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

+ W.P.(C) 6815/2022, CM APPL. 20682/2022 (Stay) & CM APPL. 32744/2022 (For Directions)

SAROJ TANDON

.....Petitioner

Through: Mr. M.A. Niyazi, Ms. Anamika Ghai, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi & Mr. Arquam Ali, Advs.

versus

**NEW DELHI MUNICIPAL COUNCIL
AND ORS**

.....Respondents

Through: Mr. Arvind Kumar Sharma, Sr. Adv. with Mr. Raghav Alok, Mr. Aniteja Sharma & Mr. Yash Gupta, Advs. for Resp./NDMC.
Mr. Preet Pal Singh, Mrs. Tanupreet Kaur, Ms. Akanksha Singh & Mr. Yash Saini, Advs. for R- 3-6 & 8.

30

+ W.P.(C) 8101/2022, CM APPL. 24595/2022 (Stay)

SAROJ TANDON

.....Petitioner

Through: Mr. M.A. Niyazi, Ms. Anamika Ghai, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi & Mr. Arquam Ali, Advs.

versus

**NEW DELHI MUNICIPAL COUNCIL
& ANR.**

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Through: Mr. Arvind Kumar Sharma, Sr. Adv. with Mr. Raghav Alok, Mr. Aniteja Sharma & Mr. Yash Gupta, Advs. for Resp./



NDMC.

Mr. Preet Pal Singh, Mrs. Tanupreet Kaur, Ms. Akanksha Singh & Mr. Yash Saini, Advs. for R- 3-6 & 8.

31

+ W.P.(C) 8306/2022, CM APPL. 25036/2022 (Stay) & CM APPL. 37176/2022 (delay of 55 days in filing)

JYOTI DHANDA

.....Petitioner

Through: Mr. M.A. Niyazi, Ms. Anamika Ghai, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi & Mr. Arquam Ali, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL
AND ANR

.....Respondents

Through: Mr. Arvind Kumar Sharma, Sr. Adv. with Mr. Raghav Alok, Mr. Aniteja Sharma & Mr. Yash Gupta, Advs. for Resp./ NDMC.

Mr. Preet Pal Singh, Mrs. Tanupreet Kaur, Ms. Akanksha Singh & Mr. Yash Saini, Advs. for R- 3-6 & 8.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

06.02.2025

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1. The writ petitioners seek to mount a challenge to Section 72(1)(f) of the **New Delhi Municipal Council Act, 1994¹** and which essentially enables the respondent-corporation to alter an assessment



already made in respect of a land or building which has been erroneously valued or assessed on account of fraud, mistake or accident.

2. The said provision reads as follows:

“72. Amendment of assessment list.—(1) The Chairperson may, at any time, amend the assessment list—

(a) by inserting therein the name of any person whose name ought to be inserted; or

(b) by inserting therein any land or building previously omitted; or

(c) by striking out the name of any person not liable for the payment of property tax; or

(d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or

(e) by making or cancelling any entry exempting any land or building from liability to property tax; or

(f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident; or

(g) by inserting or altering an entry in respect of any building erected, re-erected, altered or added to, after the preparation of the assessment list:

Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year in which the notice under sub-section (2) is given.”

3. In order to appreciate the challenge which stands principally raised, we deem it appropriate to notice the reliefs which have been claimed in the lead petition being WP(C) 6815/2022:

“(a) Issue appropriate writ order or direction thereby hold the proviso to section 72 read with section 72(f) to be illegal and ultra vires the provisions of NDMC Act 1994 which in effect provides immunity to the assessee for increase of property tax retrospectively even if there is a case of fraud on the part of assessee/assessor on the basis of doctrine "fraud vitiates all actions" and the genuine tax payers like the petitioner suffer and cross subsidize the taxes of others whose Rateable Value is not

¹ Act



fixed in terms of Section 63(1) of the Act but under Unit Area Method of Bye-Laws 2009 (which already has been held ultra vires by this Hon'ble Court and upheld by the Apex Court) or fixed on whims and fancies of Respondent No.1 NDMC and whose rateable value cannot be increased retrospectively due to embargo of proviso to section 72 of the Act read with section 72(f).

