

# COMMON CAUSE

## VOICE OF "COMMON CAUSE"

### THE CROSS WE CARRY

While the world passes through a higher and larger catharsis, changing the face of many countries and world affairs, we in *Common Cause* continue carrying the cross of the large variety of day-to-day issues which bother the people. We continue seeking the avenues of redress for these.

In this issue of the periodical we provide a glimpse of the variety of problems which keep coming up from various parts of the country. We briefly indicate the action taken on some others, and we provide information on some items which would be of interest to the members. We have dealt in it in a larger measure with the

matter relating to implementation of Consumers Protection Act, stating how we have pursued doggedly before the Supreme Court the continuing defaults of the State Governments in setting up the District Consumers Forums for providing redressal of the grievances of consumers and how eventually the Supreme Court has been kind enough to issue a positive direction to the State Governments to complete the setting up of the Forums within a period of two months. We have written to the Chief Secretaries of the States for compliance with the direction of the court and to all the Consumers Organisations in the country to watch the compliance, for reporting to us by the beginning of October so that we can launch the contempt of court proceedings against the Chief Secretaries of defaulting States.

The matter of Property Tax still looms heavy on house owners of Delhi who have during the past few months received notices increasing rateable values of the properties 10 to 20 to 50 times in numerous cases. We have now again taken the matter to Supreme Court for securing enunciation of the specific point of law whether the recent amendment of Rent Control law has any relationship with the assessment of property tax because

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#### KINDLY NOTE

1. Our address has changed.

**New Address:** A-31, West End, New Delhi - 110 021

2. We request membership subscriptions/donations be kindly sent preferably by **Draft, Postal Order or Cheque**. Money Orders often create problems through inadequate addresses, accounting and difficulties of linkage with relevant correspondence.

3. Please send us enclosed card. Stamp is affixed on it. It is self-explanatory.

4. The revised schedule of membership subscriptions has application to all, from 1-4-1991, to new members as well as previous ones. See last page.

5. This periodical issues once a quarter. It is not monthly.

6. We have brought out a monograph on Privatisation. It has been extensively sent to opinion makers in the country. Those who are interested, may write for the copy; it will be sent free.

7. All are welcome to reproduce any material from this publication.

CONSUMERS PROTECTION ACT  
CALLING COMMON CAUSE  
ACTION LINE

NEWS OF INTEREST  
WRIT PETITION RE. PROPERTY TAX  
WRIT PETITION RE. APTS OWNERSHIP ACT

## BOOST TO CONSUMERS MOVEMENT

The persistence of COMMON CAUSE in the matter of securing expeditious and satisfactory implementation of the Consumers Protection Act has borne some fruit. The Supreme Court of India has now ordered the State Governments to forthwith set up the Consumers Forums in all the districts and has given them two month's time to do this, failing which the chief concerned functionaries can face contempt of court proceedings.

The matter was taken to the Supreme Court through the Writ Petition filed by COMMON CAUSE. The Act was passed in December 1986. It prescribed as a mandatory requirement, inter alia, that District Forums shall be set up by the State Governments in each district for redressal of the grievances of the consumers. There are 455 districts in the country. Even after about two years of the enforcement of the Act we found that the State Governments were not taking interest and proper initiatives in the setting up of District Forums. They set up the Consumers Protection Councils; these are merely advisory bodies and do not enable any affective solution of the problems of consumers. In the matter of setting up the District Forums, which are to operate as real courts for redressing the complaints of consumers, there was indifference and apathy, and all sorts of reasons were being put forth, of the finances and personnel. We therefore decided to file Writ Petition in the Supreme Court. All the State Governments and Union Territories of the country were impleaded in it.

A number of hearings of this case have been held, before the Division Bench presided over by the Chief Justice of India. By now 30 counsels are representing the States and Union Territories besides the Additional Solicitor General representing the Government of India: the case on behalf of COMMON CAUSE has continued to be conducted by its Director H.D. Shourie himself. Arising from these hearings the Court has issued various directives to the States, but these have not proved effective enough. A comprehensive affidavit was filed on behalf of COMMON CAUSE in April 1991 wherein the unsatisfactory picture obtaining even after 4 1/2 years of the enforcement of the Act was brought out. Thereafter the Court issued a direction that the Presidents of the State Commissions should submit affidavits about the implementation of the Act in the respective States and Union Territories. The affidavits and reports were received only from 15 State Commissions. On the direction of the Court a summary of these affidavits and reports was prepared. This was read out in the Court. Eventually, on 5th August 1991 the Court gave a detailed order, directing that the State Governments and Union Territories must complete the setting up of the District Forums within two months in accordance with the provisions made in the Act and on the lines indicated in the order. It has been recorded in the order that contempt proceedings can thereafter be initiated for failure to comply with this order.

