

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

% **Date of decision: 7<sup>th</sup> July, 2016**

+ **W.P.(C) No.5474/2012**

**NEW DELHI MUNICIPAL COUNCIL** ..... **Petitioner**

Through: Mr. Arjun Mitra, Adv.

versus

**JASWINDER RAI** ..... **Respondent**

Through: Mr. Subhash C. Jindal, Adv.

**CORAM:-**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This petition under Article 226 of the Constitution of India impugns the order / judgment dated 26<sup>th</sup> May, 2011 [of the Additional District Judge-I (ADJ), Patiala House Courts, New Delhi acting as an Appellate Authority under Section 115 of the New Delhi Municipal Council Act, 1994 (NDMC Act)] in House Tax Appeals (HTAs) No.72A/2010 and 73/2010 to 79/2010 preferred by the respondent with respect to assessment by the petitioner New Delhi Municipal Council (NDMC) of Rateable Value for the year 2001-02 and for successive years in respect of Flat No.A-102, 6 Aurangzeb Road, New Delhi.

2. Though the petition came up first before this Court on 3<sup>rd</sup> September, 2012 but was repeatedly adjourned and notice thereof finally issued only on

19<sup>th</sup> December, 2014. A counter affidavit has been filed by the respondent and to which a rejoinder has been filed by the petitioner NDMC. The counsels were heard on 16<sup>th</sup> May, 2016 and 30<sup>th</sup> May, 2016 and order reserved.

3. The facts are not in dispute. The respondent purchased the subject flat on 20<sup>th</sup> March, 1993 and was put into possession thereof on 2<sup>nd</sup> April, 1993. The respondent, who was serving in the Indian Army retired on 31<sup>st</sup> August, 1994 and on 30<sup>th</sup> March, 1998 gave the flat on rent at a monthly rent of Rs.1,80,000/- and shifted his own residence to Som Vihar, Delhi. The rateable value of the flat while on rent was finalised at Rs.19,44,000/- with effect from 1<sup>st</sup> April, 2000 on the basis of the rent being fetched of the flat. The tenant vacated the flat on 31<sup>st</sup> March, 2003 and the flat was thereafter, for the relevant period, again in self-occupation of the respondent. The petitioner NDMC however continued the rateable value of the said flat for the period after the vacation by the tenant also at Rs.19,44,000/- and impugning which the HTAs, against the order wherein this petition arises, were filed.

4. The contention of the respondent in the said appeals was that he was entitled to benefit of Resolution No.12(Q-5) dated 21<sup>st</sup> January, 2004 of the petitioner NDMC and as per which, according to him, the flat even though earlier let out, once self-occupied had to be assessed for the purpose of house tax as if it had never been let out and not on the same rateable value on which it was assessed when let out.

5. The learned ADJ agreed with the said contention of the respondent and resultantly allowed the HTAs preferred by the respondent by setting aside the impugned assessment and the demand for property tax in pursuance thereto and by directing the petitioner NDMC to assess the flat aforesaid of the respondent for the subject years in accordance with the Resolution aforesaid.

6. Needless to state that it is the contention of the petitioner NDMC that the respondent is not entitled to the benefit of the Resolution. The controversy in this petition is confined to the said aspect.

7. The relevant part of the subject Resolution (as also set out in the impugned order of the learned ADJ) is as under:

“**Resolved** further that in respect of the residential premises, which were constructed by the owner for his residence and were let out on rent and have been taken in self occupation, after being earlier on rent, the rateable value of such premises shall be determined on such re-occupation as self occupied residential property, as if it was never on rent, and in determination of rateable value of such property, cost of additions, alterations and renovations in the premises shall be included.

Provided that this resolution shall be confined to only residential self occupied property and would not extend to self occupied non-residential property.”

8. It is the contention of the counsel for the petitioner NDMC that the benefit of the aforesaid Resolution is available only to those owners / landlords who have let out their premises while in employment and who have self-occupied the premises post their retirement. It is contended that since the letting by the respondent was post his retirement, he would not be entitled to the benefit of the Resolution.

9. The learned ADJ has negated the said contention holding that there is nothing in the Resolution from which one can construe that it is applicable only upon occupying the property immediately on superannuation or that the relief in property tax intended to be given by the said Resolution would not

be given to an assessee who used it for self-occupancy at a later stage and that the Resolution permits no scope for any other interpretation.

