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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) No. 3348/2010

**ASSOCIATION OF CONCERNED CITIZENS OF
NEW DELHI**

.....Petitioner

Through: Ms. Maninder Acharya, Senior Advocate with Mr. Trideep Pais, Mr. Amitabh Chaturvedi, Mr. Sahil Sood and Ms. Deeksha Gujral, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents

Through: Mr. Sanjay Jain, Senior Advocate with Mr. Arjun Mitra, Standing Counsel, Ms. Madhu Tewatia, Standing Counsel and Ms. Rhea Verma, Mr. Abhishek Misra, Ms. Jaskaran Kaur, Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia, Advocates for UOI.

28.

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WITH

W.P. (C) No. 12689/2009

**BABAR ROAD COLONY LEASE HOLDER
ASSOCIATION**

.....Petitioner

Through: Mr. Arvind Kumar Gupta and Mr. Alpana Malik, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents

Through: Mr. Sanjay Jain, Senior Advocate with Mr. Arjun Mitra, Standing Counsel, Ms. Madhu Tewatia, Standing Counsel and Ms. Rhea Verma, Mr. Abhishek Misra, Ms. Jaskaran Kaur, Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

29.

WITH

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W.P. (C) No. 1985/2010

WAZIR ESTATES P LTD. & ANR.

.....Petitioners

Through: Mr. Sanjeev Anand and Mr. Akshay
Kapoor, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR.

.....Respondents

Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

30.

WITH

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W.P. (C) No. 2315/2010

JOR BAGH ASSOCIATION & ORS.

.....Petitioners

Through: Mr. Pawanjit S. Bindra, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.

.....Respondents

Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

31.

WITH

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W.P. (C) No. 3074/2010

STATE BANK OF INDIAPetitioner
Through: Mr. S. L. Gupta and Ms. Mithilesh Pal,
Advocates.

versus

THE NEW DELHI MUNICIPAL COUNCIL
& ANR.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

34.

WITH

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W.P. (C) No. 4047/2010 & CM No. 20199/2016

NEW DELHI TRADERS ASSOCIATIONPetitioner
Through: Mr. Abhimanyau Mahajan, Mr. Milan
Deep Singh and Ms. Anubha Goel, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL
& ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

WITH

36.

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W.P. (C) No. 8679/2010

ASHOK SHARMAPetitioner

Through: Ms. Vasudha Jaivedi, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & GOVT. OF NCT
OF DELHI

.....Respondents

Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

37.

WITH

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W.P. (C) No. 363/2011

ABHA SINGH AND ORS.

.....Petitioners

Through: Mr. Subhash C. Jindal, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR.

.....Respondents

Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

38.

WITH

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W.P. (C) No. 7296/2011 & CM No. 16576/2011

THE MODERN SCHOOL DELHI

.....Petitioner

Through: Mr. B. B. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

39.

WITH

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W.P. (C) No. 7491/2011 & CM No. 16982/2011

JASDEV SINGH & ANR.Petitioners
Through: Mr. B. B. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

40.

WITH

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W.P. (C) No. 728/2012

ALKA SAHANIPetitioner
Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu

Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

41.

WITH

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W.P. (C) No. 729/2012

PREETI SARAF

.....Petitioner

Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR.

.....Respondents

Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

42.

WITH

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W.P. (C) No. 1153/2012

SCHOKHI INDUSTRIALS PVT. LTD.

.....Petitioner

Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.

.....Respondents

Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

43.

WITH

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W.P. (C) No. 1154/2012

MAK ENTERPRISES PVT. LTD.Petitioner
Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

46.

WITH

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W.P. (C) No. 1487/2012

MG BUILDERS AND CO. PVT. LTD.Petitioner
Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

47.

WITH

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W.P. (C) No. 1492/2012

NIRJA SAWHNEY

.....Petitioner

Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

50.

WITH

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W.P. (C) No. 1822/2012

DR. MANJU LATA SARAF & ANR.

.....Petitioner

Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

52.

WITH

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W.P. (C) No. 2088/2012

TANIA JAIN

.....Petitioner

Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

53.

