$~42

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

\+ W.P.(C) 12578/2024, CM APPL. 52354/2024 & CM APPL. 52355/2024

SIR SOBHA SINGH AND SONS PVT. LTD. .....Petitioner

Through: Mr. Rajiv Nayar, Sr. Adv with Mr. Aman Ahluwalia, Mr. Jappan Preet Hora and Mr. Devang Kumar, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL .....Respondent

Through: Mr. R. K. Dhawan, SC for NDMC with Mr. Raghav Alok, Ms. Nisha Dhawan, Mr. V. K. Teng and Mr. Naman Kumar Thakur, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **02.12.2024**

1. The present writ petition emanates out of a show cause notice dated 28.03.2019, by which the New Delhi Municipal Council ["NDMC"] proposed to fix the rateable value, in respect of the petitioner's property for three periods - effective from 01.04.2010, 01.04.2015 and 01.04.2018 respectively.

2. As far as the first two periods are concerned, the matter has since culminated in an assessment order dated 04.02.2021. Mr. Rajiv Nayar, learned Senior Counsel for the petitioner, submits that, as far as these two periods are concerned, the impugned show cause notice itself, and the consequent assessment order dated 04.02.2021, are wholly without

jurisdiction as the respondent-NDMC is not empowered by statute to exercise power under Section 72 of the New Delhi Municipal Council Act, 1994 ["the Act"], for any period prior to the commencement of the year in which the notice is given. As the notice in the present case was given on 28.03.2019, it is submitted that any amendment of the assessment list, which purports to have effect before 01.04.2018, is *ultra vires* the powers of NDMC under Section 72 of the Act. The petitioner's challenge in this writ petition is confined to this aspect.

3. As far as the fixation of rateable value with effect from 01.04.2018 is concerned, Mr. Nayar states that the matter remains pending before the NDMC, and is not challenged in this petition.

4. The assessments with effect from 01.04.2010 and 01.04.2015 were purportedly finalized by the said assessment order dated 04.02.2021. The said order, however, does not refer to the notice dated 28.03.2019 at all, but to earlier notices under Section 72 of the Act, dated 25.03.2011 and 22.03.2016. The notices dated 25.03.2011 and 22.03.2016 have been annexed to the petition [Annexure P12 and P16 respectively]. They were evidently issued under the amended Delhi Municipal Council (Determination of Annual Rent) Bye Laws, 2009, by which the unit area method was imposed.

5. The unit area method was struck down as *ultra vires* the powers of the NDMC by this Court, and affirmed by the Supreme Court vide judgment dated 22.01.2019 in Civil Appeal Nos. 903-930/2019. NDMC purports to rely upon one aspect of the said judgment [paragraph 89] which provided that for those assessees who had not challenged the unit area method, the same would be permitted to apply.

6. However, in the present case, Mr. Nayar states that the unit area method was squarely challenged by the petitioner in W.P.(C) 1759/2015; the petitioner had been granted a stay from this Court, and was successful in the proceedings, both in this Court and in the Supreme Court.

7. Mr. R. K. Dhawan, learned Standing Counsel for NDMC, is directed to take instructions on this aspect, and to file a further affidavit within three weeks from today.

8. List on 25.02.2025.

PRATEEK JALAN, J

DECEMBER 2, 2024
'bh/AD'/