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

% *Date of Decision: 07th February, 2025*

+ W.P.(C) 6064/2017 and CM APPL. Nos. 25210/2017 and 36210/2019

THE MOTOR & GENERAL FINANCE LTDPetitioner

Through: Mr. Anil Sapra, Senior Advocate with
Mr. Sunil Magon and Mr. Shyam Gaur,
Advocates.

versus

NEW DELHI MUNICIPAL COUNCILRespondent

Through: Ms. Kanika Singh, Mr. Shubham
Jaiswal and Mr. Nikhil Saini, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition is preferred on behalf of the Petitioner challenging Bye Law 4 of the New Delhi Municipal Council Act, 1994 ('NDMC Act') with respect to the Occupancy Factor G-2 wherein residential properties owned and occupied by the company have Factor 3 for computation of House Tax and are not treated as self-occupied as against residential properties owned by any other person and self-occupied having Factor 1 and Factor 1.5 as per the size of the plot. Challenge is also laid to the Assessment Order dated 30.05.2017 passed under Section 72 of NDMC Act as also consequential demand of Rs.1,82,16,007/- raised vide bill dated 12.06.2017 for the period 01.04.1999 to 31.03.2017 with respect to premises bearing No.50, Golf Links, New Delhi (hereinafter referred to as the 'subject



property’).

2. It is averred in the writ petition that Petitioner purchased the subject property on 03.03.1952 and a building was constructed thereon comprising of Ground Floor and First Floor between the years 1956-57. No additions/alterations were made in the premises till 1994. On 07.06.1999, construction was carried out on the Second Floor, due to which the Assessing Authority of NDMC revised the existing Rateable Value (‘RV’) from Rs.47,085/- to Rs.2,57,085/- less 10% w.e.f. 1998-99 and 1999-2000 on cost basis vide Assessment Order dated 07.06.1999. NDMC issued notice under Section 72 of NDMC Act on 06.03.2000 to the Petitioner proposing to amend the list for the year 1999-2000.

3. It is further averred that Petitioner responded to the notice on 16.03.2000. By a notice under Section 77 of the NDMC Act, NDMC sought certain information, which was furnished by the Petitioner on 11.10.2000 and 03.01.2001. On 13.02.2001, NDMC issued another notice under Section 72 of the NDMC Act proposing to enhance the RV of the subject property from Rs.2,57,085/- less 10% to Rs.59,12,640/- less 10% on the ground that Petitioner failed to furnish copies of Balance Sheets and Profit and Loss Accounts and construed the subject property as not self-occupied.

4. It is stated that Petitioner preferred its objections to the notice on 13.03.2001 and filed a detailed reply on 30.09.2013. Personal hearings were granted in the meantime to the Petitioner and finally, vide the impugned Assessment Order dated 30.05.2017, received by the Petitioner on 18.06.2017, RV was revised to Rs.2,36,500/- w.e.f. 01.04.1999 and Rs.43,01,300/- w.e.f. 01.04.2000 deciding notices dated 06.03.2000 and 13.02.2001 issued under Section 72 of the NDMC Act. Consequential



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demand of Rs.1,82,16,007/- was raised vide bill dated 12.06.2017. This led to the Petitioner filing the present writ petition.

5. Mr. Anil Sapra, learned Senior Counsel appearing for the Petitioner submits that the impugned Assessment Order deserves to be set aside on the ground that it was passed on 30.05.2017, i.e. after a period of 16 years from the date notices were issued under Section 72 of the NDMC Act, amongst other grounds. In support, reliance is placed on the judgment of the Division Bench of this Court in *Ved Marwah v. New Delhi Municipal Council (NDMC) and Ors., 2018 SCC OnLine Del 8096*, wherein the Court held that finalisation of Assessment List or its revision after a delay of over 12 years cannot be countenanced as it was clearly unreasonable and arbitrary and called for interference.

6. Ms. Kanika Singh, learned counsel appearing for NDMC submits that the writ petition is not maintainable as the impugned Assessment order is appealable under Section 115 of NDMC Act. In so far as the alleged delay in passing the order is concerned, it is not the case of the Petitioner in the writ petition that delay in concluding the assessment was on part of NDMC and even otherwise being a disputed question of fact, this aspect cannot be adjudicated in a writ petition as held by another Division Bench of this Court in *V.P. Aggarwal v. New Delhi Municipal Council, 2023 SCC OnLine Del 7505*.

7. Heard learned Senior Counsel for the Petitioner and counsel for NDMC.

8. Indisputably, the impugned Assessment Order dated 30.05.2017 has been passed pursuant to notices dated 06.03.2000 and 13.02.2001 issued under Section 72 of the NDMC Act. Learned Senior Counsel for the



Petitioner is right in placing reliance on the judgment of the Division Bench in *Ved Marwah (supra)*, wherein it was ruled that unreasonable delay in finalizing assessments cannot be countenanced in law and no statutory authority can be given an open-ended power to decide and adjudicate beyond a reasonable time. The Supreme Court in *State of Punjab and Others v. Bhatinda District Cooperative Milk Producers Union Ltd., (2007) 11 SCC 363* and *Delhi Development Authority v. Ram Prakash, (2011) 4 SCC 180*, held that even if a Statute does not indicate any limitation or a fetter in point of time requiring a statutory authority to adjudicate or complete proceedings with respect to show cause notices issued, nevertheless, such statutory adjudicatory proceedings should be completed within reasonable time and final orders made.

