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

\+ W.P.(C) 12686/2024 and CM APPL. 52844/2024

SH SURINDER BAJAJ & ANR. .....Petitioners

Through: Mr. Dinesh Agnani, Senior Advocate with Mr. Nikhil Chawla and Mr. Om Ram, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL .....Respondent

Through: Mr. R.K. Dhawan, Standing Counsel with Ms. Nisha Dhawan, Mr. V.K. Teng, Mr.Raghav Alok, Mr. Naman Kumar Thakur, Ms.Anwesha Singh, Mr. K.R. Madhar and Mr.Jyoti Sahai Joshi, Advocates for Respondent/NDMC.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

<u>O R D E R</u>

% **14.01.2025**

1. This writ petition is preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking the following relief:

> *"a. Issue a Writ of Mandamus/Certiorari or any other appropriate Writ/Order and/or directions, thereby, directing the Respondent to immediately comply with the Judgment of this Hon'ble Court dated 06.04.2018 and remove the erroneous dues raised against the Petitioners for the period prior to 31.03.2009 and further directing the Respondent to abide by its undertaking given before the Hon'ble Patiala House Court and to the Petitioners, and grant vacancy remission to the Petitioner for the period the property in question was lying vacant, i.e., 01.04.2011 to 07.12.2012, 01.10.2015 to 31.05.2017 and from 09.11.2018 to 27.03.2021."*

2. It is the case of the Petitioners that Jewels India Hotels Private Limited ('Jewels India') was the owner of property bearing Nos.301, 302A, 303, 304 and 305 on the third floor of Onkar Deep Building, Connaught Place with a built-up area of 2,300 square feets ('subject property'). By an agreement to sell executed on 26.03.2009, Petitioners purchased the said property on representations made by Jewels India that the house tax, lease money, ground rent, misuse charges, penalties, water and electricity charges, etc. had been paid by the company and in fact under the terms of the agreement to sell, it was agreed between the parties that Jewels India shall be responsible for any dues payable prior to the date of execution of the agreement to sell.

3. It is averred in the petition that agreement to sell was duly registered after Jewels India assured that property had been transferred in its favour and was duly mutated in the records of New Delhi Municipal Council ('NDMC') and that company was in possession of letter dated 18.03.2009 issued by NDMC confirming the mutation in its name. Jewels India also informed the Petitioners that there were no dues or arrears pending with respect to the property. After registration of the agreement when Petitioners approached NDMC, they were informed that there were outstanding arrears of property tax till 2008, upon which Petitioners sent a letter dated 12.06.2010 to Jewels India to clear the outstanding property tax but no payment was made. Shortly thereafter Petitioners received mutation order dated 07/13.09.2010 whereby they were informed that mutation will be valid only after payment of arrears of property tax amounting to Rs.11,43,393/-. It was also revealed that a notice dated 30.03.2005 had been issued under Section 72 of New Delhi Municipal Council Act, 1994 ('NDMC Act')

pertaining to revision in rateable value from Rs.1,29,600/- to Rs.2,99,000/- applicable from 01.04.2004, which notice was never disclosed by Jewels India.

4. It is averred that having no option, Petitioners filed a suit being CS No.122/2014 against Jewels India and NDMC praying for a decree of declaration that the dues claimed by NDMC prior to the execution of agreement to sell dated 26.03.2009 be paid by Jewels India and a decree of mandatory injunction be passed in favour of the Petitioners directing Jewels India to clear arrears of property tax and pay the same to NDMC or to pay the amount of Rs.11,43,393/- to the Petitioners so that it can be paid to NDMC. The suit was decreed in favour of the Petitioners vide judgment dated 31.03.2016 and the Trial Court held that payment of dues claimed by NDMC with respect to the suit property prior to 26.03.2009 was the obligation of Jewels India in terms of Clause 11 of the agreement and Jewels India was directed to pay the said amount to the Petitioners along with interest. Appeal was filed by Jewels India against the said judgment being RFA 76/2017 wherein the judgment was upheld with some modification and this Court held that NDMC shall not take steps for recovery of arrears of property tax from the Petitioners. It is stated that despite the decree of the Trial Court upheld by this Court neither Jewels India paid the decretal amount nor NDMC is willing to mutate the property in the name of the Petitioners.