WITH

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W.P. (C) No. 2091/2012

TANIA JAIN

.....Petitioner

Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

54.

WITH

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W.P. (C) No. 2102/2012

TANIA JAIN

.....Petitioner

Through: Mr. S.K. Jain, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

55.

WITH

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W.P. (C) No. 3453/2012

HOTEL QUEEN ROAD PVT. LTD.Petitioner
Through: Mr. Mohit Chaudhary, Advocate.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

58.

WITH

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W.P. (C) No. 1759/2012 & CM No. 3153/2015

SIR SOBHA SINGH & SONS PVT. LTD.Petitioner
Through: Mr. Aman Ahluwalia, Ms. Akanksha
Munjal, Mr. Nakul Gandhi and Mr. Shravan
Sahny, Advocates.

versus

THE NEW DELHI MUNICIPAL COUNCIL & ORS. ...Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

60. **WITH**

+ **W.P. (C) No. 645/2016**

CARVANSERAI LIMITEDPetitioner
Through: Mr. Aman Ahluwalia, Ms. Akanksha
Munjal, Mr. Nakul Gandhi and Mr. Shravan
Sahny, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

61. **WITH**

+ **W.P. (C) No. 1996/2016 & CM No. 8627/2016**

INDIAN TOURISM DEVELOPMENT
CORPORATIONPetitioner
Through: Ms. Shweta Bharti and Mr. J. K.
Chaudhary, Advocates.

versus

NEW DELHI MUNICIPAL COUNCILRespondent
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

62.

WITH

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W.P. (C) No. 1997/2016 & CM No. 8629/2016

INDIAN TOURISM DEVELOPMENT
CORPORATION

.....Petitioner

Through: Ms. Shweta Bharti and Mr. J. K.
Chaudhary, Advocates.

versus

NEW DELHI MUNICIPAL COUNCILRespondent
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

63.

WITH

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W.P. (C) No. 1998/2016 & CM No. 8631/2016

INDIAN TOURISM DEVELOPMENT
CORPORATION

.....Petitioner

Through: Ms. Shweta Bharti and Mr. J. K.
Chaudhary, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Mr. Sanjay Jain, Senior Advocate with Mr. Arjun Mitra, Standing Counsel, Ms. Madhu Tewatia, Standing Counsel and Ms. Rhea Verma, Mr. Abhishek Misra, Ms. Jaskaran Kaur, Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia, Advocates for UOI.

64.

WITH

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W.P. (C) No. 2001/2016 & CM No. 8644/2016

KIRTI ABROL & ANR.

.....Petitioners

Through: Mr. Ashish Mohan and Mr. Mohit Kumar, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL

.....Respondent

Through: Mr. Sanjay Jain, Senior Advocate with Mr. Arjun Mitra, Standing Counsel, Ms. Madhu Tewatia, Standing Counsel and Ms. Rhea Verma, Mr. Abhishek Misra, Ms. Jaskaran Kaur, Advocates for NDMC.

Mr. Arun Bhardwaj and Ms. Meera Bhatia, Advocates for UOI.

67.

AND

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W.P. (C) No. 1581/2017 & CM No. 7124/2017

HALMIRAH ESTATE TEA PRIVATE LIMITED

.....Petitioner

Through: Mr. Ajay Bhargava and Mr. Aseem Chaturvedi, Advocates.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR.Respondents
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Arjun Mitra, Standing Counsel, Ms. Madhu
Tewatia, Standing Counsel and Ms. Rhea Verma,
Mr. Abhishek Misra, Ms. Jaskaran Kaur,
Advocates for NDMC.
Mr. Arun Bhardwaj and Ms. Meera Bhatia,
Advocates for UOI.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER
10.08.2017

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Dr. S. Muralidhar, J.:

Introduction

1. The challenge in all these writ petitions filed under Article 226 of the Constitution is to the constitutional validity of the New Delhi Municipal Council (Determination of Annual Rent) Bye-laws, 2009 (hereinafter 'the new impugned Bye-laws'). In all these petitions barring a few no interim stay of recovery of the disputed property tax was granted. However, it was clarified that “in case at the stage of final hearing it is found that the Petitioner has deposited excess tax, directions can be passed for refund along with interest as is charged by R-1 from the defaulters.” The reference to R-1 is to the New Delhi Municipal Council (‘NDMC’) which is the principal contesting Respondent in all these petitions.