(b) Issue appropriate writ order or direction in the nature of writ of mandamus and direct the respondent no.1 NDMC to produce the records and disclose the basis of calculation of Rateable Value with regard to similarly situated shops/ properties in Khan Market and issue appropriate writ or order especially writ of certiorari thereby quashing the impugned Order u/s 70 dated 09.11.2021 and consequential property tax demand/bill dated 03.12.2021 qua the petitioner relating to her shop 49-A Khan Market New Delhi.

(c) Issue appropriate writ order or direction especially writ of certiorari thereby quashing the impugned Order u/s 72 dated 28.03.2022 provisionally proposing to increase the Rateable Value to Rs.98,26,300/- illegally, arbitrarily, selectively and with oblique motive and for issuance of appropriate writ to fix the RV of shop No.49-A Khan Market on the basis of what has admittedly been adopted/applied by Respondent NDMC for proposing and finalising RV of around 95% of the properties under its jurisdiction and for issuance of appropriate writ order or direction especially writ of mandamus to Respondent No.1 NDMC for applying RV uniformly and at uniform rate in accordance with the applicable law/ prescribed method.

(d) Issue appropriate writ order or direction especially in the nature of writ of mandamus directing the NDMC to refund the excess amount of Rs. 37,69,069/- paid on actual basis for the period October 2017- March 2020 along-with 8% interest.

(e) Issue appropriate writ order or direction especially in the nature of writ of certiorari thereby set aside and quash the Council's Resolution No. 34(F-1) dated 26-12-2020 regarding proposed amendment in the NDMC Act 1994 for introduction of the selective Unit Area Method to the extent that the same is in violation of the observation/suggestion/direction of the Hon'ble Division Bench in its judgement dated 10-08-2017 in WP(C) 3348/2010 and connected writ petitions and judgement dated 22-01-2019 in the arising appeals 903-930/2019 passed by the Hon'ble Supreme Court in cases relating challenge of the vires of NDMC Bye Laws 2009 which was held ultra vires.

(f) Issue appropriate writ order or direction thereby constitute an inquiry committee to inquire into the frauds being played by the assessee/assessor in fixing the RV of most of the properties under NDMC jurisdiction on Unit Area Method instead of under section 63 (1) of the Act illegally and against the dicta of the Hon'ble



Supreme Court in Dewan Daulat Rai and STC case and take appropriate legal actions against the defaulting parties and direct the Respondent No.1 /NDMC to fix RV of all the properties strictly in terms of Section 63(1) of the Act and collect the arrears of deficient taxes from all defaulting assesseees including the Respondents 4 to 9 herein retrospectively since the passing of the judgement of the Hon'ble Supreme Court dated 22-01-2019, OR incase the Respondent No.1 NDMC continues to fix RVs of properties across the board on UAM Basis, the petitioner may also be allowed to get RV of her property fixed on the same basis, i.e. multiplicative factors under the Unit Area Method.

(g) Pass any other or further order as this Hon'ble Court may deem fit and proper in. the facts and circumstances of the present case.”

4. As is manifest from the above, the petitioners neither question the competence of the respondents to revise an assessment nor the policy underlying under Section 72(1)(f), which enables the corporation to reassess or reopen an assessment tainted by fraud, mistake or accident. On a reading of Section 72(2) we find that a notice which may come to be issued invoking clause (f) would have to be with reference to an amendment which is proposed to be made in respect of a tax period prior to the commencement of the year in which that notice would have been given.

