New Delhi Municipal Council vs Association Of Concerned Citizens Of ... on 22 January, 2019

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Bench: Ashok Bhushan, A.K. Sikri

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 903-930 OF 2019
(ARISING OUT OF SLP (C) NO. 23186-23213 OF 2017)

NEW DELHI MUNICIPAL COUNCIL ETC.
ETC.

VERSUS

ASSOCIATION OF CONCERNED ..
CITIZENS OF NEW DELHI AND OTHERS
ETC. ETC.

WITH

CIVIL APPEAL NO(S). 964 OF 2019
(ARISING OUT OF SLP (C) NO. 2305 OF 2019)
(ARISING OUT OF DIARY NO. 35928 OF 2017)

JUDGMENT

A.K. SIKRI, J.

Leave granted.

Introductory Remarks:

2) These appeals are filed by New Delhi Municipal Council (NDMC) against the

judgment dated August 10, 2017 rendered by High Court of Delhi in a batch of writ petitions which were filed by the persons who have their houses/properties in NDMC area. Some of the petitions were by the associations of residents as well (hereinafter referred to as the "assessees/respondents"). In those writ petitions filed by the assessees they had challenged the constitutional validity of NDMC (Determination of Annual Rent) Bye-laws, 2009 (hereinafter referred to as the 'impugned Bye-laws'). These Bye-laws changed the earlier regime of determining the rateable value for the purposes of levying property tax. These Bye-laws seek to alter the earlier system of determining the rateable value on the basis of he annual rent at which the land or buildings may reasonably be expected to be let from year to year. On that basis annual rent used to be fixed and a particular percentage was prescribed for the purposes of payment of property tax. The impugned Bye-laws introduced the system of Unit Area Method (UAM). As per this method Unique Area Value (UAV) per sq. ft/meter of a property is fixed with reference to the characteristics of the property such as location, occupancy, age, structure of the said property. This UAV is then multiplied by the area of the vacant land or covered space to arrive at its annual value. When the annual value is determined on the basis of such a formula, property tax thereupon is to be paid by the assessees.

3) It may be mentioned at this stage itself that the impugned Bye-

laws have been framed by the Government of India in exercise of powers conferred by sub-section (1) of Section 391 of the New Delhi Municipal Act, 1944 (hereinafter referred to as the 'Act'). It is also to be noted that Section 63 of the Act deals with determination of annual rent. Various grounds were raised challenging the validity of these Bye-laws and one of the grounds was that the UAM of fixing the annual value as prescribed in the Bye-laws was foreign to the provisions of Section 63 of the Act, meaning thereby that the language of Section 63 did not permit determination of annual value on such a basis as it prescribed the method of fixing annual rent on the basis of the rent which the land or building may reasonably be expected to let from year to year. It was, thus, argued by the assessees in the writ petitions that the impugned Bye-laws were ultra vires the provisions of Section 63 of the Act. The High Court chose to confine itself to this particular submission and eschewed the discussion on other grounds on which these bye-laws were also challenged. In the impugned judgment, the High Court accepts the submission of the assessees holding that the impugned Bye-laws are ultra vires the NDMC Act as they are far beyond the scope and ambit of the powers vested in NDMC under Section 388(1)(A)(9) of the Act.

Section 388 gives rule making power to the NDMC.

4) When the matter was argued before us, initially the parties confined to the aforesaid aspect on which High court has rendered its decision. However, arguments were heard on the other grounds of challenge as well, so that decision is given on merits, if the circumstances so warrant. We may also mention at this stage that many applications for intervention/impleadment have been filed by those assessees who were not parties to the writ petitions in the High Court. Such assessees are satisfied with the impugned Bye-laws and, therefore, they have not supported the case set up by the

NDMC.

Factual background:

5) Before adverting to the controversy, it would be appropriate to take note of some relevant facts:

6) As is well-known, during the period of the British India, Delhi became the capital of India in the year 1911. Even before it became the capital, for the first time house tax was made applicable and levied in Delhi in the year 1902. After becoming the capital of India, Delhi was detached from Punjab and Delhi Enclave covering an area of 1240 sq. miles was formed and new roads were constructed between the temporary capital near Civil Lines and Raisina. The Punjab Improvement Act was passed in the year 1922 and it became the town planning legislation. A large chunk of land was acquired by the Imperial Delhi Committee and was transferred to the Imperial (New) Delhi Municipal Committee which was constituted in the year 1916 but came into effect in the year 1925 when this Delhi Municipal Committee was upgraded to the level of a second class municipality to be governed under the Punjab Municipal Act, 1911 (hereinafter referred to as 'PMA'). Section 188 of the PMA conferred power on the Committee to make Bye-laws, inter alia, for carrying out the purposes of the PMA. In 1932, the Imperial (New) Delhi Municipal Committee was renamed as 'New Delhi Municipal Committee' (NDMC). After obtaining the independence and with the adoption of the Constitution of India in the year 1950, Delhi was shown as Part-C State. However, in the year 1956, vide the Constitution (Seventh Amendment) Act, 1956, Delhi became a Union Territory. Immediately, thereafter the Delhi Municipal Corporation Act, 1957 (DMC Act) was passed whereunder Municipal Corporation of Delhi (MCD) was constituted to which first election took place in the year 1958. The jurisdiction of MCD covers the entire Union Territory of Delhi including the rural areas, but excluding the New Delhi Municipal Committee and Delhi Cantonment Areas. However, the area under the jurisdiction of the NDMC was reduced from 32 sq. miles to 16 sq. miles.

7) In terms of the powers conferred under Section 188(v) of the PMA which related to assessment and collection of house tax, the NDMC made the NDMC House Tax Bye-laws, 1962 ('the 1962 Bye-laws). These were published in the Official Gazette by a notification dated 24th April, 1964. There are only around 12,000 units which are subject to assessment for property tax in the NDMC area. 20% of these are residential units and rest are commercial units. However, only 20% of the properties are private properties. The remaining 80% are (a) properties belonging to the Union of India, (b) properties of Diplomatic Missions and Foreign Embassies, (c) properties of State Governments and (d) properties of Railways.

8) The above four types of properties are outside the purview of property tax assessment. This is because Articles 285 and 289 of the Constitution prohibit levy of

> taxes on the properties of the Centre and State by the State and Centre respectively. Except the properties belonging to the Union of India, the other three types of properties do not pay even the service charges to the local authorities. 75% of the property tax demand is collected from just about 6.25% of the properties in the NDMC area.

Therefore, the tax base for the purpose of collection of property tax is small compared to the MCD area.

9) For the governance of Union Territory of Delhi, the Parliament passed the Delhi Administration Act, 1966 which continued to operate till 1992, when a special status was conferred upon Delhi by rechristening it as National Capital Territory of Delhi (NCTD). This happened with the insertion of Article 239AA and 239AB in the Constitution of India vide Constitution (Sixty-Ninth Amendment) Act, 1991. Simultaneously, the Parliament also enacted Government of NCTD Act, 1991 which replaced the earlier Delhi Administration Act, 1966. With these developments several provisions of PMA were also brought in tune with the GNCTD Act, 1991. Subsequently, for the NDMC area, the Parliament enacted NDMC Act in the year 1994 that replaced PMA. Hitherto New Delhi Municipal Committee was also replaced by New Delhi Municipal Council (NDMC).

10) As per Section 60 of the NDMC Act, the power to levy taxes, including property tax, is vested with the NDMC. The NDMC, in exercise of powers conferred under Section 416(2)(a) of the NDMC Act adopted the existing 1962 Bye-laws insofar as levy of property tax is concerned as it was found that they were not inconsistent with the NDMC Act. Under these Bye-laws, as noted above, the method of arriving at annual rent is on the basis of annual rent which land and building may reasonably be expected to be let from year to year. It would be significant to mention that even in the Bye-laws of MCD, identical method of levying the house tax/property tax was incorporated.

11) There were certain concerns expressed at various quarters about the said annual rent method in the Bye-laws. Insofar as the MCD is concerned, it constituted V.K. Malhotra Committee to study and report upon the efficacy of the property tax assessment and collection system, so that the faults in the system could be ironed out. While this Committee was in the process of undertaking that study, the Union of India circulated 'Guidelines for Property Tax Reforms' in the year 1998 in order to bring needed reforms in the method of calculation of property tax and to exploit the potential of property tax as a major source of income for strengthening the revenue base of these municipalities. The V.K. Malhotra Committee submitted its report to the MCD in the year 2002. Based on its recommendations, an Expert Committee under the Chairmanship of Sh. K. Dharmarajan was constituted by the Lieutenant Governor of Delhi for recommending the modalities required for the interpretation of the UAM of property tax assessment in the MCD area, which was the major recommendation of the V.K. Malhotra Committee. After receiving the final report from Dharmarajan Committee, the Delhi Municipal Corporation (Amendment) Act, 2003 was passed. Further, in exercise of the powers conferred by the Delhi Municipal Corporation (Amendment) Act, the Delhi Municipal Corporation (Property Taxes) Bye-laws, 2004 were also made.

12) With the aforesaid introduction of UAM for the purposes of property tax assessment in MCD area, the NDMC also deliberated on this subject, having regard to the recommendations given by the Dharmarajan Committee. In a meeting held by NDMC on 27th April, 2005, it was resolved that it would request GNCTD to amend the provisions of Section 65 of the NDMC Act.

13) On 13th February, 2006, the NDMC in its meeting discussed that the rateable value Bye-laws may be prepared in such a way so as to remove most of the difficulties faced in the present system. It was suggested to introduce UAM selectively for self-occupied residential properties in the Bye-laws. Thereafter, on 10 th March, 2006, the Chairperson of the NDMC constituted a committee (the NDMC Special Committee) under Section 9 of the NDMC Act to advice upon the property tax. This Special Committee submitted its final report in February, 2007 which was, in principle, accepted by the NDMC in its meeting on 12th February, 2007. More deliberations took place thereafter and it is not necessary to spell out the same. Suffice it is to mention that amendments in the Bye-laws were proposed and objections invited. Ultimately on, 24th February, 2009, the GNCTD notified the New Delhi Municipal Council (Determination of Annual Rent) Bye-laws, 2009 (Impugned Bye-laws) in the Official Gazette. These Bye-laws were enforced from 1st April 2009 and were made applicable in the area under the jurisdiction of the NDMC.

