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Dcm Ltd. Vs.mcd and Ors.

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Court : Delhi

Decided On : Apr-24-2019

Appellant : Dcm Ltd.

Respondent : Mcd and Ors.

Advocate for Def. : Ms. Amita Gupta, Ms. Priti Yadav, Mr. Gautam Narayan, Mr. R.A. Iyer

Advocate for Pet/Ap. : Mr. B.B. Jain, Mr. Abhay Jain

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

15. 02.2018 Pronounced on:

24. 04.2019 + W.P.(C) 1174/2010 DCM LTD. .....

... Petitioner
Through: Mr. B.B. Jain and Mr. Abhay Jain, Advocates. versus MUNICIPAL CORPORATION OF DELHI AND ORS. .....

... RESPONDENTS
Through: Ms. Amita Gupta with Ms. Priti Yadav, Advocates, for MCD. Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate, for GNCTD. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE A.K. CHAWLA MR.

JUSTICE S. RAVINDRA BHAT % 1. Originally the writ petitioner (hereafter referred to as DCM) had claimed various reliefs such as challenging amended Sections 61A, 116, 116A, 116B, 116K, 123(B)(8), 133, 152-155, 169, 170(b) of the Delhi Municipal Corporation Act (hereafter referred to as the Act); the amendment of 2003 (hereafter referred to as the Amendment Act) as well as the Delhi Municipal Corporation (Property Taxes) Bye-laws, 2004 (bye laws). DCM also challenged other consequential directions including quashing of an assessment order dated 18.12.2009 (impugned order) and direction not to enforce the demand and further with reference to the assessment of property nos.8654-8979; 8989-9033 and 9035-9055 situated at W.P.(C)No.1174/2010 Page 1 of 48 Kishan Ganj, Delhi in accordance with the Unit Area Method (UAM) as applicable for 2004-05 and consequential adjustments for the amounts paid/deposited by the assessee were sought. After notice was issued and counter affidavits were filed, amendments to the claim were sought and made- whereby further reliefs by way of direction to MCD to re-constitute the Hardship and Anomaly Committee and decide its application of 15.10.2004 forthwith and also the plea that the impugned assessment order was made after the period of limitation prescribed under the Act. The other amendments sought for were with respect to the quashing of the assessment order on the ground that the land rate taken was excessive and that the rebate for size of the plot was not given and furthermore that the land was incapable of being constructed upon.

2. Briefly, DCM challenges the impugned order and demand notice dated 27.12.2009 (hereafter impugned demand) as without jurisdiction and ultra vires of the provisions of the Act as based upon conjectures and surmises. The petitioners challenge to Sections 61A, 116, 116A, 116B, 116K, 123(B)(8) and Section 169 of the Act pertain to penalty deposit, pre-deposit of the entire demanded amount at the time of filing of the appeal, removal of the concept of base year, limitation on raising demands on an assessee and lack of appeal under the UAM qua the fixing of the unit values, as violative of Article 14 of the Constitution. It is alleged that the respondent has acted in an arbitrary and in a mala-fide manner.

3. The first grievance which DCM articulated is that the impugned order makes a collective reassessment order. Mr. B.B. Jain, learned counsel highlighted that the

Show Cause Notice (SCN), however, pertained to only six properties and referred to the SCN dated 08.03.2003. The SCN in W.P.(C)No.1174/2010 Page 2 of 48 question (for the period 2002-03) was issued on 08.03.2003; it pertained to property Nos.8654, 8979, 8989, 9033, 9035, 9355 - Kishan Ganj, XIV Bara Hindu Rao. It proposed rateable value, subject to objections and hearing, stating that the proposed rateable value shall be confirmed as per provisions of Bye Law 9 of the Delhi Municipal Corporation Assessment List Bye-laws 1959. According to the SCN, the existing rateable value (` 80,420/-) was proposed to be increased to ` 55,92,23,200/- with effect from 01.04.2002. The column dealing with the rationale for increase of rateable value stated: Reasons in brief for amendment in the assessment list:Increase in land value. 4. The petitioner appears to have objected to the SCN and submitted that the layout plan for 26.9 acres was approved for development subject to certain conditions by the Resolution of the Standing Committee (of the MCD, the predecessor to the North Delhi Municipal Corporation or NDMC hereafter) dated 28.08.1995. It was submitted that one of the conditions for redevelopment was that the existing structure ought to be demolished before any construction activity was to be undertaken. Furthermore, DCM highlighted that more than 25% of the permitted and old structure were still on site and not demolished and further under occupation. Also, permission for relocation of existing schools had not been obtained and the question of assessments of vacant land would only arise only after the demolition and further appropriate assessment of what land was capable of construction could be done. In this regard, therefore, it was submitted that the MCD was yet to approve the lay out plan for lease lands and lands in respect of which DDA had raised disputes with regard to ownership. The W.P.(C)No.1174/2010 Page 3 of 48 DDA had disputed two parts of land, i.e. the demands notice nos.77440-441 both dated 17.03.2003 in respect of property no.9433B. The existing RVs for these properties were ` 8000 and ` 6480 whereas the SCN proposed an RV of ` 13,00,000 and ` 20,10,000 respectively. It was also submitted that for vacation of properties several court cases were pending. The details of various properties were also discussed in the reply. It was disputed that vacant land tax could be assessed given that there ought to have been finding with respect to if and to what extent any vacant land was or capable of being constructed upon. Given that the basic conditions for construction remained unmet

in that the properties had not been vacated or demolished and lastly that lay out plans had not been sanctioned, the question of imposing any vacant land tax did not arise. It was argued furthermore that fundamentally once the petitioner had accepted and opted for completion of pending assessments in accordance with the new procedure, in its letter as is evident from the order sheet of Assessor and Collector dated 28.03.2006, the UAM had to be applied.

5. The relevant extract of the proceeding of that date, i.e. 28.03.2006, containing the option is as follows: 12. The assessee now desires that the old assessments for the year 2002-03 and 2003-04 be decided under the UA Scheme and has placed a copy of the PTR filed by it for the year 2004- 05 and has paid a sum of Rs.897/- vide receipt No.444210 dated 30.10.04 after calculating the gross tax payable by it at Rs.50,798 p.a. and has desired that the MCD may recover the balance from the tenants as per the UA Scheme. He further states that as per the UA Scheme applicable for 2004-05 no vacant land tax is chargeable for the said year and accordingly no vacant land tax can be charged for the year 2002-3 & 2003- W.P.(C)No.1174/2010 Page 4 of 48 6. 04 even though its liability is not for the full amount to silence the dispute in case the aforesaid submissions are accepted.

13. That the assessee has also filed various applications u/s 163 of the DMC Act seeking remission of tax on the super structure lying vacant in a dilapidated condition and the vacant land lying vacant which cannot be constructed w.e.f. 1.4.2002 for the reasons above, therefore, the tax on the same, if any, should be remitted u/s 163 of the DMC Act. 14. Accordingly, the assessee has desired that only the construction which is in the occupation of the tenants and which cannot be demolished as Eviction proceedings are continuing against them should alone be taken into account and be assessed in accordance with law as per the UA Scheme for the year 2004-05 as it is thus scheme which is applicable for past pending assessments, which in the present case are 2004-5 and 2005-06 only.

15. He is directed to submit a copy of representation submitted to the Hardship & Anomaly Committee on vacant land within one week and case will be fixed again after report from concerned department on report of Hardship Anomaly

Committee. Learned counsel also relied upon the communication/notice dated 18.03.2004 issued by the MCD, stating that all cases where assessments were completed on ex parte basis and fresh assessment, on merits have not yet been made, all such ex-parte assessments can also be finalized under this UA system of assessment provided that the tax rates which had been approved by the Corporation for the financial year to which the assessment pertained to are applied. All the Assessing Officers are, therefore, advised to proceed in accordance with the aforesaid directions. W.P.(C)No.1174/2010 Page 5 of 48 7. Another order of 07.03.2017 is relied upon issued by the Commissioner/MCD, stating that by virtue of Section 116G of the Amendment Act, those cases can be considered for decision under the Unit Area Method, which are covered under Section 126 of the DMC Act, 1957 (pre-amendment). 8. It is also submitted that, in the present case, the impugned order overlooked a salient fact that vacant land tax was introduced only with effect from 01.04.2005 and, therefore, could not have been covered by the SCNs issued earlier, i.e. on 05.03.2003. It is further stated that as a matter of fact an earlier adjudication is subject matter of remand on 31.03.2005 which did not in any way empower the MCD to enlarge the scope of original show cause notice and impose vacant land tax without prior notice or hearing.

