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

% *Judgment Reserved on: July 14, 2015*
Judgment Delivered on: July 24, 2015

\+ **RFA (OS) 13/2015**

M/S. TODAY HOMES AND INFRASTRUCTURE PVT. LTD. ..... Appellant
Represented by: Mr.Rajat Malhotra, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS. ..... Respondents
Represented by: Mr.Prasanta Varma, Advocate for R-1 and R-2
None for R-3 (Proforma Respondent)

RFA (OS) 17/2015

M/S. GPS PROPERTIES PVT. LTD. ..... Appellant
Represented by: Mr.Rajat Malhotra, Advocate

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS. ..... Respondents
Represented by: Mr.Prasanta Varma, Advocate for R-1 and R-2
None for R-3 (Proforma Respondent)

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The appellants of the above captioned two appeals : M/s.GPS Properties Pvt.Ltd. and M/s.Today Homes and Infrastructure Pvt.Ltd. are the co-plaintiffs of CS(OS) 814/2014. In the two appeals filed by them, they

have impleaded the other as respondent No.3. The South Delhi Municipal Corporation and its Assessor & Collector, impleaded as defendants No.1 and 2 in the suit, are the respondent No.1 and 2 respectively in the two appeals. The two appeals lay a challenge to the order dated November 17, 2014 passed by the learned Single Judge holding that the suit filed by the two appellants, as co-plaintiffs, was not maintainable.

2. The learned Single Judge has noted that learned counsel for the appellants relied upon the decisions reported as (1994) 6 SCC 572 *Srikant Kashinath Jituri vs. Corporation of the City of Belgaum*, AIR 1979 SC 1250 *Munshi Ram & Ors. vs. Municipal Committee Chheharta*, 34 (1988) DLT 91 *Sobha Singh & Sons (P) Ltd. vs. New Delhi Municipal Committee*, AIR 1969 SC 78 *Dhulabhai etc. vs State of Madhya Pradesh & Anr.*, and 2001 (60) DRJ 549 *Ganga Ram Hospital Trust vs. Municipal Corporation of Delhi* but has held that the same were of no help to the appellants in view of the decision reported (2003) 10 SCC 38 *NDMC vs. Satish Chand*, with reference to which decision the learned Single Judge has held that keeping in view the ratio thereof the suit filed by the appellants was not maintainable.

3. The two appellants, as co-plaintiffs, had prayed in the suit as under:-

> *"(a) A decree for declaration be passed thereby declaring the demand for payment of property tax on the suit property, the Assessment order dated 01.03.2013 bearing No. TAX/CIR/2013/453 issued on 02.03.2013 and all consequential demands and Warrants of Distress as null and void and inoperative and the same be set aside and quashed being per se illegal, unlawful and unjustified;*
>
> *(b) A decree for permanent injunction be passed thereby restraining the Defendants their agents, servants, employees, officers or anybody acting on their behalf from taking coercive*

steps for recovery of the impugned amount of property tax as assessed vide assessment order dated 01.03.2013; or any other specific coercive steps to recover the said amount from the plaintiffs either through their movable or immovable property or from their bank accounts, securities and deposits etc."

4. It would be useful to note the assessment order determining the annual value for the reason it was under challenge in the suit, and the demand of house tax raised was pursuant thereto. The order notes the dispute and gives reasons why contention advanced by the assessee, which we note is M/s.GPS Properties (P) Ltd. were not tenable and why in law the assessment was being made. The order reads as under:-

"This order of assessment is of the Annual Value under the Unit Area Method of the basement of the above mentioned property which is under the ownership of M/s.GPS Properties (P) Ltd. Statesman House, 8th floor, Barakhamba Road, New Delhi. In this case, notice U/s 123D of the DMC (Amendment) Act, 2003 dated 2.11.2012 on a/c of non-payment of tax in r/o basement and hoardings was issued against the property. A representation dated 30.11.2012 has been filed by Sh. Lokesh Patodia, DGM of M/s.GPS Properties Pvt.Ltd. enclosing therewith documents which has been taken on record. The basic contention is that there are agreements executed between the owner and the space buyers of the floor area. The property tax for the common area of the mall is the responsibility of the space buyers of the floor areas in proportionate to the common area falling under their share and the same may be recovered from the space buyers.