Provisions of the Bye-laws and the NDMC Act:

> 14) It is pertinent to mention that the NDMC Special Committee which was appointed by the Chairperson, had submitted its final report in February, 2007. In that report, the Committee noted that it was difficult to advise a perfect tax system. However, keeping in view the distinct advantages offered by the UAM, the NDMC Special Committee recommended a modified form of UAM for NDMC which attempted to balance the principles of neutrality, stability, accountability, ease of administration, fairness based on benefits received and the ability to pay. The NDMC Special Committee also examined the financial position of the NDMC with special reference to the profit profile of NDMC wherein a large percentage of properties are owned by the Government and only a very small percentage of private properties are liable for payment of property tax. The NDMC Special Committee stated that it considered the following options:
>
> "(a) Maintain the status-quo as far as the method of assessment is concerned. Thus to continue with the annual value method of property tax assessment but address procedural shortcomings.
>
> Or
>
> (b) Selective introduction of Unit Area Method in respect of residential units that are self-occupied (or for both self occupied W.P.(C) 3348/2010 & connected matters Page 26 of 40 and rented) and for institutional buildings and hotels. The remaining properties to continue under the reasonable rent method of assessment as at present.
> Or

(c) Levy uniform service charges for all non-residential properties regardless of their ownership, government or private. The service charges would be liable for increases from time to time to keep pace with the inflation and increased cost of services. The base service charges would be fixed at some proportion of land values and unit rate subject to the condition that they will not be lower than the existing Rateable Value Or

(d) Introduce a modified form of Unit Area Method for all properties by fixing the unit rates solely by category of use and land values. Thus the lowest unit rate (or multiplicative factors) would be in respect of a self-occupied residential property in an area where land values are low; the highest unit rate (or multiplicative factor) would be in respect of commercial properties/hotels that are located in areas where land values are the highest (land values to be computed as per Land & Development Office rate schedules amended from time to time)"

15) The NDMC Special Committee rejected options (a), (b) and (c). It recommended acceptance of option (d). However, it recommended "a formula which is revenue neutral and at the same time optimizes the objective of vertical equity. The analysis of data compiled by the tax department suggests that there is extreme variation in taxation of similarly placed properties for various reasons discussed earlier. This problem will be automatically addressed as horizontal equity is inbuilt in the Unit Area System."

16) It is significant that the NDMC Special Committee did not touch upon the manner of bringing about the above change i.e. whether it should be by amending the Bye-laws or amending the NDMC Act itself. However, in the position paper submitted to the NDMC, the Special Committee, while recommending the adoption of a modified UAM, had suggested that it should be introduced selectively for "self-occupied residential properties." It also added: "However, Bye-laws cannot go beyond what is provided in the Act. As such, depending upon the final decision in the matter, an appropriate amendment in the Act appears to be the only alternative."

17) Since the impugned Bye-laws are declared by the High Court as ultra vires the NDMC Act, it would also be necessary to notice some of the relevant provisions of the NDMC Act. From the reading of these Bye-laws, it is clear that the UAM for determining the rateable value has been introduced which is different from 'annual rent'. Bye-laws 2 of impugned Bye-laws mentions that the annual rent for which the land and building were expected to be let would be determined as per Bye-law 3 in respect of special categories of lands and buildings and as per Bye-law 4 in respect of other lands and buildings.

18) Some of the relevant provisions of the impugned Bye-laws, may now be noted:

"2. Determination of Annual Rent – For the purpose of sub-section (1) of Section 63 of the New Delhi Municipal Council Act, 1994 (44 of 1994) hereinafter referred to as the 'Act') the annual rent, for which lands and buildings are expected to let from year, shall be determined as under:-

"(i) Special categories of lands and buildings as per provisions of bye-law 3 and;

(ii) Other lands and buildings as per provisions of bye-law 4.

3. Annual Rent of Special Category of land and buildings:-

(1) the annual rent of the lands and buildings, which are not normally let, being the property of the Union, Government, State or used as school, college, hostel, guest house, clubs, cinema hall, hotels and such other lands and buildings as may be specified by the Valuation Committee, shall be calculated at such percentage, as may be determined by the Valuation Committee, being not less than 5% and not more than 10% of the aggregate of:

(a) value of land falling in the jurisdiction of New Delhi, at the circle rate of Rs. 43,000 (Rupees forty three thousand only) per square meter, as increased by the multiplication factor for user of the land, specified in sub-bye-law (3); and

(b) value of covered space of the building at Rs.

15,000 (Rupees fifteen thousand only) per square meter of the covered space of the building as reduced by the age factor of the building as reduced by the age factor of the building specified in sub-bye- law (4).

xxx xxx xxx (3) The use factor for the land shall be as under:-

Use Factor Residential, Public Purpose, School, College Public Utility Government Offices, Embassies 2 (Other than 5 star hotels) Explanation:- Use Factor for a particular year shall be determined based on usage of a particular type for more than 180 days in a financial year.

(4) Age factor for age of the building shall be as under:-

Age	Factor
Constructed upto 1960	0.5
Constructed upto 1960-69	0.6
Constructed upto 1970-79	0.7
Constructed upto 1980-89	0.8
Constructed upto 1990-99	0.9
Constructed upto 2000-09	1.0

4. Annual Rent of other land and buildings-
(1) The annual rent of lands and buildings valuation of

which is not covered by bye-law 3 shall be the aggregate of the bona fide annual value of land and bona fide annual value of the covered space of the buildings.

xxx xxx xxx (5) The relevant factors for the increasing on decreasing or for not increasing or decreasing, the base unit area values specified in respect of each of the parameters of type of use, age, type of structure, occupancy status, average rentals available in the building, location of covered space and any other relevant factors as may be necessary for determining the bona fide annual value of land and building shall be fixed by the Valuation Committee, from time to time.

(6) Pending fixation of relevant factors and revisions thereof by the Valuation Committee, the multiplication factor for use and occupancy of the covered space shall be as under:

Use of land and covered space of building Factor Occupancy of land and covered space of building Factor Provided that the location factor covered space in basement used for storage, parking and utilities will be taken 0.5.

Explanations:-

(i) The premises owned by companies, firm, trust etc. and used by the directors, employees or partners for residence or guest house shall not be treated as self-

occupied by the owners.

(ii) For a particular year, the use factor and the occupancy factor shall be determined on the basis of usage/occupancy prevailing for more than 180 days in that year. In case the occupancy factor is determined as “others” and the premises actually remains vacant for part of the year, the property will be eligible for vacancy remission as per provisions below the heading “Remission and Refund” under Chapter-VIII relating to “Taxation” of the New Delhi Municipal Council Act, 1994 (44 of 1994). (7) Age factor for age of the building shall be as under:-

Age	Factor
Constructed upto 1960	0.5
Constructed upto 1960-69	0.6
Constructed upto 1970-79	0.7
Constructed upto 1980-89	0.8
Constructed upto 1990-99	0.9
Constructed upto 2000-09	1.0

(8) Where the land and the covered space of the

building is let and actual rent is in excess of the bona fide annual value of land and building referred

to in sub-bye- law (1), the rateable value for the purposes of that sub- bye-law shall be such actual rent.

Provided that this will not apply to residential properties used by occupier exclusively for residential purposes."

19) Let us also scan through the relevant provisions of the Act:

> "Section 60 : Levy of Taxes -
>
> 1. The Council shall for the purposes of this Act, levy the following taxes, namely:-
>
> a. Property tax;
>
> b. x x x x x x

2. X X X X X X

3. The taxes specified in sub-section (1) and sub-section (2) shall be levied, assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder.

Section 61: Rate of Property Tax-

1. Save as otherwise provided in this Act, the property tax shall be levied on lands and buildings in New Delhi and shall consist of not less than ten and not more than thirty per cent of the rateable value of lands and buildings:

> provided that the Council may, when fixing the rate at which the property tax shall be levied during any year, determine that the rate leviable in respect of lands and buildings or portions of lands and buildings in which any particular class of trade or business is carried on shall be higher than the rate determined in respect of other lands and buildings or portions of other lands and buildings by an amount not exceeding one-half of the rate so fixed:
>
> Provided further that the tax may be levied on graduated scale, if the Council so determines.
>
> Explanation. - Where any portion of a land or building is liable to a higher rate of the tax such portion shall be deemed to be a separate property for the purpose of municipal taxation.

2. The Council may exempt from the tax lands and buildings of which the rateable value does not exceed one thousand rupees.

Section 62: Premises in respect of which property tax is to be levied-

Save as otherwise provided in this Act, the property tax shall be levied in respect of all lands and buildings in New Delhi except-

a. lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by a society or body for a charitable purpose:

> Provided that such society or body is supported wholly or in part by voluntary contributions, applies its profits, if any, or other income in promoting its objects and does not pay any dividend or bonus to its members.
>
> Explanation. - "Charitable purpose" includes relief of the poor, education and medical relief but does not include a purpose which relates exclusively to religious teaching. b. lands and buildings vested in the Council, in respect of which the said tax, if levied, would under the provisions of this Act be leviable primarily on the Council; c. agricultural lands and buildings (other than dwelling houses).
>
> 2. Lands and buildings or portions thereof shall not be deemed to be exclusively occupied and used for public worship or for a charitable purpose within the meaning of clause (a) of sub-section (1) if any trade or business is carried on in such lands and buildings or portions thereof or if in respect of such lands and buildings or portions thereof, any rent is derived.
>
> 3. Where any portion of any land or building is exempt from the property tax by reason of its being exclusively occupied and used for public worship or for a charitable purpose such portion shall be deemed to be a separate property for the purpose of municipal taxation.

Section 63 : Determination of rateable value of lands and buildings assessable to property tax-

1. The rateable value of any lands or buildings assessable to any property taxes shall be the annual rent at which such land or building might reasonably be expected to let from year to year less a sum equal to ten per cent of the said annual rent which shall be in lieu of all allowances for cost of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent:

> Provided that in respect of any land or building the standard rent of which has been fixed under the Delhi Rent Control Act, 1958 (59 of 1958) the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.

