and Collector, South Zone, R.K. Puram, MCD, on receiving the Letter from ACB, inspected the file relating to property in question and informed the Department, as per the record. He further deposed that the decision dated 25.10.2004 was made, without any site inspection.



20. **PW-11, Vimal Kumar**, Assistant Assessor and Collector, MCD, Central Zone, deposed that he had received the file pertaining to the property in question in August, 2004. The file was taken from him in October, 2004 by the then Joint Assessor and Collector/Respondent.

21. **PW-5, Firoz Khan**, Head Clerk deposed that he along with **PW-2, Mr. K.C. Meena**, has inspected the entire records and had found no specific noting/marking mentioning that the tax payer had paid admitted tax, though he had been continuously paying the tax. Furthermore, it was noted that no Site Inspection or Report, was available on the record, though the copy of the noting site, was enclosed for scrutiny. The Office copy of the Reply submitted to the Investigating Officer, is **Ex.PW-2/A**.

22. **PW-6, Sh. Peeyush Jain** deposed about the methodology of fixing the House Tax and explained his Order dated 29.03.2004, **Ex.PW-4/A**.

23. **PW-4, Mr. H.K. Sharma**, DLO, Assessment & Collection Department, DMC, deposed about the procedure for reassessment and also deposed that the Order of Assessment, which has attained finality, cannot be reviewed without the permission of the higher Officer.

24. **PW-8, Feroz Khan**, who was posted in Assessment and Collection Department as Assessor and Collector, proved the Departmental instructions dated 30.09.2003 as **Ex.PW-8/A**. The Circular dated 24.12.2002 is **Ex.PW-8/B** and the Office Order dated 24.02.2003 is **Ex.PW-8/C**. The Office Order dated 27.05.2004 is **Ex.PW-8/D**, which have been issued under his signatures.

25. **PW-9, Mr. P.S. Tomar**, who was looking after the work of Department relating to property tax, deposed that *vide* Letter dated 29.01.2009, certain clarifications were sought from the Assessment and



Collection Department, to which Reply dated 06.02.2009, **Ex.PW-9/A**, was sent. He further deposed that the Respondent, Joint Assessor and Collector, was not competent to reopen the Order dated 29.03.2004 of which had become final.

26. PW-7, Mr. A.K. Ambasht, Chief Vigilance Officer, ONGC & ONGC Group of Companies, had made the Complaint **Ex.PW-7/A**, on which **PW-3, Retd. SI Anand Swaroop**, Duty Officer, made the endorsement and registered the FIR, **Ex.PW-3/A**. The Notice **Ex.PW-7/B** was sent to Mr. R.T. Arora, the owner of the property/Assessee, on 28.09.2007.

27. PW-14, Sunil Taheem, who was posted as Assistant Assessor and Collector, Unified Municipal Corporation of Delhi, deposed that he had sent Reply, **Ex.PW-14/A** to the Investigating Officer in regard to the Order, **Ex.PW-4/A** of Sh. Peeyush Jain and the Order, **Ex.PW-4/B** of the Respondent. He further deposed that the Order of Sh. Peeyush Jain, was on merits.

28. PW-13, Mr. M.S. Hasan, Joint Assessor and Collector in MCD, Delhi, deposed that the Order dated 29.03.2004, **Ex.PW-4/A**, could be best explained by Sh. Peeyush Jain, who had passed the Order. He has stated that he had not reopened such type of Order, **Ex.PW-4/A**, in his entire tenure in MCD.

29. PW-12, ACP Dharamvir Singh was the initial Investigating Officer, to whom the Complaint received from Assessor and Collector MCD, was marked for preliminary enquiry *vide* registration No. 5/07. After the preliminary enquiry, he found a *prima facie* case against the Respondent under PC Act. He made his endorsement dated 31.08.2007, **Ex.PW-12/A** on



the Complaint, *Ex.PW-7/A*, which was handed over to the Duty Officer, for registration of FIR.

