IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : NEW DELHI MUNICIPAL COUNCIL ACT

LPA No. 185 of 2011

Judgment reserved on: 25th May, 2011

Judgment delivered on: 5th July, 2011

NAKUL KAPUR ....Appellant
Through Mr. Shanti Bhushan, Sr. Advocate with Mr. Sanjai K. Pathak and Mr. Sumeet Sharma, Advocate.

VERSUS

NDMC & ANR …..Respondent
Through Ms. Madhu Tewatia and Ms. Sidhi Arora, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

SANJIV KHANNA, J.

The present intra-Court appeal under Clause X of the Letters Patent raises two issues. Firstly, whether the principle of parity and equivalence is applicable and should be applied to the facts of the present case, as per the ratio in Lt. Colonel P.R. Choudhary (Retd.) versus Municipal Corporation of Delhi, (2000) 4 SCC 577 and secondly whether section 109 of the New Delhi Municipal Council Act (Act, for short) has been misconstrued by the learned single Judge and is applicable.

2. The appellant's mother vide sale deed dated 16th November, 1995 purchased and acquired interest in a plot of land measuring 375 square yards with two and half storied

residential construction bearing No. 36, Malcha Marg, Chananakya Puri, New Delhi. As per the sale deed, the total consideration paid by the mother to acquire the property was Rs.1,60,00,000/-. The existing annual rateable value of the property at the time of purchase was 72,100/-. This rateable value was calculated on the basis of the cost of construction and the value of the land on the date when the construction commenced. This was in accord with the ratio laid down by the Supreme Court in Dewan Daulat Rai Kapoor versus New Delhi Municipal Committee, AIR 1980 SC 541 and Dr. Balbir Singh versus MCD, AIR 1985 SC 339.

3. Though, the mother of the appellant had purchased the property for Rs.1,60,00,000/-, the rateable value was not revised and had continued to remain the same till 1st April 2004.

4. The mother of the appellant applied for demolition of the existing construction and for raising fresh construction. The building plans were sanctioned vide order dated 22nd September, 2003. Learned single Judge has noticed that demolition of the old construction was made and construction was restarted in the year 2004-05. Revised building plans were sanctioned on 8th June, 2004.

5. By a gift deed dated 6th October, 2008 the property was transferred by the mother to the appellant. The gift deed records that the appellant had "demolished the then existing structure of the building on the plot underneath the property and got the building plan sanctioned for reconstruction on the said land". Learned Single Judge has specifically noticed that the gift deed had described the mother as the owner of the "plot of land", as distinct from a constructed plot. The learned Single Judge has highlighted the fact that the gift deed records that the possession of the plot of land had been handed over to the appellant. For the purpose of the stamp duty payable on the gift deed, the plot of land was valued at Rs.1,34,82,500/-.

6. The appellant applied for issue of completion certificate, which was issued on 26th November, 2008. Newly constructed property was let out on rent of Rs.6,75,000/- per month.

7. Two notices dated 24th January, 2005 and 25th March, 2009 were issued by the respondent-NDMC under section 72 of the New Delhi Municipal Act, 1974 ("Act" for short) for revising annual rateable value to 8,00,000/- and 72,90,000 with effect from 1st April, 2004 and 1st November, 2009, respectively.

8. The Assessing Authority after considering the objections to enhancement, confirmed the rateable values proposed in the two notices. The appellant filed statutory appeals but was unsuccessful and thereafter filed Writ Petition (Civil) No. 4052/2010, which has been dismissed by the impugned decision dated 24th January, 2011. In this manner, the appellant has now preferred this Letters Patent Appeal, which de facto is the third appeal.

9. To appreciate the first contention, one has to examine and interpret Section 63 of the Act as it existed during the relevant period. The said provision reads:-

"63.(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."

