Vol. X No. 3 July, 1991

COMMON CAUSE

VOICE OF "COMMON CAUSE"

OF VARIOUS MATTERS

We could not bring out the April issue of this periodical, for which we are very regretful. Members know the cause. When we communicated the cause to them they have been very generous indeed. They have sent contributions; some have sent much more than the amount of Rs. 100 we asked for. There were so many cheques and money orders that it has taken time to send the receipts. We convey our grateful thanks for this support to the organisation, and our regrets for the delay in acknowledging receipt of their generous contributions. This support tides us over the problems we faced.

In relation to these contributions we may mention certain problems we have encountered. Some persons have merely signed cheques, put them in envelopes, and despatched them, without mention of any name, nor any address, with the result that it becomes impossible to trace out the particulars and to acknowledge receipt. Likewise, sometimes the name and address is not mentioned on the message slip of the money-order form, and same difficulty arises in acknowledging receipt. We now wait for the complaints from those members who have not received the acknowledgement, for connecting such cheques and money orders. We re-emphasize our request that when writing, or sending any remission, kindly write the name preferably in capital letters and, where applicable, give the membership number. This will avoid difficulties we encounter.

In this issue of periodical we have incorporated the monograph on "HOW TO FIGHT AGAINST INEQUITIES OF PROPERTY TAX" from page 5 onwards.

In this issue of the periodical we have incorporated the entire material of a monograph which was originally proposed to be separately issued on the important subject of levy of Property Tax by Delhi Municipal Corporation and New Delhi Municipal Committee. This matter has assumed enormous dimensions because of the serious anomalies, distortions and discriminations which are being encountered by the owners of houses etc., in Delhi. In recent months the Delhi Municipal Corporation and New Delhi Municipal Committee have issued 1,70,000 notices to the owners, proposing fantastic increases of the rateable values of their properties, in many cases 20 to 30 times the existing RV's, or even 50 to 100 times in some cases. The statute clearly lays down that if the RV of any property is proposed to be increased, the municipal authority must give "adequate reasons"

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All members are requested to promptly communicate their change of Address.

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for the proposed increase, to enable the assessee to submit his "objection" to the increase. This requirement has been disregarded, and merely rubber stamps, containing vague and general reasons regarding amendment of Rent Control Act or additions/alterations in the property have been affixed on the notices. We have had taken this matter to the Delhi High Court in a Writ Petition, and the Court has issued directions to these municipal authorities to desist from taking any decisions on these notices till the next hearing in July, and has ordered extension of the date for submission of the objections by assessees.

In this issue of the periodical we are highlighting this matter regarding the levy of Property Tax for the purpose of enabling the members in other States to know in greater detail the problems relating to assessment of Property Tax. This Tax is the mainstay of any municipal body. It is important that the revenue from this source shouid continue to be enlarged, for enabling the municipal authority to provide the services demanded by the citizens. The citizens need water supply, roads, sewerage, drainage, street lighting, parks; they must enable the municipality to collect adequate funds for the provision of these services. But, it is obvious that in the assessment of Property Tax there should be no discriminations and anomalies. These are in evidence in plenty. It is a matter of great importance that some positive principles should be evolved which would constitute the basis of assessment of Rateable Values of the properties and determination of Property Tax thereon. These principles should apply to the municipal bodies all over the country. We request the help of members in various parts of the country to help us in collecting information which can be useful for this purpose. In particular, we would be grateful for information on the following points. :

(i) The names and addresses of the organisations and associations of houseowners in your city and the State. You would be in a position to make the effort to secure this information for us, or transmit to us the source from which we can secure this information.

(ii) Secure and provide us the information of the statutory provisions relating to your State under which Property Tax is levied. You may send us photo copy of the relevant provisions of the Municipal Act appicable to your State, and the provisions of the specific Act which may be applicable to your city.

(iii) Secure for the purposes of our study some analysis which may have been made of these statutory provisions and the difficulties and anomalies that these involve, including information about important cases which may have been decided by the High Court of your State. This information will be of great help in attempting to evolve definite principles on which the assessment of Rateable Value of a property, and determination of the Property Tax thereon, should be based. It should surely be possible for some members to make special efforts for collecting this information for transmission to us.

We have brought out a monograph on the important subject of "Privatisation". It will be sent to the members separately. The importance of this subject is self-evident in the course of the deep economic malaise this country is facing. People need to get acquainted with these economic aspects, to know how we have been brought to this situation, of serious shortages, deficits, debt-burdens, foreign exchange crisis, spiralling prices, uncontrolled inflation: how the politicians have over the decades since independence reduced this country to a situation where we are down in credit rating in the world, reduced to the

degrading 123rd position in the world assessment of human development; how the government has become all pervasive in the lives of the people and snatched away all the initiatives of the people in all matters of economic or social consequence; how problems on every front continue being aggravated to crisis situations. Public sector in the country has expanded to an extent that it has become a strangle-hold on the entire economy; the government is sitting too much on the backs of the people. Our monograph on Privatisation highlights these issues and prescribes the absolute need of diluting the public sector and removing this halter round our necks. The move towards privatisation is inevitable and cannot now be helped, but there are distinct dangers of this move being misused by the politicians and their trusted bureaucrats for their own ends; therefore, we have urged in the monograph the need of our privatising the public sector wisely.

MISCELLANEOUS

We reproduce hereunder some letters and news which would be for general interest to the members. These relate to different matters but are of obvious importance.

LETTER TO CHAIRMAN, CENTRAL BOARD OF DIRECT TAXES, GOVT. OF INDIA

We would like to communicate the following points for your consideration for effecting requisite modifications in the rules and procedures relating to Income Tax :

(I) Voices still continue to be raised by the people that further efforts should be made to effect simplificatlon of the forms (FORM 1, 2 and 3) relating to the submission of Returns. We are aware that efforts have been made by the Department but obviously this will need to be a continuing effort.