5. According to Mr. Niyazi, it is this prescription which would regulate the power to reopen and reassess and thus confine reopening to a particular period. However, and as we view clause (a) of the reliefs that are claimed, we find that the same is based solely on a perceived discriminatory procedure adopted by the **New Delhi Municipal Council**² in respect of various shops and establishments in the area in question. Mr. Niyazi would submit that once the respondents find that an assessment is tainted by fraud, mistake or accident, the prescription of a period to which the power to reassess



could extend in terms of the Proviso is liable to be declared unconstitutional. The petitioner also appears to have alleged that the respondent-corporation has been selectively exercising this power and only targeting certain assesses in the area.

6. These and other aspects which were urged before us were also noticed in a detailed order which was passed by us in this writ petition on 16 May 2024. That order reads as follows:

W.P.(C) 6815/2022 and CM Nos.20682/2022 & 32744/2022

1. This court is informed that respondent no.7 has since expired.
2. Mr. Niyazi learned counsel appearing for the petitioner states that it is not necessary to implead the legal heirs of respondent no.7, and he be deleted from the array of parties. An amended Memo of Parties be filed on the next date of hearing.
3. The petitioner has filed the present petition, *inter alia*, challenging the proviso to Section 72 read with Section 72(1)(f) of the New Delhi Municipal Council Act, 1994 (hereafter *the Act*) as *ultra vires* the Constitution of India.
4. It is the petitioner's case that in terms of Section 63(1) of the Act, the property tax has to be assessed on the basis of rateable value determined in terms of Section 63(1) of the Act – the annual rent at which the land and building may reasonably expected to be let from year to year less a sum equal to 10%. However, the New Delhi Municipal Council (hereafter *NDMC*) is, at its whims and fancies, assessing certain shop owners and flat owners in Khan Market, Delhi as well as in Connaught Place, New Delhi on the basis of Unit Area Method (hereafter also referred to as *UAM*), which has been struck down.
5. It is contended that this is a fraud on the statute, where the NDMC has consciously adopted a different method for assessing the property tax payable by similarly placed property owners. Whilst some properties are being assessed in accordance with Section 63(1) of the Act; others are being assessed by UAM in complete disregard of the law.
6. Mr Niyazi, the learned counsel for the petitioner referred to Paragraph nos.7 and 8 of the counter affidavit filed by the NDMC, which are set out below:

² NDMC



“7. Thus, post passing of the Hon’ble Supreme Court judgment, the NDMC; for the purposes of assessment of property tax; assessed property tax for various categories of assesseees in the following manner:

(a) For those assesseees who had challenged the bye laws and whose notices were pending before the pendency of the proceedings before this Hon’ble Court and the Hon’ble Supreme Court - the pending assessments were carried out in terms of section 63 of the NDMC Act.

(b) For those assesseees who had not challenged the bye laws and fell within 95% of the assesseees who had accepted the bye laws and whose assessments were pending till the passing of the Hon’ble Supreme Court judgment were carried out as per the bye laws. (ref. para 87 of the Supreme Court judgment).

(c) Post the Hon’ble Supreme Court judgment - for the assesseees who fell in the 95%, who were previously assessed under the now set aside bye laws - NDMC has continued with the same Rateable Value, till such time a notice under section 72 of the NDMC Act was not issued/decided. In such cases, where there has been a re-assessment pursuant to a notice u/s 72 NDMC has determined the Rateable Value as per the NDMC Act by a revised rateable value.

8. All the above-mentioned steps have been taken by the NDMC keeping in view the large interest of majority of the assesses and being mindful of the fact that till such time an amendment in the NDMC Act takes place, a workable arrangement is put in place, keeping in mind the provisions of the Act as well as the interest of the assesses and the interest of the NDMC.”

7. It is apparent from the above that it is the NDMC’s case that the properties are being assessed by Unit Area Method notwithstanding that the same is not in accordance with the Act, till such time as notices under Section 72 of the Act are issued. Paragraph 8 of the counter affidavit also suggests that no notices under Section 72 of the Act have been issued despite the Chairman, NDMC being fully aware that the property tax being collected on the basis of UAM is contrary to law. The petitioner has also filed a list of rateable values in respect of various shops and flats in Khan Market. The same indicates that the lowest rateable value is ₹600/- and the highest is ₹3,69,36,000/- . Although the rateable value of the properties may differ based on size, location and other factors, such wide variation in rateable value is, *prima facie*, inexplicable.

