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COMMON CAUSE

VOICE OF "COMMON CAUSE"

SOME PROBLEMS

In this issue of the periodical we have sought to present information on four important subjects, namely, House Tax, Estate Duty, Ground Rent and Pensions. These matters are of very close concern to vast numbers of persons.

On House Tax, the houseowners are expectantly looking forward to the judgement of the Supreme Court on the Writ Petitions which were heard at length last February after the initial hearing of some Writs in July last year. It is hoped that this judgement will clear the cobwebs which have developed and the difficulties that are being encountered by the houseowners, particularly of Delhi, in the matter of assessment of properties which are self-occupied, rented, partly-self-occupied and partly-rented, against the background of the earlier well-known Supreme Court judgement in the case of Dewan Daulat Rai Kapur & others vs. NDMC & others. The existing assessment procedures, and the statutory provisions, are open to such whimsical interpretations and distortions that it is of paramount importance that the present oppressive atmosphare be cleared. On the demand of many of our members, we reporoduce in this issue the gist of one of our three Writ Petitions submitted in the Suprem Court on the subject. It is of interest to the houseowners because it contains presentation of the total picture of the problems presently encountered and embodies suggestions on how these can be resolved. It will help to disseminate information on the legal issues involved in the present procedures adopted by MCD. This effort of COMMON CAUSE is aimed at continuing the process of educating the houseowners on their legal rights so that they can resist the demands where they irregular and un-lawful.

On Estate Duty, we have been receiving a number of enquiries on the presen position since we succeeded in getting the Estate Duty Act amended for obviating the enormous difficulties which were being caused in valuation of the house property at market price on demise of the owner. Therefore, we have considered it appropriate to provide the requisite information in this issue. We would urge the houseowners' organisations, rate-payers associations and citizens' welfare organisations to launch campaigns for persuading the State Governments to suggest to the Government of India to remove this measure from the statute book. It will be seen that the overall recovery from this statute is less than over Rs. 20 crores, and the allocations to the States yield only about Rs. 1 to Rs. 2 crores to the bigger States and measely amount of Rs. 1 lakh etc. to smaller States, whereas in terms of harassment and oppressive agony to the families, this measure is possibly unequalled. It is heart-rending to see the members of bereaved families knocking about for securing

evaluation of properties, submitting returns, seking assessments, searching for funds for payment of estate duty, and seeking estate duty clearances for every small matter of operating bank account or effecting disposal of company shares etc. We earnestly hope that the people and their organisations as well as the national Press will continue to raise voices for total removal of this enactment and its substitution by some suitable alternative which would serve the objective of avoiding fragmentation of holdings for evasion of the taxes.

Ground rent on lease-hold properties is another important matter which is now causing deep concern to the houseowners who have taken plots in lease-hold colonies, particularly where the previously stipulated period of 30 years has expired or will soon be over. We have taken up this matter with the concerned authorities and would urge that the organisations and associations of houseowners should raise their voice for suitable modification of the provisions relating to charge of ground rent. We are at present separately examining the problem created by government authorities for some house-owners who are being subjected to heavy penalties based on present market prices of land, for contended un-authorised projections and balconies -etc. in plots of lease-hold lands.

Pensions continue to be a serious problem for a very large number of people. Continuing delays in the implementation of Supreme Court judgement by the government, even after the dismissal of Review Petition of the government. are exasperating the pensioners. Often we receive suggestions that we should pray to the Supreme Court for launching contempt of court proceedings against those who are responsible for these delays. We have no intention of doing anything of the sort at present We have in this issue given the gist of present position and also of our Writ Petition on the restoration of pension commutation because this has been asked for by a number of members.

We continue to be deluged by numerous letters which keep coming to us from the pensioners; conveying congratulations, offering suggestions, seeking intervention on their individual problems etc. We again repeat our request to pensioners that they should write to us only when they must, and that it is totally useless sending to us individual cases because we cannot take up any individual cases and can at best take up common grievances and problems of the people. Secondly, it needs to be borne in mind that we are not dealing only with the problems of pensions; and in pensions too, we have decided to deal only with the three major problems, namely, the removal of discriminations caused by the 1979 Pension Liberalisation Rules, the restoration of pension commutation, and the family pension discriminations. It is no use sending us suggestions for taking up various other issues of pensioners. These should appropriately be taken up by the pensioners' organisations which need to strengthen themselves for more effective service

Everbody feels greatly concerned abot Law's delays. We have been seeking ways and means to set up a high leval group of jurists to examine certain specific procedures and one or two selected enactments wherein most delays and frustrations are at present being caused. If and when the group is constituted, we will make suitable announce ment. Secondly. we are also collecting material for advising the people about the preparation of "wills" and the procedures and promlems relating to the procurement of succession certificates and probates.

We make some more requests. Often the writers send us self-addressed envelopes, and post cards etc, While we are grateful to them, we request that this need not be done because in reply we send periodicals or circulars etc. for which we cannot utilise the self-addressed postage and these go waste. Sometimes we receive letters written in various local languages It is impossible for us to get these deciphered, and we would request that the communications should be addressed only in English. When sending subscriptions or donations, kindly be very particular in giving full name and address on the slip at the bottom of money order; in its absence we encounter enormous difficulty in accounting and acknowledgement of receipts. Often we receive letters about this periodical. We have repeatedly mentioned that this periodical is not a monthly or a quarterly; we send it to the members as and when it is brought out. There is no separate subscription for it. The members receive it free.

One more request, To minimise expenses on printing and despatch, it may not be possible to send our Annual Report (which is basically a formal brief document), Statement of Accounts and Notice of Annual General Meeting to every member all over the country. We request that those who would be actually interested may write to us asking for these. The date of Annual General Meeting will also be communicated to them. These will be sent to Delhi members.

HOUSE TAX : OUR WRIT PETITIONS

Irrationalities, arbitrariness, discriminations and distortions continue galore in the matter of assessment of House Tax in the areas of MCD & NDMC. Despite the fact that the entire matter relating to distortions and irregularities in the assessment of House Tax is now before the Supreme Court in Writ Petitions which have been heard and judgement on which is awaited, the House Tax officials of M.C.D. and N.D.M.C continue exacerbating the irritations in relation to the various matters which await adjudication.

Numerous such instances keep coming to our notics. We had felt that with the coming of elected representatives of the people in the MCD there would be some curbing of irrational and arbitrary acts of the officials and evidence of response to public grievances. but these hopes have not yet started realising. Impression is gaining ground that these representatives are too pre-occupied with their mutual squabbles and political considerations to devote attention to the problems such as those of house owners in the matter of House Tax.

One is amazed at the callous disregard of the norms and the law in the issue of notices of demand and in assessments. Some instances will examplify the continuing malaise. A house in a South Delhi colony, Constructed single storeyed in 1970 of plinth area 3500 sft partly rented and partly self-occupied, has for many years been assessed at Rateable Value of Rs. 22,600 In November, 1982, the owner added a small unit on the first floor, of aggregate area of 700 sq. ft. for self-occupation. The rented portion has remained unaltered and new construction has taken place only on a portion of the area already covered. Notice of demand has now been received from M.C.D. for increasing the Rateable Value from Rs. 22,600 to Rs. 61,700 with only the reasons: "additional construction". Instances of this nature of absurdity and arbitrariness can be multiplied manifold. In the disposal of objections against the assessments it was being recorded by the MCD assessing authorities that the price of land in lease-hold colonies was not determinable, and consequently resort was made to Section 9 (4) of the Delhi Rent Control Act instead of determining the standard rent under Section 6 of this Act, It has since been conceded on behalf of the M.C.D. that the price of land in lease-hold colonies is determinable, but the resort to the provisions of Section 9 (4) of DRC Act, on the same ground of non-determination of price of land, continues to be made, forcing the assessees to go up in appeals. A Delhi High Court judgment was being relied upon by MCD officials for assessing partly self-occupied and partly-rented premises on the basis of rental of the rented portion. Even though the particular judgement is under appeal, resort to it continues being made in the assesments of such properties. Cases are remanded by the Appellate Courts for re-assessment; these are kept languishing. Tens of thousands of objections submitted against notices under Section 126 of MCD Act are still held up and no decisions are being taken on these, ostensibly on the consideration that relevent statutory provisions would be got amended with retrospective effect. Difficulties continue being experienced in the matter of hearing and disposal of objections against the assessments and in supply of copies of assessment orders for filing appeals. in the area of NDMC there is utter disregard of the court ruling wherein it has been held that the assessments of flats in multi-storeyed buildings should be on the basis of price paid for the flat, which obviously includes the cost of construction and proportionate price of land. The assessments continue being made on the basis of rental, forcing the assessees to go up in appeals. These and such orher perpetrations continue causing exasperation to the house owners.