(ii) "NOTES" have been attached with the printed Form No. 3, It is possible that similar notes may have also been attached to Forms 1 & 2. It is surprising that amidst the paramount need to avoid wastage of expenditure and conservation of paper, the NOTES have been printed and attached to each Form. Apparently, these Notes have thus been attached to millions of forms. One is staggered to note the amount of expenditure incurred and the paper used for the purpose. Invariably these "NOTES" are detached from the Forms before they are submitted. Instead, ways and means could have been devised by which Instructions and notes of this nature could be made availabie to the assessees on demand or sold through outlets of the nature of the bookshops etc. In the publicity normally given by the Department regarding the submission of Returns, it could have been also mentioned that these Notes are available to the assessees on a small price,

(iii) We also feel equally concerned that the Department continues providing forms in English and Hindi both appearing in each Form. Obviously this leads to enormous wastage of funds and of paper. For meeting the requirement of printing the forms in Hindi, it would be desirabie that Forms shou!d be separately printed in English and Hindi. Those who wish to submit their Forms in Hindi would be welcome to procure those forms. Increasingly efforts should be made by the Department to make forms available through outlets and bookshops spread all over the country. People now are accustomed to buying the Forms printed by various cempanies floating shares and debentures, and therefore there is no reason why they should not get accustomed also to buying the Income Tax Forms. We also suggest that there should be easy avaiiabillty of "Advance Tax" challans. It would be desirable that the "Advance Tax" challans should be made available through the branches of Banks.

(iv) Some organisations have complained that the present system of levy of surcharge on the income is not correct nor scientifically based. The surcharge is presently levied when the income exceeds Rs. 75,000. Even when the income is slightly above Rs. 75,000, say by an amount of only about Rs. 1000, the assessees are expected to pay surcharge on the whole amount. This is not reasonable It would be appropriate to devise the levy in such a manner that amount of surcharge is determined, say, at 50 per cent of the income exceeding the limit of Rs. 75,000, upto a certain amount.

(v) Voices have also been raised in regard to the provision made in relation to the ' Collection charges" of rental amount. A limit of 6 per cent has been prescribed but the assessees are expected to submit actual receipts etc. incurred for collecting the rent. This unnecessarily provides impetus to the assessees to concoct the receipts. The best course would be to preseribe a certain percentage, say 3 per cent, which would be admissible as collection charges on the anology of "Standard Deduction" relating to salaries. Where the assessees may desire to claim collection charges of more that 3 per cent, they shoul be expected to produce receipts, with the maximum stipulation of 6 per cent.

(vi) There is market practice that a owner has to pay commission to an "Estate Agent" equivalent to 15 days' rent when he brings about a tenant for the premises for rental. This commission is presently not allowed as an item of expenditure by the Income Tax Deparment even when it is paid by cheque and is debited to the bank account of the assessee. Thc reason given by the Income Tax Department is that this item is it not prescribed as a dcductible item. It would be desirable that thc Income Tex Department should recognise the reality of payment of commission to an "Estate Agent" and allow this item as deductible from the income,

(vii) There have been generally complaints that the "Refunds" have continued to be sent by the Department to the assessees through the peons, who normally ask for "baksheesh". This is a very unhappy procecdure and needs to be completely stopped. We have noted with some satisfaction that instructions have been given by the Income Tax Department at certain places that the "Refunds" shouid not be sent to the assessees through peons. Positive directions should issue to all offices of the Income Tax Department that the refunds should be sent only through registered post irrespective of the amount of refund.

(viii) It is also generally complained by the people that "Notices" for appearance etc , are sent by the Income Tax Department through peons to assessees. This obviously involves unnecessary and avoidable expenditure, There is no reason why the notices could not be sent by post to the assessees. It can be laid down that it will be assumed, in the normal course, that the notices sent through post reach the assessees. Where, however, the notice may be of immediate importance and appearance, it may require to be sent through the peon but it needs to be presecribed that in each such case reasons must be recorded for such despatch.

(ix) We are aware that the Income Tax Department has from time to time brought out certain publications for providing assistance to the assessees in the filing of "Returns", computation of taxable income and redressal of grievances. However, we feel it will be of immense help if the Department could, with the help of specialised knowledge available to it, compile a short publication of not more than about 5-6 pages furnishing detailed information about the various investment opportunities etc., which can be availed of by the assessees for the specific purposes of income deduction in relation to the ase sssment of income tax.

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PROPERTY TAX

HOW TO FIGHT AGAINST ITS INEQUITIES

—H. D. SHOURIE

It is essential that you as citizens should be aware of your rights and be equipped to fight against injustices and inequities.

In the matter of Property Tax there are certain anomalies, discriminations, aberrations and distortions which you should be aware of. There are provisions of the law with which you should be acquainted so that you can put up an appropriate fight.

This monograph has been prepared for the purpose of acquainting you with these essential facts of Property Tax. (The term "House Tax" is loosely used in relation to this Tax; the proper term is "Property Tax"; it is levied on immovable properties of nature of the lands and buildings; residential, non-residential, commercial and industrial).

It is necessary first to recognise the importance of Property Tax (PT) to a municipai authority. This source of revenue is practically the mainstay of any municipal authority. It is the primary source of its revenue. The municipal authority must exploit this source of revenue to its utmost, for enabling it to provide various services which you demand. You want services; roads, drains, sewerage, sanitation, water supply, street-lighting, etc. These requira huge funds. The municipal authority must explore and exploit the sources of revenue for providing the services.