2. The rateable value of any land which is not built upon but is capable of being built upon and of any land on which a building is in process or erection shall be fixed at five per cent of estimated capital value of such land.

3. All plant and machinery contained or situate in or upon any land or building and belonging to any of the classes specified from time to time by public notice by the Chairperson with the approval of the Council, shall be deemed to form part of such land or building for the purpose of determining the rateable value thereof under sub-section (1) but save as aforesaid no account shall be taken of the value of any plant or machinery contained or situated in or upon any such land or building.

Section 65 : Taxation of Union Properties-

(1) Notwithstanding anything contained in the foregoing provisions of this Chapter, lands and buildings being properties of the Union shall be exempt from the property tax specified in section 61:

> Provided that nothing in this sub-section shall prevent the Council from levying property tax on such lands and buildings to which immediately before the 26th January, 1950, they were liable or treated as liable, so long as that tax continues to be levied by the Council on other lands and buildings.
>
> (2) Where the possession of any land or building, being property of the Union, has been delivered in pursuance of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) to a displaced persons, or any association of displaced person, whether incorporated or not, or to any other person [hereafter in this sub-section and the proviso to sub-section (1) of section 66 referred to as the transferee], the property tax specified in section 61 shall be leviable and shall be deemed to have been leviable in respect of such land or building with effect from the 7th day of April, 1958 or the date on which possession thereof has been delivered to the transferee, whichever is later, and such property tax shall, notwithstanding anything contained in any other provision of this Act, be recoverable with effect from that day or date, as the case may be.

Section 66: Incidence of Property Tax-

(1) The property tax shall be primarily leviable as follows:-

> (a) if the land or building is let, upon the lessor;
>
> (b) If the land or building is seb-let, upon the superior lessor
>
> (c) if the land or building is unlet, upon the person in whom the right to let the same vests:
>
> Provided that the property tax in respect of land or building, being property of the Union, possession of which has been delivered in pursuance of section 20 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954) shall be primarily leviable upon the transferee.

(2) If any land has been let for a term exceeding one year to a tenant and such tenant has built upon the land, the property tax assessed in respect of that land and building erected thereon shall be primarily leviable upon the said tenant, whether the land and building are in the occupation of such tenant or a sub-tenant of such tenant.

Explanation. - The term "tenant" includes any person deriving title to the land or the building erected upon such land from the tenant whether by operation of law or by transfer intervivos.

3. The liability of the several owners of any buildings which is, or purports to be, severally owned in parts or flats or rooms, for payment of property tax or any installment thereof payable during the period of such ownership shall be joint and several.

Section 67 : Apportionment of liability for property tax when the premises are let or sub-let-

(1) If any land or building assessed to property tax is let, and its rateable value exceeds the amount of rent payable in respect thereof to the person upon whom under the provision of section 66 the said tax is leviable, that person shall be entitled to receive from his tenant the difference between the amount of the property tax levied upon him and the amount which would be leviable upon him if the said tax was calculated on the amount of rent payable to him.

(2) If the land or building is sub-let and its rateable value exceeds the amount of rent payable in respect thereof to the tenant by his sub-tenant, or the amount of rent payable in respect thereof to a sub-tenant by the person holding under the sub-tenant, the tenant shall be entitled to receive from his sub-tenant or the sub-tenant shall be entitled to receive from the person holding under him, as the case may be, the difference between any sum recovered under this section from such tenant or sub-tenant and the amount of property tax which would be liable in respect of the said land or building if the rateable value thereof were equal to the difference between the amount of rent which such tenant or sub-tenant receives and the amount of rent which he pays.

(3) Any person entitled to receive any sum under this section shall have, for the recovery thereof, he same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to receive the same."

20) Though some other provisions may also be relevant, instead of reproducing those provisions, the gist thereof can be mentioned. It is extracted from the discussion from the impugned judgment as it correctly captures the essence of these provisions.

21) Under Section 61 (1) of the NDMC Act, property tax shall be levied on lands and buildings in New Delhi and "shall consist of not less than ten and not more than thirty per cent of the rateable value of lands and buildings." The proviso to Section 61(1) of the NDMC Act states that the NDMC may, "when fixing the rate at which the property tax shall be levied during any year, determine the rate leviable in respect of lands and buildings or portions of lands and buildings in which any particular class of trade or business is carried on shall be higher than the rate determined in respect of other lands and buildings or portion of other lands and buildings by an amount not exceeding

one-half of the rate so fixed." The second proviso to Section 61 (1) states that "the tax may be levied on graduated scale, if the Council so determines." The explanation to Section 61 (1) states that "where any portion of a land or building is liable to a higher rate of the tax such portion shall be deemed to be a separate property for the purpose of municipal taxation."

22) Under Section 61 (2) of the NDMC Act, the NDMC can exempt from tax the lands and buildings where "the rateable value does not exceed Rs.1,000."

23) The expression 'rateable value' is defined under Section 2 (42) of the NDMC Act to mean "the value of any land or building fixed in accordance with the provisions of this Act and the Bye-laws made thereunder for the purpose of assessment to property taxes."

24) Section 62 of the NDMC Act relates to the 'Premises in respect of which tax is to be levied'. Section 62 (1) lists out such lands or buildings or portions thereof which will not be subject to levy of property tax. This includes lands exclusively occupied and used for public worship or by a society or body for a charitable purpose. It also includes lands and buildings vested in the NDMC in respect of which the tax, if levied, would be leviable primarily on the NDMC and agricultural lands and buildings (other than dwelling houses). Section 62 (3) clarifies that if a portion of the land or building is exempted from property tax by reason of the exclusive use or occupied for public worship or charitable purpose then such portion "shall be deemed to be a separate property for the purpose of municipal taxation."

25) Section 63 of the NDMC Act sets out the method of determination of the rateable value of lands and buildings assessable to property tax. Section 63 (1) provides that the rateable value of any land or building assessable to property tax shall be the annual rent at which such land or building might reasonably be expected to let from year to year less a sum equal to 10% of the said annual rent which shall be in lieu of all allowances for cost of repairs and insurance, and other expenses necessary to maintain the land or building in a state to command that rent. The proviso to Section 63 (1) of the NDMC Act states that in respect of any land or building the standard rent of which has been fixed under the Delhi Rent Control Act, 1958 ('DRC Act'), the rateable value thereof "shall not exceed the annual amount of the standard rent so fixed.".

26) Section 632) of the NDMC Act states that the rateable value of any land which is not built upon but is capable of being built upon and any land on which a building is in process of erection "shall be fixed at five per cent of estimated capital value of such land." Under Section 63(3) the Chairperson of the NDMC can by public notice, with the approval of the NDMC, specify a plant and machinery which will be deemed to form part of such land and building for the purposes of determination of rateable value. Section 65(1) of the NDMC Act clarifies that lands and buildings being properties of the Union shall be exempt from the property tax specified in Section 61 of the NDMC Act.

27) Section 66 of the NDMC Act speaks of the incidence of the property tax. It is primarily on the lessor if a building or land is given on lease. It is on the superior lessor if the land or building is given on a sub-lease. If it is not leased then on the person on whom the right to let the same vests.

28) Section 67 of the NDMC Act talks of apportionment of liability of the property tax when the premises are let or sub-let. Section 68 clarifies who will be primarily liable for the property tax due in respect of any land or building and in the event of default of the person liable to pay such propertytax as specified in Section 66. It is clarified that this would be the occupier of such land or building.

29) Section 70 of the NDMC Act deals with the 'Assessment List'.

This is a list of all lands and buildings which contains such particulars with respect to each land and building as may be prescribed by the Bye-laws. When such Assessment List is prepared, the Chairperson under Section 70 (2) of the NDMC Act gives a public notice thereof and every person claiming to be an owner, lessor or occupier of a land or building included in the List shall be at liberty to inspect the List and take extracts therefrom free of charge. Under Section 70 (3), the Chairperson is to give a public notice of a date not less than one month thereafter when he would proceed to consider the rateable value of the lands and buildings entered in the Assessment List. He is also to give the written notice where the rateable value is proposed to be increased. Section 70 (4) of the NDMC Act provides for objections to be filed to the Assessment List in writing to the Chairperson. Section 70 (5) of the NDMC Act talks of an objection being notified into and investigated, and the person making them shall be allowed an opportunity of being heard either in person or by authorised agent before the final Assessment List is prepared under Section 70 (6) of the NDMC Act. Section 72 of the NDMC Act provides for amendment of the Assessment List and Section 73 for preparation of new Assessment List.

30) Under Section 81 the Chairperson of the NDMC Act employs valuers to give advice or assistance in respect of valuation of any land or building.

The Impugned Judgment:

> 31) After taking note of the aforesaid provisions of the Act as well as Bye-laws, the Delhi High Court, inter alia, observed that insofar as definition of 'rateable value' given under Section 2(42) of the NDMC Ac is concerned, it means 'value of any land or building fixed in accordance with the provisions of this Act and the Bye-

laws made thereunder for the purposes of assessment of property taxes'. According to it, the conjunction "and" used in the above definition makes the legislative intent explicit, namely, the rateable value has to be fixed both in accordance with the NDMC Act as well as the Bye-laws. Consequently, it is inconceivable that the manner of determination of the rateable value under the Bye-laws could be inconsistent or different from that provided under the Act. Therefore, the rateable value has to be fixed, both in accordance with the provisions of the Act and in accordance with the Bye-laws. Further, Section 63, which prescribes the method for determination of the rateable value of lands and building stipulated that the rateable value of any land or building assessable to property tax shall be the annual rent at which such land and building might reasonably be expected to let from year after year less a sum equal to 10% of the said annual rent. Also, the proviso to Section 63(1) of the NDMC Act states that in respect of any land or building the standard rent of which has

been fixed under the Delhi Rent Control Act, 1958, the rateable value thereof 'shall not exceed the annual amount of the standard rent so fixed."