9. The ground of inordinate delay in finalizing the assessment was argued as the basis for unreasonable and arbitrariness on the part of the MCD. Learned counsel relied upon the decision in Springdales School v. North Delhi Municipal Corporation 238 (2017) DLT487(DB) and State of Punjab v. Bhatinda District Cooperative Milk Producers Union Ltd. 2007 (11) SCC363 Learned counsel also relied upon Enkay (India) Rubber Company Pvt. Ltd. v. MCD and Ors. [W.P.(C) 4411/2010, decided on 11.01.2017]..

10. Mr. Jain argued that there are 20 separate properties separately assessed by the SDMC upto 31.03.2004, the full details of which are given in the writ petition. However, the SCN pertains only to property Nos.8654 to 8979 (not part of re-development plan); 8989 to 9033 (part of redevelopment plan) and 9035 to 9055 (part of redevelopment plan). Objections to this notice were made; however, MCD proceeded to assess properties in the W.P.(C)No.1174/2010 Page 6 of 48

impugned assessment order which do not form a part of the aforesaid notice under Section 126 of the unamended Act but also included other properties which did not form a part of the aforesaid notice and seven of which had already been assessed ex-parte. It is submitted regarding these writ petitions that they have been filed before the learned Single Judge of this court. The area in the notice was not disclosed but the MCD assessed 43.24 acres for which the scheme has not been sanctioned. This is clearly illegal and in violation of Section 126 of the un-amended Act. It is argued that MCD could not have done this in view of the fact that no power of review/rectification has been granted to MCD under the provisions of the Act and that too without due notice to the petitioner. In this context, Mr. Jain relies upon the judgments in the matters of Neeru Arora v. Municipal Corporation of Delhi, 124 (2005) DLT90and Municipal Corporation of Delhi v. Sunita Devi Gupta 2009 SCC Online Del 2061.

11. It is argued that the assessment order is barred by limitation as there is gross delay in passing of the impugned assessment order on remand. The notice is dated 05.03.2003 and was finally decided only on 28.03.2005. Against this, W.P.(C) Nos.9678 and 9809 of 2005 were filed which were allowed by order dated 31.05.2005 setting aside the impugned order, remanding the same to Assessing Officer for re-decision and fixed the date of hearing as 10.06.2005 at 11AM and the Assessing Officer was to decide in 4 weeks thereafter but it was actually decided by the impugned order dated 27.12.2009 which is barred by time. Even the remanded matters were not decided. In this context, the petitioner relies upon the judgments of the Supreme Court in the matters of Bhatinda (supra) and Delhi Development Authority v. Ram Prakash, reported as 2011 (4) SCC180 The petitioner W.P.(C)No.1174/2010 Page 7 of 48 also relies upon a judgment passed by this Court on 08.02.2017 in the matter of Springdales (supra).

12. It is argued that no tax can be imposed on vacant land on the petitioner of which the petitioner is only a Lessee, the Government being the owner as per the law laid down by the in Municipal Corporation of Delhi v. Shashank Steel 2009 (2) SCC349whilst interpreting Section 120 of the Act. It is also argued that the lands with the petitioner are of varied natures being partly freehold, partly leasehold, partly demolished, partly having buildings in a ruinous state, partly encroached,

partly having statutory tenants etc. As such, the land under the control of the petitioner for which the Delhi Development Authority has not sanctioned a redevelopment plan cannot be fully implemented and cannot be treated as a uniform contiguous entity subject to a uniform/general taxation.

13. Mr. Jain argued that the UAM is silent on how to classify such a property. For example, Section 163 of the Act which provides that if any building is wholly or partly demolished or otherwise deprived of value, the Commissioner may, on the application in writing of the owner or occupier, remit or refund such portion of any tax assessed on the annual value thereof as the Commissioner may think fit. The petitioner made an application for remission of the entire tax for the relevant years as the property was deprived of its value. As such, the said areas are neither vacant land nor are built up and are incapable of any use whatsoever. No rules were framed by the respondents in this behalf. Further, out of the total construction as stood at the time of the sanction of the layout plan only 78% stands demolished primarily on account of the presence of statutory tenants. However, until all the structures are demolished the entire land cannot be put to use in terms of W.P.(C)No.1174/2010 Page 8 of 48 the conditions of the sanctioned building plan. The UAM is silent whether in these circumstances, the assessee is liable to pay property tax which are in a dilapidated state, and which cannot be pulled down due to protected tenants sitting in other parts of the same property. The petitioner is entitled to remission under Section 163 of the Act for such structures which has not been granted till date.

14. It is urged that in addition, there is an MCD primary school, a Boys Secondary School, an MCD aided Girls Secondary School upon DCMs property assessed by MCD. These schools although being upon the property of the petitioner cannot be said to be let out or self-occupied and are even under the respondent no.1 - are liable to exempt from property tax/liable to rebate. The petitioner had requested MCD for assessment under the UAM as per Section 116G(2) of the Act, but the latter till date has not acceded to the request of the petitioner. The Supreme Court in the matter of Municipal Corporation of Delhi v. Mehrasons Jewellers, reported as (2015) 9 SCC719and this court in the matter of Municipal Corporation of Delhi v. Maj. Gen. Inderpal Singh Kahai, reported as 169 (2010) DLT352 held that MCD

is bound to carry out an assessment under the UAM at the request of the assessee provided that the stipulations set out in the Section are met, which in the present case are met.

15. It is argued that there was no vacant land tax for the year 2004-05 w.e.f. which the UAM was introduced. The petitioner contends that for the years prior to 01.04.2004, which are assessed under the UAM no vacant land tax can be charged in as much as only the scheme which is propounded for the year 2004-05 could be applied for the previous years. For the period prior to the amendment of the Act in 2003 only vacant land which was capable of W.P.(C)No.1174/2010 Page 9 of 48 being built upon was liable to be assessed for property tax. After 2003, this limitation was removed and all land was liable to be assessed for property tax whether it was capable of being built upon or not. In the present case, the land with the petitioner is as such not liable to be assessed for property tax because of legal constraints, many of the structures are in compliance of the sanctioned layout plan. In any event, it is disputed as to what is vacant land and what is not.

16. Mr Jain. submitted that the petitioner has paid more than what is due as property tax to MCD and as such is entitled to a refund of ` 35,42,386/- deposited under order dated 02.03.2010 of this court according to which in case the amount deposited is refunded the same shall be with interest at the same rate the respondent No.1 is charging from defaulters i.e. @12% per annum.

17. Relying on DCM Ltd. v. Municipal Corporation of Delhi, reported as AIR1998 Delhi 348 (in respect of this very land for the period w.e.f. 1.4.1993), where this Court held that in order to enable an assessee to effectively meet the case proposed against him in the notice, the basis of arriving at the proposed figure of rateable value ought to be disclosed to the assessee specifically when the assessee makes a demand for the same, as in the present case. The basis of arriving at the figure contained in the proposal has to be disclosed to the assessee which MCD has failed to do. No details have been furnished as to how the assessment has been carried out for the calculation of rateable value. No proper opportunity has been granted by MCD to DCM, to meet the grounds on which the

respondent no.1 passed the assessment order. W.P.(C)No.1174/2010 Page 10 of 48 18. It is argued that Section 170 (b) of the Act renders the right of appeal illusory because an assessee is required to deposit the total demanded amount of tax before the assessee is entitled to prefer the appeal for the base year and the respondent No.1 can recover the balance by initiating distress proceedings. In a case where the assessment order is passed after much delay of several years or decades an assessee would be required to deposit the total demanded tax for every year, namely the period from the issuance of the notice under Section 126 of the Act and the final order being passed under Section 126 of the Act making the pre-requisite of filing of an appeal extremely onerous and illusory. This is more so in a situation where the demand is excessive/illegal and where the financial strength of any assessee is weak, the effect would cause undue hardship to the assessee. Reliance is placed on Shyam Kishore & Anr. v. Delhi Municipal Corporation where the Supreme Court held that for the appeal to be heard by the Appellate Authority only the tax for the base year would have to be deposited and depending upon the outcome of the appeal adjustment would be given in the remaining assessment years. Consequent, upon the introduction of the UAM every year has become a base year and deposit of tax has to be made accordingly for the appeal to be heard. As such, there is no effective appeal which is provided under the said Act against the levy and assessment of property tax. The provision of appeal under Section 169 read with Section 170(b) is an eye wash and nugatory. Counsel submitted that Shyam Kishore (supra) did not consider the judgment of the Supreme Court in the matter of Himmatlal Harilal Mehta v. State of Madhya Pradesh, reported as 1954 SCR1122 W.P.(C)No.1174/2010 Page 11 of 48 19. It is also argued that under Section 116 of the Act the Government has to set up a Municipal Valuation Committee for classification of lands and buildings into colonies and groups and fix the unit rate for taxation keeping into consideration specified in the Act. There is no provision of appeal from such fixation. However, under Section 116K the respondent No.1 has to set up a Hardship & Anomaly Committee to consider hardship and anomalies in respect of the tax imposed. Till date the said Committee has not decided the representations made by the petitioner. This indecision by the Committee causes an enormous burden upon the petitioner or any other assessee who has filed representations

virtually leaving an assessee remediless having been saddled with an illegal demand.