PT has come to assume maximum importance among the sources of funds; it constitutes more than half the total revenue of Delhi Municipal Corporation. It is of course important that municipal authorities must ensure full and proper utilisation of the funds and avoid wastage, but that is a separate matter and the citizens need to exercise utmost vigilance in this regard Presently, we need to focus attention on the various issues relating to PT and basis of its assessment,

Before going into other details it is necessary to get acquainted with certain expressions in the legal termonology. The term "Rateable Value" (RV) is important. This term, according to the present definition in the law, is the "annual rent" at which the property can be "reasonably expected to let from year to year." In Section 116 of Delhi Municipal Corporation Act (MCD Act), as presently framed, there is a proviso that the annual rent thus determined as reasonable for assessment of PT should not exceed the "standard rent" provided under Delhi Rent Control Act (DRC Act). Under the rent control law, there is a basis for calculation of "standard rent". Till the amendment of DRC Act in December, 1988, standard rent was 8⅓% of the cost of construction and the price of land on the date of "commencement of construction". The amendment effected in December, 1988 changed the ratio from 8⅓% to 10%. To this extent there has been and continues be linkage between the DRC Act and the law relating to PT. These facts need to be borne in mind.

During the last few weeks, Delhi Municipal Corporation (MCD) and New Delhi Municipal Committee (NDMC) have issued very large number of notices, aggregating to about 1,70,000, to the owners of the property in Delhi and New Delhi, proposing to enhance Rateable Values for reassessment of PT. The enhancement proposed in these notices has been fantastically high in most cases. In a very large number of cases, the proposed enhancement ranges from 10 to 30 times, even 30 to 50 times, in some cases going upto hundred times. There are cases where, based on such enhancement of RVs', the PT for certain houses will compute to hundreds of thousands of rupees every year and the notices have been issued to the effect that the proposed enhancement will take effect retrospectively from 1988-89, i.e , the owner will have to pay PT for three years including the previous two years.

Similar initiatives were taken by MCD and NDMC two years ago. At that time too RVs were thus proposed to be enhanced. There was a loud out-cry from the citizens and the proposal had to be withdrawn. Delhi Administration considered the entire matter and set up a High Powered Committee to go into it. The HPC set up a Committee of Experts. This Committee made recommendations which were considered by HPC and thereafter it made its own recommendations. These are presently before the Delhi Administration for taking final decisions and for effecting modifications in the relevant laws which might be necessitated. Press has from time to time been reporting on the recommendations of the HPC, and on speculations about the decisions of Delhi Administration thereon. (We have a copy of HPC report and have communicated comments on it to Delhi Administration).

You will have read in the newspapers tnat from "COMMON CAUSE" we have now taken the entire matter to the Delhi High Court. We had previously, as a deliberate measure, taken this matter to the Supreme Court where we secured an observation that this matter of notices etc. could be taken up in the shape of public interest litigation. The Supreme Court recorded that the Delhi Administration should expedite the decisions on HPC recommendations and tha twe could come back to the Supreme Court, if necessary. This decision of the Supreme Court was cited by us before the Delhi High Court while submitting the new Writ Petition.

Following issues relating to the notices issued by MCD and NDMC need to be emphasised:

(i) In the notices issued by MCD and NDMC there is no specification of reasons for the enhancement of the RVs'. Relevant provision of the statute lays down very clearly that "adequate reasons" should be given for any proposal of alteration of RV. This provision in the case of MCD is contained in Section 126 of MCD Act under which these notices have been issued. The owner must know the reasons on which the proposed alteration is based, in order to enable him to submit proper "objection." In the law, the owner has to be given a period of not less than 30 days for filing the objection and he has also a right to be heard before final decision is taken on the objection. It has been upheld by Delhi High Court in the case known as "Chetan Das Vs. MCD" (Rajdhani Law Reporters MCD-93N) that unless reasons are properly given in the notice the requirement of the law is not fulfilled and that a vague notice is invalid. It is our right, therefore, to demand that the basis of their calculation for determination of the RV must be provided so that the requirement of the law about furnishing "adequate reasons" is fulfilled.

(ii) A very important point to be noticed in connoction with the notices issued by MCD is that a number of them appear to have been hurriedly prepared, probably by the Inspector themselves and served on the owners without even being given despatch numbers, etc., of the office of issue. You should check up the notice received by you and if there appears no regular despatch number etc., this fact needs to be highlighted in the objection. If the notice has not been signed by the official authorised in this behalf, then this fact too needs to be pointed out. Thus, in the objection against the notice, you should specifically point out that the notice does not appear to have been signed by an authorised officer and that you should be informed whether there was authorisation given to the official who has signed it.

(iii) These notices have been issued for three years, i.e., 1988-89, 1989-90 and for the year 1990-91. This has been done on the basis of an amendment which the MCD and NDMC have got issued, respectively, under the MCD Act and the Punjab Municipal Act, the latter being applicable to NDMC. The issue of this amendment which authorises the levy of "Property Tax" for two previous years is a matter which to all appearances is sheer arbitrariness on the part of the government and affects the rights of the citizens. We are separately examining the possibility of challenging the constitutional validity of such an amendment in in the respective two statutes. Meanwhile, you should be aware of its serious ramifications. The position will be that, on the basis of this amendment, the owner can be called upon to pay the PT for the three years including two years for which they might have already made payments on the basis of assessments previously made. This can cause them serious deprivation because, firstly, they will not be able to secure deduction of income for the previous two years for the purpose of income tax and, secondly, they will be called upon to pay the higher amount before they can even exercise their right to appeal. This point will need to be brought home to the municipal authorities.

(iv) The major problem in relation to these notices is that there are serious anomalies and discriminations. It has been held in the well known Supreme Court judgement "Dr. BALBIR SINGH and Othors Vs. theMCD" (which was given by the Supreme Court mainly on the Writ Petition of COMMON CAUSE but it carries the present citation because of a previous petition at that time pending in the Court) that disparity between houses in the same neighbourhood in the matter of Property Tax determination cannot be allowed. This judgement is cited at 1985-SC-339. Such disparity would be inevitably involved if a house in constructed recently, or an addition to it is recently made, as compared to a similar house in the same vicinity which was constructed earlier. This applies equally to DDA colonies where one colony may have been constructed earlier and another colony has been recently constructed; the mere fact that DDA charges different prices for the houses in the respective colonies is not any justification for higher levy of the Property Tax on the houses constructedr ecently. A copy of the relevant portion of paragraph 11 of this Supreme Court Judgement is recently for ready reference, Therefore, it is appropriate that every owner should demand information about the RV's of the houses and buildings in his neighbourhood to satisfy whether any discrimiaation has come about in the issue of notice to him as compared to the RV's of similar houses in the neighbourhood. In this context, we would like to bring to your notice the following provision of Section 124 of the MCD Act:

"(ii) When the assessment list has been prepared the Commissoner shall give public notice thereof and of the places where list or a copy thereof may be inspected, and every person claiming to be the owner, lessee or occupier of any land or building included in the list and any authorised agent of such person shsll be at liberty to inspect the list and to take extracts therefrom free of charge."