Against the background of these continuing problems we have considered it necessary to inform the house-owners about the main grounds on which writ petitions have been field in the Supreme Court by COMMON CAUSE. We have filed three writ petitions on this subject. One deals comprehensively with the range of problems relating to self occupied premises, rented premises, partly self-occupied and partly-rented premises, partly-recently-constructed and partly-previously-constructed premises, lease-hold and free-hold areas, etc. Second writ petition relates to the deliberate act of MCD in with holding disposal of 88,000 objections field against notices issued under Section 126 of MCD Act, with the ostensible motive of waiting for amendment of the

legislation which would enable MCD to charge tax on enhanced basis with retrospective effect. Arguments on these two Writ Petitions were heard by Supreme Court in the latter half of February' 83. Judgment is reserved. Now that the Supreme Court is closed for the summer vacations, the judgement can be expected only after the vacations. The third Writ Petition highlights the discriminations in the rates of House Tax levy in contiguous areas of NDMC and MCD. This writ Petition now stands adjourned to 25th July, for arguments.

These Writ Petitions are sizeable documents. It is not possible to reproduce these in extenso. A large number of people have been asking for information relating to the gist of these Petitions We feel that the above-mentioned first petition, which comprehensively deals with the various issues, will be of particular interest to the house-owners in the context of present circumstances while Judgement of the Supreme Court is awaited. We have, therefore, considered it necessary to reproduce in this periodical the main assentials of this Writ Petition. The Petitioner in it is COMMON CAUSE.

OUR MAIN WRIT PETITION ON HOUSE TAX

Among the house-owners of Delhi there is general dissatisfaction and resentment in regard to the manner in which the Delhi Municipal Corporation is dealing with various problems relating to assessment of rateable values and house tax. These are evidenced by the fact that more than 20,000 objections were filed U/s. 124 of the Corporation Act by the house-owners against the assessments made for the year 1982—83, about 80,000 objections have been pending for many years U/s. 126 of the Corporation Act, many hundred cases have been filed by the house-owners in courts to contest the assessments, and writs have been filed in the Delhi High Court as well as in the Hon'ble Supreme Court. There is general belief among the house-owners that the Delhi Municipal Corporation has been adopting various tactics and subterfuges to side-track and overcome the judgment of the Supreme Court in the well-known case of Dewan Daulat Rai Kapur etc. Vs–New Delhi Municipal Committee and others reported as AIR 1980 SC 541. This belief is strengthened by the fact that the Government declared the objective of overcoming the effect of this judgment, as will be evident from what follows hereinafter, in introducing a Bill on 4.8.1980 to amend the relevent statutes, namely, the Delhi Municipal Corporation Act and the Punjab Municipal Act in relation to its application to the New Delhi Municipal Committee.

Supreme Court in its judgment delivered on the 20th December, 1979 in Dewan Daulat Rai Kapur etc. Vs. New Delhi Municipal Committee & others reported as AIR 1980 SC 541 held that when a building is Governed by the provisions of the rent control legislation, the landlord cannot reasonably be expected to receive anything more than the standard rent from a a hypothetical tenant and the annual value of the building cannot, therefore, exceed the standard rent, to be determined by the assessing authority, by applying the principles laid down in the Delhi Rent Control Act, 1958, for determination of the annual standard rent.

For facilitating examination of the problems relating to house-tax levy we submit hereinafter the matters as they arise in the handling of assessments by the MCD of the various categories of house-owners These categories' comprise the following :

(i) Self-occupied properties, including properties self-occupied since the completion of construction as well as properties initially or at subsequent stage rented out, for less or more than five years, but presently self-occupied.

(ii) Rented properties, including properties which have been on rent since completion of construction as well as those initially or at subsequent stage self-occupied, but presently rented.

(iii) Partly self-occupied and partly rented properties.

(iv) Properties, either self–occupied or rented, which are either on lease-hold or free-hold land.

(v) Properties constructed during the last 4/5 years during the period when steep escalation of prices of land and cost of construction have taken place.

SELF-OCCUPIED PROPERTIES

Following factors have obvious importances relating to properties which are presently self–occupied, whether the self–occupation has been since the completion of construction or after some period of being rented out :

(a) Self-occupied properties are not covered by the Delhi Rent Control Act. No provision of DRC Act has application to these properties.

(b) There is no income accruing from these properties by way of rental, and to this extent they are differentiable from the rented properties.

(c) In recognition of the fact these self-occupied properties were not yielding any income, the MCD was till the end of 1980 (till the effect of Supreme Court Judgment in the above mentioned case of Dewan Daulal Rai Kapur Vs. NDMC and others) giving a salf-occupancy rebate of 20% in the house tax assessed on self-occupied properties after making assessment on the basis of rent generally prevailing in the locality. This discount is now not being given, thereby placing the self-occupied properties and rented properties at par in the assessment of house tax.

(d) The Supreme Court Judgment in the above-mentioned case of Dewan Daulat Rai Kapur Vs. NDMC & Others, which takes account of the "standard rent" payable by a hypothetical tenant for the property, did not specifically deal with the problem of self-occupied properties, but the application of the general principle of "standard rent" to self-occupied properties involves a very serious problem for recently constructed houses which are self-occupied and are not yielding any income. The greatly escalated price of land, (50 to 100 times the price prevailing about 20 years ago), and substantial increase in the cost of construction (3 to 5 times increase in the last 20 years), bring about serious distortions in the calculation of "standard rent", making the position impossible for the self-occupying house-owners. This will be evident from the calculation of "standard rent" for any two adjacent houses in a housing colony where one house was constructed, say, 20 years ago and the adjoining house was constructed, say, in 1981, either because the latter could not construct earlier even through the plot was purchased 20 years ago or is inherited/purchased recently.

The MCD has been previously treating the assessments of self-occupying house-owners on the basis of 20% self-occupancy robate, as stated above. They are also not computing the "standard rent" by application of the formula of cost of construction and price of land on the date of commencement of construction (which would help the properties constructed many years ago). Instead, they are taking resort to provisions of S. 9 (4) DRC Act and determining the rateabie value on the basis of first rent received, if it was ever rented, or the rents prevailing in the locality. In the case of properties on lease-hold, it is being recorded by MCD that the price of land is "not determinable" for justyfying resort to the provisions of Section 9 (4) of RDC Act. In taking these lines the MCD is disregarding the fact whether the property was rented out, for less or more than five years, partly or wholly, immediately after completion of construction or at a subsequent stage. They are primarily utilising the provisions of Section 9 (4) of DRC Act for assessing the rateable value on the basis of rents prevailing in the locality. Strictly according to the provisions of Section 6 of the DRC Act the reteable value of the presently self-occupied property should be assessed on the basis of "standard rent" calculation under S. 6 (1) (A) (2) (b) or 6 (1) (B) (2) (b), according as the case may be, if the property has been in self-occupation since completion of construction or after completion of the period of five years from the date of first renting.

As the computation of "standard rent" of self-occupied properties will inevitably involve serious anomalies and distortions in relation particularly to the recently constructed properties, as indicated above, and taking account of the fact that till 1980 the MCD was giving a self-occupancy rebate of 20% which now stands withdrawn without any justification, the Petitioner submits the following suggestions which, it is hoped, will mitigate the problems of self-occupying house-owners and remove the anomalies, distortions and discrimination which are inevitable under the present operatians of MCD.

(a) The rateable value of self-occupied property should be based either on the calculation of "standard rent" according to the formula prescribed under section 6 (1) (A) (2) (b) or 6 (1) (B) (2) (b), as the case may be, or it should be determined under the provisions of S. 9 (4) of DRC Act taking into account the average per sq. ft. rateable value determined for self-occupied property or properties of similar construction in the vicinity, the option in this matter being exercisable by the assessee. The assessee should be entitled to 20% self-occupancy rebate if it is not already operative in the case of the property or

properties taken for purposes of determination of the average per sq. ft. rateable value under section 9 (4) of DRC Act.

(b) It will be observed that if the construction is of earlier years thecomputation of assessment based on "standard rent" under the provisions of section 6 of the DRC Act, will be advantageous to the assessee and he will opt for this mode. If, on the other hand the construction is of recent years the distortion will be avoided by taking into account the assessment already made in respect of a property roughly of similar construction in the vicinity which may have been constructed earlier, and thus assessed to tax earlier, and the determination of rateable value on this basis under section 9 (4) of DRC Act will be more acceptable to the assessee. Where the property for comparison may not be available in the immediate vicinity or in same locality, the selection can obviously be made from a property in the contiguous area.