5. Learned Senior Counsel for the Petitioners submits that Petitioners were *bona fide* purchasers of the subject property and were unaware of any arrears of property tax outstanding at the time of execution of agreement to sell. In any event, after the judgment of the Trial Court declaring that

payment of outstanding arrears for the period prior to 26.03.2009 was the obligation of Jewels India and the judgment being upheld by this Court, there is no justified reason for NDMC to reject the prayer of the Petitioners to remove the dues of property tax against the subject property and/or against the Petitioners as this is prejudicing their rights as *bona fide* purchasers and owners of the subject property.

6. The second grievance ventilated in this petition is with respect to vacancy remission as the subject property was lying vacant from 01.04.2011 to 07.12.2012, 01.10.2015 to 31.05.2017 and from 09.11.2018 to 27.03.2021. It is argued that under Section 110 of NDMC Act if any building has remained vacant and unproductive of rent for 60 or more consecutive days, NDMC is under an obligation to remit or refund as the case may be, two-thirds of such portion of the property tax assessed on the rateable value thereof as may be proportionate to the number of days for which the property remained vacant, however, vacancy remission was not granted to the Petitioners and in fact till date the NDMC has not even passed any order in this regard. It is thus, submitted that a direction be issued to NDMC to consider the request of the Petitioners for vacancy remission and pass an order.

7. Mr. Dhawan, learned Standing Counsel for NDMC, on the other hand, fairly does not dispute that there is a decree in favour of the Petitioners declaring that payment of arrears of property tax for the subject property for period prior to 26.03.2009 is the obligation of Jewels India and this Court while upholding the judgment and decree has directed NDMC not to recover the arrears from the Petitioners, however, it is urged that property tax is charged on land and building and till date, an amount of Rs.11,43,393/- is

still outstanding against the subject property. Neither the Trial Court nor this Court have written-off the dues against the subject property and in case the prayer of the Petitioners is acceded to, NDMC will not be able to recover the said property tax.

8. As for the vacancy remission, it is submitted that he has no instructions if any order has been passed so far by the NDMC, however, if an order has been passed, the same shall be communicated to the Petitioners but if no order has been passed, the matter will be examined and an order will be passed within the time granted by this Court.

9. Heard learned Senior Counsel for the Petitioners and learned Standing Counsel for NDMC.

10. Indisputably, an agreement to sell was executed between the Petitioners and Jewels India on 26.03.2009 with respect to the subject property. At the time of execution of the agreement, Jewels India failed to disclose that there were outstanding dues of property tax against the property and as a consequence thereof, arrears of property tax are outstanding against the subject property. Petitioners succeeded before the Trial Court and a decree was passed in their favour declaring that the obligation to pay the dues of the NDMC prior to date of execution of the agreement to sell will be of Jewels India and the company was directed to pay a sum of Rs.11,43,393/- to the Petitioners with interest @ 9% per annum so that the Petitioners could pay the amount to the NDMC. Operative part of the decree is as follows:

> *"In view of the finding on issues no. 2, 3 and 4, this suit of the plaintiff is decreed and decree of declaration is passed in favour of plaintiff and against the defendant no. 1 and 2 that the dues claimed by the defendant no. 3/NDMC vide letter/order dated 07-13/09/2010 with respect to the suit property prior to the date of execution of the agreement to sell dated*

26.03.2009 is the obligation of the defendant no. 1 and 2 in terms of clause 11 of the agreement to sell dated 26.03.2009 and defendant no. 1 and 2 are directed to pay an amount of Rs. 11,43,393/- to the plaintiffs along with interest at the rate of 9% per annum so that they can pay the same to the defendant no. 3. Cost of the suit is also awarded to the plaintiff. Decree-sheet be prepared. File be consigned to record room."