The assessment list mentioned in this clause is the list of assessment of RV's which MCD maintains in registers of respective colonies and areas wherein the RV's of the respective buildings are listed. It is your right, therefore, to ask for being shown the assessment list. The staff of MCD refuses to show registerers to the assessees and would be willing to provide information only about the building of the owner. This is contrary to law, and you should ask the MCD official to give the refusal in writing. If the staff refuses to show you the record or to give you in writing, you should immediately put your objection in writing, making two copies (for which it is proper to take a carbon paper and the note-book to the office), hand over one copy and take acknowledgement of the concerned official at the counter on the other copy. It is necessary that the owners should exercise their rights which are given to them under the statute.

(v) The anomalies and discriminations are coming about in the following manner. Where, for instance, a house in a colony has recently been given on rent, say above Rs. 3500/- per month, the tendency on the part of MCD is to issue notice to the owner based on this rent or on an estimated rental figure. The adjacent similar house or neighbouring similar houses may have been on high rents for many years, but they are not being served notices either on the consideration that after completing five years of rental they have come to be assessed on cost basis, or because they have been able to settle the assessments through some other means. This amounts to sheer discrimination. DRC Act cannot be claimed to be operative for the adjacent houses, for giving them the benefit of determination on cost basis after the period of five year or for any other reasons, whereas it may be operative for your house. Secondly, where for instance, a house has been recently constructed or an addition/alteration has been made in it, its RV cannot be allowed to differ materially from the RV of similar houses in the neighbourhood merely because the present cost of addition/ alteration or construction is higher. There is no reason why a person who could not construct earlier, and has had to construct recently, should be penalised for this. It needs to be borne in mind that such discriminations need to be fought against, whether the house is wholly rented or wholly self-occupied, or partly rented and partly-self-occupied. Similar position should obtain whether the rent is more than 3500/- per month or less than this amount. We must put up a strong fight against this whole area of discriminations and anomalies because, as stated above, these are totally contrary to the direction in the abovementioned Supreme Court judgement. It may be kept in view that no appeal was submitted by MCD against this Supreme Court judgement and therefore its decisions are the law.

(vi) The most important point on which we would like to focus attention is whether MCD/NDMC have any legal justification to invoke the recent amendments of DRC Act to effect alterations in the RV's of the properties. In effecting amendments of DRC Act, following were given as the objects and reasons, and it was stated that the amendments were being made for a fresh look at the tenant-landlord relationship with the following objectives :

(a) to rationalise the present rent control law by bringing about balance between the interests of landlords and tenants:

(b) to give a boost to house building activity and maintain the existing housing stock in a reasonable state of repairs, and

(c) to reduce litigation between landlords and tenants and to ensure expeditious disposal of disputes between them.

None of these objects and reasons have any relationship to the provisions relating to the determination of RV for purposes of assessment of PT. For instance, the rent limit of Rs. 3500/- per month has been laid down in relation to the consideratian whether DRC Act will, or will not, apply to a particular rented property. Even the alteration of the percentage-8¼% to 10% of the cost. and the provision for increase of rental to the extent of 10% every three years, have relationship only to the problems between owners and the tenants; they have no relationship to the determination of RV and PT. There is no reason, therefore, why MCD/NDMC should be allowed to take advantage of these amendments for purposes of alteration of the RV/PT. We have raised this point in the Writ Petition recently filed in the Delhi High Court.

Against the background of the above presentation of various issues, and the law points relating to them, we would now like to provide guidance to you as to what you need to do for fighting against these inequities and arbitrariness of the MCD/NDMS authorities :

(i) You must submit objection to the notice. We have previously circulated. through organisations and associations of house owners of Delhi, a draft of the 'objection''. We attach the draft objection at the end of this monograph. This draft will need to be modificd to suit your requirements. You will have read in the newspapers that the last date for the submission of objection has been ordered by the Delhi High Court to be extended to the end of July 1991. If you have already submitted the objection, and need to submit any supplementation of the objection, there is nothing to stop you from doing this. You should give it the headlng ''Supplementary objection to the notice dated..... in respect of property No.....situated at.....,'' Of course, if you submit the additional or supplementary objection you must get the receipt acknowtedged on its copy.

(ii) We suggest that you should raise the matter of discriminations in the supplementary objection. In it you should ask the MCD/NDMC to give you information about the RV's fixed for similar properties in the neighhourhood of your property. As stated above, It is your right to inspect the list of RV's. You should dcmand to inspect it and to note down the numbers of RVs of similar properties in the neighbourhood of your property. After securing this information you should appropriately write your objection/additional objection, highlighting the discriminations and citing that this is totaily violative of the provisions of the Constitution and also contrary to the abovementioned judgement of the Supreme Court. If necessary, you should enclose copy of the extract of the judgement which has been appended in this monograph.