(c) This procedure in principle should apply also in cases where a part of the self-occupied property was constructed earlier and another part is constructted in recent years, either on an upper flooor or on a part of the plot (provided the plot is one designated entity). Option should be given to the assessee to get either or both portions assessed on the basis of "standard rent" or under section 9 (4) of DRC Act on the principles set out above.

(d) This procedure will remove the exaperations and difficulties which are being encountered by the self-occuping owners and bring about the essence of equality between the self-occupants category, irrespective of whether they had given their properties previously on rent, for a period of five years or more.

(e) This procedure should prevail whether the property is residential, non-residential or commercial. In the case of either category, the determination of assessment, on the basis of "standard rent" computation or under the provisions of S. 9 (4) of the DRC Act is justifiable. The only question for consideration will be whether for non-residential and commercial properties the 20% self-occupancy rebate should be allowed. Whereas it is absolutely essential that the self-occupancy rebate of 20% should apply in the case of residential properties, there can be substance in the argument that it should not apply for the non-residential and commercial properties, where they are put to some use leading to income.

RENTED PROPERTIES

Following factors have importance in the case of rented properties whether rented since the completion of constructon, or initially self-occupied and subsequently rented, but being currently on rent :

(i) It has been held in the above-mentioned judgement of the Supreme Court in the case of Dewan Daulat Rai Kapur Vs. NDMC that the assessment should be based on the "standard rent" irrespective of the fact that the property is fetching more than the "standard rent."

(ii) In terms of the provisions of selection 6 of DRC Act the actual rent which the property fetches on its first renting constitutes the "standard rent". After the first letting period of five years the "standard rent" is to be calculated on the construction cost and land price basis given in this provision. The raison d'etre for making this provision was to provide a rent holiday for five years to the houseowners so that the construction activity is not impeded by the rent control legislation.

(iii) In contrast to the problem of self-occupying owners the owners of rented properties enjoy the privilege of receiving rent. It is indisputable that rents have risen high during the past few years, and excepting the owners of properties rented out long ago when the rents are low, the others derive the benefit of good rentals.

(iv) The assessment of rateable value on the basis of "standard rent" calculated under S. 6 of DRC Act, by and large satisfactorily solves the problem of owners of rented properties within the terms of existing law excepting that it involves distortions and anomalies in the case of recent constructions as in the case of self-occupied properties. For two adjacent similar houses on same sized plots, in the same colony and using the same services of MCD, the assesment of rateable value, on the basis of construction cost and "price of land on the date of commencement of construction", can vastly differ where one house was constructed 20 years ago and the adjacent house was constructed last year. The difference in house tax assessment in certain cases will be as much as 10 to 20 times for adjacent similar houses, depending on the period lapsing between the two constuctions.

(v) MCD till recently was assessing the rateable value of rented properties on the basis of existing rent. This was the position till 1980 as will be evident from the booklet on property tax issued by MCD. It was desired by MCD to retain this pattern as is clear from the Amendment Bill which wass introduced in the Parliament on 4.8.1980. It wa contended on behalf of the MCD that the implementation of the Supreme Court decision in Dewan Daulat Rai Kapur Vs. NDMC would involve an annual loss of five crores to the MCD, which was obviously a gross exaggeration and which explains the stratagems they have since been adopting to overcome this judgment,

Against the background of the above problem relating to rented properties the petitioner suggests that as in the case of self-occupied properties the assesment of rateable value of a rented property be done either on the basis of "standard rent" calculated under section 6 of DRC Act or under section 9(4) of the DRC Act, with option given to the assessee to select the mode more advantageous to him. In the case of premises constructed years agc the "standard rent" calculated on the basis of section 6 of DRC Act will be obviously more advantageous to the assessee, whereas in the case of premises recently constructed, which may involve distortions of assessments on account of escalated construction costs and land prices the assessees would stand to benefit by determinotion of "standard rent" under section 9(4) of DRC Act, on the basis of average rateable value assessment of similar properties in the vicinity. This mode will obviate the anomalies of assessments of older properties and newer prpoperties

It has been mentioned earlier that under the existing provisions of section 6 of DRC Act the rent of first letting for a period of five years, incorporated as a measure of rent holiday, constitutes the "standard rent". For the period of five years of first letting the assessment of rateable value can be based on this "standard rent", but after this period is over, the standard rent must be determined on the basis of criteria suggested above, at the option of the assessee, either on cost basis under section 6 of DRC Act or under the provisions of Section 9 (4) of DRC Act on the basis of average rateable value prevalent in the vicinity.

PARTLY-RENTED AND PARTLY SELF-OCCUPIED PROPERTIES

Once the suggestions submitted above by the Petitioner are accepted in principle the position would be rendered easy also in respect of properties partly self-occupied and partly-rented, as well as for properties partly construc.ed previously and partly constructed recently. For the portion which is presently self-occupied the principles set out above for self-occupided properties should apply, and likewise for the portion presently rented the application should be of the principles suggested for rented properties. The MCD's present handling of such properties is leading to all sorts of problems and resentments, and the Petitioner feels that the adoption of the above suggestions in this behalf will obviate these difficulties.

LEASE-HOLD OR FREE-HOLD LAND

The present position has got considerably complicated by the general strategy adopted by MCD in which it is being recorded in their orders disposing of the objections of assessees that in the lease-hold colonies the "price of land is not determinable", and consequently resort is taken to the provisions of S. 9 (4) of DRC Act for assessment of the property tax This strategy is obviously based on misplaced advice. It is wrong t[illegible]ate that the price of lease-hold land is not determ[illegible]e. The fact is that price of land is announced from time to time by land & Development Office of the Government. The prices are also determined by the auctions of plots conducted by DDA. The prices are accepted in the Wealth Tax and Income Tax assessments. The provisions of S. 147 of DMC Act clearly establish that the price of land in lease-hold areas is determinable. The statements recorded by MCD, thus, that the price of land is not determinable are palpably wrong. The fact, however, remains that the land prices announced by Land & Development Office, and the prices fetched at DDA auctions (which are conducted piece-meal and in bits, thereby artificially raising the prices) are not the appropriate criteria for assessment of land price for the purposes of calculation of "standard rent" under the provisions of DRC Act. Dependence in this regard should be placed on the costs and prices assessed by the government approved valuers who, in assessing the costs and prices, take all relevant fact-

ors into consideration. Unless, therefore, there is any specific cause to justify the rejection of the cost and price assessed by a government approved valuer, it should be accepted as the basis for the calculation.

PROPERTIES RECENTLY CONSTRUCTED

In the above paragraphs the Petitioner has made reference at certain places to the greatly escalated prices of land and the substantially increased costs of construction. These increases during the last 15/20 years (10 to 20 times in the case of land and 3 to 5 times in cost of construction) have brought about serious distortions in the assessment of rateable value on the basis of "standard rent" calculated according to the formula prescribed in section 6 of DRC Act. It is obvious that the DRC Act, which was enacted for protecting the interest of the tenants in the peculiar circumstances caused after the Second World War and by partition of the country, has now become anachronistic and is leading to these types of anomalies and distortions. It is unfortunate that the existing legislation of DRC Act and MCD Act has the linkage of "standard rent" which is causing these distortions. These distortions and anomalies are apparent in the case of recent constructions as has been stated in the foregoing paragraphs The petitioner submits that the hon'ble Supreme Court, taking cognizance of these distortions and anomalies, should make a declaration that these distortions are now coming about because the legislation comprising the relevant provisions of DMC Act and DRC Act, in the context of present circumstances, has become defective, and the Government of India should be asked to remove the cause of these distortions and anomalies.

PRAYERS

The petitioner prays that the hon'ble Court may be pleased to :

(i) Declare that the present procedures followed by the Municipal Corporation of Delhi in making assessments of the lands and building for levy of property tax under sections 116 and 124 of Delhi Municipal Corporation Act (Act 66 of 1957), read with provisions of Section 9 (4) of Delhi Rent Control Act (Act 59 of 1958) without sufficient cause for not resorting to provisions of Section 6 (1) (A) (2) (b), or 6 (1) (B) (2) (b), are illegal, unconstitutional, ultra-vires and void.

(ii) The Hon'able Court may be pleased to issue a writ, direction or order directing the Municipal Corporation of Delhi that in the interest of avoiding the anomalies, discriminations and distortions which are being caused by the present procedures adopted by the Municipal Corporation of Delhi, they should adopt the following procedures in the matter of assessing the rateable value and general tax in relation to self-occupied properties and rented properties :

(a) The rateable value of the property, presently self-occupied, irrespective of whether previously rented at any stage, should be assessed either on the basis of calculation of "standard rent" according to the formula prescrived under sections 6 (1) (A) (2) (b) or 6 (1) (B) (2) (b) of Delhi Rent Control Act (Act 59 of 1958) as the case may be, or it should be determined under the provisions of S. 9 (4) of Delhi Rent Control Act (Act 59 of 1958) taking into account the average per sp. ft. rateable value determined for self-occupied property or properties of similar construction in the vicinity, or failing that, in the contiguous ones, and option of selecting one of the two alternatives should be given to the assessee.