30. PW-15, Mr. Anil Verma, who was posted as Secretary (Law) in Law and Legislative Department of Government of MP, granted the sanction *Ex.PW-15/A*, for the Prosecution of the Respondent.

31. PW-10, ACP Jai Prakash Meena as Investigating Officer had collected the requisite documents from the MCD Department.

32. PW-17, ACP Mr. V.S. Meena, who was posted as ACP, Anti-Corruption Branch, on 06.11.2011, deposed about the investigations conducted by him in this FIR.

33. PW-16, Inspector Manoj Kumar, who is the Investigating Officer, deposed about the investigations conducted by him from 19.07.2023, after the registration of FIR.

34. After recording of prosecution evidence, the Statement of the Respondent, was recorded under Section 313 of the Code of Criminal Procedure, 1973 wherein all the incriminating evidence and the documents, were put to her which she denied as incorrect and stated that she is innocent and has been falsely implicated in this Case. She further stated that she had passed the impugned Order, *Ex.PW-4/B*, in accordance with the statutory amendment and in compliance with the administrative/official instructions as were operative then.

35. She in her defence evidence, examined *DW-1, M.S.A. Khan*, who was the Assessor and Collector in November, 2009, who deposed that he had dealt with the assessment of the property in question and stated that No Dues Certificate was issued by him and the Mutation Certificate *Ex.DW-1/C* was issued by the Zonal Officer. He further deposed that he had sought legal



opinion regarding the assessment of the property in question from the Standing Counsel, NDMC and the Special Counsel, MCD. He was also shown the legal opinion dated 31.03.2011 issued by Ms. Madhu Tewatia, *Ex.DW-1/D*. He deposed that it was a general practice in MCD to rectify the Assessment Orders.

36. DW-2, Akash Taneja, who was the Joint Assessor and Collector from February 2002 to March 2005, Secretary Expert Committee on Property Tax Reforms and Special Officer, deposed that the earlier Assessment was rectified on the basis of Unit Area Method by Mr. K. Vijayan, the then Joint Assessor and Collector, which is *Ex.PW-4/DZ*.

37. DW-3, Sanjay Chauhan, UDC in MCD from July 2002 to July, 2008 deposed that he was called by ACB about 5-6 times for the enquiry in the present Case, though his Statement was not recorded.

38. DW-4, Jagbir Singh, LDC, A&C, MCD, South Zone, produced the RTI Application dated 15.04.2015 moved by Mr. Neeraj Varshney and the Reply to the same, which is *Ex.DW-4/A*.

39. DW-5, Naveen Toppo, who was posted as Deputy Assessor and Collector at SDMC, dealt with the RTI Application dated 15.04.2015 and deposed about the Reply *Ex.DW-4/A* was given. He further deposed that the original of *Ex. DW-1/A*, had been seized by ACP and the copies of the same were in the shadow file brought by him. The copy of the Mutation Letter dated 15.04.2015 is *Ex. DW-5/A*.

40. DW-6, Ms. Madhu Tewatia, who was Standing Counsel of NDMC, proved her opinion marked *Ex.DW-1/D*, in regard to the validity of the Assessment Order dated 25.10.2004, in the context of earlier assessed Order dated 29.03.2004.



41. The **Ld. ASJ considered the entire evidence** and observed that in view of the amendments in Delhi Municipal Corporation Act, 1957 (*hereinafter referred to as 'DMC Act'*) and incorporation of Section 116G of DMC Act, many Cases in which assessment had already been made, were reviewed and reassessed and thus, it cannot be said with certainty that the Respondent had acted against public interest or had obtained any pecuniary advantage from the assessee. **The Respondent was given benefit of doubt and was acquitted vide Judgement dated 22.10.2018.**

42. *Aggrieved by the said acquittal, the present Appeal has been filed on behalf of the State.*

43. The **grounds of challenge** are that the evidence adduced on behalf of the Prosecution, has not been properly appreciated. It has not been considered that the Respondent while being posted on deputation to MCD as Joint Assessor and Collector, had passed the Order dated 25.10.2004, in respect of the property in question by reviewing the earlier Order dated 29.03.2004 of Ld. Predecessor, Sh. Peeyush Jain, which had already been assailed by the Assessee himself by way of Appeal under Section 169 of DMC Act which was pending consideration before the Appellate Authority, at the time when the review was done *vide* Order dated 25.10.2004. The offence of criminal misconduct was committed under P.C. Act by the Respondent, by abusing her position as public servant whereby the Assessee, Mr. R.T. Arora obtained pecuniary advantage of Rs.4.5 Crores, which was not in public interest.