I have gone through the documents/information filed by the taxpayers. A commercial plot No.4, 5, 6 Shivaji Place, Dist. Centre, Raja Garden, New Delhi meas. 10728 sq.mtr. was allotted by Slum & JJ dept. in favour of M/s.GPS Properties Pvt.Ltd., possession of which was taken over on 24.9.2004. M/s.GPS Properties Pvt.Ltd. paid vacant land tax under unit area method from 2004-05 onwards. Building plan for construction of mall was issued on 8.2.2005, completion certificate applied on 25.3.2008, which was issued on

25.7.2008. As per documents i.e. sanctioned plan of building, there are two basements (lower & upper) and total area of basement is 18134.92 sq.mtr. The contention of the taxpayer in the representation dated 30.11.2012 that since all units have been sold out to different buyers, the taxpayer is not liable to pay property tax in r/o basement is not tenable as entire ownership rights of the basement remains with M/s.GPS Properties Pvt.Ltd. as per perpetual lease executed with DDA. Though there is no legal definition of Super area/common area of Mall but in case it includes the car parking then the parking area cannot be sold as per the Perpetual Lease agreement executed. I have gone through the lease agreement dated 15/5/2006 executed between Slum & JJ Dept. of MCD and M/s.GPS Properties Pvt.Ltd.

In this regard, clause the Perpetual Lease Deed executed between the Slum & JJ Dept. of MCD and the owner/assessee, provides as under:-

> ***"6(a) The Lessee shall not sell, transfer, assign or otherwise part with the possession of the whole or any part of the commercial plot except with the previous consent in writing of the Lessor which he shall be entitled to refuse in his absolute discretion."***

However, the other provisions of the perpetual lease deed makes it amply clear that the said rights are available only in respect of the floor space and not in respect of the basements of space for general parking and landscape area of general parking.

It is, thus, apparent from the above that the owner/ assessee is not authorized to sell out parking space or any portion thereof to any other person. Apparently the owner has given rights to the individual buyers of the units to use parking space, on payment of parking fee, whereas the ownership of the parking space continues to rest with the assessee. Also as per section 120(1)9a) of the DMC act the Property Tax on any land or building shall primarily be leviable upon the owner thereof. Thus the owner of the basement cannot shift his responsibility for payment of property tax for the basements to those who are not owners of the basements.

In view of the above facts, the basements and parking space at

ground floor in the aforesaid property in possession of the taxpayer measuring 18134.92 sq.mtr. are taken for assessment under Unit Area Method.

Under the above facts and circumstances, the AV of the basements is worked out and fixed as under:

Floor	C.A. (Sq.Mts.)	Category rate (Rs.) Per Sq.Mtr.	Structure factor	Age factor	Use factor	Occupancy factor	AV
Basement	18134.92	320/-	1	1	4	1	2,32,12,698/- p.a. w.e.f.25.3.2008

Assessment of the Basements at the above mentioned property is done accordingly. The said AV is based on information/documents on file as well as submissions in the representation. Property Tax be computed and bill raised for the tax further payable. The AV is fixed accordingly. ZI is directed to compute difference of property tax after giving credit of the payments, already deposited, and raise the bill, accordingly for payment. The assessment order is subject to the acceptance of the Audit.

It is hereby further stated that a show cause notice under Section 123D (d) should also be issued separately to the assessee as to why penalty upto 30% of the difference should not be imposed for wilful suppression of facts.

Since no information/documents giving details of the hoardings put up at the building have yet been provided, assessment in r/o hoardings will be process separately.

ZI/AZI is directed to send a demand to the taxpayer/assessee immediately and initiate recovery proceedings under the provisions of DMC ACT if the demand is not liquidated within due date of payment given to the taxpayer/assessee."