(b) The rateable value of the property, presently rented, irrespective of whether previously self-occupied at any stage, should be assessed either on the basis of calculation of "standard rent" according to the formula prescribed under section 6 (1) (A) (2) (b) or 6 (1) (B) (2) (b) of the Delhi Rent Control Act, as the case may be, or it should be determined under the provisions of S. 9 (4) of Delhi Rent Control Act taking into account the average per sq.ft. rateable value determined for rented property or properties of similar construction in the vicinity or failing that, in the contiguous areas, and option for selecting one of the two alternatives should be given to the assessee.

(c) For properties partly rentend and partly self-occupied, irrespective of whether recently constructed or having been constructed in earlier years, the respective self-occupied and rented portions should be dealt with as above in the case of self-occupied and rented properties.

(d) For properties on lease-hold land, as for free-hold land, the price valuation of land incorporated in the report of a government approved valuer should be accepted unless it is held, for reasons to be recorded, that the valuation is not trustworthy, in which

event the assessee should be asked to get valuation made by another government approved valuer.

(iii) The Hon'ble Court may also be pleased to declare that the operation of the provisions of Sections 116 and 124 of Delhi Municipal Corporation Act (Act 66 of 1957) read with the provisions of Section 6 (1) (A) (2) (b) or 6 (1) (B) (2) (b) as the case may be, is presently bringing about serious distortions and anomalies in the matter of assessments of rateable values and general tax under sections 116 and 124 of the Delhi Municipal Corporation Act, and the Government of India should be requested to take urgent steps to suitably amend the relevant provisions of both the Delhi Municipal Corporation Act as well as the Delhi Rent Control Act so that the cause of these anomalies and distortions is removed.

(iv) The Hon'ble Court may issue a writ or direction or order in the nature of prohibition or any other writ or order restraining the respondent Delhi Municipal Corporation from continuing to make assessments of rateable value and general tax under sec. 116 and 124 of the Delhi Municipal Corporation Act unless they are made in accordance with the provisions incorporated in sub-paragraph (i) & (ii) above.

ADDITIONAL SUGGESTIONS

In a separate note during the arguments before the Supreme Court we submitted suggestions for providing an alternative approach to finding solutions to the existing complex problems of Property Tax administration by MCD. These suggestions were not to be construed to denote that the suggestions embodied in our Writ petition were being altered. These were in fact offered in the alternative, within the ambit of the procedures which were till recently being adopted by MCD

OBJECTIVES

1 1 It is of foundamental importance that MCD should secure adequate funds in order to enable it to provide satisfactory services. Property Tax being one of the important sources of revenue, the objective should be to see that the revenue through this source is maximised and that the administration of the tax is so devised that it operates on prograssive principles yielding increasing revenue in the future years.

1.2 It is of equal importance that such measures for rationalisation and improvement of Property Tax should be devised which minimise distortions, irregularities, anomalies, irritants, aberrations and opportunities for corruption.

1.3 In the administration of the tax and its assessment the element of discretion at the level of subordinate staff must be eliminated because this is the primary source of corrupt practices.

1.4 Attempt should be made to accord exemptions to the weaker sections and to place the burden of the tax more on those who can afford to pay. Equally importantly. the spread of collections of very small amounts, from large sections of the population, which can only lead to inefficiency, corruption and irritation, should be avoided.

1 5 The assessment basis and procedure should be made simple so that administration of the tax does not lead to complexities and consequent resentment and resort to courts as at present.

1.6 Existing problem has become complex because the operations of present laws cause distortions and anomalies, Rent Control Laws were devised for the specific purpose of control of rents in situation arising after the war. The concept of standard rent was never intended to operate for purposes such as Property Tax. The linkage of the concept of standard rent with the property tax, in the present laws, has added to the complexities. While hoping that the rent control lagislation will some day soon be amended the objective should be to devise the basis and procedures of property tax assessments in such manner, that while operating within the ambit of the existing laws, the presents complexities are minimised.

1.7 The problem has got accentuated in the recent year because of (a) high rentals, and (b) enormous escalation of land prices which have increased 50 to 100 times the prices prevailing 20 years ago. Both these elements have direct reference to the problem of Property Tax assessments ; the former in relation to the provision of annual letting value and the latter to the present concept of standard rent calculation. The higher cost of construction and higher cost of repairs are also very relevant in this context, the former in relation to the calculation of standard rent, and the latter in the matter of assessment of annual letting value.

1.8 The problem of self-occupied primises, irrespective of whether previously rented at any stage or throught self occupied, assumes special significance

because of the present prevailing high rentals and their inevitable impact on concept of annual letting value. The objective should be to devise the basis and procedure which while imposing appropriate responsibility on self-occupied owners towards contributing to the municipal funds, should not become an unbearable burden on them. Self-occupied owners should not be made to feel that they have to live under conditions of being virtual tenants of MCD.

1.9 The problem of self-occupied owners has also, in particular, become very complex due to the enormous increase of land prices which form the main constituent in the calculation of standard rent on existing concept, making things impossible for those who have constructed the premises in recent years of escalated land prices. The objective should be to de-link the question of land prices in the determination of Property Tax.

1.10 Existing laws and procedures stipulate proclamation and re-determination of property tax assessments every year. This is very cumbersome, imposes an unnecessary burden on the MCD staff as well as on the assessees, and entails wastage of funds. While providing for revision in cases of additions, alterations or new constructions, within the ambit of present provisions of annual assessments the objective should be to stipulate that the assessments once made will hold good for five years, unless special circumstances necessitate revision in individual cases.

1.11 There has been a tendency to misuse the provisions of section 126 of MCD Act, which is evidenced by the fact that 88,000 objections of the house-owners have been kept pending by MCD in the hope that amendment of the Act will enable them to be assessed with retrospective effect. Under the existing laws the assessments and recovery are throughout contemplated to be on annual basis; therefore; resort to such tactics must be avoided. It would need to be laid down that no dues for a period of more than three years would be recoverable and that assessments and recoveries must be made within the relevant financial year.

SOLUTIONS

1.12 The problem of lesse-hold vis-a-vis free-hold land has assumed significance in the matter of Property Tax only because of the present concept of standard rent calculation. Whatever be the merits and demerits of least - hold land, the objective should be that in the matter of Property Tax assessment this question should not be relevant because it has no relationship to the provision of municipal services and the funds required for the provision of such services.

2.1 At present exemption from Property Tax operates only in respect of premises of rateable value upto Rs. 100. This amount was fixed decades ago, and in the present context has become meaningless, comprising rental value of less than even Rs. 10 per month. The present Property Tax slabs of MCD stipulate that in case of residential properties the levy is 10% upto the rateable value of Rs. 1.000, and in the case of non-residential premises the levy is 15% upto Rs. 2,200. It is suggested that in the case of residential as well as non residental properties, there should be total exemption upto the rateable value of Rs. 1,000so that the weaker sections of the people are not harassed, so that the effort of the MCD staff is not spread over vast areas of insignificant recoveries, and the avenues of corruption and sources of irritation are thereby minimised. Studies should be made as to how much shortfall in the funds will be caused by according exemptions to this extent and how this can be made good by bringing about greater efficiency in the administration and levy of the tax.

2 2 Taking into account the enormous escalation of prices of land and high cost of construction which inter alia are a constraint on expansion of the housing programmes, and also the prevailing high rentals and high cost of repairs, it is desirable that the existing slabs of imposition of Property Tax should be revised and the maximum should be brought down to not more than 20%, both for residential as well as non-residential premises. this will minimise evasions as well as opportunities of corruption. Following slab is suggested for residential premises.

RATEABLE VALUE	TAX
Upto Rs,1000	Exempted.
Over Rs. 1,000 to Rs. 2,000	Rs. 100+11½% of the amount by which the rateable value exceeds Rs. 1,000
Over Rs. 2,000 to 5,000	Rs. 215+12½% of the amount by which the rateable value exceeds Rs. 2,000

Over Rs. 5,000 to Rs. 10,000	Rs. 590 + 15% of the amount by which rateable value exceeds Rs. 5,000
Over Rs. 10,000 to Rs 15,000	Rs. 1,340+18% of the amount by which the reteable value exceeds Rs 10,000
Over Rs. 15,000	Rs 2,240+20% of the amount by which the rateable value exceeds Rs. 15,000

It will be observed that in making these suggestions the provisions in the existing slab in respect of properties of rateable value above Rs. 15 000 have been deleted. Instead of the present deletion of the properties above rateable value of Rs. 30,000. it would be desirable that studies should be conducted for determining as to how much will be the shortfall in revenues on the adoption of the obove suggested slabs. The representatives of COMMON CAUSE should be associated with these studies.

