Usha Rani Jain & Ors vs Union Of India & Anr on 19 February, 2025

Author: Yashwant Varma

Bench: Yashwant Varma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 5210/2018
USHA RANI JAIN & ORS
Through:

versus
UNION OF INDIA & ANR
Through:

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR
ORDER

% 19.02.2025

1. The writ petition has been preferred seeking the following reliefs:

> "In the circumstances as aforesaid, it is most respectfully prayed that this Hon'ble Court may be pleased to:
>
> (a) Pass/ issue an appropriate writ(s)/ order(s)/direction(s) in the nature of Writ of Declaration or any other appropriate Writ declaring/ holding Section 116(b) of new Delhi Municipal Council Act, 1994, as arbitrary, unconstitutional and opposed to public policy, null, void and unenforceable and the same being ultra vires to the Constitution of India, 1950, and also violative of the principles of natural justice, thereby striking down and/ or suitably modifying the said Section 116(b) of the New Delhi Municipal Council Act, 1994, and consequentially restrain the Respondents, more particularly the Respondent No. 2/ NDMC from asserting any rights under Section 116(b) of the New Delhi Municipal Council Act, 1994;
>
> (b) Pass/ issue an appropriate writ(s)/ order(s)/ direction(s) in the nature of Writ of

> Declaration or any other appropriate Writ declaring/ holding that wherever the rent in respect of an immovable This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:25:58 property is restricted on account of operation of the rent restriction legislation viz. the Delhi Rent Control Act, 1958, the term used as "standard rent" in the proviso to Section 63 (1) of New Delhi Municipal Council Act, 1994, should be read to mean as "actual rent" and the outer limit of the reasonably expected rent that can be expected from such property in terms of Section 63 (1) of New Delhi Municipal Council Act, 1994, shall be the "actual rent" which is being actually received vis-a-vis the said immovable property on account of operation of such rent restriction legislation;

(c) Pass/ issue an appropriate writ(s)/ order(s)/ direction(s) in the nature of Writ of Certiorari or any other appropriate Writ thereby quashing/setting aside the impugned Order dated 20.11.2017, bearing A.O. no. d/1139/ID/TAX/2017, issued by the Respondent No. 2/ NDMC under Section 72 of New Delhi Municipal Council Act, 1994, and consequentially quash/ set aside the assessment order(s) made pursuant thereto and the demand(s) made by the Respondent No. 2/NDMC upon the Petitioners herein vis-a-vis immovable property bearing No. L-7/2 {also referred as 7/B), L- Block, Connaught Place, New Delhi;

Pass any other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. Although, the principal grievance appears to emanate from an order of assessment passed by the respondents under the New Delhi Municipal Council Act, 19941, the petitioner additionally raises a challenge to Section 116(b) of the NDMC Act. That provision merely creates the condition of a pre-deposit for the purposes of hearing and determination of an appeal.

3. Section 116 of the NDMC Act reads as follows:

> "116. Conditions of right to appeal.--No appeal shall be heard or determined under section 115 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 70 (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 72 and, in the case of any other tax, within thirty days next days after the date of the receipt of the notice of NDMC Act This is a digitally signed order.

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thereof;

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Council."

4. It becomes pertinent to note that the process of assessment is undertaken in accordance with Section 72 of the NDMC Act. The NDMC Act thereafter provides for an appeal against any such assessment and which is ordained to lie before the District Judge and presently before a Tribunal.

5. The appeal is thus not a first tier determination of liability of tax. Insofar as the validity of a prescription pertaining to pre-deposit of disputed amounts is concerned, it is by now well settled that such a provision can neither be said to be manifestly arbitrary nor constitutionally invalid.

6. We, in this context, bear in consideration the judgment of the Supreme Court in Shyam Kishore v. Municipal Corpn. of Delhi2 and which would be germane to the challenge which stands mounted.

7. The Supreme Court in Shyam Kishore upheld the validity of pre-deposit requirements for appeals under Section 170(b) of the Delhi Municipal Corporation Act, 19573 and which provision is couched in terms similar to Section 116(b) of the NDMC Act. It ruled that while an appeal can be admitted without prior tax payment, it cannot be heard or decided until the disputed tax is deposited. The relevant paragraphs of the report are extracted hereinbelow:

> "38. The decisions of the Bombay and Calcutta High Courts earlier referred to (Elora [AIR 1980 Bom 162 : 1979 Bom CR 313] and Chatter Singh [AIR 1984 Cal 283 : (1983) 2 Cal LJ 205 : (1983) (1993) 1 SCC 22 DMC Act This is a digitally signed order.

