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

% *Date of Decision: 24th January, 2025*

+ W.P.(C) 16542/2023 and CM APPL. 66649/2023

SUMAN GANDHIOK (DECEASED THROUGH LR).....Petitioner

Through: Mr. Mritunjay Kr. Singh, Mr. Rajeev Kumar Gupta and Mr. Rajiv Vijay Mishra, Advocates.

versus

NEW DELHI MUNICIPAL COUNCILRespondent

Through: Mr. Sanjay Sharma, ASC for NDMC.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition is preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India seeking the following reliefs:-

“i. Call for the record of the entire proceedings undertaken by the Respondent for revising the R.V. of the said property bearing no. 41/2, 41/3FF, 41/4GF, 41/5-6 & Others, Hanuman Road, New Delhi;

ii. Quash/Set aside the order dated 22.03.2018 passed u/s. 72 of the NDMC Act passed by the Respondent qua the said property bearing no. 41/2, 41/3FF, 41/4GF, 41/5-6 & Others, Hanuman Road, New Delhi;

iii. Quash/Set aside the notice dated 12.03.2020 u/s. 72 of the NDMC Act issued by the Respondent qua the said property bearing no. 41/2, 41/3FF, 41/4GF, 41/5-6 & Others, Hanuman Road, New Delhi;

iv. Quash/Set aside the demand letter dated 26.10.2023 under section 99 of the NDMC Act for a sum of Rs. 55,23,991/- as house tax/property tax qua the said property bearing no. 41/2, 41/3FF, 41/4GF, 41/5-6 & Others, Hanuman Road, New Delhi;”



2. This petition was filed by Ms. Suman Gandhiok, however, during the pendency of the writ petition, she expired and her legal heir has been brought on record. Reference to the Petitioner in the present judgment is reference to Ms. Suman Gandhiok, for the ease of reference.

3. Petitioner and her husband late Sh. Jasbir Singh were joint owners of residential property bearing No. 41/2, 41/3FF, 41/4GF, 41/5-6 etc. situated at Hanuman Road, New Delhi (subject property), admeasuring 809.46 square meters. It is averred in the writ petition that on the date of filing of the petition, property consists of basement, ground floor, first floor, second floor and third floor. On the demise of Sh. Jasbir Singh on 19.10.2011, property was substituted in favour of the Petitioner vide letter dated 19.06.2013 issued by Ministry of Urban Development. In 2007, Petitioner demolished the old structure standing upon the property and started construction of a building as per sanction plans, approved by NDMC on 09.03.2009.

4. It is averred that on completion of the construction of a residential building, Petitioner made an application dated 26.04.2010 for approval of the completion plans and was informed by NDMC vide letter dated 11.01.2011 that the plans were approved by the Competent Authority on 09.08.2010. On 11.01.2011, completion certificate was issued by NDMC. Subsequently, vide Notice dated 03.03.2011 under Section 17(2) of the New Delhi Municipal Council Act, 1994 ('NDMC Act'), NDMC proposed to revise the Rateable Value (RV) of the property to Rs.13,22,100/- for the period commencing 09.08.2010. The notice indicated that RV was revised from Rs.20,000/- to Rs.56,39,200/- w.e.f. 10.09.2007 and from Rs.20,000/- to Rs.13,22,100/- w.e.f. 09.08.2010 and the reason for enhancement was the



'New Annual Rent Bye Laws, 2009'.

5. Aggrieved by the notice dated 03.03.2011, Petitioner submitted her objections vide letter dated 10.03.2011 to the Respondent stating therein that she had already paid property tax for the period 2010-11 as demanded. It was also brought forth that the property was under construction for over three years whereafter completion certificate was issued on 11.01.2011, hence no revenue was generated in the said period. Petitioner clarified that property was constructed solely for residential purpose. Since no action was taken by NDMC, Petitioner was under a perception that objections had been accepted and she continued to pay the property tax as per existing RV of the property.

6. It is alleged that after a delay of 10 years, NDMC vide common order dated 22.03.2018 took a decision on notices dated 26.03.2008 and 03.03.2011 under Section 72 of the NDMC Act *albeit* the notice dated 26.03.2008 was never served on her. Challenging the order dated 22.03.2018, Petitioner filed this writ petition.

7. Primordial contention of the Petitioner is that order dated 22.03.2018 under Section 72 of the NDMC Act as also the demand letter dated 26.10.2023 are bad in law being time barred and directly in violation of the said provision. It is argued that the Division Bench of this Court in *Mr. Ved Marwah v. New Delhi Municipal Council (NDMC) and Ors., 2018 SCC OnLine Del 8096*, dealing *inter alia* with the issue of delay held that notices issued for revising the assessment list after several years i.e. 14 and 16 years in the said case, cannot be sustained and delay cannot be countenanced. It was observed that finalisation of assessments must be done within a reasonable period and open ended power cannot be conferred on a statutory



authorities. Reliance was placed on the judgment of 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, wherein it was 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. In the present case, there is a delay of 10 years in passing the order dated 22.03.2018 from the date of issuance of notice on 26.03.2008 and thus, on this short ground the said order and consequential demand notice deserve to be quashed. Arguments are also made on merits questioning the increase in RV on several grounds.