(a) Where "Standard Rent" has been fixed by the Rent Controller, this should continue to form the basis of assessment.

(b) For each locality and area "rental data" should be collected and fixed as was previously being done by MCD. In fixing the rental data, however, opportunity should be provided to the citizens organizations and associations to file objections and be heard instead of such data being finalized only by the officials It is contemplated that the existence of elected representatives of the people on MCD will place appropriate curbs on arbitrariness of the officials. The exercise of fixing rental data should be undertaken every five years during which the rental data determined, after providing opportunity to the representatives and associations of citizens, should remain unchanged.

(c) The annual value/rateable value should be determined on the following basis :

(i) A general reduction of 1/6th should be made from the rental date for meeting the cost of repairs and maintenance. The existing 10% provision in the present circumstances is very inadequate.

(ii) "Carpet Area" of individual premises should determiued on the basis of municipal record of "Completion Certificate" relating to construction of the premises on the basis of sanctioned plan. The determination of carpet area, as provided in the previous instructions of MCD, provided loopholes and discretions to the subordinate staff and was the basic cause of corruption. The best course would be to determine this area on across-the-board principle by providing that 50% of the total area according to the Completion Certificate (excluding the garages and servants quarters where constructed) will constitute the relvent area for purposes of computation of Property Tax on the basis of determined rental data

(iii) No allowances need be given for fans, geysers, etc. These have led to element of discretion and corruption and opportunities for evasion of tax.

(iv) The above stipulations should hold good for residental as well as non-residential premises.

SELF-OCCUPIED PREMISES

2.4 (a) The rental data determined on the above lines should also be applicable to self-occupied premises because they too are benificiaries of the municipal services The deduction of 1/6th for repairs and maintanance should be allowed on the rental data as in the case of rented premises.

(b) For self-occupied premises, irrespective of whether they were previously on rent at any stage, there should be a rebate of 50% on the determined rental data minus the provision for repairs and maintenance. The previous rebate of 20% is totally meaningless in the context of prevailing high rentals.

2.5 Premises which are either partly rented or partly self-occupied, or partly recently constructed and partly previously constructed, as well as premises which are on lease-hold lands or free-hold lands, willl not pose any problems if the above procedures are adopted. Like wise whether contruction has taken place on part of a plot and subsequent constructfon is made either on an upper floor or on contiguous vacant land of the plot, the position will not be affected if the above procedure is adopted. In any case, the plote constituting one entity, it is inequitous that a part of it should be evaluated at a price different from another part for purposes of any calculation.

2.6 In applying the above basis for assessment it may be desirable to make provision that any owner who stands to benefit by retention of his existing assessment should have the option to retain it instead of adopting the above new basis, and this option should continue for a period of five years from the introduction of the new basis, whereafter he wiil be assessed on the same basis as others.

ESTATE DUTY : PRESENT POSITION

We have been receiving queries for clarification of the position as it now exists after COMMON CAUSE has succeeded in getting amendment effected in Estate Duty Act in relation to imposition of estate duty on house property. We present this position below.

We had been representing that the previous of provision for evaluating the residential house of a deceased person on the basis of market value was nothing short of confiscatory because of high escalation in the values of property in the recent years. No middle class family would be able to pay the estate duty, and residential houses have to be auctioned for recovery of the impost.

With the amendment of Estate Duty Act, which has taken effect from 1. 4. 81, it is now provided that one residential house of the deceased person (which can ba specified by the family representative if the deceased owned more than one residential house) shall be valued on Wealth Tax basis for the purpose of determination of estate duty. If the value of the residential house has already been accepted for Wealth Tax purposes, such value on the valuation date preceding the date of demise of the person, shall be accepted for the purpose of estate duty determination. Where value has not been previously determined, the value of residential house would be determined on the principle of Wealth Tax.

In terms of the provisions of Wealth Tax Act, as modified by Rule IBB of the Wealth Tax Rules, where the house existed perior to 1. 4. 71, the value as obtaining on that date will be taken for this purpose Where the house came to ownership of the deceased subsequent to this date the principles of rule IBB would apply for valuation of the house, basing tha valuation on a prescribed multiplier of its maintainable rent (100/8 or 100/9) depending on whether the land is free-hold or lease-hold, and reducing thereform 50% of the unearned increase in the price of land where it is lease-hold.

Valuation of residential house is, under the new rule IBB, a reasonably simple matter of calculation, but the intricacies and the language of the rule may necessitate the valuation to be done by a person who is knowledgeable on it or by a valuer. Considering that the matter of valuation has assumed importance in relation to estate duty determination it is advisable that every house-owner should get the valuation of of the house done once, and bring it on record by submitting a Wealth Tax Return to the Income Tax authorities, even though he may not be assessable to Weath Tax, so that the valuation does not subsequently present a problems on demise of the owner.

For determination of estate duty, value upto Rs. 1 lakh of the residential house is exempted; and the exemption limit of other property has been increased from the previous amount of Rs. 50 000 to Rs. 1.5 lakhs.

While these provisions, to the extent they have been made, are welcome, we strongly feel that these are not enough and that public opinion must continue building in favour of more realistic recognition of the situation by the government. Following problems are relevant in this connection :

(i) The existing examption limit of Rs. 1 lakh in respect of residential house is totally inadequate even after incorporation of the provision of Wealte Tax basis for determination of its value. We have been suggesting that this limit should in no case be less than Rs. 2.5 lakhs which itself is not very adequate figure in the context of present escalated prices.

(ii) The exemtion limit of Rs. 1.5 lakh of other estate of the deceased too is most unrealistic in the context of present value of property. Where a person owns commercial premises, for instance, the present market value of such premises will bring about such imposition of estate duty that there will be no alternative to the sale of property for paying the duty.

(iii) We have been representing that other various exemption limits incorporated in the Act have become totally unrealistic in the conditions of present day values. A gift, made by the deceased for charitable purposes, for instance, is exempted only upto Rs. 2,500; any other gift only upto the value of Rs. 1500; total house-hold goods to the mere extent of Rs. 2,500; moneys payable for insurance upto Rs. 5,000; moneys earmarked for marriage of daughter to the extent of Rs. 10,000; all expenditure in connection with funeral and connected ceremonies only upto Rs. 1000. These limits are ludicrously inadequate in the present circumstances.

(iv) The slab system for levy of estate duty on the property of the deceased, even after revision, is confiscatory. Beyond the exemption limit of Rs. 1.5 lakhs, the rate of estate duty is 10% upto Rs 2 lakhs, 15% for the next 1.5 lakhs, 25% for the next 1.5 lakhs, and so on, till it reaches the estounding figure of 85% for higher values, which obviously means that there will be no escape from sale such as of commercial property or residential property other than one mentioned above, for the payment of duty

(v) The important thing to keep in view is that the aggregate proceed from estate duty, in the current year, is estimated to be only Rs. 19 crores in the total revenue of over Rs. 20,000 crores. Cost of collection of this amount of Rs. 19 crores is estimated at Rs. 1.57 crores. Rs. 1.44 crores is expected to be the recovery from Union Territories. In the allocation to the States the figures are revealing. State like Himachal pradesh gets a measly amount of Rs. 1 lakh; the maximum that a State like Maharashtra gets is Rs. 2.85 crores; others range in between e. g. Andhra Pradesh Rs. 1.07 crores. Assam Rs. 39 lakhs, Bihar 39 lakhs, Orissa 12 lakhs, Uttar Pradesh 84 lakhs, West Bengal Rs. 1.26 crores; the total allocation of states being Rs. 15 98 crores. These facts inevitably raise the question whetherit is worthwhile for the Government to create such excruciating problems for the citizens for collecting the amount of Rs. 19 crores, and whether some other appropriate alternative cannot be devised for achieving the objective of avoiding fragmentation of the estates by holders of bigger properties. The very fact that the total recovery from this measure is only Rs. 19 crores in the whole year is itself indicative of the fact that the people owning sizeable properties have already devised ways and means of overcoming the problems of estate duty by finding alternatives to keeping wealth in their own hands. It is well known, and is claimed with some pride by certain top industrialists and businessmen in the country that they do not own any wealth in their names at all and they are not paying income tax or wealth tax and will not be subject to any estate duty on their demise. This being so, is it necessary to maintain this Act on the statute book when it is not serving the purpose it is desired to subserve, and whether some suitable alternative cannot be devised for achieving this objective.