32) Further in the opinion of the High Court though under Section 81 of the NDMC Act, the Chairperson can employ valuers to give advice or assistance in respect of valuation of land and building, this is different from the determination of the rateable value. Such value becomes relevant when there is attachment of the property to cover the arrears of municipal taxes and the value of such land and building has to be determined to ascertain what could be recovered towards the arrears. By reading these provisions in the aforesaid manner, the High Court has held insofar as NDMC Act is concerned that the legislative scheme envisages determination of rateable value only on one basis, i.e., on the basis of the 'annual rent' at which the land or building might reasonably be expected to let from year to year. In contrast, holds the High Court, the impugned Bye-laws seek to introduce a completely different system of rateable value than what is provided under the NDMC Act. As it provides UAM which envisages fixing UAV with reference to the characteristics of a property and then multiplying the UAV by area of the vacant land or covered space to find out 'annual value'. This method of levy assessment collection of tax is entirely different from what is provided under the NDMC Act and, therefore, could not have been introduced by the Bye-laws in terms of Section 388(1)(A)(9) which confers power to make Bye-laws relating to the levy, assessment, collection, refund or imposition of taxes 'under this Act'.

33) Such a course of action could not be taken without amending the provisions of NDMC Act. Relevant discussion in this behalf is reproduced below:

> "Analysis of the new impugned Bye-laws
>
> 52. The new impugned Bye-laws in the present case seek to introduce a completely different system of rateable value than what is provided under the NDMC Act. While the NDMC Act provides for rateable value to be determined on the basis of the annual rent at which the land or building might reasonably be expected to let from year to year, the UAM envisages fixing the UAV with reference to the characteristics of a property and then multiplying the UAV by the area of the vacant land or covered space to find out the 'annual value'.
>
> 53. It is not as if the NDMC was unaware that this could be done only by amending the NDMC Act. Yet only because this might be a time consuming process it chose the short cut of making the new impugned Bye-laws without amending the NDMC Act. Section 388 (1) of the NDMC Act begins with the expression "Subject to the provisions of this Act". Clearly, therefore, the legislative intent was to confer upon the NDMC the power to make Bye-laws which were subject to and consistent with the provisions of the Act.
>
> 54. Secondly, Section 388 (1) A (9) of the NDMC Act confers powers to make Bye-laws relating to the levy, assessment, collection, refund or imposition of taxes "under this Act". The expression 'relating to' preceding the words "levy, assessment,

collection..." clearly means, therefore, that Bye-laws will have to be consistent with what is already provided under the NDMC Act. A method of levy, assessment, collection of taxes which is different from what is provided under the NDMC Act cannot possibly be introduced by the Bye-laws in terms of Section 388 (1) A (9) of the NDMC Act. That would make the Bye- laws inconsistent with and contrary to the NDMC Act.

55. There are specific provisions of the NDMC Act which have been sought to be supplanted by the Bye-laws. Illustratively, the whole system of determination of annual rent under Section 63(1) of the NDMC Act is sought to be substituted by the UAM. There is no provision in the new impugned Bye-laws that could be related to Section 63(1) of the NDMC Act. The new impugned Bye-laws create classification among assessees which are different from the classification envisaged under the NDMC Act and in particular classification of property as spelt out in Sections 62 and 65 of the NDMC Act. Section 66 of the NDMC Act contemplates imposition of the property tax in respect of three categories of properties i.e. the property that has been let, sub-let and properties that are not let out at all.

There is no further classification contemplated in the NDMC Act on the basis of nature of rights which are created in respect of such land and buildings.

56. Under the proviso to Section 63(1) of the Act, the rateable value cannot exceed the standard rent fixed under the DRC Act. This is sought to be overwritten by the impugned new Bye-laws. Under the explanation to Section 61(1) of the Act where a portion of a land or building is liable to a higher rate of tax then such portion will be deemed to be a separate property for the purpose of municipal taxation. This is sought to be substituted under the UAM which seeks to aggregate the value of land as a whole with the value of the space covered on such land.

57. While categorising the occupancy factor, the impugned Bye-laws create only two categories i.e. (i) self-occupied or vacant buildings or lands and (ii) others. Thereby the letting out of a property for use by a person other than the owner for no consideration is treated at par with the letting out such property for consideration. These are only the illustrations of changes brought about by the new impugned Bye-laws.

58. In State Trading Corporation India Limited v. New Delhi Municipal Council (supra), the Supreme Court emphasised that the manner of determination of rateable value has to be only in terms of Section 63 of the NDMC Act even in respect of properties that have been sub-let and not in terms of Bye-law 12 of the 1962 Bye-laws which were found to be inconsistent with the provisions of the NDMC Act.

59. Consequently, as far as the present case is concerned it is plain that the new impugned Bye-laws are ultra vires the NDMC Act. They require to be invalidated on

this ground alone." Submission of the Counsel:

> 34) Mr. Sanjay Jain, learned senior counsel appeared on behalf of the appellant, NDMC. After referring to the various provisions of the NDMC Act as well as the impugned Bye-laws, he submitted that as per Bye-law 5 the valuation committee sits every year and lays down the standards for fixing the annual rent. The process undertaken is with a purpose to arrive at 'annual rent' which according to him is in consonance with Section 63 of the NDMC Act. He read Section 63 to emphasise that even as per that provision it is the rateable value on which tax is to be imposed on lands and building which are assessable to any property tax.

This rateable value, the provisions sates, shall be the 'annual rent'. Thus, the tax has to be on the annual rent which is the rateable value and no particular method is given under Section 63 of the NDMC Act for fixing such annual rent. Therefore, it was permissible to lay down a method of fixing annual rent in the Bye- laws which would not be contrary to Section 63 of the Act. He also submitted that UAM provided in the Bye-laws is more rationale and takes care of many anomalies of the old system. According to him, the High Court committed certain errors in approaching the subject. In the first instance it referred to the provisions of Delhi Rent control Act and application thereof which is without any basis. Other error was to wrongly assume that there are three categories of properties where the Bye-laws create only two categories. Thirdly, methodology which is worked out and mentioned in para 22 of the judgment (relating to interpretation that is to be given to Section 181 of the NDMC Act) is contrary to Section 63 of the NDMC Act.

35) Mr. Jain also submitted that the observations of the Delhi High Court in State Trading Corporation of India Ltd. vs. New Delhi Municipal Council1 are wrongly interpreted as the Court did not hold in that case that determination of rateable value has to be only in terms of Section 63 of the NDMC Act. He further argued that even in respect of those properties which are let out, still exercise is to be dome to find out the annual value inasmuch as the 'rent' which it is likely to fetch has to be determined as per Section 63. On the other hand, in respect of the properties which are self-occupied, in any case annual rent has to be arrived at. The impugned Bye-laws seek to achieve that purpose only, which was very much in consonance with Section 63 of the NDMC Act. He also submitted that the judgment in question has created a void insofar as intervening period is concerned as the NDMC has taxed the properties, after coming into force the Bye-laws, in accordance with the new Bye-laws which have been struck down and thereby leaving the properties in question without any tax for the intervening period.

1 104(2003) DLT 808 = AIR 2003 Delhi 295

36) Mr. Jain also submitted that UAM introduced by the MCD has been upheld by this Court.

37) In a nutshell, it is the case of NDMC that the impugned Bye-laws are not ultra vires the NDMC Act. The NDMC has contended that the finding of the impugned judgment that the Bye-laws of NDMC as ultra vires the NDMC Act, on the premise that the same instead of supplementing Section 63(1), supplants the same is erroneous.

38) NDMC has also contended that the entire functioning and activities of NDMC is dependent on its revenue collections. Property tax accounts for the major individual source of revenue of NDMC. In the event the Bye-laws are struck down in their entirety, as has been done by the impugned judgment dated 10 th August, 2017 of the Delhi High Court, NDMC will stand to lose a huge portion of its revenue, in the absence of which NDMC will not be in a position to provide the services that it currently provides in the New Delhi area.

39) As per NDMC, no particular method is prescribed under Section 63(1) for arriving at annual rent and the said gap has been filed up by the Bye-laws of 2009. It claims that what has been prescribed by Section 63 (1) is only the broad principle on which the rateable value would be determined, which is the annual rent that the property "might reasonably be expected to let from year to year.

40) Section 63(1) is silent on how to determine the annual rent of a property and for calculation of annual rent, NDMC can employ any method which is reasonable to arrive at the hypothetical rent which a property might reasonably be expected to let from year to year. Using the current Bye-laws to arrive and determine the annual rent, cannot be said to be unreasonable or ultra vires of the provisions of the NDMC Act.

41) Mr. Parag Tripathi, who appeared in the civil appeal arising out of Special Leave Petition (Civil) No. 35938 of 2017, supported the case set up by the NDMC. He also argued that Section 63 provides for the determination of rateable value for buildings assessable to property tax which is on the basis of annual rent which the land or building might reasonably be expected to let from year to year. There is no statutory formula provided and indeed there can be non to determine the value of rent at which any land or building might reasonably be expected to let from year to year. It is for this reason that Section 388(1)(A)(9) of the NDMC Act, 1994 vests power on the Council to make bye-laws I n all matters relating to levy, assessment, collection, refund or remission of taxes under the Act. It is a well-settled position of law that the term 'levy' is a term of wide import and includes charge as well as imposition of tax, as laid down in the followings judgments:

(I) Ashok Singh vs. Asstt. Controller of Estate Duty 2

(ii) Assistant Collector of Central Excise vs. National Tobacco Co. of India Ltd.3

(iii) Mafatlal Industries & Ors. vs. Union of India & Ors. 4

42) Analyzing the Impugned Judgment dated 10.08.2017 of the High Court, he argued that it has proceeded on the basis that the concept of annual value sought to be introduced by the NDMC (Determination of Annual Rent) Bye-laws, 2009 is completely alien to the statutory scheme of the NDMC Act on the following basis:

(i) Bye-law 2 of the 2009 Bye-laws provides that 'for the purposes of Section 63(1)" the annual rent for which the lands and buildings are expected to let from year to year shall be determined in terms of Bye-laws 3 and 4.,

2 (1992) 3 SCC 169 3 (1972) 2 SCC 560 4 (1997) 5 SCC 536

(ii) Bye-law 4 provides that the annual rent of lands and buildings not covered by Bye-law 3 shall be the aggregate of the bona fide annual value of land and bona fide annual value of covered space of the building. In terms of sub- bye-law 3 of Bye- law 4 the annual value of any covered space shall be the amount arrived at by multiplying the total area by the base unit area value of such covered space and the relevant factors stipulated in sub- bye laws 5,6 and 7.