10. Section 63(1) of the Act deals with constructed properties and not vacant or unconstructed land. Similar provisions were interpreted by the Supreme Court in the case of Dewan Daulat Rai Kapoor and Balbir Singh (supra). We are not concerned with Section 63(1) of the Act and the interpretation thereof in the present appeal. It will, however, be suffice to

notice that the appellant has not made any grievance regarding the annual rateable value fixed under Section 63(1) of the Act after the property was purchased by his mother vide sale deed dated 16th November, 1985 for Rs.1,60,00,000/-. The respondent did not enhance the existing ratebale value of 77,100/- even after purchase of the property by the appellant's mother for the aforesaid sum. The appellant's mother continued to pay property tax on the annual rateable value of 77,100/- in spite of having purchased the property for Rs.1,60,00,000/-. This was in view of the ratio laid down in the two cases of Dewan Daulat Rai Kapoor and Balbir Singh (supra) that the rateable value of the property has to be fixed under section 6 of the Rent Control Act, 1958 on the basis of the cost of construction and the value of the land on the date when the construction was started. In the said decisions, it was held that where a building is covered by the rent control legislation, the landlord cannot be expected to receive anything more than the standard rent, even if the landlord is entitled to receive contractual rent which is more than the standard rent. This ratio/rule was subject to specific statutory provisions to the contrary. [Refer India Automobiles Ltd. v. Calcutta Municipal Corporation and Anr. (2002) 3 SCC 388, Asstt. General Manager, Central Bank of India and Ors. v. Commissioner, Municipal Corporation for the City of Ahmedabad and Ors. (1995) 4 SCC 696]. It may be, however, pointed out that under the Delhi Municipal Corporation Act, 1957 and new rules were introduced with effect from 1993. Thereafter and thus, the purchase value of the property was the basis for computing annual rateable value, till the unit area system was introduced.

11. Sub section 2 to Section 63 deals with computation of annual rateable value of land, which has to be computed on the basis of the capital value of land. It is not possible to agree with the contention of the appellant that the sub section 2 applies to vacant land before it is constructed upon for the first time and does not apply to a vacant plot of land after building is constructed, but thereafter the construction is demolished. The said sub section applies to vacant land whether or not a building was earlier constructed but demolished, and even when a building which was earlier constructed, is demolished and the property can be regarded as a vacant land. The factual aspect whether or not there existed a vacant plot of land after the construction was demolished has been referred to above. In the gift deed dated 6th October 2008, the property has been described as a plot of land as distinct from a constructed property. Stamp duty on the gift deed made on 6th October, 2008, has been paid on the basis of valuation of the vacant or unconstructed land. The vacant land was valued at Rs. 1,34,82,500/-. This is in spite of the fact that the property including the constructed portion was purchased in 1995 for

Rs.1,60,00,000/-. For the purpose of computing the capital value of land, the respondent has taken the sale consideration of Rs.1,60,00,000/- as the capital value. This computation of "capital value" was not disputed before the Assessing Authority, Appellate Authority and before the Writ Court. The annual rateable value in terms of capital value of the land was computed at 8,00,000/- i.e. 5% of Rs.1,60,00,000/-.

12. Learned senior counsel appearing for the appellant had submitted that this increase in rateable value to 8,00,000/- is unjustified and illegal. It was submitted that the constructed land was assessed at a lower rateable value of 77,100/-, but the vacant land has been assessed at the higher rateable value of 8,00,000/-. This so called anomaly, in view of the two different parameters or methods prescribed in Sections 63(1) and (2) of the Act, does not merit acceptance or justify the contention of the appellant. The legislation has prescribed two different parameters and criteria for fixing and computing annual rateable value of a constructed property as distinct from a vacant land. The appellant's mother enjoyed benefit of a lower rateable value in spite of having purchased the property for Rs.1,60,00,000/- in 1995, till the existing construction was demolished and what existed was a vacant plot of land. The annual rateable value of the vacant land has to be computed and calculated on the basis of the Section 63(2) of the Act and not on the basis of Section 63(1) of Act. The constitutional validity of the Section 63(2) is not in question before us. The appellant has also not questioned the capital value of the land as computed. Once we have come to the conclusion that Section 63(2) of Act applies to vacant land then there is no other alternative but to compute the annual rateable value of vacant land at 5% of the capital value. It may be noticed here that in taxation matters the legislature has to be given play in the joints, and also that Article 14 of the Constitution though applicable to taxation legislations, the plea of indivious discrimination is to be rejected in case the two subject matters of taxation are different. Constructed property and a vacant plot of land are not synonymous. Separate valuation or taxation principles can be applied. Annual rateable value of a constructed property as per the judgments of the Supreme Court in Dewan Daulat Rai Kapoor and Balbir Singh (supra) has to be computed on the basis of the standard rent fixed under the rent control legislation even if the contractual rent is much higher. This was in view of the language of the statute. It may be also noted that in case of first letting, for five years the contractual rent itself was the basis of the annual rateable value, but not thereafter, in view of the provisions relating to standard rent under the Delhi Rent Control Act, 1958. Thus, for first five years when a property was rented out, the annual rateable value was higher. The appellant's mother had taken benefit of the aforesaid interpretation and