11. Jewels India filed an appeal against the judgment and decree dated 31.03.2016 being RFA 76/2017 before this Court. The judgment and decree was upheld with some modification and Court directed that NDMC shall not take steps for recovery against the Petitioners for any dues prior to 26.03.2009, however, Jewels India and NDMC may avail their respective remedies in accordance with law, if there is any outstanding notice. Relevant part of the judgment of this Court dated 06.04.2018 is extracted hereunder for ease of reference:

"5. Thus, the only question is whether the NDMC had any dues as on 26th March, 2009 when the Defendants made the entire payment of Rs.15,60,145/- and obtained No-Due Certificate. Obviously, if the NDMC issued a certificate on 27th March, 2009 and collected the entire payment, an alleged notice dated 31st March, 2005, cannot be resurrected in this manner after the property is sold, resulting in a dispute between the parties. Defendants submit that this alleged notice dated 30th March, 2005 was never served upon the Defendants and till date has not been issued to the Defendants.

6. Under these circumstances, it is clear that any liabilities prior to 26th March, 2009 would be that of the Defendants. If there is any alleged notice which has been served by NDMC in accordance with law or adjudicated upon, the same shall be open to challenge by the Defendants whose remedies are left open qua the said notice. Insofar as the Plaintiffs are concerned, the dues that are liable to be paid are only those that relate to the period subsequent to 26th March, 2009. NDMC shall not take steps for recovery against the Plaintiffs for any alleged dues prior to 26th March, 2009. However, Defendants and NDMC may avail their respective remedies in accordance with law, if there is any outstanding notice.

7. Impugned judgment/decree is modified in the above terms.

8. Any amount deposited by the Defendants in this Court shall be refunded to them along with the interest, if any, accrued thereon."

12. From a conjoint reading of the decree and judgment of the Trial Court and the judgment of this Court dated 06.04.2018, it is clear that the obligation to clear the outstanding arrears of property tax on the subject property prior to 26.03.2009, when the agreement to sell was executed between the Petitioners and Jewels India, is on Jewels India and no recovery can be made against the Petitioners for these outstanding arrears. Petitioners are right in their submission that with the decree in their favour, they cannot be saddled with the liability of the property tax and therefore, NDMC should rectify its record to remove the outstanding arrears against them while NDMC is right to the extent that arrears cannot be waived against the subject property. In light of this, after canvassing arguments, Mr. Agnani, learned Senior Counsel for the Petitioners submits that it would suffice, at this stage, if NDMC is directed to issue an office order in favour of the Petitioners certifying that they are not liable to pay any outstanding dues towards arrears of property tax for the period prior to 26.03.2009 in terms of the judgment and decree passed by the Trial Court in CS No.122/2014 and judgment of this Court dated 06.04.2018 in RFA 76/2017.

13. Accordingly, this writ petition is disposed of with a direction to NDMC to issue an office order in favour of the Petitioners certifying that Petitioners are not liable to pay arrears of property tax in respect of the subject property for the period prior to 26.03.2009, i.e. the date of execution of agreement to sell between the Petitioners and Jewels India in terms of the aforementioned judicial orders. Office order/certificate shall be issued by NDMC within three weeks from today along with the 'No Dues Certificate' in the name of the Petitioners. Insofar as claim of the Petitioners for vacancy remission is concerned, the same shall be examined and an order shall be

passed in this regard within four weeks from today, if not already passed under Section 110 of the NDMC Act, in accordance with law. The order so passed shall be communicated to the Petitioners. In case an order has already been passed, copy will be forwarded to the Petitioners and needless to state that Petitioners will be at liberty to take recourse to legal remedies, if aggrieved. However, if the Petitioners are held entitled to vacancy remission, steps will be taken by NDMC to remit/refund the amounts as due and payable to the Petitioners expeditiously.

14. Pending application also stands disposed of.

JYOTI SINGH, J

JANUARY 14, 2025
B.S. Rohella