44. Section 116G Sub-Section 2 of DMC Act had given a right to the Assessee for getting the tax assessed on the basis of annual value in case the Assessment had not been finalized. However, in the present case, the



Assessment stood finalised by **PW-6, Sh. Peeyush Jain** vide Order dated 29.03.2004 and was under challenge by the Assessee. The Order dated 29.03.2004 of Sh. Peeyush Jain, was not an interlocutory Order. Circular dated 18.03.2004, **Ex.PW-6/DB**, was thus, not applicable to the Case. It has not been considered that the Minutes of Meeting dated 15.04.2004, **Ex.PW-6/DA** is not applicable, because neither the matter was remanded back to the Joint Assessor & Collector to be decided afresh nor was the Order of Sh. Peeyush Jain, *ex-parte* nor was it pending Assessment, on 01.04.2004.

45. Moreover, Office of Joint Collector and Assessor, is a quasi-judicial Authority, which has no inherent power to review unless provided by the express provision of law.

46. The perusal of the documents relating to the assessment of the property in question, revealed that there was no noting in the correspondence file that the admitted tax was paid and no site inspection was carried out by the Respondent, before passing the Order. The Order of Sh. Peeyush Jain had attained finality on merits and there was no occasion for the Respondent, to reopen the Case.

47. She was aware of the pendency of the Appeal before the Court and there was no Order of the Superior Authority or the Court, to reopen the Assessment. The Respondent illegally without any authority, reopened the file thereby causing a loss of Rs.4,53,61,016/- to MCD. She bypassed the rules and regulations of MCD by reopening the assessment Order. Moreover, no record or Note-sheet in the file pertaining to the assessment of the property in question, reflects that any Application was moved by Assessee on 16.10.2004. The undue haste in passing the Order dated



25.10.2004 despite no site inspection, only reflects the arbitrariness and leads to adverse inference about her conduct.

48. Reliance has been placed on Rajiv Kumar vs. State of Uttar Pradesh, decided by the Apex Court on 02.08.2017. Reliance is also made to Runu Ghosh vs. CBI, 2011 SCC OnLine Del 5501. There is no provision in DMC Act, which permits review or to reopen the Assessment Order. Reliance is placed on Lokesh Dhawan vs. Union of India & Ors., 2004 1 (AD) Delhi 165 and Patel Narshi Thakershi & Ors. vs. Shri Pradyumansinghji, AIR 1970 SC 1273.

49. Furthermore, while the Appeal was pending against the Order, the inferior Court had no jurisdiction to entertain the Review Application for which, reliance is placed on Hari Singh vs. S. Seth, AIR 1996 Delhi 21. Reference is also made to State of Delhi Municipal Corporation vs. M.G. Jain wherein it was held that what the Prosecution has to establish is that the Public Officer obtained for someone else - not necessarily by abusing his Office, or using corrupt or illegal means, pecuniary advantage or a valuable thing, which was not in public interest.

50. *A prayer is, therefore, made that the Judgment of acquittal dated 12.10.2018, be set-aside.*

51. *The Respondent in her detailed Reply* had denied all the averments made in the Appeal. It is submitted that the grounds stated therein, are erroneous, misconceived and contrary to the record. The Ld. Trial Court has meticulously considered and appreciated the evidence and given a judicious Judgment. The Order dated 29.03.2004 of Sh. Peeyush Jain, is stated to be a final Order.