enjoyed advantage of lower taxation from 1995 till 1st April 2004, when the construction was demolished. Thereafter, the annual rateable value has to be fixed under Section 63(2) of the Act, instead of 63(1) of the Act. In the present case we are not concerned with the effect of the decision of Delhi High Court in Raghunandan Saran Ashok Saran (HUF) Vs. Union of India & Other 2002 II AD (DELHI) 261, which struck down Sections 4, 6 and 9 of the Delhi Rent Control Act, 1958 and the impact thereof on the annual rateable value of a property. The observations made above should not be construed as findings or opinion of this Court on the said aspect.

13. In view of the aforesaid findings, we are clearly of the view that annual rateable value of the vacant plot of land fixed under Section 63(2) of the Act at 8,00,000/- cannot be challenged or questioned as suggested by the appellant in the present appeal.

14. As noticed above, annual rateable value of the property was further enhanced with effect from 26th November, 2008, when the newly constructed property was given on rent for Rs.6,75,000/- per month. The rent is not in dispute and is admitted. The appellant has, however, raised the plea of parity and in this regard has relied upon decision in the case of P.R. Chaudhary (supra). In the said case, the Supreme Court has relied upon the observations made in Dr. Balbir Singh's case. Paragraph 11 of the decision in Dr. Balbir Singh's case relied upon in P. R. Chaudhary's case reads:-

11. Now, let us take up for consideration the first category of premises, in regard to which the question of determination of rateable value arises, namely, where the premises are self-occupied, that is, occupied by the owner. We will first consider the case of residential premises. It is clear from the above discussion that the rateable value of the premises would be the annual rent at which the premises might reasonably be expected to be let to a hypothetical tenant and such reasonable expectation cannot in any event exceed the standard rent of the premises, though in a given situation it may be less than the standard rent. The standard rent of the premises would constitute the upper limit of the annual rent which the owner might reasonably expect to get from a hypothetical tenant, if he were to let out the premises. Even where the premises are self-occupied and have not been let out to any tenant, it would still be possible to determine the standard rent of the premises on the basis of hypothetical tenancy. The question in such case would be as to what would be the standard rent of the premises if they were let out to a tenant. Obviously, in such an eventuality, the standard rent would be determinable on the

principles set out in sub-section (1)(A)(2)(b) of Section 6 of the Rent Act. The standard rent would be the rent calculated on the basis of 7 1/2 per cent or 8 1/4 per cent per annum of the aggregate amount of the reasonable cost of construction and the market price of the land comprised in the premises on the date of commencement of the construction. The Delhi Municipal Corporation, however, contended that where any premises constructed on or after June 9, 1955 — and the premises in most of the cases before us are premises constructed subsequent to June 9, 1955 — have not been let out at any time and have throughout been self-occupied, the standard rent of such premises would be determinable under the provisions of sub-section (2)(b) of Section 6 and any rent which could be agreed upon between the landlord and the tenant if the premises were let out to a hypothetical tenant would be deemed to be the standard rent of the premises and the formula set out in sub-section (1)(B)(2)(b) [sic (1)(A)(2)(b)] of Section 6 would not be applicable for determining the standard rent by reason of the non obstante clause contained in the opening part of sub-section (2) of Section 6. This contention, plausible though it may seem, is in our opinion not well-founded. It is difficult to see how the provision enacted in sub-section (2)(b) of Section 6 can be applied for determining the standard rent of the premises when the premises have not been actually let out at any time. Sub-section (2)(a) of Section 6 clearly contemplates a case where there is actual letting out of the premises as distinct from hypothetical letting out, because under this provision the annual rent agreed upon between the landlord and the tenant at the time of first letting out is deemed to be the standard rent for a period of five years from the date of such letting out and it is impossible to imagine how the concept of first letting out can fit in with anything except actual letting out and how the period of five years can be computed from the date of any hypothetical letting out. It is only from the date of first actual letting out that the period of five years can begin to run and for this period of five years, the annual rent agreed upon between the landlord and the tenant at the time of first actual letting out would be deemed to be the standard rent. Sub-section (2)(b) of Section 6 can have no application where there is no actual letting out and hence in case of premises which are constructed on or after June 9, 1955 and which have never been let out at any time, the standard rent would be determinable on the principles laid down in sub-section (1)(A)(2)(b) of Section 6. So also in case of premises which have been constructed before June 9, 1955 but after June 2, 1951 the standard rent would, for like reasons, be determinable under the provisions of sub-section (1)(A)(2)(b) of Section 6 if they have not been actually let out at any time since their construction. But if these two categories of premises have been actually let out at some point of time in the past, then in the case of former category, the