2. By the new impugned Bye-laws, the NDMC brings about a change in the method of arriving at the rateable value for the purposes of property tax. It seeks to change the existing system of determining the rateable value on the

basis of the annual rent at which the land or buildings may reasonably be expected to be let from year to year to a Unit Area Method ('UAM'). In the UAM, first the Unit Area Value ('UAV') i.e. per sq. Ft./meter of a property is fixed with reference to the characteristics of the property such as location, occupancy, age, structure. The UAV is then multiplied by the area of the vacant land or covered space to arrive at its annual value.

3. The new impugned Bye-laws are sought to be challenged on several grounds. Broadly it is sought to be contended that the UAM cannot be introduced by way of the new impugned Bye-laws without amending the New Delhi Municipal Act, 1994 ('NDMC Act') which even as of today contemplates determination of the rateable value on the basis of the annual rent at which the land or building might reasonably be accepted to be let. The contention is that the new impugned Bye-laws cannot be justified with reference to the rule making power conferred on the NDMC under Section 388 (1) A (9) of the NDMC Act. It is contended that the new impugned Bye-laws are, therefore, *ultra vires* the NDMC Act as they go far beyond the scope and ambit of the NDMC Act. The second broad ground of challenge, which is without prejudice to the first, is that the new impugned Bye-laws are arbitrary, unreasonable, discriminatory and irrational and, therefore, violative of Articles 14 and 19 of the Constitution of India.

4. The Court in this judgment upholds the challenge of the Petitioner as to the validity of the new impugned Bye-laws on the first ground itself. Consequently, the Court has not considered it necessary to examine the second ground of challenge at this stage. The said ground of challenge is

reserved to be urged at the appropriate time in future if the same is available, when the NDMC Act is amended to bring about the change in the system of determination of the rateable value of land and building for the purposes of the levy of the property tax.

5. Although the facts in respect of each of the petitions may slightly vary, since the principal relief sought in each of them is identical, viz., declaring the new impugned Bye-laws to be unconstitutional and invalid, the Court proposes to refer illustratively to the facts in Writ Petition (C) No. 3348 of 2010 which is by an Association of Concerned Citizens of New Delhi.

Background

6. In the pre-independence era, Delhi became the capital of India in 1911. In 1912 the Delhi Enclave covering an area of 1240 sq.miles was formed. A large chunk of land acquired by the Imperial Delhi Committee was transferred to the Imperial (New) Delhi Municipal Committee). In 1925 the Chief Commissioner of Delhi upgraded this Committee to the level of a second class municipality to be governed under the Punjab Municipal Act, 1911 ('PMA').

7. Section 188 of the PMA conferred powers on the NDMC to make Bye-laws *inter alia* for carrying out the purposes of the PMA. The NDMC became a first class Municipal Committee in 1932.

8. In the post-independence era, Delhi was declared a Union Territory. The Municipal Corporation of Delhi ('MCD') came to be constituted under the Delhi Municipal Corporation Act, 1957 ('DMC Act'). The jurisdiction of

the 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.

9. 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.

Provisions of the NDMC Act

10. The Government of NCT of Delhi Act, 1991 ('GNCTD Act') was enacted by the Parliament in January, 1992. Several provisions of the PMA were brought in tune with the GNCTD Act. The NDMC Act was enacted in 1994 to replace the PMA and the New Delhi Municipal Committee was replaced by the New Delhi Municipal Council (NDMC).

11. The power of imposition of levy of taxes including property taxes was vested under Section 60 of the NDMC Act with the NDMC. Under Section 416 (2) (a) of the NDMC Act, NDMC adopted the existing 1962 Bye-laws insofar as they were not inconsistent with the NDMC Act.