52. The testimony of **PW-6, Sh. Peeyush Jain**, is not admissible *per se*. The opinions of third persons are relevant only on 'the point of foreign law' or 'science or art' or 'the identity of handwriting or finger impressions' provided by the person rendering such opinion especially by skilled person. The opinion of a witness in the present Case, in regard to the finality or otherwise of the Order dated 29.03.2004, cannot be termed as admissible.

53. **PW-6, Sh. Peeyush Jain**, author of the Order dated 29.03.2004, nowhere stated that the said Order was final. Likewise, **PW-1, Mr. U.B. Tripathi** only gave a legal opinion, **Ex.PW-1/A**. However, he clarified that it was actually a Letter which he had addressed to Mr. I.D. Shukla, the then DCP, Anti-Corruption Branch.

54. It is further stated that on the issue of payment of admitted tax, the Petitioner ought to have considered the testimony of **PW-2, Mr. K.C. Meena**, who in his examination-in-chief, had stated that there was no specific noting/marking mentioning that the Tax Payer had paid the admitted tax. He further stated that the tax payer continuously kept on paying the tax.

55. Likewise, **PW-5, Firoz Khan** had also testified to the same effect on the issue of spot inspection. The Prosecution has deliberately remained silent about the Meeting held by the Commissioner of MCD on 15.04.2004, the minutes of which was circulated on 23.04.2004, which have been duly proved as **Ex.PW-6/DA**. The Prosecution is not justified in making the allegations of loss to the MCD. The difference in the amount of property tax is on account of the change of the method of *rateable value (RV)* to that of *unit area method (UAM)*.

56. **PW-7, Mr. A.K. Ambasht** admitted having passed a rectification Order dated 07.03.2007, which is **Ex.PW-7/DB**. *Vide* the said Order rateable



value of Rs.1,50,00,000/- (fixed w.e.f. 01.04.2001 *vide* Order dated 27.03.2004) was rectified to Rs.10,07,260/- by following the Unit Area Method.

57. Similarly, Mr. K. Vijayan in his Order dated 05.09.2005 marked **PW-4/DZ**, had revised the rateable value of Rs.1,52,44,800/- w.e.f. 30.08.1999 and Rs.14,81,760/- w.e.f. 01.04.2000 by applying Unit Area Method to Rs.1,81,130/- and Rs.1,38,500/- respectively. The Respondent had thus, fixed the rateable value, according to law.

58. It is further submitted that while the proposition of law as detailed in the Judgments relied by the Prosecution, cannot be disputed but they are not applicable to the facts of the present Case.

59. Furthermore, the Order was passed by the Respondent on 25.10.2004 while **PW-7, A.K Ambasht** made a request for registration of FIR belatedly on 14.05.2007, which got registered on 31.08.2007. There is inordinate delay in registration of FIR.

60. Furthermore, during the pendency of investigations, the Respondent had filed the Writ Petition bearing W.P.(CRL) 366/2009 wherein a Status Report dated 20.05.2009 under the signatures of Sh. K.R. Meena, the then ACP, Anti-Corruption Branch, **Ex.PW-17/D11**, was filed wherein it was stated that other similar cases done by other officers of MCD, were taken on record and examined and it was found that the various proposed RVs were considerably rectified/decreased/brought down later under UAM process and these decreased amounts were not treated as financial loss to the MCD.

61. The Statements of **PW 6, Sh. Peeyush Jain** and **PW 8, Mr. Feroz Khan** amply clarified that the *ex-parte* Order dated 29.03.2004, issued by **PW 6, Sh. Peeyush Jain**, was a rectifiable Order and could be re-opened by



the Respondent, in terms of the Circular dated 18.03.2004, that was issued by **PW 8, Mr. Feroz Khan** himself.