(iii) You will have observed that MCD has in recent weeks published in the newspapers two forms for submission of information by the owners relating to the property or flat. Before

you submit information on the format of either of these forms, you should know the legal position in regard to the submission of information relating to the property. The legal position is that under Section 131 of the MCD Act, the Commissioner of Corporation can ask the owner or occupier of the land or building, or of any portion thereof, to furnish him information relating the measurements/dimensions, rent, actual cost or other specified details connected with the determination of the value of the building or land. The owner is bound by the statute to comply with the demand of the Commissioner and to provide true information. In the event of non-compliance of such demand a penalty can be imposed on the owner and he will thereafter "be precluded from objecting to any assessment made by the Commissioner in respect of such land or building". Therefore, it is clear that information should be supplied to MCD/NDMC where it has been demanded under the relevant statute. While this is the legal position we do not consider that you are under legal obligation to submit the information asked for in the two forms published in the newspapers by MCD. In these forms they have *inter alia* asked for information which you may not be able to correctly furnish and it may not, therefore, be appropriate for you to be tied down by submitting the information and also by making self-assessment on the basis of such information. We feel that in any case, it is appropriate that you should submit the information which MCD has been previously asking for vide the objection forms prescribed by them. In this objection form, the information asked for related to the rateable value being disputed, the reasons for disputing the rateable value, date of purchase of land, cost of land, commencement of construction, completion of construction, occupancy of the property, rent, etc. Based on this basic information you were required in this form to make your calculation of the rateable value. We wish to emphasise that in any case while submitting the objection you should raise the question of discrimination which may be evident in relation to the age of the building or the rental income from the building as compered to similar building in the neighbourhood.

(iv) In the objection you must include a sentence at the end that you wish to be heard in person and that you will produce any documents that may be needed. Documents may include evaluation report of the premises by a registered valuer, sanction of the plan of construction or addition, completion report, etc. You should remain equipped with photo-copies of such necessary documents.

(v) You should personally appear on the date which may be fixed for the hearing by the Deputy Assessor & Collector. You must assert your rights. Where your important contentions are being disregarded at the hearing you should remain equipped to immediately write down your points, in English or Hindi as you may desire, and ask for the submission to be placed on record, taking the written acknowledgement of its being received by the officer. For this purpose, you should go equipped with a note-book and a carbon paper; write down your points on the paper and get the acknowledgement on the copy.

(vi) For facilitating your task we attach at the end of this monograph the draft objection. It should be modified to suit your requirements and the relevant point which may not have been already put in the objection should be submitted in the shape of supplementary or additional objection. In any case, you should also keep in view the desirability of taking legal advice to safeguard your interests.

RATIONALISATION OF PROPERTY TAX

It goes without saying that there is paramount need of restructuring and rationalising the property tax. Various efforts to this end have been made. We have persistently been pursuing this matter but it is unfortunate that till now no satisfactory solution has emerged from the government which will meet the demands of the people and avoid the difficulties, anomalies and discriminations which have been in evidence. For your facility, we give below the main recommendations of the High Powered Committee set up by the Delhi Administration and the comments thereon which we communicated to the Delhi Administration :

Recommendations :

(i) There should be uniformity of the basis and procedures regarding levy of PT in Delhi, New Delhi and Delhi Cantonment. There should be lowering of rates of PT for MCD area and making them more realistic and rational. Separate levy of scavenging tax, fire tax, education cess should be done away with. Wholesale exemption previously given to government properties should be abolished and all buildings, other than those used for special purposes like institutions for handicapped children run by charitable organisations, should be subjected to PT. Rebate for maintenance and repairs should be increased from 10 per cent to 15 per cent. These recommendations of the High Powered Committee are, of course, welcome to the citizens.

(ii) Procedural recommendations including the suggestion that owners should make their self-assessment as in the case of income tax, and pay the tax in advance; modification of the procedures regarding appeals and removal of obligation of making full payment before entertainment of appeal; no assessments to be kept pending for more than three years; continuation of present system of rebates on prompt payments; continuation of the existing system of ten-year payment. These procedural recommendations are also welcome to the citizens.

(iii) While the above recommendations were supported by us, we made critical comments on certain other recommendations, particularly in relation to the basis of assessment of RV/PT. HPC has adopted the approach of "Investment" (comprising the original price of purchase of land and cost of construction and of additions) and of "rent receivable", recommending *inter alia* that RV should be 10 per cent of the investment or the rent receivable, whichever is lower; where the property has been acquired the investment will mean payment of price and the cost of any additions; where the construction has taken place before 1.4.1988 the RV should be ten per cent of investment or rent receivable whichever is lower; and where the property has been completed or acquired after 1.4.1989 the RV should be ten percent of investment or rent receivable if let out, whichever is lower. Our comments on these recommendations were to the effect that the cut-off date, i.e., 1-4-1989, gives inevitable impression of being arbitrarily determined and would be challengable in court as there cannot be any justification for differentiation between premises constructed before 1.4.1989 and those constructed or acquired later. All owners of self-occupied properties constitute one homogeneous class and there cannot be any justification or rational principle for classifying them into different classes related to the date of construction because such classification will be wholly unrelated to the objects to be achieved, namely, levy of PT on the concerned properties, and consequently the criteria of making such classification will be totally arbitrary.

Such classification has been held by the Supreme Court in a number of cases to be totally violative of the principles enshrined in the Constitution.

We have communicated following further detailed comments to the Delhi Administration. There cannot be any justification for perpetuating discrimination between those which came on to the scene earlier, or were born earlier, and those who built later. This discrimination would not have presented a serious problem if the difference in cost and particularly the price of land had not been as big as it has come about in the last two decades. On this point the Supreme Court on the writ filed by Common Cause in the case known by the citation "Dr. BALBIR and Others Vs. MCD", as mentioned above, has already laid down that such type of discrimination cannot be allowed. It needs to be emphasised over and over again that in the Constitution of India it has been laid down that all are equal before the law. In the matter of assessment of PT a person who built the property earlier or acquired or purchased earlier, cannot be given preferential treatment over the other who came on the scene later, either by construction or purchase or transfer. This rule will cover all properties including those built by the owners as well as those purchased by them in the shape of flats etc.

While these recommendations of HPC are subjected to these comments, and these have been supported by the organisations and associations of house-owners of Delhi, we have been suggesting that the proper solution to this entire problem of PT assessment would lie in disregarding the age of the building and to put all the buildings at par for purposes of PT.