12. Sections 60 to 81 of the NDMC Act contained provisions relating to levy of imposition of property tax by the NDMC. Section 60 (1) (a) empowers the NDMC to impose and levy property tax. Under Section 60(3) of the NDMC Act such property tax shall be levied, assessed and collected "in accordance with the provisions of the NDMC Act and the Bye-laws made

thereunder.”

13. 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.”

14. 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.”

15. 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.” The conjunction ‘and’ used in the above definition makes the legislative intent explicit. The value has to be

fixed both in accordance with the NDMC Act and 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. In other words, it is not the disjunctive 'or' but the conjunctive 'and' that has been used. Accordingly, the rateable value has to be fixed both in accordance with the provisions of the NDMC Act and in accordance with the Bye-laws.

16. 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."

17. 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."

18. Section 63(2) 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.

19. 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.

20. 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 property

tax as specified in Section 66. It is clarified that this would be the occupier of such land or building.

21. 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.

22. 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. This is different from the determination of the rateable value. This valuation of

the land or building 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.

23. Thus the legislative scheme under the NDMC Act envisages determination of the 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.

Facts relating to the NDMC Area

24. At this stage it requires to be noticed that 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.

25. 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 Centre and State 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. It may be mentioned that in various other cities in India like Patna, Bangalore, Hyderabad, Ahmedabad, Mirzapur etc., the UAM has been adopted for the imposition of property tax to increase the collection of revenue. The quantification varies in different cities.

Background to the new impugned Bye-laws

26. The MCD constituted the V.K. Malhotra Committee in 1995 to study and report upon the efficacy of the property tax assessment and collection system under the NDMC Act so that the faults in the system could be noted. The V.K. Malhotra Committee submitted its report in 2002.

27. Following the recommendations of the said Committee, an expert committee was constituted by the Lieutenant Governor ('LG') of the Delhi. For recommending the modalities required for the introduction of the UAM of property tax assessment, the Dharmarajan Committee under the chairmanship of Mr. K. Dharmarajan was constituted.

28. The Dharmarajan Committee gave its report following which the GNCTD by letters dated 5th December, 2002 and 3rd January, 2003 drew the attention of the NDMC stated that it would be proper and just to have a uniform tax system in the entire NCT of Delhi. It was suggested that the terms of recommendation of the Dharmarajan Committee may be extended to the New Delhi area. However, at the meeting of the NDMC held on 29th January, 2003 it was decided not to request the GNCTD to extend the terms of reference of the Dharmarajan Committee to cover the New Delhi area. It was decided to wait for the final report of the Dharmarajan Committee. It was, however, decided that pending implementation of the Dharmarajan

Committee report in the MCD, the decision to implement the UAM should be explored in the New Delhi area.

29. Meanwhile on the basis of the recommendations by the Dharmarajan Committee, the Delhi Municipal Corporation Act (DMC Act) was amended. The amending Act received the assent of the President on 9th June, 2003. Under Chapter VIII of the DMC Act titled 'Taxation', a new scheme under Sections 114 to 114E, Section 115, 115A and Section 116, 116A to 116C introduced. *Inter alia* under Section 116E of the DMC Act, the method for determination of the annual value of the covered space of building and a vacant land using the UAM was introduced. Section 116K provides for appointment of a 'Hardship and Anomaly Committee' which comprises of a professional from the areas of either finance, taxation, law or municipal management as the Chairperson and four other members one of whom must be a councillor to be nominated by the Corporation. One should be the member of the Municipal Valuation Committee and other three members to be nominated from among the members of the Municipal Valuation Committee and other shall be the Additional Commissioner (Revenue) of the Corporation. Along with amending the DMC Act, the Delhi Municipal Corporation Bye-Laws, 2004 ('DMC Bye-laws') were also made in 2004.