9. However, there is also merit in the contention of NDMC that a writ Court should not ordinarily enter into disputed questions of fact including the question as to which of the rival parties is responsible for the delay in passing an Assessment Order, while exercising power of judicial review. This is a self-imposed restraint on a writ Court and unless there are compelling or extraordinary circumstances, adjudication on questions of fact is best left to the adjudicating authority, more particularly, where there is a statutory remedy of appeal available to a party.

10. Division Bench of this Court in *V.P. Aggarwal (supra)*, as rightly flagged by counsel for NDMC, has held that adjudication of the question as to whether assessee or the authority is responsible for delay will involve deciding disputed questions of facts, which cannot be done in writ proceedings and assessee is required to raise the objections before the Appellate Authority. It was also held that NDMC Act provides a complete



machinery for assessment of tax and therefore, assessee cannot be permitted to abandon that machinery and invoke jurisdiction of the High Court under Article 226 of the Constitution of India. Be it noted that before the Division Bench, Petitioner had raised similar contentions as raised by the Petitioner before this Court and this is captured in paragraph 2 of the judgment.

Relevant paragraphs of the judgment are as follows:-

*“2. Learned counsel for the petitioner states that the proceedings initiated pursuant to the impugned notice dated 25th March, 2013 and assessment order dated 08th February, 2023 are bad in law as the same are barred by limitation and in violation of Section 72 of the NDMC Act. He further states that the impugned orders and demand letters have been issued to the petitioner after an inordinate delay of ten years and as such are beyond the period of limitation. He submits that as per proviso to Section 72(1) of the NDMC Act, no person shall be 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. He states that vide the aforesaid notice dated 25th March, 2013, the respondent had intended to amend the rateable value for the subject property to Rs. 33,69,600/- from 01st April, 2010 to 14th November, 2010 and from 15th November, 2010 to 14th November, 2013, which is retrospective in nature and thus, not permissible. In support of his contentions and submissions, he relies upon the judgment of this Court in **Ved Marwah vs. New Delhi Municipal Corporation & Ors., 2018 SCC OnLine Del 8096.***

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“7. This Court in the judgment of Ved Marwah (supra) has held that the finalisation of the assessment proceedings after a delay of more than ten years was unreasonable and thus, liable to be set aside. In such cases of inordinate delay in finalisation of assessment proceedings what needs to be seen by the appellate authorities is that on whose account the proceedings were delayed. In cases where the assesseees have fulfilled their obligations by submitting their objections and supporting documents to the authorities and it is the authorities who are delaying the adjudication process, then the assesseees cannot be penalised for inaction of the authorities. However, this adjudication involves deciding disputed questions of facts, which cannot be done by this Court in writ proceedings. The petitioner is thus, required to raise his objections before the appellate authorities.

8. This Court is also of the opinion that as the NDMC Act provides a complete machinery for assessment of tax, assessee is not permitted to



abandon that machinery and invoke jurisdiction of High Court under Article 226. This Court is of the view that the present case does not fall under the exceptional ground on which a writ petition is maintainable at this stage in tax matters.

9. Consequently, considering that the assessment order has already been passed in the present case, the contentions and submissions advanced by the petitioner must be agitated before the Appropriate Authority.

10. Accordingly, the present writ petition is dismissed with liberty to the Petitioner to raise all its contentions and submissions before the Appellate Authority. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open.”

11. In the present case, there are no specific details with respect to the allegation that NDMC was entirely responsible for the delay in passing the impugned Assessment Order *albeit* there is merit in the contention of Mr. Sapra that in law, inordinate delay of 16 years cannot be countenanced. There may be merit in the contention of the Petitioner that delay in passing the impugned Assessment Order rests with NDMC, however, firstly, there are no specific pleadings to this effect and secondly, this issue can be aptly adjudicated by the Appellate Authority and therefore, in light of the judgment of the Division Bench in *V.P. Aggarwal (supra)*, this Court refrains from entering into the disputed question as to which of the two rival parties is responsible, wholly or partly for the delay in passing the Assessment Order. There is no dispute that the Assessment Order is appealable under Section 115 of NDMC Act and it would be appropriate to relegate the Petitioner to the appellate remedy.

12. Accordingly, this writ petition is disposed of with liberty to the Petitioner to approach the Appellate Authority by virtue of Section 115 of NDMC Act to lay a challenge to the Assessment Order. Needless to state that all rights and contentions of the respective parties are left open to be



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raised before the appropriate forum including the issue of delay in passing the Assessment Order dated 30.05.2017.

13. At this stage, Mr. Anil Sapra, learned Senior Counsel submits that pursuant to order dated 19.07.2017, a sum of Rs.20,00,000/- was deposited by the Petitioner with NDMC and adjustment should be given of the said amount while issuing the demand letter/bill pursuant to the fresh Assessment Order. Depending on the outcome of the appellate proceedings and in case a fresh Assessment Order is passed, the concerned Authority will take into account that a sum of Rs. 20,00,000/- stands deposited with NDMC and grant adjustment, if called for.

14. Writ petition stands disposed of along with the pending applications. In case of any surviving grievance, it will be open to the Petitioner to take recourse to appropriate legal remedies.

JYOTI SINGH, J

FEBRUARY 7, 2025/jg/BSR/shivam