62. After the completion of investigations, the Prosecution had filed a **Closure Report** having found no criminality attributable to the Respondent. On 07.12.2010, the Ld. Special Judge observed that the Closure Report was not satisfactory and directed ACB, for further re-investigation. Perusal of the Order dated 07.12.2010, clearly shows that there was no deliberation about the contents of the Closure Report and the Order was sans any reasons that led the Ld. Trial Court to conclude that the Closure Report was unsatisfactory.

63. The Ld. Special Judge *vide* Order dated 15.03.2012, directed the Investigating Officer, to file a Charge-Sheet, which is contrary to the mandate of law. These directions took away the element of impartiality of the Investigating Agency, which could not help, but somehow file the Charge-Sheet at the cost of obliterating the investigation leading to the filing of the Closure Report and by completely brushing aside its own conclusions as reflected in the Status Report, **Ex.PW-17/D11. Mr. K.C. Meena**, ACP, Anti-Corruption Branch, was cited as a Prosecution witness, but was deliberately dropped as he had filed the Closure Report.

64. The Respondent summoned **Mr. K.C. Meena** as her defence witness, but when he appeared on 25.05.2017, he moved an Application to state that he did not want to depose as a defence witness and as such, he was discharged.

65. It is submitted that the grounds of Appeal, do not show that the conclusions arrived at by the Ld. Trial Court, are perverse or that there is misapplication of law.



66. *Hence, the Appeal is liable to be dismissed.*

Submissions heard and the record perused.

67. *Respondent, Surbhi Varshney* was working as Joint Assessor and Collector, House Tax Department, Lajpat Nagar, New Delhi. The **Charge** against her is that while re-assessing earlier House Tax Order dated 29.03.2004 of **PW-6, Sh. Peeyush Jain**, the then Joint Assessor and Collector, House Tax Department, Central Zone, New Delhi, she violated the Guidelines and Instructions of MCD, thereby causing wrongful loss of House Tax amount of approximately Rs.4.5 crore to MCD and wrongful gain to Sh. R. T. Arora, the assessee, who was the owner of property bearing No.W-16, GK-II, New Delhi.

68. The first material witness was **PW 6, Sh. Peeyush Jain**, who had passed the impugned Assessment Order dated **29.03.2004 Ex.PW-4/A**. Thereafter, the amendment of DMC Act was made in the year 2003 *vide* which Section 116G was inserted w.e.f. 01.08.2003. Relevant part of **Section 116G** read as under:

“.....

(2) Notwithstanding anything contained in sub-section(1), where assessment has not been finalized in respect of a vacant land or covered space of a building or both, on the date of the commencement of the Delhi Municipal Corporation (Amendment) Act, 2003, the assessee may have such land or building or both, as the case may be, assessed on the basis of the annual value.

.....”

69. Section 116G therefore, gave an option to Assessee, whose *assessment for property tax has not yet been finalised under the existing*



system, to get their tax finalised/re-assessed under the new **Unit Area System** (UAS). A **Circular dated 18.03.2004 Ex.PW-6/DB** was issued which gave the option to the Assessee for choosing Unit Area Method (UAM) or previous RV method of assessment, in cases which are remanded back or ex-parte cases or pending Assessment as on 01.04.2004.

70. *It is thus, evident that the subsequent Amendment w.e.f. 01.04.2004, the Assessment Orders made in the earlier regime, could be reviewed on the basis of UAM, provided the property tax has not yet been finalised.*

71. *In the present case, main controversy is whether after the assessment was made by PW-6, Sh. Peeyush Jain on 29.03.2004, was on merit or was ex parte. and whether it had attained finality.*