8. We are *prima facie* of the view that if certain officials of the NDMC have consciously adopted a method of collecting lower tax



than as imposed in law, then the said officials must be held accountable for the loss caused to the exchequer.

9. The Chairman, NDMC shall file a personal affidavit setting out the number of shop owners, who have been assessed to property tax on Unit Area Method after 22.01.2019 – being the date of the decision of the Supreme Court in *New Delhi Municipal Council and Ors. v. Association of Concerned Citizens of New Delhi and Ors.*: (2019) 15 SCC 303, whereby UAM was struck down.

10. Insofar as the petitioner's prayer of quashing the order dated 28.03.2022 under Section 72 of the Act is concerned, it is noticed that the said document is not an order, but a notice under Section 72 of the Act proposing to increase the annual rateable value of the petitioner's shop (Shop No.49A, Khan Market) from ₹64,80,000/- to ₹98,26,300/-.

11. It is the petitioner's case that the rateable value of her shop is sought to be increased on the basis of the rent in respect of a shop in the vicinity of Shop No.49A, Khan Market, New Delhi. But the rateable value of the said shop is much lower than the provisionally proposed rateable value of ₹98,26,300/-.

12. It apposite for this Court to consider this issue in these proceedings. The petitioner is entitled to respond to the said notice and take all objections for proposed increase in the rateable value. Needless to state that the objections raised by the petitioner are required to be considered by the concerned authorities before passing an order revising the rateable value of the petitioner's property. In the event that an order adverse to the petitioner is passed, the petitioner has an efficacious remedy of filing a statutory appeal under Section 115 and 116 of the Act.

13. The petitioner also prays for refund of a sum of ₹37,69,069/- claiming that an excess amount was paid during the period of October, 2017 to March, 2020. The petitioner claims that the rateable value fixed by the concerned authority was higher than the actual rent collected by the petitioner in respect of the shop in question.

14. No such relief can be granted to the petitioner. The petitioner had full notice of rateable value and in the event the petitioner was aggrieved by the fixing of the rateable value, he was required to take appropriate remedies at the said stage. There is no question of this court re-opening assessments which were accepted by the petitioner at the material time, in these proceedings under Article 226 of the Constitution of India.

15. The petitioner also challenged the resolution dated 26.12.2020 passed by the NDMC. The said challenge would be considered on the next date of hearing. In addition, the petitioner also seeks that directions be issued for constituting an inquiry committee to



inquire into the fraud being played by the assessors in fixing rateable values of the properties under the NDMC's jurisdiction on UAM instead of under Section 63(1) of the NDMC Act. The petitioner has flagged an issue as to assessments being made contrary to law. The said question that any further directions are required to be issued in this regard will be considered on the next date of hearing.

16. The interim stay granted on 02.05.2022 is vacated. The present petition is now confined to prayer (a), (e) and (f) as set out in the petition.

17. List on 05.09.2024.

W.P.(C) 8101/2022 and CM No.24595/2022

W.P.(C) 8306/2022 and CM Nos.25036/2022 & 37176/2022

W.P.(C) 8892/2022 and CM No. 26733/2022

18. The present petitions are also confined to the prayers similar to prayers (a), (e) and (f) of W.P.(C) 6815/2022.

19. The interim orders, if any, stand vacated.

20. List on 05.09.2024.”

7. The argument of the power to reopen being discriminatorily invoked and applied is what appears to have led to the Court rendering observations which appear in Paras 7 to 9. However, insofar as the argument of the writ petitioners based on the rateable value being sought to be increased on the basis of rent prevalent in the vicinity and other connected issues was concerned, the Court itself observed that those were issues pertaining to the merits of the proposed assessment and thus clearly not being questions which would merit consideration in the writ petition. This becomes evident from the Court observing that the petitioner would be deemed to have full notice of rateable value and in case it were aggrieved by the fixation of that value, it would be required to take and adopt appropriate remedies. Similar observations appear with respect to the resolution of 26 December 2020, which is sought to be questioned.