SOLUTIONS TO THE PROBLEM

For finding an equitable solution of this problem of PT assessment, which is of primary importance to municipal authorities for their revenues and which directly affects the citizens, we have to find the solution which would ensure that no discriminations anomalies and aberrations come about in the assessments. These anomalies and discriminations will inevitably be caused if a person who has constructed the premises recently, and has had to spend much greater amount on account of the highly escalated price of land and higher cost of construction, should be asked to pay more PT than the person who constructed the premises years or decades ago, because both the buildings, if they are of the same size, on equal sized plots, in same neighbourhood, receive the same quantum of municipal services, viz., the persons living in them breathe the same air and have the same services of water supply, roads, street-lighting, sewerage and drainage, etc. There is no reason why one should have to pay higher tax to the municipal authorities than the other. Similarly, such discriminations will be inevitably caused if the assessment of PT continues to be regulated on the basis of rental payment, particularly because of the continuing linkage of DRC Act with the assessment of PT in the present statute. Where the building continues to be subjected to DRC act because its rental is less than the figure of Rs. 3500/- per month, its PT assessment will be distorted because of the limitation imposed by DRC Act even though its rental value may be much more. Moreover a building previously rented for five years can be adjudged to be later assessed to PT on cost basis whereas its adjoining building may be assessed to PT on much higher actual rental basis.

Such discriminiations and anomalies would be involved if the basis of assessment continues to have any linkage with the DRC Act; these problems will inevitably lead to enormous litigations as at present. One building may have been on rent for many years and its rental may have continued

to be much lower on that ground; similar contiguous recently constructed building may be fetching much higher rental, quantum of municipal services to both buildings is the same; yet the PT assessment for them may vastly differ on the existing basis; and this would provide impetus to the assessee to resort to concealment of actual rental figure.

These various problems of discriminations and anomalies should, to the extent possible, be eliminated in any system of rationalisation and restructuring of PT. We have from time to time been urging solutions which would minimise these difficulties and would facilitate the task of municipal authorities as well as reduce the litigation. We give below alternative solutions:

(i) One solution is to base the assessment in relation to the area of the plot and aggregate built area thereon, i.e., total area of the respective floors. Suitable multipliers can be prescribed, perhaps on the basis of PWD specifications, about the standard of construction and the location of the building, which would take into account all the relevant factors relating to the building. The municipal authorities have the records of sanctioned plans of the buildings; owners can submit their figures of the plot area and the aggregate building area, and these can be checked from the municipal records. It should be possible to calculate the RV on the basis of these figures and the prescribed multipliers. Such determination of RV/PT will have no scope of being challenged; owners will eventualy accept these; there will be no discriminations regarding assessment. The work of municipal authorities as well as of the owners will be smoothened.

(ii) The other obvious solution is to base the RV/PT on the capital value of the buildings. Criteria can be laid down for facilitating the calculation of capital value based on the price of land which can be declared for the respective localities and the cost of construction relating to the respective grades of construction according to prescribed PWD specifications. The capital value thus determined will obviate the discriminations because the value of all buildings will be adjudged on prescribed criteria and not on the price of land or the cost of construction which both have greatly escalated over the years. The areas which are presently exempt from levy of PT, particurly in the old parts of Delhi where the rental value is very low and consequently their RV is less than Rs. 1000/- per month, which has been arbitrarily fixed as the exemption limit, although their value is very high and they enjoy all the municipal services, will be brought within the net of PT, and all buildings of similar size and all flats in any one locality, will be brought at par. A suitable low factor can then be prescribed for calculating the RV/PT on the basis of capital value.

We strongly urge that all citizens shoul get acquainted with these various aspects of the vexed problem of assessment of RV/PT. It is necessary that your voice should be raised. There is no reason why you should not make your voice heard. If you generally agree with the above analysis of various problems, you should, individually as well as through your organisations and associations, start campaigning for effecting alteration in the present system of PT assessment for bringing about a system which would remove discriminations and is based on equity and fair play, at the same time meeting the requirements of raising revenues of municipal authorities and reducing their expenditure on assessments and calculations. We consider that you should raise your voice on the following lines:

(a) The present system of assessment of RV/PT based on the linkage with DRC ACT is now totally cut-of-date. It needs to be completely scrapped.

(b) The system of assessment of RV/PT should be evolved either on the basis of the area of land and the aggregate built area thereon, with prescription of suitable factors relating to the standards of construction, present condition of the building, and the locality, or it should be based on the capital value taking into account the value of land calculated on the basis of land price notified for specified areas, and taking into account the value of aggregate built area thereon, calculated on the basis of factors notified for respective standards of construction and present condition of the building.

(d) While, thus, the assessment of RV/PT is based on such system of equity, regardless of whether the construction has taken place amidst present high costs or whether it was done earlier, we consider that opportunity needs to be provided to the municipal authorities to partly share the benefit arising from the prevailing high rentals. We are of the view that a suitable factor should be evolved, based on a specified small percentage of the rental, to be additionally operative in the calculations of RV/PT, where the building is on rent and the rent is above a specified minimum amount.

Our purpose of preparing this monograph has been :

(i) to acquaint you with various aspects of the law to enable you to fight for your rights and protect your interests against any anomalies and discriminations;

(ii) to give you draft objection and material for supplementary objection; and

(iii) to request you to raise your voice for proper restructuring and rationalisation of this important source of revenue for the municipal authorities.

DRAFT OBJECTION ANNEXURE 'A'

With reference to your notice No : .....dated.....received by me on..... in relation to the increase of Rateable Value (RV) of our property at.....from Rs..... to Rs.....I urge that the proposed rateable value is illegal, excessive, against facts and without jurisdiction, and it is not acceptable to me on the following among other grounds :

(i) To the extent the proposed increase has any relationship to the amendment of Delhi Rent Control Act the increase is patently illegal. The objects and reasons of Delhi Rent Control Amendment Act specifically state that the amendment had been made to bring about a balance between the interests of landlords and tenants. This amendment had nothing whatsoever to do with the assessment of rateable value or property tax under the respective statutes relating to MCD and NDMC.