72. In this context, it would be pertinent to first refer to the testimony of **PW-6, Sh. Peeyush Jain**, who had initially made the house tax Assessment for Sh. R. T. Arora. It was deposed by him that he had made the property tax Assessment Order on 29.03.2004 **Ex.PW-4/A**, with regard to the property in question. He had determined the rateable value at the maximum as per proposal at Rs.2,72,46,240/- w.e.f. 01.04.2000 and he had decided the issue of the tax relating to the property on the basis of *income earning from rent and not from business*. He further deposed that the property owner had claimed that the income from the property was from his self-business, however, on analyzing the facts and the Balance Sheet, it was noted that some portion was occupied by M/s Anant and no details of rent, etc. had been furnished with regard to that portion. The entire basement, first floor and second floor of garage block were either vacant or self-occupied. It was also noted that the tax payer had not filed certain details. He concluded on merits, that the property was in fact, let out on rent and the income from



property was to be assessed as rental income. He also noted that the issue of service charge, which is the income being received from the property, is rental income. *The rateable value was thus, worked out on average rent basis.* Moreover, **it was noted that the Order was open to rectification / modification / review, if anything contrary comes to the knowledge or if other facts came to the light.**

73. PW-6 clarified in his cross-examination, that the *ex-parte* rent was fixed, w.e.f. from 01.04.1996 as Rs.1,23,24,200/-. The rateable value was sought to be increased by Rs.23,46,000/- but was restricted to the maximum, as had been proposed. The Rateable Value could not have been determined over the value in the proposal. The rateable value w.e.f. 01.04.1996 and w.e.f. 01.04.2000 are to the maximum and are based on the Inspector's proposal. He admitted that the complete details, leading to exact determination of RV, were not available, at the time of passing the Order. Consequently, it was fixed on the basis of Inspector's Report.

74. He further explained in his cross-examination by Addl. PP that *"to my understanding ex parte also means a best judgment assessment, when complete details are not available"*.

75. Admittedly, an Appeal was preferred against the said Order dated 29.03.2004 before the Appellate Authority, which was pending.

76. While the Appeal was pending in the Court, the Assessee, *vide* Letter dated 16.10.2004 *Ex.PW-6/DX* addressed to the Respondent, while requesting for finalization / rectification of the Assessment from 01.04.1995 under *Unit Area System*, made a reference that he had filed an Appeal, HTA No.358-362/2004 before the Court of Ld. District Judge, Delhi, which would be automatically cancelled on the passage of fresh Order. He



categorically declared that in case the Assessment was rectified / decided on merits, from 01.04.1995 onwards afresh, he would withdraw the Court case and liquidate the tax liability.

77. On the basis of this Letter and the Circular dated 18.03.2004 *Ex.PW-6/DB* that Respondent opened the case of the Assessee to make the assessment afresh.

78. The *main contention raised* on behalf of the State is that the Assessment Order dated 29.03.2004 had attained finality and therefore, Circular dated 18.03.2004 was not applicable to this Assessment. The entire controversy therefore, is whether the Assessment Order dated 29.03.2004 of Mr. Peeyush Jain was not final as the Appeal was pending and thus, could be reviewed by the Respondent.

79. This aspect was explained in the case of *MCD & Anr. vs M/s Mehrasons Jewelers (P) Ltd.*, C.A. No.6718/2004 decided by the Apex Court of India on 11.08.2015, wherein it was observed that where an Appeal is pending before the District Judge as also in all cases which have not become “*final*,” in the sense that the appellate authority or the High Court or Supreme Court (after 2003), in respect of an assessment of property tax prior to 2003, remands the matter for fresh determination, would all be covered by the language of Section 116G(2).

80. This aspect was also considered in the case of *MCD vs. Major General Inderpal Singh Kahai & Anr.*, LPA 74/2004 decided by Co-ordinate Bench of this Court on 21.04.2010. While interpreting Section 116G as inserted by way of amendment in DMC Act, three situations were contemplated in a given case of assessment, which are as under:



*“Firstly, where an assessment has been **finalized and no appeal is filed against it**, then the assessment will continue to be operative until it is revised.*

*Secondly, where an assessment has been finalized **but an appeal has been filed against it**, then as per the third proviso to Section 169(1) of the DMC Act, the assessee can ask for an assessment on the basis of the annual value of the property.*

Thirdly, where the assessment is not finalized, then as per Section 116G(2) of the DMC Act, the assessee can ask for an assessment on the basis of the annual value of the property.”