20. It is argued that Sections 152, 154, 155, 123B(4), (5), (8) and proviso to Section 123B (9) are arbitrary and void because they confer MCD with penal powers and also to claim interest from an assessee in the event of default/delay in payment of property tax but there is no provision for payment of interest in the event that an assessee is entitled to a refund. An assessee aggrieved of an assessment order first has to deposit the entire demanded tax before an appeal can be heard and also incur the loss of interest on the demanded amount. In the event of gross delay in the final adjudication of the matter the assessee loses not only the interest but the principal amount (which in the present case is ` 1,41,69,554/-) becomes depleted on account of inflation. As such, the assessee is severely prejudiced. In the present case the loss incurred by the petitioner is very huge.

21. The MCDs argument is that the petitioner has an alternative and efficacious remedy under Section 169 which this Court should relegate it to. W.P.(C)No.1174/2010 Page 12 of 48 Learned counsel then argued that the challenge to the amendment Act is inapplicable to the facts of this case and in any case, the grounds are not made out. Substantively, it is argued that the Assessor and Collector added seven properties, allegedly while passing the impugned order. Furthermore, the MCD contended why there was no rectification of the order in which the writ petitions were pending in the Court. Learned counsel submitted that the deleted Section 170B cannot be questioned because that was the subject matter in the decision in Shyam Kishore (supra). Further, it is submitted that the decision in Gagan Makkar (supra) is not applicable nor are the facts identical as in that case, the MCD seriously contests the submission with respect to delay in finalization of the assessment order in this case. It is argued that after the order of this Court in the writ petition in 2005, the assessing authority held a number of proceedings. Even as per its admission the proceedings and hearings went on in 2006 and thereafter. In all these hearings, the petitioner sought and produced various documents and continued to do so even later. In view of these facts, it is not as if the AO concluded the proceedings and slept over

the matter. Rather, the concerned official granted hearing and took note of all submissions made while issuing a reasoned order which is impugned in the present writ petition. As such the allegation of delay, it is urged, is baseless. The MCD admits that W.P.(C)s 4683/2008 and 13523/2009 are pending before this Court; however, it denies that the subject matter of those petitions have anything to do with the present case.

22. The NDMC denies any violation of principles of natural justice in the passing of the impugned assessment order, or that it added the 7 properties as alleged. It is denied that MCD has rectified any ex-parte assessment order. W.P.(C)No.1174/2010 Page 13 of 48 MCD submits that in view of the ruling in Shyam Kishore (supra), to say that this court cannot now decide the legality or constitutionality of Section 170(b). It is also denied that Old Act will apply and petitioner can deposit tax for the base year only. NDMC refutes the allegation that right of appeal is illusionary and cannot be treated as an adequate alternate remedy. Counsel submitted that the reliance on Himmatlal (supra) is of no relevance as the dicta in that judgment is not applicable to facts of present case. Counsel also submitted that that proviso to Section 169(1) cannot be said to be ultra-vires the Constitution of India or there are two conflicting provisions in the DMC Act. It is denied that there was any base year concept in unamended DMC Act. Assessee has to file property tax return every year and pay tax annually. Commissioner will raise demand for previous years, only if Assessee has not disclosed true facts or under paid the tax. It is further submitted that now assessee has to file property tax return every year and pay tax accordingly.

23. NDMC argues that tax for the period 01.04.2002 to 31.03.2004 cannot be decided under UAM since it came into effect from 01.04.2004. It is denied that petitioner could opt for assessment under Section 116(G) of DMC (Amendment) Act, 2003 as assessment in the petitioners case was already finalized. It is pointed out that on the one hand petitioner is alleging the challenge to vires of Unit Area Method and on the other hand, petitioner is requesting for assessment under Unit Area Method.

24. It is further submitted that Section 457 of DMC Act relates to powers of District Judge and same has not been extended to Municipal Taxation Tribunal. It is denied that proviso to Section 169 of DMC Act is ultra vires W.P.(C)No.1174/2010 Page 14 of 48 the Constitution. Assessee has to pay tax each and every year. If assessee had chosen not to pay property tax for 10 years, then it has to face the consequences. MCD gives full opportunity of hearing to every assessee and right to get rectified wrong assessments, if any. An honest assessee will never have to pay taxes for 10 years in one go.

25. NDMC argues that Hardship and Anomaly Committee did not hold meetings or did not hear, or consider to decide the objections of public. However the Assessing Authority took into account the commercial area at 13607 Sq.Mtrs. Residential (Leasehold portion). It has to charge tax on tenanted premises and vacant land tax is being charged as construction on ground floor is less than 25% of the plot area. The entire vacant land is in possession of petitioner and roads have not been constructed. The contents relating to separate 20 properties are matter of record with petitioner. It is admitted that layout plan for 26.9 acres (Residential) have been approved by MCD by letter dated 09.08.1991.

26. Counsel for NDMC urged that Section 163 deals with property tax of demolished or destroyed building, whereas, in present case the building is standing in part of the area. The assessee cannot take benefit of Unit Area Method for the assessments in question because Unit Area Method has been introduced w.e.f. 01.04.2004. Vacant land tax is leviable under the unamended Delhi Municipal Corporation Act, 1951. It is denied that assessee has no alternative but to file writ petition under Article 226 of the Constitution of India. It has the right to file appeal under Section 169 of DMC Act against the impugned assessment order and demand. It is denied W.P.(C)No.1174/2010 Page 15 of 48 that amendments are unconstitutional or they do not cover different situations for levy of property tax.

27. Further, learned counsel for NDMC urged that the properties were built on lease hold land or that 7 officers bungalows have been constructed on 2795 Sq.mts (1.97 acres). It is denied that assessee is entitled for remission of any

taxes as these constructions are in dilapidated condition nor Section 163 is applicable to facts of present case. It is denied that assessee is not liable to pay vacant land tax for the years in question as Unit Area Method is not applicable to facts of present case. It is also stated that as a matter of record the lay out plan has been sanctioned for carrying out construction on 3595 Sq. Mtrs. of land. It is denied that this land is incapable of being built upon or that vacant land tax is not leviable on this land. The present writ petition is not for year 2004-05.

28. According to NDMC, it is a matter of record that DCM Primary School has to be shifted, after demolishing the same with respect of DCM Boys Senior Secondary School, built on 4907 sq.mtrs. of land. Notice under Section 126 of DMC Act w.e.f. 01.04.2001 was served upon assessee but it has been decided by MCD. No proposal is pending as on today. The petitioner cannot compare the taxes under old and amended Act as it is beyond the scope of present writ petition by which petitioner is challenging assessment order dated 22.12.2009 and demand thereon. An identical position applies to the DCM Girls Senior Secondary School. NDMC argues that the Hardship and Anomaly Committee is not concerned with assessments prior to 01.04.2003. The

... Petitioner

had contended before the Assessing Authority that separate demands have been issued in respect of the W.P.(C)No.1174/2010 Page 16 of 48 three schools and there is no change in the status and so it cannot be looked into in the present writ proceedings.

29. NDMC denied that lands where old constructions are standing are not liable for payment of property tax. It is submitted that this court cannot go into these facts of vacant, constructed, dilapidated or demolished areas in a petition under Article 226 of the Constitution of India. It is matter of record that industries had to be shifted out of Delhi and petitioner applied for permission to redevelop the property as housing residential complex and layout plan was sanctioned for the same, subject to terms and conditions. But it cannot be said that land in question is incapable of being built upon as per provisions of Section 116(2) of DMC Act, as on today or for the assessment years 2002-03 and 2003-04. The

... Petitioner
is owner of entire land and in its representation dated 28.01.2005 in para 7(iii), it contended that the whole property is to be treated as vacant land. It is denied that vacant land cannot be taxed as on small portion building is existing. Only land or building which fall under provisions of Section 115 of DMC Act are exempt. It is denied that MCD did not provide details on which proposed rateable value had been arrived at by the respondent. MCDs counsel denied that DCM or its advocate were harassed by it. The present case clearly does not fall within the scope of the exemptions stipulated under Section 115(4) of DMC Act.