GROUND RENT OF LEASE-HOLD PLOTS

Houseowners in the lease-hold colonies are feeling greatly concerned about the stipulation made in the leases for enhancement of the ground rent on the expiry of each period of thirty years.

In Delhi the first period of thirty years has expired in the case of certain areas like Jor Bagh. Golf Links Chanakya Puri, and will soon expire in areas like Patel Nagar, Karol Bagh etc. In thecase of other areas, the period will start expiring after some more time.

In the lease deeds the provision is that the ground rent will be subject to enhancement provided that "the increase in rent fixed at each enhancement will not each such time exceed one-half of the increase in the **letting value of the site without building** at the date on which the enhancement is made and such letting value shall be assessed by the Collector or Deputy Commissioner of Delhi".

A number of questions arise from the wording of this provision in the leases and the houseowners are naturally feeling greatly perturbed at the implications of the wording particularly in the context of the enormous escalation of land prices which were never expected at the time when leases were originally taken. We mention hereunder the problems which are relevant in this connection :-

(i) There is confusion in implication of the words **"letting value of the land"**. What comprises the "letting value" of vacant land? In the case of vacant land, there is provision under Sec. 116(2) of the Delhi Municipal Corporation Act which states that the rateable value (synonymous with annual value comprising the annual rent which the property will fetch from year to year) of vacant land shall be five per cent of the "estimated capital value" of land. Capital value, in this context, will obviously be the original premium paid when the plot of land was taken on lease.

(ii) What would be the implication of the words **"letting value of the site without building at the date when the enhancement is made"**? How can letting value of

a piece of land, on which construction has taken place, be determined without taking into account the building which stands on it? Will the vacant land in this conext be the land which is appurtenant to the building, or the land which is partly left open besides the land which is compulsorily left open according to building bye-laws?

(iii) The words **"at the date on which the enhancement is made"** add further complexity to the problem. It is well-known that the prices of land have sky-rocketed in Delhi during the last 5/6 years and are now 50 to 100 times what they were 20/30 years ago. If the letting value" of land is related in any way to the present price of land, even after taking into account the 50 per cent un-earned increase which has to be paid to the DDA, the position becomes impossible for every houseowner, and even more so for self-occupying houseowners. For instance, where a plot of 500 sqm in a leases-hold colony was taken 30 years ago at Rs. 20/- per sqm (total premium paid Rs. 10,000), the price today may be Rs. 2,000 per sqm (Rs. 10 lakhs for 500 sqm). Even if 50 per cent is deducted from this towards payment to DDA as un-earned increase, the annual letting value may, according to this provision, come to be determined on the basis of price of Rs. 5 lakhs. The ground rent on basis of this letting value even at the previous rate of 2½ per cent will become a back-breaking figure, and for self-occupying houseowners it will be totally impossible to afford. It needs to be kept in view that there are additional impositions on the property, including income tax, wealth tax and property tax of the local authority, and the requirement of payment of ground rent cannot obviously be considered in isoltion from these other impositions.

(iv) It is moreover necessary to keep in view the fact that the lands and buildings in Delhi are subject to the provisions of Delhi Rent Control Act. The rent on these lands and buildings cannot be increased beyond the 'standard rent". "Letting Value',, for the purposes of determination of ground rent cannot; therefore. be considered without reference to the "standard rent".

(v) As stated above, the lease deed refers to the "letting value" of the land without the building. Letting value of building is always inclusive of the value of land underneath and appurtenant to it. The "standard rent" under the Rent Control Act is fixed and frozen, with refrence to the price of land on the date of commencement of construction the "letting value" of the land is consqeuntly frozen with the "standord rent" under the Rent Control Act. there cannot be to two "lettig values", one under the Rent Control Act and second under any other law.

(vi) The question for determination will also be as to what will be the basis for determination of "letting value" ? Will it be related to the price of land which is declared from time to time by the DDA/L&Do?. Such declaration of price is related primarly to the payment of un-earned increase to the Government. If that price is taken to form the basis for calculation of "letting value", it will make the position totally impossible for the houseowners, as stated above.

(vii) In any case, it is of fundamental importance that the "letting value" of the land in any lease hold colony must not be determined by the Collector/Deputp Commissioner without giving oportunity to the associations of the house-owners to file their objections against the proposal.

These are some of the issues which are at present agitating the minds of house-owners in the lease-hold colonies. COMMON CAUSE has brought these to the notice of the Government in a letter addressed to the Minister of works & housing, Lt. Governor and vice-chairman of DDA. It is necessary that the Government should consider these and all other related aspects for determining the policies relating to revision of ground rent. Linked to these issues is the primary consideration whether the lease-hold system should continue, and if it has to be terminated, what criteria should be prescribed for conversion of lease-hold tenure to free-hold tenure. In case the Government in respect of residental colonies comes to the conclusion has lease-hold system has to continue, then the terms of lease, which were drawn up at the time of initiation of the lease-hold concept, need to be reconsidered. In the matter of ground rent it is of primary importance that the Government should examine the entire question in the light of the above points and related issues, and initiate the the proces of consulting opinion of the houseowners before taking final decision. The Government has intimated that these the points communicated by us will be given consideration before taking dec.sion on this matter.

FOR THE PENSIONERS

On the problem of Pensions we have continued to inform the association and organisations of pensioners through a series of circulars the developments since the Supreme Court Judgement. In particulars, our pension circulars no. 121 122 and 123 carried the information on various points. We have held discussions with the Finance Secretary and senior officers concerned with pensions. Finance Secretary told us that the Government could either place a formula before the Supreme Court for approval or seek such approval from the parliament. We immediately wrote back to him that either of these courses was fought with possibility of serious delays which would add to the frustrations of pensioners. Secondly, on the question of application Supreme Court Judgement to pre-1972 pensioners we have again emphasised that even a most literal interpretation of the Judgement makes it unambigyous clear that it applies to the pre-1972 pensioners. In regard to its application to railway pensioners and all-India services, it was recognised by the officers that separate orders invariable issue in respect of these pensioners whenever any pension orders issue for central services pensioners. We understand that Governmenr has constituted a high level group to go into the entire question and evolve formulas for implementation of the Supreme Court Judgements and that the objective in view is to issue instructions by early June. We will continue to watch further developments.

Pensioners wood have seen in the newspapers that COMMON CAUSE has also filed Writ Petition on the subject of restoration of pension commutations. This Petition has been submitted along with some co-petitioners who are old pensioners. The Writ has been admitted by the Supreme Court and RULE NISI has been issued to the government. The Hon'ble Judges, on our request, agreed that this matter can be specially mentioned before the Hon'ble Chief Justics for early nearing of the petition. Our plea was that the pensioeers affected by this problem are very old and it would be appropriate that this petition be decided early. We have also filed Writ Petition on the matter of family pensions. This will now come up for consideration of admission after the summer vacations.

Pensioners are very keen to know the grounds on which we have put forth these new petitions. In this issue of the periodical we reproduce for information the gist of the writ on restoration of pension commutations. In considering the factum of this Writ Petition it is necessary to point out that Despite the earlier promise of sympathetic consideration the Government rejected this demand even as late as 15th April 1983 in reply to a question in the Lok Sabha, repeating the same old arguments. We request that nobody should write anything on this matter, or on the questions of family pension, to the Chief Justice or any other judges of the Supreme.

We have a few additional small points for the pensioners. These follow. We continue to receive deluge of letters from the pensioners. We are greatful to them and to their organisations and associations for their congratulations and words of praise for the work done by COMMON CAUSD in taking up causes of pensioners. It is impossible to acknowledge all the letters, through our attempt has been to do this to the extent possible. Questions continue being asked whether the Supreme Court judgement will be applicable to pre-1972 pensioners and railway pensioners and all India services, what the extent of benefits will be, whether it will automatically apply to the problem of family pensions, whether dearness allowances will be taken into account in re-calculations of pensions, when will the enhanced pensions and arrears start being paid, whether pensioners will be entitied to additional gratuity, and so on. We have already given detailed information on the points on which it was possible to do so; we cannot anticipate answers to other questions. We can well undestand the impatience of the pensioners, but we humbly request that they should kindly write letters when they must, and avoid burdening us with necessary correspondence.

We have repeatedly stated that it is impossible for our organisation to take up individual cases and that COMMON CAUSE is not dealing only with the problems of pensins; it is taking up a large numbers of common problems and grievances of the people. A large number of cases of individuals still keep coming to us with request that they be taken up

with the appropriate authorities. We have necessarily to write back expressing our regrets and the inability to take up individual cases.