10. The contention of the petitioner NDMC is based on the Agenda Items 5.8 and 5.9 leading to the said Resolution and which are as under:

“5.8 There is also a demand for relief from the owners of the self occupied residential properties which were taken in self occupation after earlier being on rent. In Diwan Daulat Rai Kapoor V/s NDMC, the Delhi High Court held that where the premises are earlier on rent and were un-let in the year of assessment, these have to be assessed on last rent. In NDMC V/s Nand Lal Bassi, the Delhi High court held that *‘when a rented properties is taken in self occupation, there cannot be any change in rateable value.’* Supreme court in Diwan Daulat Rai Kapoor also held that *‘when a property is on rent, its rateable value will not change when taken in self occupation.’* These decision are creating real hardship to the category of residential properties which were earlier self occupied or constructed for self occupation but had to be let out by the owner as he was unable to occupy the premises as he was outside Delhi or if in Delhi due to service or professional consideration, having accommodation from the employer or could not / did not occupy the premises and had let the premises and on return to Delhi or after superannuation or some such contingency is taking the premises in self occupation. This will also cover cases where due to family needs, the owner occupying a portion of the building also occupies another portion which was earlier on rent. There are also case in which there is change in occupancy of floor. The person was occupying 1<sup>st</sup> floor and the ground floor was on rent and now ground

floor is taken in self and the 1<sup>st</sup> floor is being given on rent. These self occupied residential properties need a consideration.

5.9 The Supreme Court in the case of Dr. Balbir Singh V/s MCD had observed that in assessing the self occupied residential properties, there is a vital distinction from the point of view of the owner between self occupied premises and tenanted premises and right to shelter under the roof being a basic necessity of every human being, residential premises which are self occupied must be treated on a more favourable basis than the tenanted premises so far as the assessibility to property tax is concerned. The Council is therefore, giving a 25% rebate from the payment of property tax to the self occupied residential premises owned and occupied by an individual. The category of properties referred to in para-5.8 above are not getting the same treatment as the self occupied residential property which never let out. The Council may resolve grant of relief U/s-124 to such category of properties and once it is self occupied, it may be permitted to be assessed in the year it is taken in self as if it was not let earlier and rateable value decided on the same basis as a residential property which was never let out. No such relief to non-residential properties. This relief shall be available to only individual original owners and not to purchasers of the property or to Companies, Firms or other Institutions, where premises are occupied by the Directors, Partners or Employees. This will cover pending cases as well.”

11. The learned ADJ, in the impugned order / judgment, of course neither noticed the aforesaid Agenda Items nor axiomatically dealt with the same.

12. I had during the hearing on 16<sup>th</sup> May, 2016 enquired from the counsels as to what difference in the assessment of rateable value would the Resolution aforesaid make even if the respondent was to be entitled to the benefit of the Resolution aforesaid. A reading of the Agenda Items shows that the only benefit would be of a rebate of 25% from the payment of property tax and there would be no difference in the assessment of rateable value; the Resolution does not even mention the rebate. The counsels however appeared to be proceeding on the premise that if the property had never been let out, the rateable value thereof would be as per the standard rent within the meaning of the Delhi Rent Control Act, 1958 (DRCA) and would be lower than the rateable value assessed on the basis of actual rent fetched earlier. It was further brought to the notice of the counsels that the provision in the Rent Act as to standard rent had also been struck down in *Raghunandan Saran Ashok Saran (HUF) Vs. Union of India* 95 (2002) DLT 508 (DB). However no clarity emerged during the hearing on 30<sup>th</sup> May, 2016 also on the said aspect.

13. Moreover, Supreme Court in *State Trading Corporation India Ltd. Vs. New Delhi Municipal Council* AIR 2016 SC 1269 has held (i) that since the provision of standard rent under the DRCA had been struck down in