5. From a perusal of the assessment order it is clear that as per the assessee, being authorized to sell the different portions of the building constructed on the plot of land, while selling different portions to different parties the price charged included proportionate common areas and since they had a right to park the vehicles in the basements the interest in the basements would seize to be with the assessee; inherent in the plea was that while determining the rateable value of the different units sold on unit area

method the assessment had to be with the liability on the purchasers of the different portions of the building. The contention was rejected by the assessing officer noting that as per the perpetual lease-deed conferring ownership rights on the assessee it was authorized to sell the floor space alone and hence not the basement. There is a presumptive reasoning in the assessment order that the individual buyers of the units were using the parking space on payment of parking fee, and we say so for the reason the language of the relevant part of the assessment order reads: *Apparently the owner has given rights to the individual buyers of the units to use parking space, on payment of parking fee, whereas the ownership of the parking space continues to rest with the assessee.*

6. M/s.GPS Properties Pvt. Ltd. filed an appeal challenging the assessment since Section 169 of the DMC Act, 1957 confers a right upon a person aggrieved by an assessment of any tax under the Act to file an appeal before the Municipal Taxation Tribunal, but abandoned the appeal in view of the fact that Section 170 of the DMC Act, 1957 prohibits the Municipal Taxation Tribunal to hear any appeal if it relates to the levy and assessment of property tax unless the amount which is disputed in the appeal is deposited by the appellant in the office of the Corporation.

7. Section 171 of the DMC Act, 1957 reads as under:-

> *"**171. Finality of appellate orders –***
>
> *The order of the Municipal Taxation Tribunal confirming, setting aside or modifying an order in respect of any rateable value or assessment or liability to assessment or taxation shall be final.*
>
> *Provided that it shall be lawful for the Municipal Taxation Tribunal, upon application or on its own motion, to review any order passed by it in appeal within three months from the date of the order."*

8. Noting that the right to file an appeal against an order assessing and/or levying property tax was available to the aggrived assessee and Section 171 of the DMC Act, 1957 gave finality to the order passed by the Municipal Taxation Tribunal, applying the ratio of law declared by the Supreme Court declared in *Satish Chand*'s case (supra), the learned Single Judge has concluded that a civil suit questioning an assessment order concerning a property and levying property tax was not maintainable.

9. Though 5 decisions cited by the appellants have been noted by the learned Single Judge, the ratio thereof has not been discussed.

10. It would be interesting to highlight that the decision of the Division Bench of this Court in *Ganga Ram Hospital Trust*'s case was authored by the same learned Judge who authored the decision in *Satish Chand*'s case after being elevated to the Supreme Court. Concerning assessment and levy of house tax under the Delhi Municipal Corporation Act, 1957 the learned Judge has held that a civil suit to challenge the assessment and levy of property tax is not barred; clarifying that the limited gateway open was as per the law declared by the Constitution Bench of the Supreme Court in *Dhulabhai*'s case which has been followed in various decisions, and the decision rendered in *Satish Chand*'s case by the learned Judge pertained to assessment and levy of house tax under the Punjab Municipal Act.

11. In *Satish Chand*'s case Section 86 of the Punjab Municipal Act, 1911 was noted by the Supreme Court and interpreted to be an express bar to the maintainability of a civil suit. No such express bar was shown to the Division Bench of this Court in *Ganga Ram Hospital Trust*'s case, and hence the view taken that a civil suit would be maintainable, but the scope thereof would be limited.

12. Regretfully, in the instant case, the learned Single Judge has overlooked this fine but critical distinction i.e. where a statute expressly bars the jurisdiction of a Civil Court and where a statute does not expressly bar the jurisdiction of a Civil Court but merely provide for a remedy against an assessment order but makes the remedy conditional to the deposit of the house tax and thereby making the condition so onerous that it would be a case akin to giving charity by the left hand and taking it away by the right hand.

13. Since the matter has to be remanded before the learned Single Judge because of her reasoning hereinafter to decide on the maintainability of the suit by looking into the pleadings and determining whether the scope of the suit is within the narrow window opened by the law in respect of which alone suits can be filed, an exercise not done by the learned Single Judge, we proceed to note the various decisions and the fineness of the distinction with reasons in support as to why, concerning assessment and levy of house tax under the DMC Act, 1957 it cannot be said that the jurisdiction of a civil Court is completely barred to entertain a suit challenging the assessment/levy of property tax.

14. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. This was so held in the decision reported as (1974) 3 SCR 882 *Gangabai v. Vijay Kumar & Ors*.

15. Section 9 of the Code of Civil Procedure reads as under:-

> *"9. The Courts shall subject to the provisions herein contained have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or implied barred."*

16. Thus, Courts have the jurisdiction to try all suits of a civil nature with

the only limitation being the right expressly or impliedly barred by law.