8. Learned counsel appearing for NDMC, at the outset, submits that the writ petition is not maintainable as Petitioner has an alternate remedy by way of a statutory appeal under Section 115 of the NDMC Act to challenge the impugned order and demand, including questioning the alleged delay. In response to the judgment of the Division Bench in *Mr. Ved Marwah (supra)*, learned counsel relies on a subsequent judgment of another Division Bench of this Court in *V.P. Aggarwal v. New Delhi Municipal Council*, 2023 SCC OnLine Del 7505, wherein after noticing the judgment in *Mr. Ved Marwah (supra)*, the Division Bench observed that in 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 assesseees have fulfilled their obligations by submitting objections and supporting documents and it is the authority who



delays the adjudication process, then the assessee cannot be penalised, however, since this adjudication also involves deciding disputed questions of fact, this cannot be done in writ proceedings and therefore, this writ petition be dismissed relegating the Petitioner to statutory remedy, if aggrieved.

9. Heard learned counsels for the parties.

10. Indisputably, Petitioner has laid a challenge to order dated 22.03.2018 passed under Section 72 of the NDMC Act with respect to the subject property, whereby RV of the property has been revised and consequently a demand notice was issued on 26.10.2023. This order was passed pursuant to notice dated 28.03.2008 proposing to revise the RV against which objection was filed by the Petitioner.

11. Petitioner alleges delay of nearly one decade in passing the impugned order and apart from merits, seeks quashing of the impugned order on the ground of delay, placing reliance on the judgment of the Division Bench of this Court in *Mr. Ved Marwah (supra)*. Respondent, on the other hand, takes an objection to the maintainability on the ground that Petitioner has an alternate and efficacious statutory remedy and must avail the same to challenge the impugned order and demand letter. Relying on the judgment of the Division Bench in *V.P. Aggarwal (supra)*, it is strenuously urged that the issue of delay is also a disputed question of fact and cannot be decided in a writ petition.

12. In my view, there is merit in the contention of NDMC. It is true that in *Mr. Ved Marwah (supra)*, the Division Bench has held that notices for revising the assessment list must be finalised within a reasonable time and undue delay in concluding the cases cannot be countenanced. No statutory



authority can be given an open ended power to decide and adjudicate beyond a reasonable time. The Supreme Court in the aforementioned judgments has held that even where a Statute does not indicate any limitation or fetter to the point in time requiring a statutory authority to adjudicate or complete proceedings, nevertheless, the proceedings/processes should be completed within reasonable time. However, the judgment in **Mr. Ved Marwah (supra)** does not deal with the issue as to whether a writ Court can in the scope and ambit of judicial review decide the question as to whether an assessee is responsible for delay or the authority. There is no doubt that this question will entail entering into disputed questions of fact, which is a field in which a writ Court should not ordinarily enter, as a matter of self-restraint and this becomes particularly important when there is a statutory remedy of appeal available to an assessee. Division Bench of this Court in **V.P. Aggarwal (supra)**, as rightly flagged by counsel for NDMC, has clearly 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 the writ proceedings and the assessee is required to raise the objections before the Appellate Authorities. 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 assessee has 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 assessee 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.”

13. In view of the judgment of the Division Bench in *V.P. Aggarwal (supra)*, this writ petition is dismissed with liberty to the Petitioner to approach the Appellate Authority prescribed under the NDMC Act and raise all contentions, factual and legal, before the said Authority. It is made clear that this Court has not expressed any opinion on the merits of the case and all rights and contentions of the parties to the *lis* are left open including the contention of the Petitioner with respect to alleged delay in passing the impugned order dated 22.03.2018.

14. At this stage, learned counsel for the Petitioner submits that Petitioner has been regularly depositing the property tax and therefore if an appeal is filed before the Appellate Authority under Section 115 of the NDMC Act, the same should be entertained without insistence on a pre-deposit and the delay in approaching the Appellate Authority be condoned and till the Petitioner files the appeal, no coercive action be taken against her.

15. Insofar as the pre-deposit is concerned, it is left open to the Appellate Authority, as and when the appeal is filed, to consider the issue of pre-deposit in light of the fact that Petitioner has been paying property tax at the existing RV and had filed her objections against notice dated 26.03.2008. While deciding the issue of limitation, the Appellate Authority will take into consideration the pendency of this writ petition in this Court since November, 2023.

16. It is further directed that in case Petitioner files an appeal within four weeks from today, no coercive action will be taken by the Respondent until the appeal is taken up for consideration by the Appellate Authority. Needless to state if the Petitioner is aggrieved by the order passed by the



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Appellate Authority, she will be at liberty to take recourse to legal remedies, if so advised.

17. Pending application stands disposed of.

JANUARY 24, 2025/shivam

JYOTI SINGH, J