 2 Cal HN 330]) have upheld the validity of a rigid provision banning the entertainment of an appeal altogether where the taxes are not paid. However, the Supreme Court decisions in Anant Mills [(1975) 2 SCC 175 : (1975) 3 SCR 220] , Vijay Prakash Mehta [(1988) 4 SCC 402 : JT (1988) 3 SC 435] and Bava [(1968) 1 SCR 82 : AIR 1968 SC 13] had occasion to consider only the vires of a milder provision which permitted the appellate authority to waive or relax the condition of deposit. As explained in Seth Nand Lal v. State of Haryana [1980 Supp SCC 574, 590 : (1980) 3 SCR 1181, 1207] these decisions settle the principle (SCC p. 590, para

22) "that the right of appeal is a creature of statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory."

(emphasis added) The Court in those cases had no occasion to consider what the position would be if the conditions placed on the right of appeal were unduly onerous or such as to render the right of appeal totally illusory.

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44. It seems to us the words of Section 170(b) are capable of a broader interpretation. A perusal of Section 170 shows that the section uses three different expressions "heard or determined", "brought" and "admitted" in relation to an appeal and some significance is to be attached to the use of the expression "heard or determined". In like situations, other statutes such as the one considered by this Court in Lakshmiratan Engineering Works Ltd. v. Assistant CST [AIR 1968 SC 488 : (1968) 1 SCR 505 : 21 STC 154] and those contained in certain other enactments like the Bombay and Calcutta Municipal Acts specifically prohibit the very entertainment of the appeal if the tax is not paid. When the D.M.C. Act has carefully avoided the use of that word, we must give full effect to the differential wording. Also, the absence of a language in clause (b) of the proviso similar to that in clause (a) -- which indicates that an appeal filed beyond the period of limitation will not stand admitted unless the delay is condoned -- also warrants an inference that the payment of disputed tax is not a condition precedent to the entertainment or admission of the appeal. In the present statutory context, it sounds plausible to say that such an appeal can be admitted or entertained but only cannot be heard or disposed of without pre-deposit of the disputed tax. Such an interpretation will provide some much-needed relief from the harshness of the provision. These are not days in which the calculation of the property tax is simple and uncomplicated; the determination of the annual value of the property, except when based This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:25:58 on the actual rent received from the property, involves various subjective factors and, not unoften, there is a wide gulf between the tax admitted to be due and the tax demanded. Sometimes, to compel the assessee to pay up the demanded tax for several years in succession might very well cripple him altogether. This apart, an assessee may not be able to deposit the tax while filing the appeal but may be able to pay it up within a short time, or at any rate, before the appeal comes on for hearing in the normal course. There is no reason to construe the provision so rigidly as to disable him from doing this. Again, when an appeal comes on for hearing, the appellate judge, in appropriate cases, where he feels there is some great hardship or injustice involved, may be inclined to adjourn the appeal for some time to enable the assessee to pay up the tax. Though it will not be expedient or proper to encourage adjournment of an appeal, where it is ripe for hearing otherwise, only on this ground and as a matter of course, an interpretation which leaves some room for the exercise of a judicial discretion in this regard, where the equities of the case deserve it, may not be inappropriate. The appellate judge's incidental and ancillary powers should not be curtailed except to the extent specifically precluded by the statute. We see nothing wrong in interpreting the provision as permitting the appellate authority to adjourn the hearing of the appeal thus giving time to the assessee to pay the tax or even specifically granting time or instalments to enable the assessee to deposit the disputed tax where the case merits it, so long as it does not unduly interfere with the appellate court's calendar of hearings. His powers, however, should stop short of staying the recovery of the tax till the disposal of the appeal. We say this because it is one thing for the judge to adjourn the hearing leaving it to the assessee to pay up the tax before the adjourned date or permitting the assessee to pay up the tax, if he can, in accordance with his directions before the appeal is heard. In doing so, he does not and cannot injunct the department from recovering the tax,

if they wish to do so. He is only giving a chance to the assessee to pay up the tax if he wants the appeal to be heard. It is, however, a totally different thing for the judge to stay the recovery till the disposal of the appeal; that would result in modifying the language of the proviso to read: "no appeal shall be disposed of until the tax is paid". Short of this, however, there is no reason to restrict the powers unduly; all he has to do is to ensure that the entire tax in dispute is paid up by the time the appeal is actually heard on its merits. We would, therefore, read clause (b) of Section 170 only as a bar to the hearing of the appeal and its disposal on merits and not as a bar to the entertainment of the appeal itself.