17. Many statutes contain express bars with respect to the right to file a civil suit. For instance, Section 293 of the Income Tax Act contains such a bar. Similarly there are a number of other statutes containing such a bar. While interpreting Section 9 of the Code of Civil Procedure, in the decision reported as (1968) 3 SCR 662 *Dhulabhai etc. v. State of Madhya Pradesh & Anr.*, the five Judge Bench of the Supreme Court laid down the following principles:-

> *"32. Neither of the two cases of Firm of Illuri Subayya, [1963] 50I TR 93(SC) or Kamla Mills, [1965] 3 SCR 173 can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:*
> *(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.*
>
> *(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.*
>
> *Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are*

prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra virus cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

18. Thus except where a civil suit is specifically barred under a particular statute there can be no bar to a civil suit. A suit for its maintainability requires no authority of law. It is enough that no statute bars the suit. The jurisdiction of civil court is all embracing. It is determined on the basis of pleadings of the plaintiff in the suit.

19. This is the reason why, in *Satish Chand*'s case (supra), because of Section 86 of the Punjab Municipal Act, 1911 a suit to question the assessment and levy of property tax was held to be barred, because the bar was express.

20. An implied bar, as distinguished from an express bar, may arise in a

situation, where for instance a statute creates a special right and lays down a special remedy for exercising the right. For exercising such special right a party will be required to have resort to the special remedy as per the statute. Impliedly it may be inferred that there can be no other remedy with respect to the special right. Position in law regarding implied bars, is that such bars need not be readily inferred. Exclusion of jurisdiction of a civil court is a serious matter and cannot be encouraged. No court would like to overstep the limits placed on its jurisdiction by law. At the same time, courts will not be eager to restrict their jurisdiction on basis of implied bars. It is a matter of legal right of a party. Legal rights ought to be normally given effect to rather than curtailed by inviting implied bars to jurisdiction. Often one comes across specific bars contained in statutes regarding right to file a civil suit. The reason for this is simple. Where the legislature intends to bar institution of civil suits it should not hesitate in saying so specifically in the statute itself. The cases of implied bar are rare. That is why the courts have universally taken the view that implied bars to civil suits need not be inferred very lightly.

21. The legal position in this behalf has been summarised by the Supreme Court in the decision reported as (1988) 171I TR 254 (SC) *Raja Ram Kumar Bhargava v. Union of India* as follows:

> *"Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing in common-law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatus and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil courts' jurisdiction is impliedly barred. If, however, a right pre-existing in common law, is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil*

courts' jurisdiction, then both the common-law and the statutory remedies might become concurrent remedies leaving upon an element of election to the persons of inherence. To what extent, and on what areas and under what circumstances and conditions, the civil courts' jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in Dhulabhai's case."

22. In the decision reported as (1963) 50I TR 93(SC) *Firm I.S. Chetty & Sons v. State of Andhra Pradesh* , the Supreme Court observed:

"The mere fact that a special statute provides for certain remedies may not by itself necessarily exclude the jurisdiction of the civil courts to deal with a case brought before it in respect of some of the matters covered by the said statute."

23. Thus the mere fact that a statute provides for certain remedies is not sufficient to exclude jurisdiction of civil courts. The right to approach the civil courts is an inherent right which normally cannot be taken away or presumed to be taken away. The right is too strong to be denied by indirect means. Only a specific bar could take it away. In this background the Division Bench of this Court in *Ganga Ram Hospital*'s case ventured into the provisions of the DMC Act, 1957 to find out whether they impliedly barred the jurisdiction of a Civil Court to entertain a civil suit.

24. Section 169 provides for a remedy of appeal against levy or assessment of any tax under the Act and Section 170 lays down conditions subject to which the right of appeal conferred by Section 169 can be exercised. The Division Bench noted that neither of these two sections contains any provision barring a civil suit to challenge levy and assessment of tax under the Act. The Division Bench held that thus at best it may be argued that in view of the remedy of appeal provided under Section 169 of the Act, a party should have recourse to the said remedy. The Division Bench held that there may be cases where a party filing a civil suit to

challenge the levy and assessment of tax under the Act may like to urge that the levy and assessment of tax is not in accordance with the Act or is vocative of the provisions of the Act. In other words it may be the case of a plaintiff that the authorities under the Act have not acted in accordance with the provisions of the Act while levying and assessing tax and, therefore, it is entitled to exercise its inherent right to challenge such a levy and assessment by way of a civil suit. The Division Bench note that the availability of an alternative remedy may be treated as a bar by the court while exercising its writ jurisdiction because writ jurisdiction under Article 226 of the Constitution of India is a matter of exercise of discretionary jurisdiction of the court but it is not the same case while entertaining a civil suit. Exercise of jurisdiction to entertain civil suit is not a discretionary matter before the civil court. A civil court may reject the plaint as per law or dismiss a civil suit on merits. It cannot refuse to entertain the suit unless barred by law.