30. By an order dated 10th March, 2006 the Chairperson of the NDMC constituted a Committee known as NDMC Special Committee under Section 9 of the NDMC Act to advise upon the property tax with the following terms of reference:

“1. To consider the overall revenue position and anticipated revenue receipts of New Delhi Municipal Council for the next

five years;

2. To make recommendations on the method by which the municipal body can continue to provide high quality services while maintaining its fiscal health;

3. To suggest the ways and means and the optimum method of assessment of property tax (Unit Area Method/actual value etc.) so as to maximize revenue & improve collection efficiency, keeping in view that property tax is a key element of NDMC revenues.”

31. In February, 2007 the NDMC Special Committee submitted its final 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

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)”

32. 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.”

33. 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 Special Committee which is prepared within the NDMC, while recommending the adoption of a modified UAM it was suggested that it should be introduced selectively for “self-occupied residential properties.” It was 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.”

34. It is stated that the report of the NDMC Special Committee was also internally circulated to all the concerned departments including finance, law etc. of the NDMC. At its meeting held on 13th February, 2008 the NDMC adopted a Resolution to the effect *inter alia* that the recommendations of the NDMC Special Committee were in principle accepted. It was noted as under:

“For NDMC however, it is proposed to introduce the Unit Area based system for determination of ARV by amending the existing House Tax Bye-laws. This approach provides flexibility to adjust the scheme to suit changing requirements and resolve problems, if any, faced during the implementation of the scheme. Amendment of Act being a lengthy and time consuming process can be avoided.”

35. It was, therefore, decided to invite public objections to the amendments to the 1962 Bye-laws as proposed. It is thus seen that although the NDMC was conscious that there was need to amend the NDMC Act, it did not adopt

that route since it considered it to be a “lengthy and time consuming process”. Clearly, the NDMC did not understand the implications of such a decision with reference to the legality of the proposed amendments to the 1962 Bye-laws.

Provisions of the new impugned Bye-laws

36. There were whole scale changes brought about by the new impugned Bye-laws which ironically bore the title ‘New Delhi Municipal Councils (Determination of Annual Rent), 2009 whereas it introduced the UAM for determining the rateable value which is different from ‘annual rent’. Bye-law 2 of the new impugned Bye-laws stated that the annual rent for which the land and buildings were accepted to be let would be determined as per

37. Bye-laws 3 and 4 to make it appear that they bear a relation to annual rent under Section 63(1) of the NDMC Act. However, Bye-law 4 introduces a new basis and mechanism of taxation that is the UAM which is different from the existing system of determination of annual rent. It introduces the Base Unit Area Value concept with an assigned value of Rs.1,000 sq.m. both in respect of covered space of a building as also land not constructed upon pending further fixation by the valuation committee created under the impugned Bye-Laws known as the NDMC Valuation Committee.

38. It is pointed out that new Bye-law 4 (2) does not take into account the most vital factum of impossibility of construction in certain areas with the Lutyens Bungalow Zone (‘LBZ’) and ‘prohibited’ or ‘regulated area’ under the Ancient Monuments and Archaeological Sites and Remains Act, 1958. Further the Valuation Committee under Bye-law 5 has been given powers to

determine the categories which fall under Bye-law 3 as 'special category of lands and buildings', the percentage applicable for calculating the tax liability of such special categories, the base unit area value under Bye-law 4(4) and the various factors for increasing or decreasing the tax liability under Bye-law 4(5).

39. The new impugned Bye-laws came into force on 1st April, 2009. It is stated that on 29th May, 2009 the NDMC Valuation Committee made recommendations in respect of assessment of property tax under the new impugned Bye-laws. The Petitioners have assailed these recommendations of the NDMC Valuation Committee as being arbitrary. However, as already pointed out earlier, the Court does not propose to consider these aspects since it proposes to examine the first major ground of attack viz., that the UAM could not have been introduced through the new impugned Bye-laws but only by amending the NDMC Act itself.

40. At the time the objections were fled, it was not clear as if the impugned Bye-laws had been placed before the Parliament. However, during the pendency of these petitions the Bye-laws were placed before the Parliament and, therefore, that ground of challenge no longer survives.