81. It was observed that where the assessment has not been finalised, the Assessee would be entitled to the benefit of statutory amendment and have the assessment made on the annual value of the property. *“..... In other words, **even at an appellate stage, an assessee is empowered to ask for a decision on the basis of the annual value of the property.**”*

82. *It is therefore evident from the aforesaid judgments that where an Appeal is pending, it cannot be said that Assessment has become final and therefore, Assessee has a right to seek reassessment.*

83. Indisputably, in the present case, the Appeal was pending before the Ld. District Judge. Therefore, in the light of aforesaid judgments, it cannot be said that assessment Order had attained **finality**, as it was **still open** to the adjudication by Ld. District Judge.

84. In this regard, it would be significant to refer to the testimony of **PW-6, Sh. Peeyush Jain**, who further clarified in his cross-examination that all Orders passed for determining RV are subject to judicial process of law. **He** admitted that there is a settled principle that on the basis of the facts /



information / amendments in law and administrative instructions, subsequent rectification/modification/review can be effected in future, accordingly.

85. Another contention of the prosecution to establish *mala fide* of the respondent was the assertion that she carried out the re-assessment without any Application/request from the Owner. Herein again the reference be made to the cross-examination of **PW-6, Sh. Peeyush Jain** who also clarified that under Section 116G(2), the option is with the Assessee to have his property assessed on the basis of either the old scheme or the new scheme. While he admitted that no such request was made to him by Assessee, but he admitted that the perusal of File shows that such a request was made by the Assessee *vide* Letter dated 16.10.2004, **Ex.PW-6/DX** to his successor Officer/Respondent, who had passed the impugned Order dated 25.10.2004 **Ex.PW-4/B** on the basis of UAM method, without disturbing the principal issue i.e. rent / service charge.

86. It is therefore, brought on record that an Application had been duly made to the respondent, who had considered the case and made re-assessment, on the basis of Amended provision, which was envisaged in the Amendment itself.

87. The Respondent thus, considering that an Appeal was pending, accepted the request of the assessee and made a reassessment on the basis of the annual value of the property. It may be a case where the Respondent may have made a wrong presumption that since the Appeal was pending, she could take up the Letter of the assessee for opening the assessment, rather than the matter being referred back by the Ld. District Judge, but definitely, it cannot be said to be with any ill-intention.



88. Respondent has acted within the realm of law except that she should have waited to the Appeal be remanded by the Ld. District Judge, rather than herself having taken the Application and made reassessment.

89. At this stage, it is important to refer to Section 114 of the Indian Evidence Act, 1862 which reads as under:

114. Court may presume existence of certain facts.—The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

90. Further, the illustration (e) of the Section 114 reads as “*that judicial and official acts have been regularly performed*”. This means that in the ordinary course, the Court is entitled to assume that any act done by a judicial authority or public official has been carried out in accordance with law, following the prescribed procedure, unless there is material to suggest otherwise.

91. The Apex Court in Devender Pal Singh vs. State (NCT of Delhi), (2002) 5 SCC 234 has observed that ***there is a statutory presumption under Section 114 of the Evidence Act that judicial and official acts have been regularly performed. The accepted meaning of Section 114(e) is that when an official act is proved to have been done, it will be presumed to have been regularly done. The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor.***



92. Similarly in Mukesh Singh vs. State (NCT of Delhi), (2020) 10 SCC 120, a Constitutional Bench of the Apex Court on Section 114(e) has observed as under:

11.1. At this stage, reference may be made to Illustration (e) to Section 114 of the Evidence Act. As per the said provision, in law if an official act has been proved to have been done, it shall be presumed to be regularly done. Credit has to be given to public officers in the absence of any proof to the contrary of their not acting with honesty or within limits of their authority....

93. The above decisions make it clear that Section 114(e) of the Evidence Act creates a legal presumption that judicial and official acts are carried out properly and in accordance with law. In other words, once it is shown that an official act has been done, the Court may presume that it was done in the usual and lawful manner, unless there is reliable evidence to show otherwise.