annual rent agreed upon between the landlord and the tenant when the premises were first actually let out shall be deemed to be the standard rent for a period of five years from the date of such letting out and in the case of the latter category, the annual rent calculated with reference to the rent at which the premises were actually let for the month of March 1958 or if they were not so let, with reference to the rent at which they were last actually let out shall be deemed to be the standard rent for a period of seven years from the date of completion of the construction of the premises. However, even in the case of these two categories of premises, the standard rent after the expiration of the period of five years or seven years as the case may be, would be determinable on the principles set out in sub-section (1)(A)(2)(b) of Section 6. Thus in the case of self-occupied residential premises, the standard rent determinable under the provisions of sub-section (2)(a) or (2)(b) of Section 6 in cases falling within the scope and ambit of those provisions and in other cases, the standard rent determinable under the provisions of sub-section (1)(A)(2)(b) of Section 6 would constitute the upper limit of the rateable value of the premises. Similarly, on an analogous process of reasoning, the standard rent determinable under the provisions of sub-section (2)(a) or (2)(b) of Section 6 in cases falling within the scope and ambit of those provisions and in other cases, the standard rent determinable under the provisions of sub-section (1)(B) (2)(b) of Section 6 would constitute the upper limit of the rateable value so far as self-occupied non-residential premises are concerned. The rateable value of the premises, whether residential or non-residential, cannot exceed the standard rent, but, as already pointed out above, it may in a given case be less than the standard rent. The annual rent which the owner of the premises may reasonably expect to get if the premises are let out would depend on the size, situation, locality and condition of the premises and the amenities provided therein and all these and other relevant factors would have to be evaluated in determining the rateable value, keeping in mind the upper limit fixed by the standard rent. If this basic principle is borne in mind, it would avoid wide disparity between the rateable value of similar premises situate in the same locality, where some premises are old premises constructed many years ago when the land prices were not high and the cost of construction had not escalated and others are recently constructed premises when the prices of land have gone up almost 40 to 50 times and the cost of construction has gone up almost 3 to 5 times in the last 20 years. The standard rent of the former category of premises on the principles set out in sub-section (1)(A)(2)(b) or (1)(B)(2)(b) of Section 6 would be comparatively low, while in case of latter category of premises, the standard rent determinable on these principles would be unduly high. If the standard rent were to be the measure of rateable value, there

