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

+ LPA 123/2025 & CM APPLs. 9819-21/2025

SHRI SURENDER KUMAR GUPTA
THROUGH HIS SPA SH. RAJIEVE GUPTA ...Appellant

Through: Mr. D.K. Rustagi, Mr. J. Karan
Malhotra, Mr. Mohit Nagpal, Ms.
Anjali Pandey, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL
THROUGH CHAIRPERSON & ANR ...Respondents

Through: Mr. Sanjay Sharma, ASC, Mr.
Ravi K. Chandna, Asst. SC, Mr.
Malyaj Sehgal, Mr. Nischal
Aggarwal, Advocates for NDMC.

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Date of Decision: 18th February, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGEMENT

TUSHAR RAO GEDELA, J : (ORAL)

1. Present letters patent appeal has been filed assailing the impugned judgement dated 22.10.2024 passed by the learned Single Judge dismissing the writ petition bearing W.P.(C) No.14821/2024 titled *Surender Kumar Gupta vs. New Delhi Municipal Council & Anr.* filed by the appellant, in view of the alternate and efficacious remedy available under the statute.



2. It is the case of the appellant that he is the sole successor of the subject property i.e., Ground Floor, First Floor and Second Floor on a commercial-cum-residential plot situated at 84, Janpath, New Delhi-110001. He claims to have entered into an Agreement to Sell dated 17.05.2022 with one Mr. Gurcharan Singh Bhatia, in respect of part of the subject property. It is stated that the appellant agreed to sell the said portion on specific representation and assurance of Mr. Bhatia to have the requisite know-how, resources to get long pending property tax liability with NDMC duly settled for the entire built-up portion on the Ground Floor and First Floor in the subject property.

3. According to the appellant, part consideration of Rs.1.75 crores out of the total consideration of Rs.5.25 crores fixed under the said Agreement was retained by Mr. Bhatia to resolve and settle the property tax obligations in respect of the entire property. It is the claim of the appellant that the proposed purchaser has manipulated documents resulting in assessment of lesser area so as to make profit out of the deduced amount for this purpose. It is the case of the petitioner that the respondents/NDMC *vide* impugned rectification order dated 10.08.2022, wrongly assessed the area of the subject property as 6389 sq. ft. as against the actual entire area of the subject property admeasuring 11,763.81 sq. ft.

4. It is further stated that a civil suit was filed by the appellant being C.S. No.450/2023 titled '*Surender Kumar Gupta Vs. Gurcharan Singh Bhatia*' pending before the learned ADJ, Patiala House Court, seeking mandatory injunction and in the alternative, cancellation of the sale



documents for want of fulfillment of the obligations of the proposed purchaser in regard to the payment of the entire property tax in respect of the subject property.

5. The appellant also claims to have submitted representations to respondent no.1 on 03.07.2023 and 11.09.2024 for correction of the assessment of the area of the subject property and if required, to carry out inspection; and further requesting to not carry out any mutation in favour of Mr. Bhatia in respect of the subject property. However, no response was received from the respondents, constraining him to file the underlying writ petition.

6. *Vide* impugned order dated 22.10.2024, as regards prayer (i) for direction to the respondents to correct the area of the subject property to 11,763.81 sq. ft. instead of 6389 sq. ft., as recorded in the impugned rectification order dated 10.08.2022 passed by respondent no.2, the learned Single Judge noted that the appellant is free to avail of the appellate remedy available under Section 115 of the New Delhi Municipal Council Act, 1994 (hereafter the '*Act*'); and as regards the prayer (ii) of the underlying writ petition regarding direction to respondents to mutate the subject property in favour of the appellant, the learned Single Judge has noted that the appellant may take necessary steps in the civil suit filed by the appellant against Mr. Gurcharan Singh Bhatia (the proposed purchaser) in respect of transactions between the parties which is pending before the District Court, Patiala House.

7. Mr. Rustagi, learned counsel appearing for the appellant has made submissions similar to the ones raised before the learned Single Judge.



Additionally, he submits that the appellate remedy under Section 115 of the Act would be confined only to the challenge to the levy or assessment order of tax and not to the issue sought by the appellant in the underlying writ petition, i.e. to correct the area of subject property to 11,763.81 sq. ft. instead of 6389 sq. ft. as recorded in the rectification order dated 10.08.2022 impugned therein. According to him, the learned Single Judge overlooked the crucial issue while dismissing the underlying writ petition.

8. It is further contended that so far as the rejection of prayer (ii) sought in the underlying writ petition is concerned, learned Single Judge has erroneously taken into consideration that since a civil suit has been filed by the appellant against Mr. Gurcharan Singh Bhatia, the proposed purchaser, the writ petition seeking mutation of the subject property in the sole name of appellant would not be maintainable, is incorrect both on fact and on law. According to him, the direction to respondent no.1 to mutate the property solely in the name of appellant cannot be sought by the appellant in a suit and has to be sought solely by way of writ petition under Article 226 of the Constitution of India. He emphasizes that since this right accrues to the appellant against an instrumentality of the State, which qualifies within the definition envisaged in Article 12 of the Constitution of India, the underlying writ petition was maintainable and ought to have been adjudicated. In view of the aforesaid submissions, learned counsel for the appellant prays that the impugned order be set aside and the matter be remanded back to the learned Single Judge for consideration on merit.



9. We have heard learned counsel for the parties, examined the impugned judgment and the records of the case.

10. We find from the records that the rectification order dated 10.08.2022 was passed on a request of the appellant seeking rectification of the assessment orders passed *qua* the property in question. Section 115 of the Act stipulates that an appeal would be available against the levy or assessment of any tax under the Act. It is apparent that any proceeding ancillary to such order of assessment of tax would also fall within the ambit of Section 115. Moreover, any change in the area of which the tax assessment is to be determined, would also have a direct impact on the tax liability itself. Thus, looked at it any which way, the grievance of the appellant can be addressed by way of preferring an appeal under Section 115 of the Act. Thus, the learned Single Judge has rightly disallowed the prayer and relegated the appellant to the efficacious and alternate appellate remedy available under the Act. We concur with the said reasoning.

11. So far as the prayer (ii) is concerned, admittedly, a suit seeking mandatory injunction in respect of the subject property and in the alternative, revocation/recission of Agreement to Sell dated 17.05.2022 and other related documents, has already been filed by the appellant and is pending adjudication. It is apparent from the record that there is a dispute with regard to the Agreement to Sell and other documents executed between the appellant and Mr. Gurcharan Singh Bhatia and the same would have an impact upon the prayer made by the appellant seeking direction to the respondents to mutate the subject property solely



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in his name. Thus, the issue of mutation being intrinsically intertwined with the facts involved in the aforesaid suit, the underlying writ petition would clearly not be maintainable. For this proposition too, we are with the reasoning of the learned Single Judge. Thus, for the above reasons, the appeal is unmerited.

12. In view of the above observations, the present appeal, alongwith the pending applications, is dismissed.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

FEBRUARY 18, 2025/rl