30. It is argued that NDMC is charging vacant land tax and not tax on building, which have to be constructed in terms of approved lay out plan. It is denied that only 4.31 acres of land is capable of being built upon or that petitioner is not the owner of entire 26.9 acres of land. MCD/NDMC was W.P.(C)No.1174/2010 Page 17 of 48 not handed over even an inch of land owned by DCM. The roads, parks, schools, etc. are part of (Residential Complex) to be developed by DCM on the vacant plot in question and meant for enjoyment and use of residents of that complex, as in all other similar cases. It is denied that MCD is holding any land in trust for public at large. No construction has been carried out and petitioner cannot claim benefits, exemptions for future constructions to be carried out.

31. As to the charge of vagueness in the SCN for assessment, it is submitted that the Assessing Authority took into consideration L&DO rates for determining the market value of land; L&DO rates are much lower than actual prevailing market rate of land. The

... Petitioner
did not start the construction as per lay out and thus cannot demand any benefit, based on the alleged layout plan. It is denied that as on today DCM is not the owner of entire land or it has no right to deal with the land in question roads, parks, schools etc. have not been contracted nor these facilities have any relevance for assessment of vacant land for the assessment years 2002-03 and 2003-04. It is denied that 20% increase in the land rate is based on surmises and conjectures as L&DO rates were available only till the year 2000 and increase in the land rate was

to be taken for the year 2002. Actual rent for let out portion is much below the prevailing rents as these buildings were rented out many years ago. Relevant provisions of the Act 32. Section 116G -introduced by the DMC (Amendment) Act, 2003 is as follows:-

"W.P.(C)No.1174/2010 Page 18 of 48 "116G. Transitory provisions.-. (1) Notwithstanding anything contained in this Act, as amended by the Delhi Municipal Corporation (Amendment) Act, 2003, a tax on vacant land or covered space of building or both, levied under this Act immediately before the date of coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, shall, on the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, be deemed to be the tax on such vacant land or covered space of building or both, levied under this Act as amended by the Delhi Municipal Corporation (Amendment) Act, 2003, and shall continue to be in force until such tax is revised in accordance with the provisions of this Act, as amended by the Delhi Municipal Corporation (Amendment) Act, 2003. (2) Notwithstanding anything contained in sub-section (1), where assessment has not been finalized in respect of a vacant land or covered space of a building or both, on the date of the commencement of the Delhi Municipal Corporation (Amendment) Act, 2003, the assessee may have such land or building or both, as the case may be, assessed on the basis of the annual value".

33. Section 169 of the DMC (Amendment) Act, 2003 is as follows: 169. Appeal against assessment, etc. - (I) An appeal against the levy or assessment or revision of assessment of any tax under this Act shall lie to the Municipal Taxation Tribunal constituted under this section: Provided that the full amount of the property tax shall be paid before filing any appeal: Provided further that the Municipal Taxation Tribunal may, with the approval of the District Judge of Delhi, also take up any case for which any appeal may be pending before the court of such District Judge: Provided also that any appeal pending before the court of such District Judge shall be transferred to the Municipal Taxation W.P.(C)No.1174/2010 Page 19 of 48 Tribunal for disposal, if requested by the applicant for the settlement thereof on the basis of annual value. (2)(a) The Government shall constitute a Municipal Taxation Tribunal consisting of a Chairperson and such other members as the Government

may determine: Provided that on the recommendation of the Government, the Chairperson may constitute one or more separate benches, each Bench comprising two members, one of whom shall be a member of the Higher Judicial Service of a State or a Union territory and the other member from the higher administrative service, and may transfer to any such Bench any appeal for disposal or may withdraw from any Bench any appeal before it is finally disposed of. (b) The Chairperson, and not less than half of the other members, of the Municipal Taxation Tribunal shall be persons who are or have been the members of the Higher Judicial Service of a State or a Union Territory for a period of not less than five years, and the remaining members, if any, shall have such qualifications and experience, as the Government may by rules determine. (c) The Chairperson and the other members of the Municipal Taxation Tribunal shall be appointed by the Government for a period of five years or till they attain the age of sixty five years, whichever is earlier. The other terms and conditions of service of the (d) Chairperson and the other members of the Municipal Taxation Tribunal, including salaries and allowances, shall be such as may be determined by rules by the Government. (e) The salaries and allowances of the Chairperson and the other members of the Municipal Taxation Tribunal shall be paid from the Municipal Fund. W.P.(C)No.1174/2010 Page 20 of 48 In every appeal, the costs shall be in the discretion of (3) the Municipal Taxation Tribunal or the Bench thereof, if any. (4) Costs awarded under this Section to a Corporation shall be recoverable by a Corporation as an arrear or tax due from the appellant.

5. If a Corporation fails to pay any costs awarded to an appellant within ten days from the date of the order for payment thereof, the Municipal Taxation Tribunal may order the Commissioner to pay the costs to the appellant. 34. Section 170 of the DMC (Amendment) Act, 2003 reads as follows:

"170. Conditions of right to appeal.-. No appeal shall be heard or determined under Section 169 unless - (a) the appeal is, in the case of a property tax, brought within thirty days next after the date of authentication of the assessment list under Section 124 (exclusive of the time requisite for obtaining a copy of the relevant entries therein) or, as the case may be, within thirty days of the date on which an amendment is finally made under Section 126, and, in the case of any other tax,

within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of the presentation of the first bill or, as the case may be, the first notice of demand in respect thereof: Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the Municipal Taxation Tribunal that he had sufficient cause for not preferring the appeal within that period; (b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation."

W.P.(C)No.1174/2010 Page 21 of 48 35. Sections 152-155 of the DMC (Amendment) Act, 2003 read as follows:-

"[152.]. Time and manner of payment of taxes. - (1) Save as otherwise provided in this Act, any tax levied under this Act shall be payable on such dates, in such number of instalments and in such manner as may be determined by bye-laws made in this behalf. Provided that if, on the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, there is any increase in the amount of property tax which was being paid or was payable immediately before the coming into force of the Delhi Municipal Corporation (Amendment) Act. 2003, the difference in the amount of property tax in excess of fifty per cent. above the tax being paid or being payable, shall be given effect to by stages covering a period of three years by dividing the amount of such increase in the property tax by three, the quotient being added to the amount of property tax which was payable immediately before the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, and to the amount of property tax which shall be payable respectively in each of the remaining two successive years after such addition. (2) Where any person liable for the payment of property tax under this Act has failed to pay- (a) such tax by the date as specified in sub-section (3) of section 123B; or (b) the arrear of tax, interest and penalty, if any, and any other sum in the nature of tax up to the 31st March of the preceding financial year; he shall be liable to pay simple interest at the rate of one per cent. for every month or part of the month comprising the period from the expiry of the due date, till the amount is actually paid. W.P.(C)No.1174/2010 Page 22 of 48 [152A].. Punishment for wilful default in payment of property tax, furnishing wrong information in return

of assessment, etc.- Whoever wilfully makes default, in the payment of, or wilfully attempts in any manner whatsoever to evade, any tax, including amount of interest due and penalty levied under this Act, or furnishes any wrong information in the return of assessment, or wilfully fails to furnish in due time the return of property tax, or does not furnish information as asked for under any provision of this Act, he shall, without prejudice to any other penal provision under this' Act to which he may be subject, be punishable- (a) in the case where the amount of tax sought to be evaded exceeds ten lakh rupees with rigorous imprisonment for a term which shall not be less than three months but which may extend up to seven years, and with fine of not less than fifty per cent. of the amount of tax evaded; and (b) in any other case, with rigorous imprisonment for a term which shall not be less than one month but which may extend up to three years, and with fine of not less than fifty per cent. of the amount of tax evaded: Provided that the penalties so imposed shall be in addition to, and not in derogation of, any liability in respect of the payment of tax which the defaulter may have incurred.

153. Presentation of bill.-. (1) When any tax has become due, the Commissioner shall cause to be presented to the person liable for the payment thereof, a bill for the amount due: Provided that no such bill shall be necessary in the case of- (a) property tax payable on self-assessment of vacant land or covered space in any building; (aa) a tax on vehicles and animals; (b) a theatre-tax; and (c) a tax on advertisements. W.P.(C)No.1174/2010 Page 23 of 48 (2) Every such bill shall specify the particulars of the tax and the period for which the charge is made.

154. Notice of demand and notice fee -(1) If the amount of the tax for which a bill has been presented under section 153, is not paid within fifteen days from the presentation thereof, or if the tax on vehicles and animals or the theatre-tax or the tax on advertisements is not paid after it has become due, the Commissioner may cause to be served upon the person liable for the payment of the same a notice of demand in the form set forth in the Seventh Schedule. (2) For every notice of demand which the Commissioner causes to be served on any person under this section, a fee of such amount not exceeding five rupees as may be determined by bye- laws made in this behalf, shall be payable by the said person and shall be included in the cost of recovery.