(iii) 'Annual value" for the purpose of arriving at the annual rent which a property may reasonably expected to fetch is not a new concept and has been applicable to the NDMC area until the enactment of the NDMC Act in 1994. In this regard, reference may also be had to the definition of "annual value" in Section 3(1)

(b) of the Punjab Municipal Act which provides that annual value shall mean the gross annual rent which a house or building may reasonably be expected to let from year to year.

(iv) It is, therefore, clear that the term 'annual value', which is arrived at by taking into account factors such as area, usage of the property, age factor and also occupancy, is only an indicator of the rent which a particular property would fetch when let for use or enjoyment.

43) Mr. Tripathi further submitted that the impugned judgment also proceeds on the basis that the 2009 Bye-laws have overwritten the proviso to Section 63(1) which provides that the rateable value shall not exceed the standard rent fixed under the Delhi Rent Control Act. Questioning this approach, he submitted that the High Court has, with respect, lost sight of the fact that concept of standard rent is no longer available under the Delhi Rent Control Act, 1958 since the Delhi High Court was pleased to strike down Sections 4,6 and 9 of the said Act dealing with Standard Rent in Raghunandan Saran Ashok Saran (HUF) vs. Union of India and Others 5 , which judgment was never challenged in appeal and has thus attained finality.

44) This aspect was also noted by this Court in State Trading Corporation vs. New Delhi Municipal Council 6. In that view of the matter, there was no occasion for the High Court to strike down the Bye-laws on the ground that the Bye-laws have overwritten the proviso to Section 63(1).

45) Mr. Tripathi also submitted that various judgments relied upon by the High Court on the aspect of excessive delegation were not applicable in the facts of the present case.

5 95(2002)DLT 528 6 (2016) 12 SCC 603

46) One additional submission was made by Mr. Parag Tripathi deviating from the NDMC stand. Learned senior counsel referred to the provisions of Section 63(2) of the NDMC as well as Section 388(1)(A)(9) of the Act which read as under:

> "Section 63(2): The ratable value of any land which is not built upon but is capable of being built upon and of any land on which a building is in process of erection shall be

fixed at five per cent of estimated capital value of such land.

Section 388(1)(A)(9) : any other matter relating to the levy, assessment, collection, refund or remission of taxes under this Act."

47) His submission was that from a conjoint reading of the aforesaid provisions it is clear that that provisions of Section 388(1)(A)(9) sufficiently empower NDMC to make Bye-laws in respect of matters covered under Section 63, i.e., Sections 63(1) and 63 (2).

His further submission was that this Court has, time and again, held while interpreting taxing statute that percentage of tax or charges or penalties provided is to be treated not as a mandatory provision but merely as indicative of a ceiling. For this submission, he invited the attention of this Court to the following passage in P. Ratnakar Rao and Others vs. Sate of A.P. and Others7:

"4. The contention raised before the High Court and repeated before us by Shri Rajeev Dhavan, the learned

7 (1996) 5 SCC 359 Senior Counsel for the petitioners is that the discretion given in Section 200(1) of the Act is unguided, uncanalised and arbitrary. Until an accused is convicted under Section 194, the right to levy penalty thereunder would not arise. When discretion is given to the court for compounding of the offence for the amount mentioned under Section 200, it cannot be stratified by specified amount. It would, therefore, be clear that the exercise of power to prescribe maximum rates for compounding the offence is illegal, arbitrary and violative of Article 14 of the Constitution. We find no force in the contention. For violation of Sections 113 to 115, Section 194 accords penal sanction and on conviction for violation thereof, the section sanctions punishment with fine as has been enumerated hereinbefore. The section would give guidance to the State Government as a delegate under the statute to specify the amount for compounding the offences enumerated under sub-section (1) of Section 200. It is not mandatory that the authorised officer would always compound the offence. It is conditional upon the willingness of the accused to have the offences compounded. It may also be done before the institution of the prosecution case. In the event of the petitioner's willing to have the offence compounded, the authorised officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceedings, if already instituted, would be closed or no further proceedings shall be initiated. It is a matter of volition or willingness on the part of the accused either to accept compounding of the offence or to face the prosecution in the appropriate court. As regards canalisation and prescription of the amount of fine for the offences committed, Section 194, the penal and charging section prescribes the maximum outer limit within which the compounding fee would be prescribed. The discretion exercised by the delegated legislation, i.e., the executive is controlled by the specification in the Act. It is not necessary that Section 200 itself should contain the details in that behalf. So long as the compounding fee does not exceed the fine prescribed by the penal section, the same cannot be declared to be either exorbitant or irrational or bereft of guidance."

48) On that basis, he argued that the 5% rate stipulated under Section 63(2) should be treated as the ceiling which can be used to determine the rateable value. Section 63(2) on a fair reading thereof and in view of the various judgments of this Court does not mandate rateable value fixed at 5% of the capital value of the land. This is only the ceiling and has to be dealt with accordingly.

49) He also argued that the whole idea behind Section 63(2) is to determine the property tax. When there is no enjoyment of the property itself and the building is in the process of erection, then the land falls in the category of 'not built up but is capable of being built up' or is actually being built up.

50) In these circumstances once a building is demolished and a fresh building is constructed after obtaining sanction plans from the NDMC, the rateable value can be determined under Section 63(2) only for the period during which the building is fully demolished, i.e., the land in question becomes fully vacant till such time as the roof of the ground floor is constructed. Once such construction is made after obtaining the sanction plan, by no stretch of imagination can the land be said to be vacant, as it now contains a building, with a constructed roof in accordance with the sanctioned plan. According to him, any other interpretation will create a huge discrimination between those parties who are seeking to construct a building and others who are enjoying the benefit of a constructed building. In the case of a newly constructed building, once the construction is complete, the rateable value will not exceed Rs. 1 to 4 lakhs whereas a percentage of the capital value of the land at 5%, the same would be in the region of Rs. 3 to 4 crores. This discrimination which is 60-80 times would be totally without any justification because no new or additional benefit are accruing to a party which is demolishing and reconstructing the property, rather a great health hazard will be created with the old building are continued to be used in that dilapidated stage.

51) He, thus, argued that a 5% levy is wholly arbitrary and does not serve any purpose also for the reason that no municipal services whatsoever whether sewerage, water or electricity are really being provided by the NDMC to a demolished property because there is no resident, but only a limited extent of water and electricity is used for the purposes of construction. Emphasizing that property tax is really in the nature of a fee on account of the services rendered by the Municipal Authority. (See: Pradeep Oil Corporation vs. Municipal Corporation of Delhi and Anr.;

(2011) 5 SCC 270).

52) He submitted that the levy must commensurate to the services rendered by the authority. On that basis, Mr. Tripathi has sought a direction from this Court to the NDMC to formulate Bye-laws in respect of Section 63(2) as well and/or laid down guidelines in the case of those building where pursuant to sanction plan existing building is demolished and a fresh building is constructed, the property tax during the period of vacancy of the land due to the demolition of the building, be determined at the same rate, as the building upon construction based on the sanction plans would be subject to. Further, any in any case this period during which rateable value would be determined under Section 63(2) should be limited to from the period of demolition of the existing structure/building till such time as the roof of the ground floor is laid and constructed.

53) Ms. Maninder Acharya, M/s. Mukul Rohatgi, Sanjay R. Hegde, Huzefa Ahmadi, B.B. Gupta, Ms. Vibha Datta Makhija, learned senior counsel, M/s. Sanjeev Anand, B.B. Jain and many other counsel appeared on behalf of the different respondents/ assessees and defended the judgment of the High Court. It may not be necessary to separately state the arguments advanced by these counsel. Instead the arguments of these counsel are noted below in a consolidated manner.

54) Before concentrating on the main issue of ultra vires, the counsel for the respondents highlighted that under the impugned Bye- laws NDMC is demanding/collecting property taxes on unconstructed/vacant land which are otherwise incapable of being constructed upon. This is notwithstanding the fact that Section 63 of the NDMC Act stipulates the annual rateable value (ARV) can only be determine don the basis of constructed/vacant land which is capable of being constructed upon. In order to show that a large portion of land falling under the jurisdiction of NDMC cannot be built upon, following aspects are highlighted:

A. A majority of the properties of NDMC are situated in the Lutyens' Bungalow Zone ("LBZ" and are governed by the LBZ Guidelines dated 8th February, 1988, which not only prohibit construction on a large part of the plots falling in LBZ but also severely restrict new development and construction beyond the area previously constructed upon.

B. Similar restrictions exist for properties falling within the 'prohibited areas' and 'regulated areas' declared by the Archaeological Survey of India (ASI) under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and amendments thereto.

C. Given limitations of building bye-laws, such a legally required setbacks, it is quite clear that there are portions of the property that owners are compelled by law to leave vacant. Larger plots of land also require larger setbacks and lesser ground coverage.

55) It is submitted that the above three restrictions make it impossible to construct on the entire plot of land, and result in large portions of these plots becoming unconstructed/vacant land that are not capable of being built upon. In fact, over 50% of properties falling with the NDMC jurisdiction are governed by either LBZ Guidelines and/or by ASI regulations. The respondents argue that, it is completely discriminatory vis-a-vis properties situated outside such areas to levy heavy taxes on such vacant land when development thereupon is strictly prohibited.

56) It is also argued that on such properties, no property tax can be levied. Support from the judgment of the High Court of Delhi, in the case of Municipal Corporation of Delhi vs. Shashank Steel Industries (P) Ltd.8 is taken in this behalf wherein the Court interpreted the expression 'capable of being built upon' appearing in Section 116(2) of the Delhi Municipal Corporation Act, 1957, which is stated to be in pari materia with Section 63(2) of the NDMC Act. Therein, that High Court has held that property tax is leviable only in respect of land which is otherwise 'capable of being built upon' and

where construction is permission. It was submitted that the civil appeal filed by the Municipal Corporation of Delhi against the decision of the Full Bench was dismissed by this Court.