*Raghunandan Saran Ashok Saran (HUF)* supra, no reliance could be placed on the proviso under Section 63(1) of the NDMC Act; (ii) that in any case since the standard rent of the premises of the State Trading Corporation India Ltd. had never been fixed under the DRCA, the State Trading Corporation India Ltd. was not entitled to invoke the same; (iii) that since the NDMC Act contains a provision and procedure under Section 63 for calculating the annual rent, one need not refer at all to New Delhi Municipal Council Bye-laws, 1962 (which were framed when the area now governed by the NDMC Act was governed by the Punjab Municipal Act, 1911) and that the bye-law 12 of the said bye-laws was apparently inconsistent with the provisions of the NDMC Act and it is impermissible to refer to the bye-laws framed under the Punjab Act in view of specific provisions made under the NDMC Act providing for the levy, assessment and collection of property tax; (iv) that under Section 63 of the NDMC Act the only basis for fixation of rateable value is annual rent at which the land or building might reasonably be expected to be let from year to year, subject to deductions provided under the Act; (v) if the property is let out, the actual rent payable by the tenant to the landlord is available for verification by the Assessing Officer; (vi) where the property is self occupied, the annual rent will have to

be fixed on the basis of what the landlord might reasonably expect to get from a hypothetical tenant; (vii) such fixation has to be made only as per the NDMC Act; and, (viii) it is for the Assessing Officer to make the fixation in accordance with law.

14. I have on the basis of the judgment aforesaid of the Supreme Court, in *NDMC Vs. M/s Om Prakash* 2016 SCC OnLine Del 2504 held that for self occupied properties and about which there can be no possibility of doubt are capable of fetching rent in excess of Rs.3,500/- per month, and above which rent the provisions of DRCA w.e.f. 1<sup>st</sup> December, 1988 do not apply, the question of the landlord reasonably expecting to fetch only the standard rent does not arise; rather Supreme Court has expressly negated the same by holding that since the provision of standard rent in the DRCA itself has been struck down and since no standard rent referred to in the proviso to Section 63(1) of the NDMC Act was fixed qua the property, no reliance could be placed thereon.

15. It thus appears that irrespective of the applicability of the said Resolution to the property of the respondent, the rateable value of the respondent's property has to be fixed as per the rent which it is reasonably

capable of fetching and not as per its standard rent, under which impression the counsels appear to be litigating and the only difference which the applicability of the Resolution would make would be of rebate, if being given though there is no mention thereof in the Resolution.

16. For the sake of completeness, it is also deemed appropriate to deal with the applicability of the Resolution.

17. No error can be found with the reasoning of the learned ADJ of the Resolution, as per its reading, not carving out any distinction whether the letting out was pre-retirement from service or post-retirement. There is also nothing at all in the Resolution from which it can be said that the intent of the Council of the petitioner NDMC was for the same to be read in the context of Agenda Item. In fact, the Resolution does not even refer to the Agenda Items at all. It has thus to be read as saying what it says and so read it applies to all cases of self occupation post letting of residential accommodation, whatsoever may be the reason for not self occupying earlier and instead letting out the property. Though a Resolution may take its colour / interpretation from the context in which it was passed, including the Agenda Item, but for that there has to be something in the Resolution to link

it to the Agenda Item. There is none in the subject Resolution. However so read, the Resolution does not even mention rebate, which finds mention in the Agenda item. Even otherwise, I am of the view that even if the Agenda Item were to be read, the same do not limit the applicability of the Resolution to only those cases where the letting was pre-retirement or excludes those where the letting out was post-retirement. The Agenda Item talks of 'hardship to landlord in self-occupation who had let out his property earlier', either i) because he was unable to occupy the property as he was outside Delhi and had occupied the property on return to Delhi; or ii) because he was unable to occupy the property, though in Delhi, due to service or professional consideration, having accommodation from the employer and had occupied the property on superannuation; or iii) because of some such contingency is taking the premises in self-occupation; or iv) where due to family needs, the owner occupying a portion of the building also occupies another portion which was earlier on rent or where there is change in occupancy of floor. The Resolution thus cannot be said to cover only those cases where the letting out was on account of employment outside Delhi or if in Delhi owing to accommodation having been provided

by the employer. The Resolution also covers cases of “some such contingency” and of “expanding family need”.

18. No merit is thus found in the petition which is dismissed.

19. There was no interim stay of the order of the learned ADJ but I was told that no assessment in pursuance thereto has taken place till now. The same be done now at the earliest.

20. The respondent to appear before the Assessing Authority of the petitioner NDMC with all the relevant documents on 8<sup>th</sup> August, 2016 at 1500 hours.

No costs.

**RAJIV SAHAI ENDLAW, J**

**JULY 07, 2016**  
'gsr'..