8. Similar would be the position which would obtain if it be the



case of the writ petitioners that the rateable value method cannot be applied and that property tax is being computed arbitrarily by adoption of **Unit Area Method**³. These and other questions can be easily canvassed and urged in the proposed assessment proceedings.

9. However, and when we revert to the reliefs which are claimed, we find no merit in the challenge which stands raised to Section 72(1)(f) read along with its Proviso for the following reasons. The statute, in unambiguous terms, seeks to regulate and guide the power to reopen a concluded assessment in case it be found that the original assessment was tainted by fraud, mistake or accident. These factors, which are spoken of, are clearly germane to the power to reopen and which may be sought to be exercised to alter a concluded assessment. The Proviso to Section 72(1)(f) in fact seeks to modulate the power to reopen a concluded assessment by restricting that power to a period prior to the commencement of the year in which a notice under sub-section (2) may have been issued. We find that the said Proviso is clearly fair and acts as an inbuilt measure which guides the power to reassess and reopen and restrains the respondents from seeking to review and alter assessments that may have been made way back in point of time.

10. The power to restrict the period which could be reopened is also not unique to the Act since similar restrictions are found in various other direct and indirect tax legislations. While it is true that fraud unravels all acts, the power is also available to be invoked in cases of mistake or omission. It is perhaps bearing the aforesaid factors in mind that the Legislature has sought to demarcate the period which

³ UAM



would be thrown open to reassessment. Absent such a stipulation, the respondents could, hypothetically speaking, reopen cases which may have attained finality decades before the issuance of the notice referable to that provision. The underlying legislative policy appears to be to restrict the period which could be subjected to reassessment. The provision, thus far from being manifestly arbitrary, is demonstrative of a fair and a balanced measure and approach which the Legislature adopted.

11. In any case, we find ourselves unable to countenance what benefit could possibly flow to the writ petitioners basis the submissions which were addressed with respect to the validity of Section 72(1)(f). This since any assessment or reassessment that may be undertaken in the case of the writ petitioners would itself be subject to the respondents establishing that an assessment already made suffered from the vice of fraud, mistake or accident and that reassessment would stand confined to the period that would come to be identified in accordance with the Proviso. Regard must also be had to the fact that none of them either assert that the period for which reassessment is proposed to be invoked in their cases violates Section 72 nor could they possibly benefit from a larger period being thrown open.

12. Even if the submission had been that the power has been discriminately invoked or that some assesseees have not been subjected to such an exercise, that too would not convince us to entertain the instant challenge bearing in mind the indubitable position that Article 14 of the Constitution does not have a negative dimension.

13. We also find no justification to entertain these writ petitions,



which themselves are in respect of provisional notices proposing an increase in the rateable value. These and other aspects pertain to the merits of an assessment that may be undertaken by the corporation. The same thus leaves it open to the petitioner to raise all contentions that may otherwise be available on merits. The Court, in terms of its order of 16 May 2024 has already negated the prayer for refund holding it to be wholly unmerited.

14. Insofar as the larger questions that came to be noticed by the Court in its earlier order of 16 May 2024 are concerned, and which also stand mirrored in what the Court observed in Paras 8 to 10, we find that the same could be adequately addressed in appropriate proceedings and which may be instituted independently. This more so since none of those issues have any bearing or remote connection to the principal challenge that stood raised and which was confined to the validity of Section 72(1)(f).

15. In view of the above, we find no merit in the challenge as raised in the instant writ petitions. All other rights and contentions of respective parties pertaining to the proposed reassessment are kept open.

16. The writ petitions consequently fail and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 06, 2025/kk