57) The impugned Bye-laws are also questioned as violative of Article 14 of the Constitution of India on the ground that they lack reasonable classification. All areas under the NDMC from B.K. Dutt Colony to Golf Links to Bengali Market to Prithviraj Road, are treated at par in that the same base UAV Rs. 1,000/- per sq. mtr.

(later increased by 20% to Rs. 1,1200/- per sq. mtr. w.e.f. 01.04.2013) is imposed on them even though the rent that they would fetch is in no way comparable. The Annual Rateable Value for two buildings/houses (of say 1,000 sq. mtr. each built between 2000-09 on plots below between 500 to 1,000 sq. mtrs.) one in B.K. Dutt Colony and the other on Golf Links, where both are 8 100 (2002) DLT 66 (FB) used as a residence by the individuals who own them, would be the same, calculated by the formula below:

bona fide Annual Rateable Value of the Covered Space =Base unite Area Value x Covered Space x Age factor x Use Factor x Occupancy Factor =1,200x1,000x1x1x1.5x1=18,00,000/- less 10% deduction = Rs. 16,20,000/-

58) It is submitted that fixing the same base unit area value for all the colonies falling within the jurisdiction of the appellant ignores the roles, location and social factors play in determining annual rent and thus tax, and accordingly treat unequals as equals. This is argued as discriminatory, as held in State of Kerala vs. Haji Kutty9 wherein this Court held that “imposing a uniform tax on objects, persons or transaction essentially dissimilar may result in discrimination”. Comparison is made with the Scheme adopted by the MCD, which has divided the area under its jurisdiction into six different zones and has provided a separate location factor for each zone for calculating the property tax.

59) Further submissions predicated on Article 14 of the Constitution are as under:

9 AIR 1969 SC 378

(i) The impugned Bye-laws seek to impose onerous terms upon firms, companies, trusts etc. by denying the benefit of self- occupation use to their properties in which their partners/directors/employees/trustees reside, and charging three times the property tax being charged from individual assessees. Such impermissible impugned Bye-laws have been made in utter disregard of Section 66 of the NDMC Act, sub-section (1) of which clearly mandates that:

"The property tax shall be primarily leviable as follows:-

(a) if the land or building is let, upon the lessor;

(b) if the land or building is sub-let, upon the superior lessor;

(c) if the land or building is unlet, upon the person in whom the right to let the same vests." This Section clearly contemplates the classification of unlet land or building as a single category if there is no lease/sub-

lease, therefore, suggesting that such properties owned by firms, companies or trusts etc. fall in the same class as self-occupied properties. Such unequal treatment is indubitably discriminatory.

(ii) Furthermore, the impugned Bye-laws seek to tax the property not on the basis of its user but on the basis of the legal status of the owner, which goes against the principle that property tax is a tax on a property and not a tax on the owner. This is also discriminatory as many beneficial owners of the property hold the same through a firm, company, trust, etc. for reasons such as estate planning, family settlements, synergies of business, court decrees, business exigencies etc. and they cannot be penalised on the basis of nature of ownership and that too for a historic and irreversible act done by them or their predecessors-in-it.

(iii) The service provided by NDMC towards sewage, public health, streets, roads, drainage, parks etc. does not change and there is no qualitative and quantitative difference in the same for firms, companies, trusts etc.

(iv) The impugned Bye-laws [Bye-law 4(6)] seek to impose unreasonably and discriminatory onerous terms upon the assessees putting their property to any permissible use "other than residential" by charging a six times factor for calculating the Annual Rateable Value of covered space. This omnibus category of "Other than Residential" does not envisage multiple diverse uses that a property may be put to an unreasonably and arbitrarily clubs all uses "other than residential" into one category without providing any distinction between a use which is likely to yield profits and/or cause more burden on the infrastructural facilities of the appellant and other uses which may be non-profit and/or do not cause an additional excess burden on the infrastructure as compared to residential use. This is in stark contrast to the MCD Act, which, in Section 116A classifies vacant land and buildings into colonies and groups and specifies base area value thereafter. In this calculation, use wise categorization is done, nut just into 'residential' and 'other than residential', but into categories like business building, mercantile building, building for recreation, public purpose building, etc. Bye-law 6 of the Delhi Municipal Corporation (Property Taxes) Bye-laws 2004 goes so far as to exempt land or buildings used for charitable purposes such as orphanages, hospitals and schools that are free of cost, etc. This demonstrates a significant application of mind by the MCD in contrast to the appellant herein.

The outcome of the Impugned Bye-laws is that if a trust owns a property which is used partly for the residential purpose of its trustees and partly for running a charity, the tax obligation would be many times the amount of tax payable by a house next door which is owned by the individual who resides in it, both on account of the multipliers for non-self occupied and ownership not by an individual. This scenario is unreasonable and violative of Article 14.

(v) Properties which are designated for residential use [as per the city master plan] and are put to 'residential cum office use' by foreign/diplomatic missions operating out of such properties as permitted under applicable law (whether as owner or tenant) cannot be treated as "other than residential" and consequently be subjected to higher factor for calculating the Annual Rateable Value of covered space.

(vi) Rationality of the impugned Bye-laws is also questioned on the ground that under the impugned Bye-laws, if some portion of the covered space of the property is partly rented and the remaining covered space of the property is self-occupied, the impugned Bye-laws do not give a self occupation rebate on the unconstructed/vacant land {i.e. applying the current base unit area of Rs. 1,200/- per sq. mtr. Instead of Rs. 600/- per sq. mtr.) even though the unconstructed/vacant land may be I n complete occupation/enjoyment of the owners. Even in cases where as little as one room in the barsati floor or outhouse is rented and the tenant is not given any access to the unconstructed/vacant land (except right of entry/ingress from the main gate/driveway), the landlord/owners would be obligated to pay an inexplicably and substantially higher amount of property tax.

(vii) As per the Bye-law 4(8) of the impugned Bye-laws, in case of commercial properties, the Annual Rateable Value of the covered space as per the impugned Bye-laws is the value arrived under the Impugned Bye-laws or the actual rent fetched, whichever is higher. Grievance is that in this way, the NDMC is trying to achieve best of both worlds, which is not consistent with the "optionality" underlying the impugned Bye-laws. Moreover, after the NDMC has taken the stand that the impugned-Bye-Laws seek only to provide a method by which to calculate the annual rent, it is incongruous that the actual rent be taken into consideration.

(viii) Given that Delhi is one state, there is no reason for different systems between the NDMC and MCD areas. For this purpose, reference is made to the case of State Trading Corporation of India Ltd. case wherein a Single Judge of the High court of Delhi observed as under:

> "37. Before parting with this judgment, I must express my anguish at the fact that though Delhi is one city, different parameters are being followed by Municipal authorities in the same town. It is only for purposes of convenience that jurisdiction have been divided among NDMC, MCD and Delhi Cantonment Board. The least that is expected is that all these Municipal authorities should act at tandem and follow similar principles in determination of rateable value. Merely because the house of one person falls in one area or the other, which may even be adjacent, and a different Municipal authority is dealing with the issue of determination of rateable value, should not imply totally different concepts in determination of such rateable value. It is appropriate that all the Municipal authorities must meet and consider this aspect to bring a uniformity in the system of determination of the rateable value in parts of Delhi when they fall within one jurisdiction or the other. This is more so as the provisions under said Act and the DMC Act are para materia. The MCD, in fact, now proposed to apply a different concept of a unit method of taxation, but so far, the NDMC has not finalised any proposal in the same terms." It is argued that although

the appeal against the said decision was allowed by a Division Bench of the High Court of Delhi in NDMC vs. State Trading Corporation10, the aforesaid observations were neither overruled nor commented upon by the Division Bench and do hold good. In any case, appeal against the judgment of the Division Bench was thereafter allowed by this Court in State Trading Corporation case. Therefore, as per the respondents, these observations do hold the field.

(ix) It is also submitted that the impugned Bye-laws seek to penalise private citizens at the cost of the union and state instrumentalities. Out of the total NDMC area of land about 90% of the land is owned by the Government itself and the rest 10% is owned by the individuals, body corporates etc. As the Government has been exempted from paying taxes, therefore the burden to pay tax is on the persons, who occupy only 10% land of the total NDMC area. This according to the respondents is discriminatory and in violation of Article 14 of the Constitution of India.

60) Adverting to the issue of ultra vires which has appealed to the High Court thereby quashing the impugned Bye-laws, the

10 126(2006) DLT 191 respondents supported the reasons given by the High Court in this behalf. Emphasizing the fact that as per Section 63(1) of the NDMC Act, annual rent to be arrived at has to be the rent which such land or building might reasonably be expected to be let from year to year. Respondents emphasised that Section 63(1) uses the word 'rent' and not 'value' and, therefore, the only way for determining the annual rent is to see the 'rent' which the properties likely to reasonably fetch. The respondents have submitted that this language contained in Section 63(1) of the NDMC Act has come up for interpretation before this Court in number cases and interpreted in the same manner in which the High Court has dealt with the issue. The respondents, in this behalf, referred to the following judgments:

(i) The Corporation of Calcutta vs. Smt. Padma Debi and Others11;

(ii) The Guntur Municipal Council vs. The Guntur Town Rate Payers' Association etc.12

(iii) Dewan Daulat Rai Kapoor vs. New Delhi Municipal Council and Others13

(iv) Indian Automobiles Ltd. vs. Calcutta Municipal Corporation and Anr.14

(v) State Trading Corporation case

11 (1962) 3 SCR 49 12 (1970) 2 SCC 8703 13 (1980) 1 SCC 685 14 (2002) 3 SCC 388

61) It is thus argued that the High Court has rightly held that the UAM is not a means or method of collecting the rent for which a property might reasonably be expected to let. In support of this contention, the respondents referred to some of the Bye-laws and the position thereunder which

according to the respondents makes it clear that UAM introduced in the impugned Bye-laws is completely foreign to the methodology of 'annual rent' provided under Section 63. The Bye-laws referred to are as below:

> 62) Bye-laws 4(6) introduces a "multiplication factor for use and occupancy of the covered space", wherein the multiplication factor for residential use is 1 but all other use is 6. Similarly, for self occupied or vacant properties, the multiplication factor is 1 whereas for others it is 3. As per the explanation to this Bye-law.
>
> "premises owned by companies, firms, trusts, etc. and used by the directors, employees or partners for residence or guest house shall not be treated as self occupied by the owners."
>
> 63) Thus, by way of illustration, a property owned by a trust and used by it as a guest house or to run a charity would be taxed 18 times what an identical self occupied residential property would be taxed. Properties fetch the same rent whether they are owned by an individual or a trust, whether they are used as a residence or a guest house. This Bye-law is thus directly contrary to the contention that the Impugned Bye-laws are a method of computing rent.
>
> 64) The impugned Bye-laws provide for the calculation of tax to begin by multiplying the total covered area by an assigned base UAV of Rs. 1,000/- per sq. mtr. (revised to Rs. 1200/- per sq. mtr. w.e.f.