25. While on the question of express or implied bar to a civil suit, the Division Bench noted that elsewhere in the Delhi Municipal Corporation Act, 1957, where the legislature intended to create a specific bar to exercise of right to file a civil suit, it had specifically provided for it. In this connection the Division Bench made a reference to Sections 347A, 347B and 347E of the Act, in matters relating to unauthorised construction in properties and demolition of such construction, the statute having established an Appellate Tribunal before which the parties were entitled to agitate their grievances. In all such cases appeals were provided to the Appellate Tribunal and further appeal was provided from the order of the Appellate Tribunal to the Administrator under Section 347B. Section 347E was providing for a complete bar on the power of a civil court to entertain any suit/application or other proceedings in respect of any order or notice

appealable under Section 343 or Section 347B. The Division Bench highlighted that it was clear that wherever the legislature intended to create a bar to the maintainability of a civil suit on a particular subject matter, it was so provided in the Act itself. The Division Bench noted that even pertaining to issues concerning constructions, where the statute created an express bar in the maintainability of a civil suit, the conditions under which a suit would be maintainable were determined by the Supreme Court and thus even in such cases, on limited issues, a civil suit would lie. The decision of the Supreme Court on this aspect noted by the Division Bench is reported as (1993) 3 SCR 522 *Shiv Kumar Chadha v. Municipal Corporation of Delhi*, wherein it was observed:

> *"According to us, it cannot be urged that the provisions of the Act have created any right or liability and for enforcement thereof remedy has been provided under the Act itself. The Act purports to regulate the common law right of the citizens to erect or construct buildings of their choice. This right existed since time immemorial. But with the urbanisation and development of the concept of planned city, regulations, restrictions, on such common law right have been imposed. But as the provisions of the Act intend to regulate and restrict a common law right, and not any right or liability created under the Act itself, it cannot be said that the right and the remedy have been given uno flatus e.g. "in the same breath". Most of the cases of this Court referred to above related to statutes creating rights or liabilities and providing remedies at the same time. As such the principles enunciated therein, shall not be fully applicable in the present case. In spite of the bar prescribed under sub-sections (4) and (5) of Section 343 and Section 347-E of the Corporation Act over the power of the courts, under certain special circumstances, the court can examine, whether the dispute falls within the ambit of the Act. But once the court is satisfied that either the provisions of the Act are not applicable to the building in question or the basic procedural requirements which are vital in nature, have not been followed, it shall have jurisdiction, to enquire and*

investigate while protecting the common law rights of the citizens. Can a court hold a suit to be not maintainable, although along with the plaint materials are produced to show that the building in question is not within the Corporation limits, or that the constructions were made prior to coming into force of the relevant provisions of the Act?"

26. The Division Bench concluded that while considering the provisions of a statute and determining whether there was an implied bar in the maintainability of a civil suit, the scheme of the statute with reference to the adequacy of remedies provided for have to be gone into and would be decisive in view of the law declared by the Supreme Court in the decision reported as (1965) 57I TR 643(SC) *Kamala Mills Ltd. v. State of Bombay*.

27. In the decision reported as (1954) 1 SCR 1122 *Himmatlal Harilal Mehta v. State of Madhya Pradesh* it was held by the Supreme Court that if the remedy provided by the Act is of an onerous and burdensome character, it can hardly be said to be an adequate alternative remedy. Before the appellant can avail of it he has to deposit the whole amount of tax. Such a provision can hardly be described as an adequate alternative remedy. It renders the right of appeal illusory and not real. Again, in the decision reported as (1966) 1 SCR 284 *M.G.Abrol.Addl.Collector of Customs. Bombay & Anr. v. M/s.Shantilal Chhotelal and Co.* it was observed:

"15. Lastly, it was argued that the High Court should not have exercised its jurisdiction under Article 226 of the Constitution, as the respondents had an effective remedy by way of appeal to higher Customs Authorities. But the High Court rightly pointed out that the respondents had no effective remedy, for they could not file an appeal without depositing as a condition precedent the large amount of penalty imposed on them. That apart, the existence of an effective remedy does not oust the jurisdiction of the High Court, but it is only one of the circumstances that the Court should take into consideration in exercising its discretionary jurisdiction under Article 226 of the

Constitution."