Submissions on behalf of the Petitioners

41. Specific to the first ground, the submissions on behalf of the Petitioner by Mr. B. B. Gupta and Ms. Maninder Acharya, learned Senior counsel and Mr. B.B. Jain, learned Advocate were as under:

(a) The impugned new Bye-laws which is a piece of delegated/subordinate

legislation seek to cover the very fields covered under the NDMC Act. These new impugned Bye-laws do not supplement the existing provisions of the NDMC Act but supplant them. They in fact mean to overwrite the express provisions of the NDMC Act.

(b) The new impugned Bye-laws are ultra vires the provisions of the NDMC Act and are beyond the powers delegated to the NDMC under Section 388 (1) A (9) of the NDMC Act.

(c) Reference is made to the decision in ***State Trading Corporation India Limited v. New Delhi Municipal Council (2016) 12 SCC 603*** where the Court emphasised that the only basis for fixation of rateable value was the annual rent at which the land and building might reasonably be expected to be let and that the re-determination of such rateable value will have to be in accordance with the proviso to Section 63(1) of the NDMC Act under Bye-law 12 of the Bye-Laws of 1962. It was held that the Bye-law 12 of the 1962 Bye-laws was inconsistent with the provisions of the NDMC Act.

(d) The NDMC adopted a short cut to bring about whole scale changes to the system of determination of rateable value by merely amending the Bye-laws whereas the MCD went through the route of amending the DMC Act itself to introduce the UAM. The amendments to the DMC Act were unsuccessfully challenged before this Court in ***Vinod Krishna Kaul v. The Lt. Governor NCT of Delhi (2012) 192 DLT 241***.

(e) Reference was made to the specific changes brought about by the new impugned Bye-laws which bore no resemblance to the system of

determination of rateable value in the NDMC Act. Thus the new impugned Bye-Laws deserved to be struck down on the ground that they were *ultra vires* the NDMC Act.

Submissions on behalf of NDMC

42. Mr. Sanjay Jain, learned Additional Solicitor General of India ('ASG') appearing on behalf of the NDMC traced the history of the changes brought about in the method of determination of rateable value to the judgment of this Court in ***Indian Hotels Co. Ltd. v. New Delhi Municipal Council 63 (1996) DLT 163 (DB)***. The Court there emphasised the need for a simplified system of assessment and collection of taxes which was simple and efficacious and did not cause harassment to the tax payers.

43. The learned ASG submitted that the NDMC area was of a different character where only 20% would be the properties which are available for tax. It had, therefore, to be viewed differently from other areas where UAM had been introduced. He submitted that the introduction of the UAM was preceded by a very detailed exercise undertaken by the NDMC Special Committee. The changes brought out by the new impugned Bye-laws were deliberated and well intended and for the benefit of the tax payers. In seeking to support the new impugned Bye-laws and defending their validity, Mr. Jain referred to Section 388 (1) A (9) of the NDMC Act which specifically enabled the NDMC to make Bye-laws to provide for 'any other matter relating to levy, assessment, collection, refund of tax...'

Challenge to a subordinate legislation

44. At the outset, the Court would like to dwell on the legal position

regarding the challenge to the validity of a subordinate legislation. In ***Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641*** the Supreme Court emphasised that a subordinate legislation could be questioned on any of the grounds on which a plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform the statute under which it is made. The rationale for this was that “subordinate legislation must yield to primary legislation. It could of course also be questioned on the ground that it is manifestly arbitrary.”

45. In ***Supreme Court Employees’ Welfare Association v. Union of India (1989) 4 SCC 187*** it is held that the validity of a subordinate legislation can be challenged if it is *ultra vires* the Constitution or the governing Act or to the general principles of the laws of the land or is “so arbitrary or unreasonable” that no fair minded authority could ever have made it. In ***Shri Sitaram Sugar Co. Ltd. v. Union of India (1990) 3 SCC 223*** a Constitution Bench of the Supreme Court reiterated as under:

“47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterized as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". See *Leila Mourning v. Family Publications Service* [411 US 356]. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorized end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires": per Lord Russell of Killowen, C.J. in *Kruse v. Johnson*."