45. If the provision is interpreted in the manner above suggested, one can steer clear of all problems of constitutional validity. The contention on behalf of the Corporation to read the provision rigidly and seek to soften the rigour by reference to the availability of recourse to the High Courts by way of a petition under Articles 226 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:25:58 and 227 in certain situations and the departmental instructions referred to earlier does not appear to be a satisfactory solution. The departmental instructions may not always be followed and the resort to Articles 226 and 227 should be discouraged when there is an alternative remedy. A more satisfactory solution is available on the terms of the statute itself. The construction of the section approved by us above vests in the appellate authority a power to deal with the appeal otherwise than by way of final disposal even if the disputed tax is not paid. It enables the authority to exercise a judicial discretion to allow the payment of the disputed tax even after the appeal is filed but, no doubt, before the appeal is taken up for actual hearing. The interpretation will greatly ameliorate the genuine grievances of, and hardships faced by, the assessee in the payment of the tax as determined. Though an assessee may not be able to acquire an absolute stay of the recovery of the tax until the dispute is resolved, he will certainly be able to get breathing time to pay up the same where his case deserves it. If this interpretation is placed on the provision, no question of unconstitutionality can at all arise.

46. We only wish that the statute itself is soon amended to make this position clear. After all, under the D.M.C. Act, the appellate authority is a high judicial officer, being the District Judge, and there is no reason why the Legislature should not trust such a high judicial officer to exercise his discretion in such a way as to safeguard the interests of both the Revenue and the assessees. We think that, until this is done, the provision requires a liberal interpretation so as to preserve such interests and should not be so rigidly construed as to warrant the throwing out of an appeal in limine merely because the tax is not paid before the appeal is filed."

8. Similarly, in Narayan Chandra Ghosh v. UCO Bank4, the Supreme Court held that the pre-deposit requirement under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is mandatory for filing an appeal before the Appellate Tribunal. The Supreme Court observed that the High Court rightly set aside the Tribunal's order and which entertained the appeal without the pre-deposit having been made, as follows:

> "7. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal.
>
> (2011) 4 SCC 548 This is a digitally signed order.

 However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. Thus, there is an absolute bar to the entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity.

8. It is well-settled that when a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.

9. The argument of the learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, the appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring an appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. Therefore, the condition of pre-deposit being mandatory, a This is a digitally signed order.

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9. In Ajay Sagar v. Commr. of Customs5, this Court took note of the decision of the Allahabad High Court in Ganesh Yadav v. Union of India6 and where the constitutional challenge to the mandatory nature of pre-deposit under Section 35-F of the Central Excise Act, 1944 was dismissed. We deem it apposite to extract the relevant paragraphs from that decision hereunder:

> "32. The Allahabad High Court in Ganesh Yadav case [Ganesh Yadav v. Union of India, 2015 SCC OnLine All 9174], while upholding the requirement of pre-deposit under Section 35-F of the CE Act as mandatory and dismissing the constitutional challenge, held that the High Court under Article 226 of the Constitution of India is vested with the jurisdiction in an appropriate case to dispense with the requirement of a pre-deposit. Reliance is placed on the following extract:
>
> "8. ... The requirement of a deposit of 10% is in the case of an appeal to the Tribunal against an order of the Commissioner (Appeals). This requirement cannot be regarded or held as being arbitrary or as violative of Article 14. Above all, as the Supreme Court held in Shyam Kishore v. MCD [Shyam Kishore v. MCD, (1993) 1 SCC 22] the High Court under Article 226 of the Constitution is vested with the jurisdiction in an appropriate case to dispense with the requirement of pre-deposit and the power of the court under Article 226 is not taken away. This was also held by the Supreme Court in Govt. of A.P. v. P. Laxmi Devi [Govt. of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720] in which the Supreme Court observed that recourse to the writ jurisdiction would 2023 SCC OnLine Del 6024 2015 SCC OnLine All 9174 This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:25:59 not be ousted in an appropriate case...."