155. Penalty in case of default of payment of taxes -(1) If the person liable for the payment of any tax does not, within thirty days of the service of the notice of demand under section 154, pay the sum due and if no appeal is preferred against such tax, he shall be deemed to be in default. (2) When the person liable for the payment of any tax is deemed to be in default under sub-section (1), such sum not exceeding twenty per cent. of the amount of the tax as may be determined by the Commissioner may be recovered from him by way of penalty, in addition to the amount of the tax and the notice fee, payable under sub-section (2) of section 154. (3) The amount due as penalty under sub-section (2) shall be recoverable as an arrear of tax under this Act. 36. Section 123B of the DMC (Amendment) Act is as follows: 123B Self-assessment and submission of return.-. (1) After the coming into force of the Delhi Municipal Corporation W.P.(C)No.1174/2010 Page 24 of 48 (Amendment) Act, 2003, any owner of any vacant land or covered space of building or any other person liable to pay the property tax or any occupier in the absence of such owner or person, shall file a return of self-assessment within sixty days of the coming into force of the aforesaid Act. (2) Such owner or other person or occupier, as the case may be, shall, thereafter, file the annual return only in those cases where there is a change in the position as compared to the previous return, within three months after the end of the financial year in which the change in position has occurred. (3) Any owner of any covered space of building or vacant land or any other person liable to pay the property tax, or any occupier in the absence of such owner or person shall compute the tax due under section 114A or section 114C, as the case may be, and pay the same in equated quarterly instalment by the 30th day of June, 30th day of September, 31st day of December and 31st day of March of the financial year for which tax is to be paid. In the event of tax being paid in one lump sum for the financial year by the 30th day of June of the financial year, rebate of such percentage not exceeding fifteen per cent. as may be notified by a Corporation, of the total tax amount due shall be allowed. (4) Any owner of any vacant land or covered space of building or any other person liable to pay the property tax or any occupier in the absence of such owner or person, who computes such property this section, shall, on such computation, pay the property tax on such vacant land or covered space of building, as the case may be, together with interest, if any, payable under the provisions of this Act on-

(a) any new building or existing building which has not been assessed; tax under Or W.P.(C)No.1174/2010 Page 25 of 48 (b) any existing building which has been redeveloped or substantially altered or improved after the last assessment, but has not been subjected to revision of assessment consequent upon such redevelopment or alteration or improvement, as the case may be. (5) Such owner or person, as the case may be, shall furnish to the Commissioner a return of self-assessment in such form, and in such manner, as may be specified in the by-laws and every such return shall be accompanied by proof of payment of property tax and interest, if any. (6) In the case of any new building for which an occupancy certificate has been granted, or which has been occupied, after the coming into force of the Delhi Municipal Corporation (Amendment) Act, 2003, such payment shall be made, and such return shall be furnished, within thirty days of the expiry of the quarter in which such occupancy certificate is granted or such building is occupied, whichever is earlier. Explanation.-For the removal of doubt, it is hereby declared that occupancy certificate may be provisional or final and may be for the whole or any part of the building and occupancy may be of the whole or any part of the building. (7) After the determination of the annual value of vacant land or covered space of building under section 116E or section 116F or revision thereof under section 123C has been made, any amount paid on self-assessment under this section shall be deemed to have been paid on account of such determination under this Act as amended by the Delhi Municipal Corporation (Amendment) Act, 2003. (8) If any owner or other person as aforesaid, liable to pay the property tax under this Act, fails to pay the same together with interest thereon, if any, in accordance with the provisions of this section, he shall, without prejudice to any other action to which he may be subject, be deemed to be a defaulter in respect W.P.(C)No.1174/2010 Page 26 of 48 of such property tax, or interest, or both, remaining unpaid, and all the provisions of this act applicable to such defaulter shall apply to him accordingly. (9) If after the assessment of the annual value of any land or covered space of building finally made under this Act, the payment on self-assessment under this section is found to be less that than of the amount payable by the assessee, the assessee shall pay the difference within two months from the date of final assessment, failing which recovery shall be made in accordance with the provisions of this Act, but, after the final assessment, if it is

found that the assessee has paid excess amount, such excess amount shall be refunded: Provided that in any case where the amount of tax determined in the final assessment is more than the amount of tax paid under self-assessment, and the difference in the amount of tax is, in the opinion of the Commissioner, the result of wilful suppression of the Commissioner may levy a penalty not exceeding thirty per cent. of such difference in the tax besides the interest thereon: Provided further that the levy of such penalty shall be in addition to any other punishment provided for under this Act: Provided also that the procedure for sending of notice, hearing of objection and determination of tax and penalties shall be such as may be specified in the bye- laws. (10) Where no notice is sent by the Commissioner under section 123C within twelve months after the year to which such self-assessment relates, such self- assessment shall be regarded as assessment made under this Act: Provided that in any case, where there has been wilful suppression of facts, penalty upto thirty per cent. of the tax due may be imposed: facts as defined in the bye-laws, W.P.(C)No.1174/2010 Page 27 of 48 Provided further that the procedure for sending of notice, hearing of objection and determination of tax and penalties shall be such as may be specified in the bye-laws. Analysis and Findings 37. As far as the first question with respect to the onerous nature of the conditions for appeal, essentially mandated by Section 169 of the Act are concerned, the judgment in Gagan Makkar v. UOI [W.P.(C) 4683/2008, decided on 23.08.2012]., is as follows: From this discussion, it is apparent that, first of 24. all, the right of appeal is a creature of the statute; secondly, as such, the legislature can circumscribe this right of appeal by making it conditional; thirdly, however, such condition must not be so onerous as to amount to an unreasonable restriction rendering the right almost illusory; fourthly, it is permissible to enact a law stipulating that no appeal shall lie against an order relating to assessment of tax unless the tax has been paid; but, fifthly, this has been held by the Supreme Court in cases where the requirement of pre-deposit of the tax amount at the point of appeal is accompanied by a provision for waiver of the same, complete or partial, by the appellate authority on the appellant demonstrating undue hardship.

25. In the backdrop of these legal principles - can it be said that the proviso to Section 169 (1) of the DMC Act imposes a condition so harsh or onerous as to

make the right of appeal granted under Section 169(1) illusory?. We have seen that in Anant Mills (supra), the provision in question [section 406(2)(e) of the Bombay Provincial Municipal Corporation Act, 1949]. had a proviso which permitted the appellate authority to dispense with the requirement of pre-deposit of the tax claimed from the appellant in cases of hardship. In Seth Nand Lal(supra), the Supreme Court upheld such a provision, inter alia, because of the meagre amount of pre-deposit that W.P.(C)No.1174/2010 Page 28 of 48 the right of appeal was required under the Act in question. Once again, in Vijay Prakash D. Mehta (supra), the Supreme Court upheld the validity of Section 129 E of the Customs Act, 1962 which also contained a proviso enabling the appellate authority to dispense with the pre-deposit of tax or penalty. A similar provision was considered in Gujarat Agro Industry (supra) though in that case, the power to dispense with the pre-deposit was limited to 25% of such amount. In Shyam Kishore (supra), the Supreme Court interpreted Section 170(b) of the DMC Act in such a way as to avoid the issue of constitutional validity. However, it observed that the validity of a condition, which makes illusory, may need careful consideration in an appropriate case.

26. In its present avatar, Section 169(1) gives a conditional right of appeal. The condition being that before the filing of the appeal, the full amount of the property tax is required to be paid. There is no provision for dispensation of this condition, in full or in part, by the appellate authority on the appellant showing and establishing hardship. In this way, it is different to the cases considered in Anant Mills (supra), Vijay Prakash D. Mehta (supra) and Gujarat Agro Industries (supra) all of which, to some degree, involved provisions which had a safety valve clause, as it were, for dispensation of the pre-deposit amount. And, in Seth Nand Lal (supra), which had a peremptory provision without such a clause, the Supreme Court held the provisions to be valid because the predeposit amount was a meagre amount. The Constitution Bench after reiterating the principle that the legislature could impose conditions on the right to appeal provided the conditions were not so unreasonable or onerous to render the right illusory, found that the meagre amount of predeposit was neither an unreasonable nor onerous condition.

27. Here, the property tax amount may run into lakhs of rupees and, therefore, cannot be regarded as meagre. As such, we are of the opinion that the proviso to Section 169(1) of the DMC Act imposes an onerous and unreasonable condition of paying W.P.(C)No.1174/2010 Page 29 of 48 the full amount of the property tax before the filing of an appeal. Such a provision renders the right of appeal illusory. It is true that the legislature need not have given a right of appeal at all. But, the legislature, having decided, in its wisdom, to give a right of appeal cannot make it illusory by imposing such an onerous or unreasonable condition as to amount to a deprivation of that very right which it intends to give. Neither can the possible property tax amounts be considered meagre nor is there any provision for dispensation, whether full or partial, so as to ease the harshness of the proviso to Section 169(1) of the DMC Act. Therefore, we have no alternative but to hold that the said proviso is an onerous condition and to strike it down as being violative of Article 14 of the Constitution of India. 38. In the light of the above, this Court is of the opinion that the Division Benchs view in Gagan Makkar (supra) prevails and ought to apply. At the same time, this Court is cognizant and has noticed all the facts that the judgment in Gagan Makkar (supra) is pending appeal by Special leave. The declaration of law made in Gagan Makkar (supra) is consequently valid. However, it clarified that the parties shall be bound by the final judgment of the Supreme Court in the pending appeal arising out of Article 136 proceedings before it. For the same reasons, it is held that the judgment in Shyam Kishore (supra) binds the parties and precludes any discussion about the validity of Section 170B.