01.04.2013), irrespective of location. The appellant thus seems to be inexplicably equating the rent a property which a house in B.K. Dutt would fetch with one in Golf Links or Prithviraj Road.

65) Factors such as location, neighborhood, corner plot, architectural style, etc. which play a significant role in ascertaining the rent a property would fetch are ignored in the impugned Bye-laws.

66) It is, thus, argued that the Impugned Bye-laws are not a means of calculating the rent a property would fetch. To the contrary, they lay out a method that is entirely different from the parent legislation. Respondents also point out difference in the following manner:

> (a) Firstly, Section 63(2) of the NDMC Act provides for taxation only on land capable of being built upon. Given that parts of the NDMC area fall under the Lutyens' Bungalow Zone ('LBZ') or 'prohibited' or 'regulated area' declared by the Archaeological Survey of India under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (including the rules framed thereunder), and given that building bye-laws require certain setbacks to be left vacant, the unconstructed/vacant land is often not capable of being built upon. Bye-law 4(2), which provides for calculation of bona fide value of land not constructed upon, ignores this aspect and thus contradicts the parent legislation.

(b) Secondly, the categories created under the Bye-law 4(6) are different from the classification envisaged under the NDMC Act and in particular classification of property in Section 62 and 65 of the NDMC Act. Section 66 of the NDMC Act creates three categories of properties – those which have been let, those which have been sub-let and those that are not let out at all. The impugned Bye-laws, however, create an entirely different method of categorization.

(c) Furthermore, the Impugned Bye-laws confer extensive powers upon the Valuation Committee in Bye-Law 5, which amounts to excessive delegation of power in a manner that has not even been envisaged in the parent statute.

Consideration of the arguments:

67) In the first place, we take up the fundamental issue, namely, whether the impugned Bye-laws are ultra vires Section 63 of the NDMC Act? As noted above, judgment of the High Court is confined to this issue alone. As can be seen from the legislative scheme contained in various provisions pertaining to property tax, Section 60 is the charging Section which authorizes the NDMC to levy various types of taxes including property tax. As per sub-

section (3), tax can be assessed and collected in accordance with the provisions of the Act and Bye-laws made thereunder, rates at which the property tax can be charged are mentioned in Section

61. This Section, inter alia, provides that the property tax shall be levied on lands and buildings in New Delhi and shall consistent of not less than 10% and not more than 30% of the rateable value of lands and buildings. Thus, property tax can be charged on lands and buildings for which rates can be prescribed and these rates have to be between 10% to 30%. Further, this percentage is of the 'rateable value' of lands and buildings. Definition of 'rateable value' is given in Section 2(42) of the NDMC Act to mean 'the value of any land or building fixed in accordance with the provisions of this Act and Bye-laws made thereunder for the purposes of assessment to property taxes'.

68) Various premises, viz: lands and buildings, in respect of which property tax can be levied are mentioned in Section 62. Insofar as rateable value is concerned, the manner of determination thereof is specified in Section 63 of the Act. Since, the method of determination is the fulcrum of the dispute, Section 63 assumes importance for the purposes of deciding the issue in these appeals. It is also an accepted position that the interpretation that is to be given to this provision would lead to the outcome of the case. For these reasons and for the sake of continuity and clarity, we reproduce Section 63(1) and (2) thereunder:

"Section 63 : Determination of rateable value of lands and buildings assessable to property tax-

1. The rateable value of any lands or buildings assessable to any property taxes shall be the annual rent at which such land or building might reasonably be expected to let

> from year to year less a sum equal to ten per cent of the said annual rent which shall be in lieu of all allowances for cost of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent:
>
> Provided that in respect of any land or building the standard rent of which has been fixed under the Delhi Rent Control Act, 1958 (59 of 1958) the rateable value thereof shall not exceed the annual amount of the standard rent so fixed.
>
> 2. The rateable value of any land which is not built upon but is capable of being built upon and of any land on which a building is in process or erection shall be fixed at five per cent of estimated capital value of such land."
>
> 69) As per Section 63(1) rateable value of any lands or building assessable to any property taxes is the 'annual rent'. Further, such annual rent has to be determined 'at which such land or building might be reasonably be expected to let from year to year....' .

70) The 'rateable value', as per Section 2(42) of the NDMC Act is to be fixed in accordance with the provisions of the Act and the Bye- laws made thereunder. Therefore, the first question is as to what are the provisions made in this behalf in the Act. For this Section 63 comes into play which prescribes that 'annual rent' would be rateable value. This annual rent, as per this provisions, is one such land or building is expected to let from year to year minus 10% thereof. The Impugned Bye-laws lay down the procedure for fixing of annual rent on UAM. This leads us to the question as to whether this UAM can be stated to be the method of arriving at annual rent which land or building is reasonably expected o let from year to year? Here it may be noted that as per NDMC, Section 63 does not prescribe any particular method for arriving at annual rent and, therefore, this gap has been filled up by the Impugned Bye-laws by prescribing the formula based on UAM. It would be difficult to accept such an interpretation of Section 63(1) as sought to be given by the learned senior counsel for NDMC.

71) Section 63(1) is not silent on how to determine the annual rent of a property. This annual rent has to be the one which the land or the property 'might reasonably be expected to let from year to year'. It is, thus, based on the letting yearly value of the property. Such a conviction has come up for interpretation before this Court in a series of cases right from 1960s till date. It would be relevant to note that similar language was used in the unamended provisions of Delhi Municipal Corporation Act as well as similar acts of some other states.

72) The Corporation of Calcutta vs. Smt. Padma Debi and Others15 has analyzed the words 'gross annual rent at which the land or building might reasonably be expected to let from year to year". In a similar provision under the Calcutta Municipal Act, 1923 as Section 63(1) and held as under:

> "We shall first look at the provisions of the section to ascertain the meaning: The crucial words are "gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year". The dictionary

meaning of the words "to let", is "'grant use of for rent or hire". It implies that the rent which the landlord might realise if the house was let is the basis for fixing the annual value of the building. The criterion, therefore, is the rent realisable by the landlord and not the value of the, holding in the hands of the tenant. This aspect has been emphasized by the Judicial Committee in Bengal Nagpur Railway Company Limited v. Corporation of Calcutta (AIR 1942 Calcutta 455)(1).

15 (1962) 3 SCR 49

73) In the case of The Guntur Municipal Council case, this Court again analyzing similar provision under the Madras District Municipalities Act, 1920 held as under :

".....Section 82 gives the method of assessment. It is provided by sub-section (2) of that section that the annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less certain deductions. .....

.....Now Section 82(2) of the Municipalities Act, as stated before, makes provision for the fixation of annual value according to the rent at which lands and buildings may reasonably be expected to be let from month to month or from year to year less the specified deduction. The test essentially is what rent the premises can lawfully fetch if let out to a hypothetical tenant. The municipality is thus not free to assess any arbitrary annual value and has to look to and is bound by the fair or the standard rent which would be payable for a particular premises under the Rent Act in force during the year of assessment....."

74) In Dewan Daulat Rai Kapoor case, this Court held as under:

" .....The criterion is the rent realisable by the landlord and not the value of the holding in the hands of the tenant. The rent which the landlord might realise if the building were let is made the basis for fixing the annual value of the building. The word “reasonably” in the definition is very important. What the landlord might reasonably expect to get from a hypothetical tenant, if the building were let from year to year, affords the statutory yardstick for determining the annual value. Now, what is reasonable is a question of fact and it would depend on the facts and circumstances of a given situation. ....."

75) Similarly, in Indian Automobiles Ltd. case, it was held that the criterion for calculating annual valuation must be the rent realizable by the landlord and not the value of holdings, and that the word ‘reasonably’ in the Section was a question of fact.

76) In State Trading Corporation case, while dealing with certain other Bye-laws as against the NDMC Act came to the conclusion that:

"7. .....Since there is a provision and procedure under Section 63 of the NDMC Act for calculating the annual rent, one need not refer at all to the bye-laws as quoted above since they are apparently inconsistent with the provisions of the NDMC Act. In short, it is impermissible to refer to the bye-laws framed under the Punjab Act in view of specific provisions made under the NDMC Act providing for the levy, assessment and collection of property tax.

8. Therefore, the only basis for fixation of rateable value is the annual rent at which the land or building might reasonably be expected to be let from year to year, subject to the deductions provided under the Act."

77) The aforesaid judgments give a clear message that annual rent is to be the one which the landlord might realize if the house was let. The criteria, thus, is the rent realizable by the landlord and not the value of the holding. The test essentially is what rent the premises can lawfully fetch if let out to a hypothetical tenant. In the Guntur Municipal Council case, this Court made it clear that having regard to the provision in the Act, the municipality was not free to assess any arbitrary annual value and has to look to and is bound by the fair or standard rent which would be payable for a particular premises under the Rent Act in force during the assessment.