(ii) The statute prescribes it as a mandatory requirement that the municipal authority proposing to alter the RV of any property must furnish "adequate reasons" for the proposed alteration for enabling the owner to file objection. This mandatory requirement has not been fulfilled in this notice, which carries affixation only of a rubber stamp embodying vague generality. Such transmission renders this notice totally illegal and makes it imposible for me to submit proper objection.

(iii) The notice carries a rubber stamp also to the effect that it relates to the years 1988-89, 1989-90, and 1990-91. This implies that the municipal authority proposes to charge the enhanced property tax, on the increased RV, for the threeyears from 1.4.1988. In this conneotion it needs

to be pointed out, firstly, that if the proposed increase is based on any relationship with the amendment of DRC Act, which is submitted by me to be illegal, the amendment itself came about with effect from 1.12.1988. Levying any increased tax from a date prior to 1.4.1988 itself shows sheer arbitrariness on the part of the municipal authority. Secondly, it needs to be stressed that charge of property tax for any previous years on an increased basis, for any reasons which are not in any way attributable to the assessee, is also indicative of utter arbitrariness on the part of the municipal authority. In this connection it needs to be kept in view by the municipal authority that under the existing law, and also as interpreted by Delhi High Court, the assessee is under obligation to make full payment of the entire amount of tax demanded before any appeal against the assessment can be entertained. This makes the position totally impossible for me as an assessee, and constitutes another instance of display of sheer and utter arbitrariness on the part of the municipal authority. Connected with this matter is the problem that the payment of tax for the previous years will cause me serious loss by deprivation of the reduction of Income Tax for the previous respective years for no reasons attributable to me, which again bespeaks of arbitrariness on the part of the municipal authority. It will be noted that matters of arbitrarinass of such nature are contrary to the provisions of Constitution.

(iv) It has been specifically laid down very clearly in para 11 of the well-known judgement in the case known as Dr. Balbir Singh & Others Vs MCD (AIR-1985-SC-339) that disparities in the RVs of similar properties in the same neighbourhood cannot be allowed. The directive contained in this paragraph of the judgement of the Supreme Court cannot be disregarded where the increase in RV is being attributed to "re-erection/additions/alterations". To the extent that the increase of RV in case is being attributed to any construction or addition/alteration, this pronouncement of the highest court of the land is being flouted.

(v) If the increase of RV in the said notice is being attributed to the rental income, or assumption thereof, I world request you to kindly furnish me information on the following points in respect of similar builings in my immediate neighbourhood for facilitating determination of the question of the involvment of discrimination which would be obviously contrary to the provisions of the Constitution.

Particulars of the property; name of owner:
area of land; carpet area on the respective floors;
rent presently paid by the tenant (s) of the
respective properties.

I will be most willing to submit this information in respect of the property which is the subject matter of the above-mentioned notice. This will enable the matter to be examined whether any discrimination is involved in the increase of RV proposed in the above-mentioned notice. If this information regarding the neighbouring properties is not proposed to be supplied to me I may kindly be informed of the reasons thereof.

(vi) I may kindly be informed whether any panel of assessors has set up for determination of prevalent rent in my locality, and if so, recommendations of the ponel may please be intimated to me. If not, I may be informed as to what crireria have been evolved for dctermination of prevalent rent in my locality for the purpose of determination of rent of our building.

FOR SELF-OCCUPIED PROPERTIES (Constructed before =1.12.88)

(vii) The abova property is self-occupald. Existing rateable value was fixed on the basis of standard rent as per law. Considering that the property is self-occupied, the question of application or non-application of Rent Control Act is irrelevat, in its original form or as amened.

FOR RELF-OCCUPIED PROPERTIES (Constructed after 1.12.88)

(vii) The property was constructed during the period from.....to ..... It is wholly self-occupaied. The valuation report by registered and approved valuer is attached. It is requested that the rateable value may be fixed on the basis of "reasonable Rent" which, in terms of relevant judgements of the Supreme court cannot exceed the standard rend defined under the Rent Control Act.

FOR RENTED PROPERTIES (with rent below Rs. 3500 for whole building)

(vii) The property was constructed during the period.....to.....
The rent !s less than Rs. 3500 p.m. It has already completed five years of renting on.....
It is requested that its rateable value be assessedon cost basis.

RENTED PROPERTIES (where rent of separate portions is less than Rs. 3500)

(vii) The property was constructed during the period.....to.....
The rent of its different portions is less than Rs. 3500. The property has already completed five years of its renting in..... It is requested that the rateable value bc assessed on cost basis.

OLD RENTED PROPERTIES (with rent of Rs. 3500 or more)

(vii) The property was constructed during the period... .....to.....
It was given on rent on....., and it completed the period of five years of renting on..... It was thereafter assessed on basis of standard rent as per the law.
There is no provision under which the standard rent once fixed can be altered. It is requested that its standard rent may kindly be maintained,

NEWLY CONSTUCTED PROPERTIES (with rent of more than Rs 3500)

(vii) The property was constructed during tne period.....to..... .....
It has been let out on rent from.....for Rs.....p.m. It is requested that the rateable value be fixed on the basis of reasonable rent, which has been held by the Supreme Court in the relevant judgements to be standard rent.

PARTLY RENTED & PARTLY SELF-OCCUPIED PROPERTIES

(vii) The property was constructed during the period.....to.....
The percentage of its rented portion is.....on floor area basis. On the basis of assessment, in accordance with the relevant Supreme Court decisions, the rateable value of self-occupied

portion is Rs..... The rented portion is on rent at Rs..... The five year period of rental was completed on..... The premises shoule be assessed for rateable value on cost basis. (If the period of five year has not expired, the assessment should be sought on proportionate basis of the floor area for self-occupied and rented portions).

(viii) Relevant documents will be presented at the time of hearing. I should be given opportunity of being heard before final decision is taken.