39. With respect to the other important argument, i.e. the delay alleged by the petitioner and the ground of finalization of the assessments, the DB judgment in Springdales (supra) had followed a previous ruling of the Supreme Court in Bhatinda (supra). After noticing the observations, this Court stated as follows: W.P.(C)No.1174/2010 Page 30 of 48 21. Following Bhatinda (supra) in the present case, Section 123B(10) statutorily finalizes, as it were, the assessment unless the return is scrutinized and notice issued for the purposes of proceedings by the Commissioner one year after the completion of the concerned assessment year. Section 123D constitutes an exception to Section 123B(1) inasmuch as it empowers the Commissioner to revisit the issue even after the expiry of period

stipulated under Section 123(D)(b). Exercise of Section 123D per se is not conditioned or constrained by any time limit. Following the logic in Bhatinda (supra) and DDA (supra), the Court is of the opinion that a harmonious construction of the two provisions would mean that even the power under Section 123D is to be exercised for a maximum period of one year after the lapse of the period indicated in Section 123B(10). There is, furthermore, a need to clarify that in the event of exercise of the suomotu powers under Section 123D, by the Commissioner, which leads to any reassessment for the permissible years (say 2-3 previous years), it would be sufficient compliance with Section 170(b) if the assessee deposits the demand relatable to one year, in the light of the changed circumstances, because that will operate less onerously, and facilitate meaningful exercise of the right of appeal available. This logic had prevailed and persuaded the Court to hold that the base year rateable value related tax alone could be deposited in compliance with the pre-deposit condition in Sunil Raj (supra) although that is per se not the mandate of Section 170(b). As far as the issue of use factor is concerned, this Court notices that the question is covered by V.K. Kaul v. UOI192(2012) DLT241(DB). In that judgment, the Court had held that the basis for determining the rateable value by deploying Use Factor 3, i.e. the nature of fees charged by the institution, is untenable. The court in V.K. Kaul (supra) stated as follows: 59. While we have no difficulty in agreeing with the respondents that there exists an intelligible differentia between government / government-aided schools on the one hand and private un-aided schools on the other, the question this the object of such differentia has a nexus with that needs examination is whether W.P.(C)No.1174/2010 Page 31 of 48 classification. The apparent and ostensible object is that schools which are not running as profit earning businesses ought to be treated at par with government / government-aided schools. That is apparent from the fact that government / government aided schools have a use factor of 1 and so do private unaided schools, which charge fees uptoRs. 600/- per month. The foundation on which the Use Factors of 2 and 3 are assigned to schools charging fees between Rs.601/- and Rs.1200/- per month and those charging fees in excess of Rs. 1200/- per month, respectively, appears to be the reasoning or, shall we say, assumption that these schools are profit making enterprises. But, what if that were not true?. What if the schools charging

higher fees were imparting a better quality of education with a better infrastructure without any individual or group of individuals profiteering from the enterprise?. In such a situation, the nexus between the intelligible differentia and the object would disappear rendering the classification to be violative of article 14 of the Constitution. Therefore, a classification based merely on the fee structure would not be a satisfactory means of achieving the object. Perhaps, one Use Factor could be assigned to all schools which are not profit making bodies / entities, irrespective of the fee structure. And, a higher Use Factor could be assigned to schools which are being run on a profit-making basis. We have no means to ascertain as to whether the petitioners before us fall into one or the other category. While we agree with the petitioners that the fee structure cannot be the sole determinative factor for ascribing a particular Use Factor, we are also clear that it is not for us to do this exercise. Consequently, we direct that this grievance of the petitioners with regard to the Use Factor assigned to school buildings be considered by the Corporation and the MVC in the light of observations made above. In the meanwhile, however, as we have found the classification based on fee structure alone to be violative of Article 14 of the Constitution and beyond the mandate of the W.P.(C)No.1174/2010 Page 32 of 48 amended Act of 1957, all schools, irrespective of the fee structure, would have to be assigned a single Use Factor. And, since government / government aided schools have been assigned a UF of one (1), that would be applicable for all schools till the exercise is completed by the MVC and the Corporation in the light of the discussion above. 40. In the present case, no doubt, the SCN issued to DCM was in March 2003 and was relatable to the period 2002-03. However, at the same time, this matter had reached the Court by way of writ petitions - W.P.(C)s 9678/2003 and 9809/2003. W.P.(C) 9670/2005 along with W.P.(C) 9809/2005 set aside the order of 28.03.2005 and remitted the matter back to the assessing officer. The record would show that thereafter the petitioner had approached this Court on various dates in various proceedings - W.P.(C)s 4271/2007; 8500/2000; 8329/2007; 8492/2007; 8499/2007, 8498/2007; 8327/2007, 8328/2007 and 4343/2007. Furthermore, the details of proceedings and correspondence clearly bear out the fact that during the period 2005-08, the hearings were conducted; the petitioner DCMs counsel sought and was granted time to issue clarifications and documents

as well. These were availed of. Unlike in Bhatinda (supra) or Springdales (supra), this Court is not persuaded to hold that the impugned order is erroneous or void on account of delay. Neither of the hearings conducted in this case and the other peculiarities such as the number of writ petitions initiated by the petitioner in respect of which there is no clarity in the present writ petition, i.e. whether all of them are subject matter of these proceedings or are the subject matter in relation to other properties, this Court cannot accept the plea that there was undue delay and consequent error in the making of the assessment order. This argument is consequently rejected. W.P.(C)No.1174/2010 Page 33 of 48 41. This court is of the opinion that the judgment in Mehrasons (supra) clearly substantiates the argument of the petitioner on the question of exercise of option under Section 116G. In that decision, the correctness of this courts judgment in Inderpal Kahai (supra) was challenged by the erstwhile MCD. The court held as follows: 21. Since what is being assailed is the correctness of the judgment in Major General Inderpal Singh Kahais case (supra) passed by the Division Bench of the Delhi High Court, it is important to set out its reasoning. The Division Bench, after referring to Sections 116G and 169, then stated: 9. It is clear from the third proviso to Section 169(1) of the DMC Act that even where an assessment is finalized, but an appeal is pending, an assessee is entitled to ask for a decision in the appeal on the annual value basis. In other words, even at an appellate stage, an assessee is empowered to ask for a decision on the basis of the annual value of the property.

10. Therefore, three situations are postulated: Firstly, where an assessment has been finalized and no appeal is filed against it, then the assessment will continue to be operative until it is revised. Secondly, where an assessment has been finalized but an appeal has been filed against it, then as per the third proviso to Section 160(1) of the DMC Act, the assessee can ask for an assessment on the basis of the annual value of the property. Thirdly, where the assessment is not finalized, then as per Section 116-G(2) of the DMC Act, the assessee can ask for an assessment on the basis of the annual value of the property. W.P.(C)No.1174/2010 Page 34 of 48 11. It appears to us that the intention of the Legislature was to commence the levy of property tax with effect from 1st April, 2004 on a clean slate - in respect of all pending assessments and in respect of all appeals pending against finalized assessment orders. All assessments in such

cases would be made after 1st April, 2004 on the option of the assessee, on the basis of the annual value of the property. If the statutory amendment is read and understood in this light, it is clear that Section 116-G(2) of the DMC Act not only entitles an assessee to seek an assessment on the annual value basis, in an assessment not yet finalized, but it also empowers the assessee in making such a demand as a matter of right.