On our suggesttion the pensioners and their organisations have taken the initiative to write to the Prime Minister and Finance Minister. This is heartening indeed and a large number of representations and appeals are being addressed to them. Some organisations are sending these appeal to us. We request that these should be sent direct.

It is very kind indeed of a large number of pensioners and quite a few organisations to launch drives on their own to enrol new members for COMMON CAUSE and also to send us voluntary donations. We are deeply grateful to them for their initietive and support. We will continue to strive our utmost to render further service to the oommunity.

A matter of particular gratification to us is that while numerous pensioners and their organisations and associations have written to us that they will fulfil their promise and contribute one month's increase of pension to COMMON CAUSE, a number of pensioners have already sent to us these contributions in anticipation now that the decision regarding implementation of the Supreme Court Judgement is clear. We are deeply grateful to them. With the funds contributed to us we will do whatever is possible to strengthen the organisations and associations of pensioners for more effective functioning and service.

WRIT PETITION ON RESTORATION OF PENSION COMMUTATION

The Petitioners have challenged the Constitutional validity of the action of the Government by which deductions in monhly pensions continue being effected for the entire life of those Central Government pensioners who took lump-sum commutation of portion of their pensions on retirement under the provisions of Civil Pensions (Commutation) Rules, previously of 1925 and since revised as Central Civil Services (Commutation of Pension) Rules, 1981, and corresponding Rules applicable to the defence pensioners. The action of the Government is affecting all old pensioners of civil and defence services, including the all-India services and railway pensioners, numbering about 100,000 who commuted a portion of their posions on retirment under the Civil Pensions (Commutation) Rules of 1925 and who because of continuing deductions of their pensions, even after repayment of the entire amount received by them on comutation, are facing, in their days of old age and infirmity, privation, want and extreme hardships in these days of inflation and high prices. This action of the Government is manifestly irrational, arbitrary, oppressive, and contrary to the declared objectives of social welfare and attainment of socio-economic justice.

The aged pensioners of the Central Government, who devoted all their working life to the service of the Government in the expectation of being looked after in their days of infirmity and disablement, already face the shrinkage of their meagre pensions on account of the shrinkoge of the rupee to 1/5th of its previous value when the pensions were granted to them. The effect of this shrinkage of their pensions and escalation of prices is not mitigated by the ad-hoc relief and interim relief which has from time to time been given to them, linked to the rise in cost of living index. Amidst the privations and difficulties caused by these factors, the Government has, despite repeated representations, failed to restore to the aged pensioners the portion of their pensions which was commuted on their retirement. This action of the Government is contrary to the principles enshrined in Article 41 of the Constitution of India, besides causing discrimination between those pensioners who get a portion of their pension commuted for receiving lump-sum payment on retirment and are thereby subjected to deduction of their pensions throughout life and those pensioners who did not take commutation on retirement and whose pensions are not subject to any deductions, such discrimination being being violative of Articles 14 of the Constitution of India.

Certain State Governments have, in consideration of these difficulties and privations of the aged and and infim pensioners, already promulgated orders where-under the pensioners who commuted a portion of their pension on retirement, have been fully restored their pensions on the ottainment of the age of 70 years. These orders for restoration of full pension on the attainment of the age of 70 years have been made for saving the old pensioners from penury and want which would otherwise be caused

by continuing deduction of their pension throughout life. While this restoration of the commuted portion of the pension has not been orderd by the Union Government in respect of its pensioners and certain State Government have done so, this has caused an invidious discrimination between the pensioners of Central Governments and the pensioners of State Governments which have orderd the restoration of full pension. Even though the budgets of Central Government and such State Governments, from which payments are made, can be contended to be different, such discriminations and anomalies are violative of articles 14 of the Constitution of India, particularly where as is obvious, Certain financial allocations are made from the Union funds to the State Governments and these are utilised inter-alia for employment of and payments to the staff. Discriminations are thus caused between pensioners retired from projects and operations funded by such allocations to the state Governments from the Union funds and the pensioners retired directly from the employment in the Central Government.

On retirement a pensioner is entitled to get a portion of his pension commuted. Almost all pensioners seek commutation of the pension in order to meet various family obligations including marriages of their sons and daughters. higher education of the children, and other pressing requirments. The Commutation Rules as amended from time to time, govern the grant of commutation. Salient points of these Rules are as under:

(i) Commutation is allowed to civil and defence pensioners in cases of super-annuation, retirement, release, invalidation and disability.

(ii) The maximum percentage of pension allowed to be commuted is 1/3rd in the cases of civil pensioners. For defence pensioners, the commutation is allowed upto 50 percent in certain cases and upto 45 percent for certain other specified categories of personnel. It is laid down in the Rules that in case of civil pensioners the amount of pension, after comutation, must not be less than Rs. 240/- per annum; in the case of defence officers, the prescribed minimum is Rs. 2,000/- per annum and for other ranks Rs. 240/- per annum.

(iii) The period within which, after entitlement of pension, the commutation can be applied for is prescribed. In the case of civil pensioners, it wss prescriped in the previous Rules of 1925 that the application must be made within one year of entitlement to pension. It is also provided that commutation can be sought more than once provided the prescribed limit of commutation is not exceeded.

(iv) Detailed tables, based on actuarial calculations, have been prescribed for determining the quantum of commutation payable to the pensioners. These tables take into account the actual age of the pensioner as well as his life expectancy, and are based on the rate of interest of 4.75 perannum. It will be seen that based on the age of the pensioner's next birth-day, the commutation value is expressed as "number of years purchased" which is the multiplier used for calculating the amount of commutation to be allowed to a pensioner on the determination of his age next birthday. It will also be observed from this table that for pensioners within the range of 55th and 58th year of their next birthday, the commutation value ranges from 11.73 to 10.78 respectively, i. e. the maximum commutation amount allowed to civil pensioners within the range of 55 and 58 years varies from 11.73 times 1/3rd of the annual pension, to 10.75 fines 1/3rd of annual pension averaging about 11 years for the category of pensioners within this age range. These years are being taken for this presentation because the super-annuation age for civil services was previously 55 years and is now 58 years.

(iv) All commutations previously were subject to cirtification by a prescribed Medical Board, consisting of three medical officers possessing prescribed qualifications. The Medical Board's certification determined the life expectancy of the pensioners on the basis of a "strict" detailed medical examination, including medical history and habits. The composition of Medical Board for respective categories was prescribed in the Rules, and it was explicitly laid down as to what examinations and tests the Board was expected to conduct for determining tha life expectancy of the commutation applicant. It was also prescribed in the Rules that the Medical Board should determine whether, on account of lack of full health of the applicant, any years should be added to the actual age for determining his commutation age, i. e. whether he was expected to live lesser number of years than those laid in the prescribed commtation

table. This assessment by the Medical Board determined as to what multiplier should be used for calculating the quantam of commutation to be paid to him. The purpose of this entire procedure of examination by the Medical Board obviously was to make sure that the Respondent gave commutation only to such pensioner who was able to make re-payment and that it was given only to the extent which, in his normal life expectancy, he was in a position to repay to the government the commutation received by him. It is also noticeable that it was prescribed in the Rules that the commutation must be applied within one year of pension entitlement. This too was obviously based on the consideration that the pensioner should be able to repay to the government the commutatioh amount within his life expectancy. Since December, 1977, the requirment of appearing before and examination by the Medical Board, for determination of the eligibility and quantum of comtation, has been done away with, and the pensioners now can claim the commutation merely on application without having to appear before any Medical Board. The pensioners who retired prior to December 1977 had invariably to appear before the Medical Board which determined the commutation age for purposes of calculating the commutation amount payable. It is worth nothing that under the previous Rules a pensioner could be refused commutation on Medical grounds.

(v) Whereas the maximum percentage limit was prescribed, the pensioner had the option to get the commutation done at a lesser percentage, but it is abvious that in practically all cases, the pensioner opted for commutation of the maximum percentage because of the pressing family requirements and expectation of lumb sum becoming available for meeting such requirements. The commuted amount, from the date of acceptance of commutation, starts being deducted from the pension of the pensioner in the same percentage in which the commutation was calculated i.e, where 1/3rd of the pension was commuted, based on the formula mentioned in the foregoing sub-paragraph, the pension was reduced by the same percentage, and all future payments of the pensions were made on the basis of such deductions. The deductions are perpetual and terminate only with the temination of life of the pensioner.