would be huge disparity between the rateable value of old premises and recently constructed premises, though they may be similar and situate in the same or adjoining locality. That would be wholly illogical and irrational. Therefore, what is required to be considered for determining rateable value in case of recently constructed premises is as to what is the rent which the owner might reasonably expect to get if the premises are let out and that is bound to be influenced by the rent which is obtainable for similar premises constructed earlier and situate in the same or adjoining locality and which would necessarily be limited by the standard rent of such premises. The position in regard to the determination of rateable value of self-occupied residential and non-residential premises may thus be stated as follows: The standard rent determinable on the principles set out in sub-section (2)(a) or (2)(b) or (1)(a)(2)(i) or (1)(b)(2)(a) of Section 6, as may be applicable, would fix the upper limit of the rateable value of the premises and within such upper limit, the assessing authorities would have to determine as to what is the rent which the owner may reasonably expect to get if the premises are let to a hypothetical tenant and for the purpose of such determination, the assessing authorities would have to evaluate factors such as size, situation, locality and condition of the premises and the amenities provided therein. Bigger size beyond a certain optimum would depress the rate of rent and so also would less favourable situation or locality or lower quality of construction or unsatisfactory condition of the premises or absence of necessary amenities and similar other factors. But after taking into account these varying factors, the disparity should not be disproportionately large. We may also point out that until 1980 the assessing authorities were giving a self-occupancy rebate of 20 per cent in the property tax assessed on self-occupied residential premises. We would suggest that, in all fairness, this rebate of 20 per cent may be resumed by the assessing authorities, because there is a vital distinction, from the point of view of the owner, between self-occupied premises and tenanted premises and the right to shelter under a roof being a basic necessity of every human being, residential premises which are self-occupied must be treated on a more favourable basis than tenanted premises, so far as the assessability to property tax is concerned.

(emphasis supplied)

15. On a careful perusal of the above-referred paragraph, it is noticeable that the Supreme Court was dealing with cases of self-occupied property. This becomes clear if we read the highlighted portion of paragraph 11 in Dr. Balbir Singh's case wherein the principle of equalization or parity has been referred. The Supreme Court in the said case was concerned

with disparity in rateable value of two properties in the same locality, when they had been constructed on different dates having a long time gap. To compute annual rateable value under section 6 of the Delhi Rent Control Act, 1958, market value of the land on the date of commencement of construction was the basis. Cost of land was rising in Delhi and, therefore, there could be a huge disparity in the rateable values of old and newly constructed properties even though they were similar and adjoining. It was in these circumstances when the Supreme Court has held that in cases of self occupied residential and non-residential properties, the standard rent fixed or payable under Section (2)(a) or (2)(b) or (1)(A)(2)(b) or (1)(B)(2)(b) of Section 6 was the criteria/principle, but the standard rent fixed/payable would be the upper limit for fixing the rateable value

16. The aforesaid observations of the Supreme Court, therefore, were dealing with self-occupied residential and non-residential property and not to tenanted properties. They deal with a situation when a self-occupied owner would be liable to pay a higher property tax than a property that was constructed earlier, in view of the fact that the land rates had increased and the annual rateable value had to be calculated on the basis of the cost of land at the time of construction. P.R. Chaudhary (supra) was also a case where the property was self occupied and not tenanted. This is clear from the paragraph 2 of the judgment. Therefore, these two decisions are clearly distinguishable and cannot be applied once the property was rented out by the appellant with effect from November 2008 at the rent of Rs. 6,75,000/- per month. In Government Servants Coorporation Housing Building Society Ltd. and Ors. v. UOI (1998) 6 SCC 381, the Supreme Court examined the consequence of addition of clauses (c) and (d) to section 3 of the Delhi Rent Control Act, 1958 w.e.f. 1st December 1988. The Rent Act, as a result of clause (c) added to section 3, was not applicable to premises whose monthly rent exceeded Rs.3,500/-. In the said case it has been held that after the amendment of Delhi Rent Control Act with effect from 1st December 1988, the properties on monthly rent of more than Rs.3,500/-, the actual contractual rent would be the basis for computing the rateable value. It was held as under:

"4. In the case of The Corporation of Calcutta v. Smt. Padma Devi [1962]3SCR49 , this Court considered Section 127(a) of the Calcutta Municipal Act, 1923. This Section was similar to Section 116(1) of the Delhi Municipal Corporation Act, 1917. Under Section 127(a) the annual value of the land or building shall be deemed to be gross annual rent at which the land or building might at the time of assessment reasonably be expected to let from year to year less

certain deductions. The Court observed that the word "reasonably" is not capable of precise definition. It said, (at page 55)" 'Reasonable' signifies 'in accordance with reason.' In the ultimate analysis it is a question of fact. Whether a particular act is reasonable or not depends on the circumstances in a given situation. A bargain between a willing lessor and willing lessee uninfluenced by any extraneous circumstances may afford a guiding test of reasonableness. An inflated or deflated rate of rent based upon fraud, emergency, relationship, and such other considerations may take it out of the bounds of reasonableness. Equally it would be incongruous to consider fixation of rent beyond the limits fixed by penal legislation as reasonable. Under the Rent Control Act, the receipt of any rent higher than the standard rent fixed under the Act is made penal for the landlord."