12. Looked at from another point of view, if Section 116- G(2) of the DMC Act does not so empower an assessee, then not only would the purpose of that Section be lost, but a rather strange and anomalous situation would be created - namely, that in a pending appeal against a finalized assessment, an assessee can demand an assessment on the basis of the annual value of the property (third proviso to Section 169(1) of the DMC Act) but in a pending assessment, the assessee cannot demand an assessment on the basis of the annual value. Surely, such an odd situation is not postulated by the law or by the Legislature. is the in appreciating 15. In our opinion, there is an error in the submission made by learned counsel for the Municipal Corporation. The error term `finalized assessment. An assessment in the context of Section 116- G(2) of the DMC Act means an assessment that has been accepted by the assessee and is not the subject matter of a statutory appeal. It does not include an assessment set aside in appeal nor does it include an assessment challenged by way of a statutory appeal. This being so, the assessment made by the Joint Assessor and Collector and set aside by the learned Additional District Judge by W.P.(C)No.1174/2010 Page 35 of 48 his order dated 1st April, 2002 is not a `finalized assessment within the meaning of Section 116-G(2) of the DMC Act. The assessment in the case of the respondents having been set aside and remanded back for re- determination of the rateable value by the learned Additional District Judge clearly indicates that the assessment was wide open. In that sense, it was not finalised in so far as the provisions of Section 116-G(2) of the DMC Act are concerned.

16. According to learned counsel for the Municipal Corporation, notwithstanding this, once the assessment is made by the Joint Assessor & Collector, it must be taken to be finalized for the purpose of Section 116- G(2) of the DMC Act. This submission would be correct if the assessment order is accepted by the assessee

or is not challenged in appeal, but in the present case where the assessment order itself has been set aside with a direction by the learned Additional District Judge to re- determine the rateable value (and no fresh order has been passed by the Joint Assessor and Collector in terms of the directions given by the Additional District Judge) it cannot be said that the assessment has been finalized at least at the hands of Joint Assessor and Collector. 22. We are of the opinion that this is a correct view of the law. Under Section 169 3rd proviso, appeals that are pending before the Court of the District Judge are to be transferred to the Municipal Taxation Tribunal to be set up under the 2003 Amendment for disposal, if requested by the applicant, for the settlement thereof on the basis of annual value. This proviso means that an appeal pending before a District Judge is to be transferred compulsorily to the Taxation Tribunal (after it is set up) if an applicant requests for disposal of the appeal on the basis of annual value. Obviously, the word settlement would not in this context means a consensual arrangement between both parties but would only mean a determination to be made by the Tribunal on the basis of annual value. Once this W.P.(C)No.1174/2010 Page 36 of 48 position becomes clear, the impugned judgment cannot be faulted. It is clear then that even at the appellate stage an applicant can opt to apply for the new unit area method provided for in Section 116E so that his property tax assessment may be decided in accordance with the said method even though it pertains to an assessment year prior to 2003. 42. It is plain that three situations were contemplated by this court in Inderpal Kahai (supra). The third one related to pending assessments; the Division Bench concluded that All assessments in such cases would be made after 1st April, 2004 on the option of the assessee, on the basis of the annual value of the property. If the statutory amendment is read and understood in this light, it is clear that Section 116-G(2) of the DMC Act not only entitles an assessee to seek an assessment on the annual value basis, in an assessment not yet finalized, but it also empowers the assessee in making such a demand as a matter of right. This view was held to be the correct interpretation by the Supreme Court in Mehrasons (supra).

43. In the present case, the SCN was issued in March 2003. The amendment of 2003 came into force on 01.08.2003. Therefore, clearly in terms of Section 116G the petitioner had the option of choosing the mode of finalization of the

assessment. The order/proceeding dated 28.03.2006 clearly records that the assessee requested finalization of the assessment under the UAM, under the amended Act. The impugned order, therefore, needs to be set aside on this aspect.

44. As far as the petitioners submissions with respect to the decision in Shashank Steel (supra) and denial of liability under Section 120 goes, the W.P.(C)No.1174/2010 Page 37 of 48 court is of opinion that such arguments could not have been brushed aside. In that decision what was in issue was whether M/s. Shashank Steel Industries Pvt. Ltd. was the owner of the leasehold rights under the said Deed who was primarily liable to pay property tax under Section 120(1)(c) of the said 1957 Act. That argument was rejected by this Court which interpreted the perpetual sub-lease dated 20.2.1981 in entirety and concluded that on account of various restrictions placed on the sub-lessee it cannot be said that M/s. Shashank Steel Industries Pvt. Ltd. (sub-lessee) was the owner of the industrial plot and that the perpetual sub-lease did not operate as a conveyance. The Supreme Court endorsed that judgment, stating as follows: 14. In this case, we are concerned with the question of primary liability on the vacant land during the period 1982 to 1987. During that period the factory had not come up. Therefore, there was no question of enhanced value on account of accretion taking place during the said period. Therefore, keeping in mind the restriction(s) placed on the sub-lessee we are of the opinion that this is a case of "letting". It is not the case of conferring ownership rights on the sub- lessee. Under the Deed, M/s. Shashnak Steel Industries Pvt. Ltd. remains a sub-lessee. In fact, there is forfeiture/re-entry provided for in the said lease. That right of forfeiture/re-entry can be effected either by the lessor or by the lessee which further shows that the sublessee is not in full enjoyment of the leasehold rights in the property in question.

15. For the aforestated reasons on interpretation of the perpetual sub-lease dated 20.2.81, we are of the view that the said Deed cannot be construed as a conveyance of leasehold rights in favour of M/s. Shashnak Steel Industries Pvt. Ltd. We are of the view that this case is that of letting. Therefore, we do not find any infirmity in the impugned judgment. We also agree with the view taken by the Delhi High Court that a bare perusal of the Deed would show that the condition

imposed on the sub- W.P.(C)No.1174/2010 Page 38 of 48 lessee to pay tax is only as a matter of indemnification and it would not indicate ownership of the leasehold rights in favour of the sub-lessee.

16. Coming to the interpretation of the provisions of Section 120(1) of the said 1957 Act, at the outset we may state that the language of the said section suggests that the intention of the Legislature in fixing primary liability of property tax upon the owner of the land is to facilitate the collection of property tax. It is not unreasonable for the Legislature to impose the primary liability upon the lessor and to give him the right of recoupment. In this case, we are concerned only with the question as to whether the Corporation was right in imposing primary liability to pay property tax on the sub-lessee under Section 120(1)(c) of the said 1957 Act. Whether the liability was on Mohan Co- operative Industrial Estate Ltd., is not required to be gone into by us because that is not the case of the Corporation and also because the lease between the President of India and Mohan Co-operative Industrial Estate Ltd. dated 20.3.80 was not produced before us. We also do not know the basis on which premium was payable by the lessee to the lessor.

17. On a bare reading of Section 120(1)(c), in the context of the Deed dated 20.2.81, we find that the said Deed did not operate as a conveyance and that the industrial plot was let out to M/s. Shashnak Steel Industries Pvt. Ltd. Since there was letting in favour of the said company, Section 120(1)(c) of the said 1957 Act did not apply.

18. For the aforestated reasons, we see no infirmity in the impugned judgment of the Delhi High Court. Accordingly, the civil appeal filed by the Corporation is dismissed with no order as to costs. 45. This court is of the opinion that the perfunctory manner by which the impugned order brushed aside the petitioners submissions with respect to W.P.(C)No.1174/2010 Page 39 of 48 applicability of the principles in Shashank Steel (supra) cannot be countenanced. That judgment constitutes the law of the land, being a binding enunciation of the principles applicable, made by the Supreme Court- and in the context of provisions of the Act. The Commissioner being a creation of that law, was bound by that interpretation. The impugned order, however, is bereft of any reasons as to why

that decision is inapplicable; nor does it analyze the facts relating to each property, the area, the terms of the lease or conveyance deed, etc. Consequently, the impugned order has to be set aside on this ground as well.

46. As far as the question of vacant land tax is concerned, it is noteworthy that this too is intrinsically connected with the issue of title. Furthermore, the assessing officer ought to have taken note of the existing constructed portions, those which were demolished, the portions which had to be demolished but could not be; the area capable of construction, in respect of each property (having regard to the sanctioned plan) and the area under occupation of tenants. A tabular chart and separate discussion of each property was necessary. However, the discussion is an omnibus one.