94. Therefore, to say that the Respondent acted in bad faith while reassessing the property in view of the changed circumstances, cannot be accepted, as the presumption under Section 114(e) operates in favour of the regularity and bona fides of her official act, and no credible material has been brought on record to rebut this presumption.

95. The State has tried to impute mala fide by claiming that there was an undue haste insomuch as the Application was moved on 16.10.2004 and the Review Order was passed on 25.10.2004. However, in the case of Runu Ghosh vs. CBI, CRL.A.509/2002, 2011 SCC OnLine Del. 5501, decided by Co-ordinate Bench of this Court observed that the true interpretation of Section 13(1)(d)(iii), in regard to the decision or an act of a public servant



which results in another obtaining pecuniary advantage or valuable thing, to be without public interest, is if that action of the public servant is the consequence of her or his manifest failure to observe those reasonable safeguards against detriment to the public interest, which having regard to all circumstances, it was his or her duty to have adopted. It was further observed that the test and standard indicated were sufficiently objective, having regard to the kind of conduct, it seeks to target, and the objective it seeks to achieve, i.e. responsible action by every public servant.

96. Ld. Special Judge, after referring to the aforesaid Judgment, observed that the present facts were on the right side of the reasonable line that could be drawn insomuch after the amendment and incorporation of Section 116G of DMC Act, the assessee was entitled to get the reassessment done, provided that the assessment has not attained finality.

97. It is not a case that assessee in the present case was not entitled for review, but there is only a technical objection that the matter should have not been entertained on the Application of assessee, but the matter should have been remanded by the Ld. District Judge. It may be a technical fault and a misunderstanding on the part of the Respondent to consider has not a final assessment, since the Appeal was pending and to have reassess the house tax in view of the subsequent amendment.

98. Moreover, **DW-2, Akash Taneja**, who was the Joint Assessor and Collector from February 2002 to March 2005, Secretary Expert Committee on Property Tax Reforms and Special Officer, deposed that the earlier Assessment was rectified on the basis of Unit Area Method by Mr. K. Vijayan, the then Joint Assessor and Collector, which is **Ex.PW-4/DZ**.



99. It has emerged that there were many Assessment Orders which were reviewed, in terms of the amendments.

100. Moreover, **DW-1, M.S.A. Khan**, the Assessor and Collector in November, 2009, deposed that it was a general practice in MCD to rectify the Assessment Orders. He had sought legal opinion regarding the assessment of the property in question from the Standing Counsel, NDMC and the Special Counsel, MCD. He was also shown the Legal opinion dated 31.03.2011 issued by Ms. Madhu Tewatia, **Ex.DW-1/D**.

101. **DW-6, Ms. Madhu Tewatia**, Standing Counsel of NDMC, proved her opinion marked **Ex.DW-1/D**, in regard to the validity of the Assessment Order dated 25.10.2004, in the context of earlier assessed Order dated 29.03.2004.

102. **Pertinently, DW-1, M.S.A. Khan** had further deposed that he had dealt with the assessment of the property in question and No Dues Certificate was issued by him and the Mutation Certificate **Ex.DW-1/C** was issued by the Zonal Officer. Had there been anything amiss or *malafide*, the department would not have cleared the file and permitted the Mutation, had the re-assessment been not in accordance with the Amendment. It is also significant to note that a **Closure Report** had been filed initially as no culpability on the part of the respondent was found. It is only on remand by the Court, was the present Charge Sheet was filed.

103. It is thus, proved that when re-assessment was introduced by law and in many cases re-assessment was indeed done, there is no basis to claim that the act of the Respondent led to any pecuniary loss caused to the exchequer. Moreover, there is not an iota of evidence that her act was motivated by *mala fides* or that she had derived any wrongful gain, which is an essential



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aspect to prove the offence under Section 13 PC Act. The Respondent has been rightly acquitted by the Ld. Special Judge.

104. There is not merit in the present Appeal, which is hereby **dismissed**. Pending Applications, if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 24, 2025/RS