5. Therefore, where there is legislation fixing the standard rent of the premises, the rent at which the premises could be reasonably expected to be let cannot exceed the statutory ceiling. But where there is no artificial control on the rent which is charged, a bargain between a willing lessor and willing lessee uninfluenced by any extraneous circumstances, affords a good test of reasonableness.

6. The same principle was reiterated by this Court in Dewan Daulat Rai Kapoor and Ors. v. NDMC and Ors: [1980]122ITR700(SC) . After quoting the above passage from The Corporation of Calcutta v. Smt. Padma Debi and Ors., (Supra), this Court held that the actual rent payable by a tenant to the landlord would, in normal circumstances, afford reliable evidence of what the landlord might reasonably expect to get from a hypothetical tenant, unless the rent is inflated or depressed by reason of extraneous considerations such as relationship, expectation of some other benefit etc. There would ordinarily be, in a free market close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant.

7. In the case of Dr. Balbir Singh and Ors. etc. v. Municipal Corporation, Delhi and Ors.,: [1985]152ITR388(SC) , also this Court reiterated the test laid down in the above two cases and repeated that in a free market there would ordinarily be a close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant. See also East India Commercial Co. Pvt. Ltd. v. Corporation of Calcutta [1998]2SCR543 .

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."

17. The assessment list 2009-2010 has been placed on record. The said assessment list gives details of the existing rateable value. The rateable value of some of the properties is substantially high, presumably because they have been rented out. In some cases, the rateable value is low, presumably because they are self-occupied and old constructions. For example, rateable value of shop No. 18/48 has been fixed at 8565700, 52, Malcha Marg, has been fixed at 6615100 and 162, Malcha Marg has been fixed at 6912000. Therefore, it is incorrect to state that the appellant has been singled out.

18. The last contention of the appellant relates to interpretation of Section 109 of the Act. The said section reads as under:-

"109. Demolition, etc., of buildings—If any building is wholly or partly demolished or destroyed or otherwise deprived of value, the Chairperson may, on the application in writing of the owner or occupier, remit or refund such portion of any tax assessed on the rateable value thereof as he thinks fit."

19. The aforesaid provision was not relied upon before the Assessing Officer and the Appellate Authority. The appellant had also not moved any application before the chairperson under Section 109 of the Act seeking remission or refund of any tax assessed. Section 109 of the Act refers to a building, which is wholly or partly demolished or destroyed or otherwise deprived of value. Thus, Section 109 will apply even if the building is wholly destroyed and what exists, is a vacant plot of land. However, there should have been a building or a construction existing on the now vacant land. Demolition or destruction of the building, either in part or in full, should have resulted in deprivation of value. The words 'remit' or 'refund' used in Section 109 are significant. They refer to property tax already paid on any constructed building under Section 63(1) of the Act or any other provisions, but because of demolition or destruction or otherwise deprivation of value, the occupier or the owner is entitled to apply for

remission or refund of tax. Property tax is paid during the first part of a financial year i.e. before the end of financial year. In such circumstances, under section 109, an owner or occupier can apply for refund or remission of tax assessed because the building is wholly or partly demolished or destroyed or otherwise its value has come down/deprived. In the present case, section 109 will not apply as when the building was destroyed, the appellant did not file any application under Section 109 of the Act. The said section would be applicable in case what was assessed to tax was the constructed building, but during the assessment year in question the building had been destroyed or demolished or otherwise deprived in value. This again is not the situation in the present case.

20. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is dismissed. However, in the fact of the present case, there will be not order as to costs.

-Sd-
(SANJIV KHANNA)
JUDGE

-Sd-
(DIPAK MISRA)
CHIEF JUSTICE