47. The particulars of the various properties, detailed in the petition area as follows: S. No .

1. Deman d No.77434
Property No.Area Category Status of property Sq. Area Mtr. Known C-Line Ganesh Line 8654-8979 8989-9033 9035-9355 Leasehol d Freehold Not part of the redevelopment . Part of the re- 101543 sq. mtr. (L.H. 11040 + 90503) Sq. Mtr. W.P.(C)No.1174/2010 Page 40 of 48 Jain Line Freehold development Part of the re- development 2 77438 8980-8988 3 77436 9034 4 5 6 9356-9380 77435
77437 9381-9419 77439 9433-A777442 9433-C KatraBha ktawar Mal. Part of Jain Land At one time ESI Dispensar y part of Ganesh Line Tent Factory. Part Ganesh Line KohluWal iGali Line No.9 (Qtr. 1 to

200) of Line No.9 (Qtr. 201 to

356) Freehold Part of the re- development Sq. 310 Mtr. Freehold Part of the re-development Sq. 1145 Mtr. Freehold Part of the re- development Sq. 250 Mtr. Freehold Part of the re- Partly Freehold Partly leasehold Partly Freehold Partly leasehold development Partly freehold under redevelopment Partly freehold under redevelopment On lease hold no redevelopment is permitted Partly freehold under redevelopment sq. Sq. 540 Mtr. 18777 Sq. Mtr. Leasehold 15732 sq.mtr. Freehold 3045 mtr. 18777 sq. mtr. (Leasehold) 14740 sq. mtr. Freehold 4037 sq. mtr. 6492

sq. mtr. 8 77440 9433-B Jain Land Partly Freehold W.P.(C)No.1174/2010 Page 41 of 48 9 77441 9433B-1 Partly disputed land Jain Land Partly MCD Primary School Ganesh Line 10 First Assess ment 1.4.20 02 on disputed land on redevelopment has been permitted. Partly freehold under redevelopment . On disputed no redevelopment has been permitted. Freehold Proposed Freehold Partly disputed land 4330 Sq. Mtr. 405 Sq. Mtr. to relocated be within the same complex proposed use for residential part of the Approved LOP-MCD (total area of school is 405 sq. mtr. - covered area 300 sq. mtr. Year of construction 1949. 11 First Assess ment 1.4.20 02 Ganesh Line DCM Girls Senior Secondary School Sq. 1619 Mtr. Freehold Proposed to relocated be within the same complex proposed use for residential part of the Approved LOP-MCD (total area of school is 1609 W.P.(C)No.1174/2010 Page 42 of 48 12 First Assess ment 1.4.20 02 DCM Boys Senior Secondary School sq. mtr - covered area 630 (Ground) + 235 (first floor) sq. mtr. Year of construction 1967 school under operation and it aided is school. (The is Jain Line Freehold Proposed Sq. 4907 Mtr. 1143.8 Sq. Mtr. to relocated be within the same complex proposed use for residential part of the Approved LOP-MCD (total area of school is 4907 sq. mtr - covered area 1434 (Ground F) + 1031 (First floor) sq. mtr. Year of construction 1957 (The school is under operation aided school. Leasehold property 100 % vacant not demolished letter to MCD - 13
9421 DCM Officer Bungalow Leasehol d W.P.(C)No.1174/2010 Page 43 of 48 for dilapidated conditions and no permission for construction not a part of the project.- .do- -do- -do- -do- -do- -do- -do- -do- -do- -do- -do- -do- 14
9422 15
9423 16
9430 17
9431 18
9432 19
9433 -do- -do- -do- -do- -do- -do- 20
9732-10093 B-Line -do- -do- Sq. 1230 Mtr. 1231.6 Sq. Mtr. 1063.6 Sq. Mtr. 1063.6 Sq. Mtr. 1063.7 Sq. Mtr. 1144.7 Sq. Mtr. 14245 Sq. Mtr.

48. The impugned assessment order (@ pages 102 to

104) contains a discussion, and sets out a tabular chart, which is as follows: through its assessee .The various representations dated 22.03.03, 14.1.2005, 25.2.2005, 17.11.2005, 28.11.2005, 4.5.06, 26.11.07, 12.3.2008 and during personal hearing, held on 19.1.05, 27.01.05, 25.02.05, 16.03.05, 17.11.05, 21.03.06, 08.11.07, 26.11.07, 20.02.08, 25.04.08, 13.03.09, 24.11.09. 08.12.09, objected to the proposal of increase in the RV. They are part of this adjudication proceeding. the meantime, communications were received vide In & DPCC/MS/SEAC/09/587 DPCC/MS/SEAC/09/676 dated 2312009 FROM State Level Expert Appraisal Committee (SEAC) of Delhi Pollution Control Committee that the particulars furnished before it by M/s. DCM0510.2009 dated W.P.(C)No.1174/2010 Page 44 of 48 Ltd. was at variance with the claim made by it before the Property Tax Department of MCD as to various use in regard to property the present proceeding. This was also confronted to the assessee on 24.11.2009. the subject matter of forming In response to notice dated 17.11.2009, Shri B.B. Jain Advocate and authorized representative (A/R) of the assessee company appeared on 24.11.2009 and 08.12. 2009 and made his submissions before me. At the outset, it was brought to notice by the A/R on 24.11.2009 to its submission dated 17.11.2005 listing down the properties pending adjudication as under: S. No.Property No.A B C D E F G H XIV/7303- 7661, Hindu Rao Bara Bara XIV/8654- 8989- 8979, 9033, 9035- 9355, Kishan Ganj XIV/9356-80 Near Hindu Rao XIV/9433-b-1, Kishan Ganj XIV/9433-C, Kishan Ganj XIV/9034, Kishan Ganj XIV/9433-A, Kishan Ganj XIV/9381- 9419, KohluwaliGali, Kishan Ganj Old existing RV6449080420 Proposed New RV Decided on Status of cases 3110000 29.3.05, Pending on remand 559223200 28.3.05, Pending on remand Assessment orders set aside by the High Court vide its judgment dated 31.5.05 remanding them to the A&C. 15180 3777060 Pending -do- 6480 2010000 Pending -do- 28080 875000 Pending -do- 10000 530000 Pending -do- 30240 475000 Pending -do- 1830 250000 Pending -do- W.P.(C)No.1174/2010 Page 45 of 48 I J K L M XIV/8980-88, Kishan Ganj XIV/9433-B, Kishan Ganj DCM Boys Sr. Sec. School, Gaushala Road, Kishan Ganj DCM Primary School, Gaushala Road, Kishan Ganj DCM Girls Sr. Sec. School, Gaushala Road, Kishan Ganj 370 140000 Pending -do- 8000 130000 Pending -do- - - - 1580000 23.3.05 Pending on remand 350000 21.3.05 220000 Pending and The Jt. A&C vide its letter dated 1.7.05 stayed the ex-parte

order the demand/kept in. Demand although or assessment remains.-. paid question double still It was pointed also out by the A/R that out of the above, a de novo adjudication has already been made in the case of property no.7303-7661, Bara Hindu Rao (S. No.A of above) by the A&C rest of the cases are being adjudicated now. 49. The writ petitioner, DCM produced 7 show cause notices issued on 05.03.2003, and 17.03.2003 later, in the amended writ petition. From the pleadings there is no clarity whether separate writ petitions are pending in respect of these notices. A tabular chart in respect of those properties is as follows: S. No.Date notice of Property Nos. Existing RV Proposed RV1 17.03.2003 8980-88/XIV Gaushala 370/- 1,40,000/- With effect from 1.4.02 Road, Kishan Ganj, Delhi (at S. No.I in impugned W.P.(C)No.1174/2010 Page 46 of 48 2. 17.03.2003 9034/XIV, Gaushala Road, 10,000/- 5,30,000/

4.02 order) Kishan Ganj, Delhi (at S. No.F in impugned order) 3. 05.03.2003 9356-9380/XIV, Kishan Ganj, Bara Hindu Rao, Delhi. 15,180/- 37,77,060/

4.02 (at S. No.C in impugned order) 4. 17.03.2003 9381-9419/XIV, Gaushala 1830/- 2,50,000/

4.02 Road, Kishan Ganj, Delhi (at S. No.H in impugned order) 5. 17.03.2003 9433-A/XIV, Gaushala 30,240/- 4,75,000/

4.02 Road, Kishan Ganj, Delhi. (at S. No.G in impugned order) 6. 17.03.2003 9433/C/XIV, Gaushala 28,080/- 8,75,000/

4.02 Road, Kishan Ganj, Delhi. (at S. No.E in impugned order) 7. 17.03.2003 9433/B/XIV, Gaushala 8,000/- 13,00,000/

4.02 Road, Kishan Ganj, Delhi (at S. No.J in impugned order) 50. The collective nature of the impugned order, which seeks to deal with properties other than what was part of the original SCN, but were subject matter of other notices, in this courts opinion, is troublesome. The composite nature of the order tends to broad-brush all properties with the same treatment. Given that the assessee had multifarious defences - all of W.P.(C)No.1174/2010 Page 47 of 48 which could apply to some properties and some of which only to a few and others to some

others, at least separate orders or at least a separate discussion in the impugned order, with respect to each property was necessary. As a consequence, this court is of the opinion that the impugned order cannot be sustained.

51. In view of the above conclusions, the Court hereby sets aside the impugned order. The Assessing Officer shall consider all contentions of the petitioner and also especially grant the option of assessment under the new Unit Area Method, in terms of Section 116G of the MCD Act. The process shall be completed in six months. The writ petition is accordingly allowed without order on costs. APRIL24 2019 S. RAVINDRA BHAT (JUDGE) A.K. CHAWLA (JUDGE) W.P.(C)No.1174/2010 Page 48 of 48

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