(emphasis supplied)"

10. We had, in Rajesh Gupta @ Sanjay Lala v. Union of India & Ors.7, observed that the pre-deposit requirement under Section 129-E of the Customs Act, 1962 is constitutionally valid. Relying on a decision of the Bombay High Court in Haresh Nagindas Vora v. Union of India8, it was observed that mandating a pre-deposit of the duty or penalty is a reasonable condition on the statutory right

to appeal. This condition which was intended to ensure speedy disposal of appeals and reduce protracted litigation, was not deemed onerous or discriminatory by the Court, leading to the dismissal of the writ petition in the following terms:

> "8. We further note that the question of validity of Section 129E had been dealt by the Bombay High Court in Haresh Nagindas Vora v. Union of India with the High Court observing as follows:-
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> "10. As seen from a plain reading of the provision, section 129-E provides for deposit of certain percentage of duty demanded or penalty imposed or both, as a condition precedent for the appellate authority to entertain an appeal. Subclause (i) and (ii) of section 129-E mandates deposit of 7.5% of the duty demanded or penalty imposed or both, in case of an appeal before the Commissioner (Appeals) (section 128-A) and before the Tribunal (section 129-A) respectively. Clause (iii) of section 129-E provides for deposit of 10% of the duty demanded or penalty imposed or both in pursuance of the order appealed against. The first proviso provides that the amount which is required to be deposited under this section shall not exceed Rs. 10 crores.

11. The intention of the Parliament in amending section 129-E by the amending Act in question needs to be noted. Prior to the amendment, in view of the powers and discretion conferred with the appellate authority to waive/dispense with the pre-deposit, substantial time was expended on the adjudication of such applications and in W.P.(C) 15431/2024 dated 06 November 2024 2017 SCC OnLine Bom 3013 This is a digitally signed order.

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12. The contention of the petitioner that the provision is rendered discriminatory as it creates two different classes when it mandates pre-deposit of duty demanded or penalty imposed or both, and more particularly when penalty cannot be considered to be a revenue as it is not a tax requiring it to be safeguarded, also cannot be accepted. It may be pointed out that even the preamended provision stipulated for a deposit in case of appeals from orders levying penalty. This submission of the petitioners also cannot be accepted considering the decision of the Supreme Court in Vijay Prakash D. Mehta and Jawahar D. Mehta v. Collector of Customs (Preventive), Bombay, 1988 MhLJ Online (S.C.) 1 : (1988) 4 SCC 402 : AIR 1988 SC 2010, which lays down that right to appeal is a statutory right and not an absolute right, which can be circumscribed by the conditions in the grant. In 1980 MhLJ Online (S.C.) 2 : Nand Lal v. State of Haryana, 1980 Supp SCC 574 : AIR 1980 SC 2097 the Supreme Court referring to the earlier decision in Anant Mills Co. Ltd. v. State of Gujarat, 1975 MhLJ Online (S.C) This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/03/2025 at 22:25:59 I -- (1975) 2 SCC 175 : AIR 1975 SC 1234 held as under:--

> "It is well settled by several decisions of this Court that the right of appeal is a creature of a statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory (vide the latest decision in Anant Mills Ltd. v. State of Gujarat, 1975 MhLJ Online (S.C.) 1 : (1975) 2 SCC 175 : AIR 1975 SC 1234)"

Thus by virtue of section 129-E the right to appeal as conferred under the said provision is a conditional right, the legislature in its wisdom has imposed a condition of deposit of a percentage of duty demanded or penalty levied or both. The fiscal legislation as in question can very well stipulate as a requirement of law of a mandatory pre-deposit as a condition precedent for an appeal to be entertained by the appellate authority. In view of the above settled position in law, section 129-E of the Act cannot be held to be unconstitutional on the ground as assailed by the petitioner."

9. We are consequently of the opinion that the instant writ petition is thoroughly misconceived and is liable to be dismissed."

11. We, accordingly and for all the aforesaid reasons, find no merit in the challenge which stands raised to the validity of the pre-deposit condition imposed by Section 116(b) of NDMC Act. The prayer and relief as sought in that respect is, consequently, refused.

12. However, and insofar as the order of assessment is concerned, we accord liberty to the writ petitioner to adopt such appropriate statutory remedies as may be otherwise permissible in law.

13. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

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