Whereas the Respondent, through the constitution of Medical Boards and examination of life expectancy of the commutation applicant, thereby ensured that the pensioner would normally live for the period during which the commuted amount paid to him is refunded back to the exchequer, the pensioner for his whole remaining life gets bound down to continue to suffer deducation of the prescribed percentage of the pension even though he may have, during the period of anticipated life-expectancy paid back to the exchequer the entire amount received by him on commutation. The Petitioners state that there are a very large number of cases where aged pensioners who are now indigent and infirm and whose sole sustenance has been on the meagre pension earned after devoting their whole working life to the dedication of the government service, are now reduced to such penury that it has become impossible for them to subsist within the means of their reduced pension even after the addition of ad-hoc relief and interim relief granted to them from time to time. These aged pensioners have paid back to the government, through the monthly daductions from their pensions, amounts much larger than the amounts received by them on commutation. Thousands of such cases have come to notice. In the list attached to the Petition are given particulars of cases selected at random including cases of civil as well as defence pensioners. These particulars in each case include the name and address of the pensioner, post of retirement; year of retirement, amount of commutation received on retirement and the approximate amount which has since been taken back by the government from the pensioner through deductions from his pension. It will be observed that in some cases the deducted amounts are more than even twice the amount of commutation received.

Pension is a right and not a gratuitous bounty. It is earned by the pensioner on the basis of long years of his working life devoted to the service of the Government. Pension is given as a welfare measure, for enabling the pensioner to live without want and at a reasonable living standard taking into account his living standard during the years of service. Out of the pension, the pensioner at the time of retirement, for meeting his family commitments and

requirements, takes advantage of the facility of commutation which is extended to him. The Petitioners do not have the relevant statistics, which may be known to the Government and can be called for by the Hon'ble Court, but the Petitioners believe that in practically all cases, excepting extremely few, the pensioners take the advantage of commutation facility. Often the payment is utilised primarily for meeting the family requirements such as marriages of sons/daughters and other social obligations. The quantum of commutation amount of an average pensioner, particularly of the low-paid employees is obviously such which obviates the chance of its utilisation for any profitable investment.

The commutation payment, in the shape of an advance against pension, is as much a social security measure as the pension itself. It is given for rehabilitation of the pensioner and the family on the stoppage of regular full emoluments on retirement so that the family may not face sudden indigence and deprivation and is also able to meet the other family and social obligations. and payment of the commuted amount is, to this extent, a very welcome measure. But when the pension continues to be deducted even beyond the period during which the pensioner has repaid the entire commuted amount and more; the entire objective of pension constituting a social security measure is inevitably frustrated. Such continuing deductions, in the period of old age and infirmity of the pensioner and in times of indigence which may be brought about by circumstances beyond his control, in effect adops the shape of becoming a confiscatory measure, depriving the pensioner till death of a rightful portion of tbe pension which he earned after whole working life with dedication to the government service.

This matter was also represented to the Committee on Petitions of the Lok Sabha. In its Ninth Report the Committee on Petitions (Sixth Lok Sabha) presented to the Lok Sabha on 11-4-1979, the Committee reproduced the reply submitted by the Respondent on the question why it is not possible to restore the commuted portion of pension. This reply is reproduced hereunder :-

"Commutation of pension is an optional facility which a retiring Government servant may avail if he so desires either to meet his immediate liabilities or for acquiring assets. It may be added that Section 10 of the Pensions Act, 1871 permits a portion of the pension to be commuted for a lump sum with the consent of the pensioner. The pensioner agrees to forego for life a portion of the pension for which he gets a lump sum amount. Commutation of pension involves an element of risk for bot the Government and the pensioners If the pensione dies early, it is the Government who loses. The lump sum amount paid to the pensioner is not an advance against pension, the lump sum amount is worked out with reference to the commutation table in force at the time of commutation".

It is unfortunate that the Respondent has been resorting to legalistic arguments in de ling with this humane problem and has been rejecting a very legitimate demand of the aged pensioners, disregarding their requirements in old agc and thrusting on them an un-deserved want It has been stated above, and is re-iterated, that even though the pension commutation is not obligatory and is an optional facility, the circumstances emerging on the termination of full remuneration of earning member of the family on super-annuation, and the need of meeting the social obligations and requirements of the family at that time in the social milieu obtaining in the country, drives practically every pensioner to take recourse to the commutation of pension The option available to the pensioner in this matter is in fact illusory; there is hardly any escape from resorting to commutation, for meeting his family and social obligations. Another point urged by the Respondent in contesting the claim of pe .sioners is even more cruel. It is unfortunate that the Respondent should give such great weightage in its scales to the amount that it loses by early demise of the few pensioners, not mentioning the gains that it makes from the large number of pensioners who outlive the period of commutation. It is incontestable that life expectancy over the past couple of decades has increased. We do not have the statistics and we request the Hon'ble Court to ask the Government to come forth with statistics to show, by taking one or two services as examples, of the percentage of pensioners who die out during the period of commutation and those who out-live such period, as also the respective years in such cases There are cases where the pensioners live beyond 70 years and a few even beyond 80 cases. It is cruel that old pensioners in their seventies or eighties should be made to subsidise the 'losses" which the government claims to suffer on account of early demise of some pensioners. It will be argueable by the Respondent that when commutation was received by the pensioner, the value of the rupee was much more, and also that the investment made by the pensioner at that time from tha commuted amount, will have been fruitful. This argument is fallacious. It is obvious that the commutation is generally utilised for meeting the family and social obligations and in the case of low-paid pensioners it is not conceivable that they could utilise their commutation amount towards any profitable investment.

It has been mentioned above that the organisations of pensioners appearing before the Committee on Petitions of the Lok Sabha inter-alia represented about the restoration of pension commutation. This matter was considered by the Committee. In its above-mentioned Report (Ninth Report submitted to the Lok Sabha on 11-4-1979), the Committee made the following recommendations on the matter of restoration of pension commutation. stressing that this problem needs to be considered more from a humane than a strictly legal point of view for mitigating the hardships of pensioners.

"The Committee note that the commutation of pension is an optional facility available to a Government servant to get a lump sum amount to meet his immediate liabilities against foregoin a portion of his pension for life. It involves a risk for both the Government and pensioner. The Committee are of the view what while this has its merit from a strictly legal point of view, but it is harsh on the living pensioners who have outlived their commutation period and are struggling to live in their old age. The committee desire the Governmeat to compassionately consider this aspect of the matter more from a humanitarian than a strictly legal point of view, in order to mitigate their hardships, and should review the whole scheme of commutation of pension at a higher level"

The matter of representations having been made by the pensioners and their organisations on this subject was referred to in the Lok Sabha during the debate on a private member's Bill on Pensions on 30 April 1981. The Minister of State for Home Affairs, in referring to this matter, stated that the question of restoration of pension commutatin has been suggested by the Prime Minister and that the Government was considering this matter. This statement was made about two years ago, but no steps have hitherto been taken to effect restoration of the commutation. Following is the statement made by the Minister of State for Home Affairs: "Mr Suraj Bhan (M P.) has raised the point of the commuting pension. He has said that a person who lives longer is at a loss under the present scheme. Restoration of a part of the pension commuted after a specified time is one ot the points which the Prime Minister has suggested. The Government is actively considering that aspect of the matter".

Quite a few State Governments in the country have sympathetically considered the demand for full restoration of the pensions of the aged pensioners who commuted their pensions on retirement. The petitioners have been able to collect information from the State Governments of Punjab, Haryana, Himachal-Pradesh, Tamil Nadu, and Karnataka. Presumably some other State Governments have also made similar orders. Information on this point will be available with the Government and the Hon'ble Court may ask the Respondent to produce it. The State Governments have by and large ordered restoration of full pension of the pensioners on their attainment of the age of 70 years. (Order issued by these State Governments have been reproduced in the Petition).

The petitioners, therefore, pray that this Hon'ble Court may be pleased to issue;-

(i) A Writ of certiorari or any other writ order or direction in the nature of certiorari striking down such provisions relating to the Pension Commutation Rules as applicable to Civilian pensioners as well as defence pensioners and the pensioners of all India Services and Railways, which permit the government to recover more than what is paid to the pensioners on commutation;

(ii) A writ of mandamus or any other writ or direction in the nature of mandamus restraining the Respondent or its agent or agents from recovering from petitioners and others similarly situated, an amount larger than the amount paid to the Petitioners on commutation and directing the Respondent to restore full pensions of all such pensioners after completion of the recovery of the amount paid to them on commutation of the pensions ; and

(iii) A writ of mandamus directing the Respondent to frame a proper scheme based on rational principles and submit it to the Hon'ble Court, whereby the pensions would be fully restored to all pensioners who receive payment on commutation, on their returning to the respondent over the course of years sum equivalent to the commuted amount

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