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17 05 2005

Present Mr R.K. Aggarwal for the petitioner
Mr Vinay Sabharwal and Mr Roopeesh Kanwar, Advocate for
the respondent

WP(C) No.8056/2005 & CM 5853/2005

1. Rule. With consent of parties, the matter is taken up for final disposal.
2. The relief claimed in this petition is against an assessment order and issued show cause notices under Section 154 of the Delhi Municipal Corporation Act "The Act") on 20.12 2004. The petitioner submits that the finalization of rateable value in this case is contrary to the principles formulated by the decisions of this Court. The property in question is in Sainik Farms.
3. Learned counsel for the petitioner, Mr Agarwal, submits that the respondent MCD was bound to finalize the assessments having regard to the consideration in the purchase transaction and the actual cause of construction. He has placed reliance on the judgment of this Court in *KTS Tulsi Vs. MCD 2003 IV AD (Delhi) 666* which was subsequently followed in *Amarjit Singh Nanda Vs. MCD & Anr., WP(C) No 13418/04* and *Krishanjit Sangar Vs. MCD & Anr. WP(C) No.15127/04*.
4. In *Tulsi's case* (supra), the Court held that the assessing authority is duty bound to consider the primary evidence consisting of the sale

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deed in question and other sale deeds of the area. It is only in the absence of primary evidence, that the secondary evidence can be gone into. It was further held that in a given case, if the price disclosed was low, the assessing authority could, for cogent reasons, spelt out in the order, differ from the same. The Court had observed that one more factor was relevant, namely, that in the cases where registered sale deeds exist, they would have been scrutinized by another authority, which would have considered the issue of value of transaction in question, although in the context of stamp duty payable.

5. The above judgment as also the orders which have followed it, have, therefore, established that the assessing authority has to apply its mind to the facts of each case and proceed to determine the rateable value on the basis of the primary evidence, namely, the sale deed or the transactional document. It cannot proceed merely to adopt a pre-determined formula, adopting the value or a portion of such value, applicable for another, maybe, adjacent colony while arriving at the rateable value in respect of the premises. Another added factor would be the cost of construction.

6 The counsel for the petitioner has also submitted that certain amounts have been paid/deposited with the MCD and that the petitioner would

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be paying admitted liabilities towards the arrears of taxes. Learned counsel has, in addition, relied upon Section 116-G (2) of the Delhi Municipal Corporation Act, which came into force on 1st August 2003 and made the Unit Area System for determining the assessable value applicable w e f. 01.04 04. It is submitted that the petitioner's premises would also be covered by those provisions. He has also placed reliance on certain orders passed in rectification proceedings by the MCD by which the benefit of amended provisions have been extended to other premises within the same locality, viz Sainik Farms.

7. Mr Vinay Sabharwal, learned counsel appearing on advance notice for the MCD submits that the petitioner can always seek his remedies under the Act, against the assessment order. In addition, he has submitted that the judgment in KTS Tulsī's case (supra) has been appealed against and is pending consideration before the Division Bench.

8. In my considered opinion, the pendency of an appeal, does not, in any manner, detract from the precedential value of the judgment in Tulsī's case. As noticed earlier, the judgment has been uniformly followed in several other cases. The MCD cannot now take a stand contrary to the law laid down in Tulsī's case.

9. I am also of the opinion that once the unit area system came into force

w.e.f. 01.04.2004, the respondent MCD is under duty to give option to all persons who had approached it (particularly in cases where ex-parte assessments had been made and who had represented against such assessments, or sought rectification) in accordance with Section 116G(2) of the Act. The assessee has a right to exercise option under that provision. The learned counsel has relied upon certain rectification orders passed in proceedings by the MCD, giving the benefit of the unit area method or system, to premises in Sainik Farms. I am of the opinion that the scheme or method has to be adopted uniformly and if benefit is given to one category, or class of assesses in a locality, it should be extended to others within that class/category as per Section 116-G(2)

10. In view of the above the impugned demand as well as the assessment order cannot be sustained. I therefore, quash the assessment order and the impugned notices dated 20.12 2004. The respondent MCD is directed to proceed to determine the rateable value / assessable value, as the case may be, afresh after considering the representations of the petitioner and giving a hearing in that regard. This process of hearing shall be completed within three weeks. The petitioner shall present himself before the Assessing Authority on 27th May, 2005 at 3.00 PM. It is open to the petitioner to produce all necessary documents and

11. materials in support of his case. The Assessing Officer shall, thereafter, pass a speaking order within four weeks.

12. The petitioner shall deposit all admitted liabilities within a period of four weeks from today. The deposit made in these proceedings pursuant to the above directions will not be considered so as to the prejudice of the stand of any parties. All contentions in regard to all issues are left open.

13. The petition is partly allowed, in terms of the directions indicated above with no orders as to costs.

Dastl.

S. Ravindra Bhat
S. RAVINDRA BHAT, J

MAY 17, 2005

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