46. In *St. John's Teachers Training Institute v. Regional Director, NCTD* (2003) 3 SCC 321 the Court held as under:

“A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that **the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it.** What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilization of experience and consultation with interests affected by the practical operation of statutes.”

[Emphasis supplied]

47. In *Delhi Administration v. Siri Ram* (2000) 5 SCC 451, the Supreme Court reiterated the well recognised principle that the conferment of rule making power by an Act does not enable the rule making authority to make rules which travel beyond the scope of the enabling Act or which is inconsistent or repugnant thereto. The following observations of the Supreme Court in *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* (1975) 1 SCC 421 were reiterated:

“18... statutory bodies cannot use the power to make rules and

regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred by the statute to make rules and regulations establish the pattern of conduct to be followed.”

48. The decisions in ***State of Karnataka v. H. Ganesh Kamath (1983) 2 SCC 402*** and ***Kunj Behari Lal Butail v. State of H.P. (2000) 3 SCC 40*** hold likewise. In ***General Officer Commanding-in-Chief v. Subhash Chandra Yadav (1988) 2 SCC 351***, the Supreme Court observed:

“14.....Before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.”

49. In ***Global Energy Ltd. v. Central Electricity Regulatory Commission (2009) 15 SCC 570***, the Supreme Court was considering the validity of regulations governing the procedure, terms and conditions for grant of trading licence and other related matters under the Electricity Act, 2003. There the Electricity Act was itself silent regarding conditions for grant of licence. However, in the regulations the pre-qualifications for grant of licence were stipulated. The Court explained that the grant of the rule making power “for carrying out the purposes of the Act” was a general delegation . Thus by reason of such a provision alone, the regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act.

50. In ***State of Tamil Nadu v. P.Krishnamurthy (2006) 4 SCC 517*** it was observed as under:

“16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”

51. The legal position emerging from the above decisions may be summarised thus:

- (i) A subordinate legislation, including a Bye-law, is vulnerable to be challenged as to its validity on the same ground as the primary legislation.
- (ii) A subordinate legislation could be questioned on the ground that it does not conform to the statute under which it is made.
- (iii) A subordinate legislation must yield to the primary legislation. Rules made under an Act cannot be made to supplant the provisions of the enabling Act but to supplement it.
- (iv) If the rules or Bye-laws framed are beyond the scope and purview of the rule making power of the authority framing the rule, the rule framed would be void. Statutory bodies, therefore, cannot use the power to make the rules

and regulations to enlarge the powers beyond the scope intended by the legislation.

(v) Where a rule is directly inconsistent with the mandatory provisions of the statute it will have to suffer invalidity.

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 assesseees 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.

Conclusions and directions

60. The Court accordingly strikes down the new impugned Bye-laws as being *ultra vires* the NDMC Act as they are in excess of the scope and ambit

of the powers vested in the NDMC under Section 388 (1) A (9) of the NDMC Act.

61. Consequently, the Court invalidates all actions taken by the NDMC under the new impugned Bye-laws in terms of levy, assessment, collection and enforcement of demand of property tax. All property demands made under the new impugned Bye-laws are hereby invalidated and declared unenforceable.

62. In terms of the interim order passed by the Court, referred to hereinbefore, the excess of the tax deposited has to be refunded but the determination of such excess will have to await the making of the assessments in accordance with the extant provisions of the NDMC Act. Such refund of excess tax deposited would be in accordance with the law and together with the interest payable thereon in terms of the NDMC Act. It will be open to the individual tax payers to seek appropriate remedies in regard to refund together with interest at the appropriate stage after completion of the assessment in terms of the extant provisions of the NDMC Act.

63. The other grounds of challenge are left open to be urged if and when the NDMC Act is amended to bring about the change in the determination of the rateable value. The Court expects the NDMC and the legislature to consider the additional grounds of challenge to the new impugned Bye-laws while considering the changes to the NDMC Act.

64. With the above observations, the writ petitions and pending applications

are disposed of but in the circumstances with no order as to costs.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 10, 2017

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