Yours faithfully

( )

ANNEXURE 'B'

EXTRACT FROM DR. BALBIR SINGH & OTHERS VS. MUNICIPAL CORPORATION OF DELHI AIR 1985 SC 339 PARAGRAPH 11 AT PAGE 350.

" The rateable value of the premises, whether residential or non-residential, cannot exceed the standard rent, but, as already pointed out above, it may in a given case by less than the standard rent. The annual rent which the owner of the premises may reasonabiy expect to get if the premises are let out would depend on the size, situation, locality and condition of the premises and the amenties provided therein and all these and other relevant factors would have to be evaluated in determining the rateable value, keeping in mind the upper limit fixed by the standard rent. If this basic principle is borne in mind. it would avoid wide disparity between the rateable value of similar premises situated in the same locality, where some premises ara old premises constructed many years ago when the land prices were not high and the cost of construction ha d not escalated and others are recently constructed premises when the prices of land have gone up almost 40 to 50 times and construction cost upto 5 times in the last 20 years. The standard rent of the former category of premises on the principles set out in Sub-S (2) (A) (2) (b) or (1) (B) (2) (b) of 8.6 would be comparatively low, while in case of latter category of premises, the standard rent daterminable on these principles would be unduly high. If the standard rent were to be the measure of rateable value, there would be huge disparity between the rateable value of old premises and recently constructed premises. though they may be similar and situated in the asme or ar'joining locality That would be wholly illogical and irrational. "

Contd. from page 4

Compensation for Faulty Washing Machine

"The Madras District Consumer Disputes Redressal Forum has ordered a private manufacture of washing machines and one of his authorised dealers to pay a compensation of Rs. 57,420 with 12 per cent interest to a consumer whose machine caused a major fire in his house in February.

In its order, delivered recently, the forum found that the fire mishap was due to deficiencies in the machine and ordered its manufacturer, Crompton Greaves Ltd., Madras, and the dealer, R. S. Eenterprises, to pay the compensation to the complainant, Mr. J. M. Amanullah, for his loss.

According to Mr. Amanullah, he bought the machine in January this year for Rs. 8,500 from the dealer. The machine started giving trouble right from the time of its installation and on February 12 last, it started to burn, leading to a major fire.

He said executives and loss assessors sent by the manufacturer inspected the damage and estimated the total loss at Rs. 57,420. However, some weeks later, the manufacturer rejected the claim for compensation on the ground that there was no manufacturing defect in the machine.

The manufacturer contended that the wiring system in the complainant's house was defective. The machine was installed without earthing, he said and disclaimed responsibility for tne mishap.

The forum, headed by Mr Ahmed Khan, said the complainant was using a number of consumer durables such as a water heater and air-conditioners for many years and they were working properly. Though the maching in dispute posed many problems, it continued to work for over a month. It was difficult to accept that there was no earthing, it said.

The forum held that the dealer and the manufacturer were jointly liable for the mishap. In default of payment of compensation, the general managers of the companies were ordered to a year's simple jmprisonment.

Order to the Bank

Mysore District Consumer Disputes Redressal Forum, presided over by Sri K. B. Vaidya has ordered State Bank of India, Kuvempunagar Branch, Mysore, to pay a sum of Rs. 35,000/- (Rupees Thirty Five thousand only) together with interest of 10% per annum until the date of payment and Rs. 500/- towards the cost of the case, to Miss. Malathi Bhat for issuing a Defective Draft for Rs. 200/- without the signature of the Branch Manager.

The complainant in her complaint had alleged that she purchased a Bank Draft on 22-3-90 for Rs. 200/- by paying an exchange charge of Rs. 2/- to be sent to the Director, of an Institution in Calcutta towards examination fee for appearing for AMIE Examination which was held in June 1990. She had enclosed thjs Draft along with her application and sent it to the Director. But the Draft was returned by him on the ground that it was not signed by the Branch Manager of the issuing Bank. Thus she was not able to take up the examination in June 1990 and lost six mcnths in her academic Career which had cumulative effect throughout her career, waste of hard work, mental agony and anguish and claimed Rs, 90,000/- as compensation.

Ths District Forum has allowed her complaint and ordered the State Bank of India to pay Rs. 35,000/- as compensation with interest and Rs. 500/- as the cost of the case for not issuing the instrument after observing all formalities and in proper transactable condition causing damage to the complainant.

Relief for citizens

Repeated unfruitful visits to any government office to get even a simple document after making the necessary payment is a comm[illegible] experience for most citizens in the country. One need not take such harassment lying down anymore. For the Orissa State Consumer Disputes Redressal Commission, in a landmark ruling recently, has come to the rescue of one such harassed citizen.

Any citizen could now seek prompt service from a government office, citing the above judgement.

Mr. Chintamani Panigrahi was forced to make 16 visits from Cuttack to the tehsildar's office in Khandapara to collect certified copies of a judgement. Frustrated he moved a complaint before the commission demanding justice.

The Commission, set up under the Consumer Protection Act, came to his rescue by stating that a citizen who pays fees for certified copies of court order is a Consumer. Till now, the government has not treated a citizen who has some work at its office as a consumer.

Mr. Justice Start Chandra Mohapatra, who heads, the Commission ordered the district administration to give the certified copies sought by Mr. Panigrahi within 15 days. Further, Mr. Panigrahi was sanctioned a compensation of Rs. 1,200.

The amount will be paid by the tehsildar of Khandapara, the subcollector of Nayagarh and the district collector of Puri. the three respondents. Of this Rs. 700 is towards the consumer's travel costs and Rs. 500 as redress. Consumer activists have hailed the judgement as a landmark. Harassments, by revenue officals are an integral part of the Indian bureaucracy, and the poorest citizens are the worst affected.

This judgement has created havoc among government officals who say their activities are beyond the jurisdiction of COPRA, said, Mr. B. Vaidyanathan, Secretary of the Rourkela-based Consumer Protection Council.

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