78) In State Trading Corporation, which was a case directly dealing with this very provisions, namely, Section 63 of the NDMC Act, the Court again reiterated in unambiguous terms 'the only basis for fixation of rateable value is the annual rent at which the land or building might reasonably be expected to let from year to year, subject to the deductions provided under the Act'.

79) Even in common parlance, simple language of Section 63(1) clearly conveys that the rateable value is the annual rent which the property is likely to fetch. The yardstick is the 'letting'. Two words used in this Section convey this meaning very clearly, namely, the word 'rent' in the phrase 'annual rent' and the word 'let'. Therefore, annual rent is to be determined on the basis of the letting value which is expected reasonably. In cases where the property is already let out, actual rate at which the property is let out becomes the amount at which the land or building is reasonably expected to fetch. Exception may be those cases where the property is let out actually at a rent which is lesser than the rent it would be fetched otherwise. This is the ratio of Mehrasons Jewellers Private Limited2. It was a case in respect of premises not controlled by Delhi Rent Control Act.

This Court held that the annual rent received by the landlord is what willing lessee uninfluenced by other circumstances would pay to the willing lessor; actual annual rent in these circumstances can be taken as the annual rateable value of the property for assessment of property tax.

80) The question directly arose for consideration in Government Servant Cooperative House Building Society Limited and Others vs. Union of India and Others16, this Court noticed the 1988

amendment to the Delhi Rent Control Act and various judgments referred to hereinabove by us and concluded as under:

> "8. Therefore, the annual rent actually received by the landlord, in the absence of any special circumstances, would be a good guide to decide the rent which the landlord might reasonably expect to receive from a hypothetical tenant. Since the premises in the present case are not controlled by any rent control legislation, the annual rent received by the landlord is what a willing lessee, uninfluenced by other circumstances, would pay to a willing lessor. Hence, actual annual rent, in these circumstances, can be taken as the annual rateable value of the property for the assessment of property tax. The municipal corporation is, therefore, entitled to revise the rateable value of the properties which have been freed from rent control on the basis of annual rent actually received unless the owner satisfies the municipal corporation that there are other considerations which have affected the quantum of rent." 16 (1998) 6 SCC 381

> 81) In case there is a proof and/or material to find out that the reasonable rent could have been more than at which it is actually let out, the actual rent receipt can be discarded by adopting the expected rent which, on the basis of material, can be said to be reasonable. In those cases where the property is self-occupied or is vacant and not let out, it can be gathered from the rent at which a comparable property is let out. However, in such a case there would be two situations. Going by the dicta laid down in Dewan Daulat Rai Kapoor and other cases, the reasonable rent would be the standard rent which can be determined under the provisions of Delhi Rent Control Act. However, this principle would be applicable only in respect of those properties where Delhi Rent Control Act applies. In other cases, the yardstick would be the letting value of comparable properties, i.e., the rent at which comparable properties are let out. However, such criteria of fixation of standard rent has lost its relevance after the judgment of the Delhi High Court in Raghunandan Saran Ashok Saran (HUF) vide which Sections 4,6 and 19 of the Delhi Rent Control Act which deal with fixation of standard rent, were declared as ultra vires of the Constitution of India. The aforesaid decision has been affirmed by this Court in State Trading Corporation of India Ltd. case.

82) Be as it may, in the context of the issue at hand, we emphasize that it is the annual letting value fixed in the aforesaid manner which can be the annual rent and not the value of the property in question. The expression 'annual rent' is to be read in contradistinction to 'annual value'. Two concepts are altogether different. Inasmuch as the latter expression relates to annual value of the property which may be based on parameters different from fixing the annual rent of the property.

83) Having cleared the aforesaid aspect, we need to discuss as to whether UAM specified in the impugned Bye-laws aims to strive at ascertaining 'annual rent'? If the answer is in the affirmative, only then one can say that the impugned Bye-laws are in tune with the provisions of Section 63(1) of the NDMC Act. After going through the Bye-laws and the manner in which the rateable value is

fixed, we are constrained to observe that it is not in sink with the scheme of Section 63(1) of the NDMC Act. To recapitulate in brief, Bye-law 4 stipulates that the bona fide annual value of land not covered under Bye-law 3 would be the annual value of land and bona fide annual value of the covered space of the building. Bye-law 3 seeks to fix the entire value of land falling in the jurisdiction of New Delhi at the circle rate of Rs. 43,000/- (Rupees Forty Three Thousand only) per square meter. Likewise, Bye-law 4(10) where annual rent of any building is determinable under more than one-sub-bye-law, the annual rent shall be the aggregate of the annual value determined under sub-bye-law of this Bye-law. We, therefore, reject the arguments of the appellants and do not deem it necessary to deal therewith any further.

84) Thus, we agree with the High Court that the Impugned Bye-laws that provide UAM which is based on value of the property that on rental which the property is likely to fetch and are, there, foreign to the methodology provided in Section 63 of the NDMC Act. Such Bye-laws are, thus, ultra vires the provisions of NDMC Act. They are in excess of the scope and ambit of powers vested in the NDMC Act under Section 388(1)(A)(9) of the NDMC Act.

85) As rightly contended by the assessees, initially, same was the thinking process in the NDMC as well inasmuch as there was a move to amend the Act in order to bring UAM for the purpose of levying property tax. This is how the Municipal Corporation of Delhi achieved its objective. However, for the reasons best known to the appellants, without amending the provisions of the Act it went ahead in bringing Impugned Bye-laws, 2009.

86) No doubt, in many ways, UAM is a better method in comparison with the earlier method based on annual rent. For this reason, this method has now been followed for the purpose of levying property tax not only in the areas in Delhi itself covered under the Municipal Corporation of Delhi but in many other States as well. However, such a method which may be a better method can be incorporated in accordance with the law. In the present case, it could be done after amending the provisions of the NDMC Act. Since, we are agreeing with the High Court which has quashed the Impugned Bye-laws as ultra vires, it becomes meaningless and irrelevant to go into other issues or other arguments advanced before us. However, we may only add that once the appellants take steps for amending the Act and want to reintroduce the Bye-laws of 2009, many aspects highlighted by the assessees in respect of Bye-laws would be kept in mind. We are not suggesting that the contentions raised by the respondents/assessees relating to validity of different Bye-laws are well-founded, nor are we suggesting that they are ill- conceived. This Court has not expressed any views on the merits of these contentions, either waym as this Court has not gone into the merits of such contentions. At the same time in order to obviate any future challenge the NDMC is expected to keep in mind the arguments of the appellants on these aspects.

87) We may record here that when the matter was heard at a stage when the counsel for NDMC had argued the matter and even respondents have made their submissions in reply thereto, learned counsel for the NDMC before giving rejoinder made a statement on 16th January, 2018 that the new Bye-laws had been accepted by approximately 95% assessees. Further, because of the interim order passed by this Court permitting such assessees to deposit the property tax on the basis of these Bye-laws, they had voluntarily deposited the property tax as well on the basis of self-assessment.

Having regard to this, the learned counsel for the NDMC submitted that the grievances of the respondents/assessees can be looked into by the Valuation Committee. Based on this statement, following order was passed on 16th January, 2018.

> "Learned counsel for the respondents have completed their submissions. The petitioner(s) have to give rejoinder thereto. Before making the submissions in rejoinder Mr. Yoginder Handoo, learned counsel appearing for petitioner(s), has stated that approximately 95% assessees have accepted the new bye-laws and pursuant to the order passed by this Court, they have come forward voluntarily and deposited the property tax on the basis of 4 self-assessment. He submits that some of the grievances which are stated by the respondents herein in respect to their properties which according to them are in the impugned bye-laws can be looked into by the Valuation Committee. He further submits that Valuation Committee may be having its sitting within two weeks and may give its report in this behalf within five weeks. He, therefore, makes a request to adjourn the matters for five weeks. The matters stand adjourned to 06.03.2018.
>
> We make it clear that the aforesaid exercise would be without prejudice to the rights and contentions of the parties. The petitioners may file its written submissions during this period. In the meantime, interim order to continue."

88) When the matter came up on 6 th March, 2018, Mr. Sanjay Jain made a statement on behalf of NDMC that the revised guidelines have been framed and put on website, to which objections have been invited. He also stated that after receiving and considering the objections, the matter would be finalized at NDMC's end. The respondent/assessee and some others also submitted their objections to the modified guidelines. These were looked into by the NDMC and decision thereon was taken by the Chairperson, NDMC under Bye-law 5(2) of the Impugned Bye-laws after the Valuation Committee had given its recommendations for the year 2018-19. This decision dated 14 th May, 2018 of the Chairperson was handed over to the Court. As per this, various objections of the assessees were considered and decision taken thereon which are reflected in the tabulated form. Many respondents/ assessees are still not satisfied with the decision taken on various aspects and the arguments. We, however, leave it to the NDMC to take a final call thereupon having due regard to the legal position on these aspects.

89) One last but very significant aspect is still required to be dealt with. The declaration of Impugned Bye-laws as ultra vires has created a difficult situation. These Bye-law were framed in the year 2009. They were struck down by the High Court vide impugned judgment dated 10th August, 2017. They held the field from 2009-2017. While issuing notice in these Special Leave Petitions on 22nd September, 2017, in respect of the direction of the High Court to pass re-assessment order, this Court observed that it would be open to the NDMC not to pass such re-

assessment orders. That interim order has prevailed during the pendency of these appeals. Further, as already noted above, 95% of the assessees are agreeable to pay the tax as per Bye- laws 2009. They have even paid the taxes on that basis. In these circumstances, to upset the applecart completely may not be appropriate. In such a peculiar situation, in exercise of powers under Article 142 of the Constitution, we direct that those assessees who have paid the tax as per Bye-Laws, 2009, their assessments shall not be reopened. Another reason for taking this course of action is that these assessees are satisfied with the assessments under Bye-laws, 2009. However, it will not apply to the respondents herein, namely, those assessees who were the writ petitioners in the High Court. In their cases, the direction given by the High Court in the impugned judgment shall prevail.

90) The appeals stand disposed of in the aforesaid terms.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN)
NEW DELHI;

JANUARY 22, 2019.