28. In the decision reported as 63 (1996) DLT 163 *Indian Hotels Company Limited v. New Delhi Municipal Council*, a Division Bench of this Court held that the condition of pre-deposit amounts to negation of the right of appeal. The requirement of pre-deposit makes the remedy too onerous. To illustrate the point the court gave several examples. The following observations contained in the said judgment highlight the issue:

> *"36. A condition requiring 100% amount of tax to be deposited as a condition precedent to hearing by the Appellate Authority may amount to negation of right of appeal in some cases. To illustrate, a property may be assessed in the name of someone who is neither the owner nor occupier thereof and fixed with liability to pay tax; a property not falling within the limits of the Municipal Corporation may come to be assessed and taxed; property may be grossly overvalued by the Assessing Authority attracting an obligation to pay an amount of tax absolutely disproportionate with the value of the property and means of the owner. In all such cases under the present law, the assessed must deposit the tax before he may deserve a hearing from the Appellate Authority. This provision too deserves to be suitably amended so as to confer a discretionary power on the Appellate Authority allowing dispensation of the deposit of the amount of tax wholly or partially in very deserving cases depending on the facts of individual case and for reasons to be recorded. Provision may be made for payment of interest so as to adequately compensate the Corporation for the delayed recovery in the event of appeal being dismissed or interim order being vacated. Such a provision would serve the ends of justice giving relief to the assessed/appellants in deserving cases and reduce the filing of writ petitions in superior Courts."*

29. The above quotation shows that the Bench has even made certain recommendations for amendment of the relevant provisions of the statute. Similarly another Division Bench of this Court in the decision reported as AIR 1999 Delhi 67 *D.R. Aggarwal v. N.D.M.C.*, relying upon *Himmatlal*'s case (supra) held that the remedy of appeal is onerous and can hardly be

called to be adequate alternative remedy.

30. The Division Bench decision of this Court reported as 34 (1988) DLT 91 *Sobha Singh & Sons (P) Limited v. N.D.M.C.* was a case under the Punjab Municipal Act, 1911 and in view of the express bar created by Section 86 of the Punjab Municipal Act remedy by way of suit was held to be barred.

31. In this connection, the decision of the Supreme Court reported as (1979) 118I TR 488 (SC) *Munshi Ram & Ors. Vs. Municipal Committee Chheharta*, needs to be noted wherein the Supreme Court recognised that if the Municipal Committee acts beyond or in abuse of powers under the Act a civil suit to challenge such an act would be maintainable inspire of a specific bar to such a suit contained in the Act. The Court accepted that normally a particular remedy prescribed by a statute has to be pursued as per the provisions of the statute. It must be sought in the forum and in the manner given under the statute. However, the bar to the jurisdiction of the civil court would not apply in cases where the Committee in levying a tax or committing an act clearly acts outside or in abuse of its powers under the Act.

32. Since the learned Single Judge has not looked into the issue required by law to be looked into and the error in the impugned decision is to overlook the distinction where jurisdiction of a civil court is expressly barred under a statute and where the jurisdiction is impliedly barred due to a remedy available under a statute but the remedy is onerous and has also not looked into the pleadings to determine whether a limited window was opened to the plaintiffs to maintain the civil action, we dispose of the two appeals declaring that there is no absolute bar to the maintainability of a suit

challenging assessment and levy of property tax under the Delhi Municipal Corporation Act, 1957, but the scope of the suit would be limited i.e. the challenge would be limited in light of the law declared hereinabove by the Supreme Court and Division Benches of this Court in various judgments to which we have adverted to hereinabove. Thus, we set aside the impugned order dated November 17, 2014 and restore CS (OS) No.814/2014. The learned Single Judge, guided by the legal principles we have culled out hereinabove, would determine the maintainability of the suit afresh.

33. The Registry is directed to list the suit for directions before the Roster Bench on August 10, 2015.

34. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 24, 2015
mamta