COMMON CAUSE has since written to all the Consumers' Organisations in the country, bringing to their notice this important order of the Supreme Court and requesting them to report about the failures of compliance with this order so that COMMON CAUSE can approach the Court for initiating the contempt proceedings against the Chief Secretaries/Civil Supplies Secretaries of the States and Union Territories. Through this periodical we convey request to all public spirited individuals to demand full and expeditious compliance of this direction of the Supreme Court and write to the Chief Ministers and Chief Secretaries accordingly. It would be desirable that some public interest organisations in the States, or the consumers organisations operating at State headquarters, should file Writ Petitions before the respective High Court on similar lines and ask for immediate setting up of the District Forums and their effective operation.

It needs to be highlighted in this context that the excuse of financial constraints put forth by the States and Union Territories is totally misconceived and unacceptable. The total expenditure on a District Forum in the year is not more than about Rs 2 lakhs; surely, no State can take the plea that they cannot find this much money for the purpose, where they know that the establishment of the Forums will be for the benefit of all the consumers and will enable them to ensure that they do not continue to suffer at the hands of manufacturers and trade and the agencies providing them various unsatisfactory services.

We have considered it necessary that consumers all over the country should become acquainted with the particulars of this matter so that pressures develop for proper and effective implementation of this Act which was enacted with such fanfare but which has continued to languish in implementation. For this purpose we are reproducing herein the following documents:-

- (i) The Affidavit submitted on behalf of COMMON CAUSE along with the statement showing the progress of establishment of the District Forums. (The State Commissions have by and large been established, but they cannot be effective and fully operative till the District Forums are established and appeals from them come up to the State Commissions).
- (ii) Letter issued by COMMON CAUSE to all Consumers Organisations in the country, along with the copy of the order of Supreme Court, and letters to Chief Secretaries of States and to the Secretary of Civil Supplies and PDS Ministry of the Government of India.

### AFFIDAVIT FILED IN THE SUPREME COURT ON BEHALF OF COMMON CAUSE BY THE DIRECTOR

1. That on the basis of information available to the undersigned as collected from various sources the attached statement has been prepared for indicating to the Court the latest position about implementation of the Consumers Protection Act. From this statement following facts will be evident:
  - a) Reports emanating from the Union of India, Respondent, provide information about the District Forums in three stages of establishment, namely, 'approved', 'notified' and 'functioning'. In the statement prepared at the end of December 1990, the latest available to the petitioner, the over all position stated was: 233 Forums functioning, 29 notified and 127 approved. This statement, however, needs to be considered in the light of facts appearing hereinafter. In certain states the District Forums are claimed to be functioning even though no separate Forums have been set up, the existing District Judges have been given the authority to operate under this Act, and only one day in the week is generally being devoted by the District Judges to this work. The states which, according to the information of the petitioner, have adopted this strategy are: Andhra Pradesh (23 districts), Orissa (13 districts), Rajasthan (21 districts), Uttar Pradesh (most of the 63 districts).
  - b) In a number of states the District Forums, instead of being set up in each district, have been established on the basis of one Forum for a number of districts. Bihar does not have Forums in all the districts; Haryana has only two for 11 districts; Himachal has one for 12 districts; Karnataka has four to serve all its districts; Kerala has 3 for the 14 districts; Madhya Pradesh has 9 for 45 districts; Maharashtra has 3 for 26 districts; Rajasthan has 6 for 21 districts; Punjab does not have any Forum; Tamil Nadu has 6 for 15 districts; West Bengal has 3 for 17 districts.
  - c) In quite a few other states where the Forums are stated by the Respondent to be functioning the reports are that they are in fact not actually functioning and the problems of accommodation, appointment of President and Members and of the staff, etc, are holding up their operations. Smaller states and Union

Territories are not encountering as much problems as the larger states. Great delays come about in the stages of "approval", "notification" and "functioning".

- d) Problems of establishment and functioning of State Commissions are not as acute as those of the District Forums. The pillars of implementation of the Act are in fact the District Forums; to the extent they are not established or are not made satisfactorily operational the consumers of the concerned districts will continue to remain deprived. Over all position is that the District Forums have not been established in a large number of districts, or are established on basis of one Forum serving a number of districts, or are not fully and satisfactorily operational.
2. Besides these problems in regard to the establishment and operation of District Forums and State Commissions there are other matters which are providing a serious handicap to the implementation of this important statute. These are enumerated below:
- a) In certain states the calibre of members appointed on District Forum is not of the status which is conducive to providing satisfaction to the consumers. In Andhra Pradesh the members nominated on certain Forums are reported to be illiterate and not acquainted with the law and procedures. There are reports that generally the nominations on District Forums are made on political considerations.
- b) Where a vacancy occurs in a Forum, or State Commission, it is not filled promptly. Delhi Forum is illustrative of this problem. One member of the Forum completed his term in September 1990; the President of the Forum retired four months ago; these vacancies remain unfilled, totally disabling the functioning of the Forum. Cases accumulated total above 2000, and dates of 6 to 9 months are being given. Even the National Commission has suffered from this difficulty. One member resigned six months ago; two more members completed their terms four months ago; the Commission has been disabled from regular functioning. A very serious situation has arisen from a recent judgement of the National Commission wherein it has been held that where the orders are not signed by all the three members of District Forums they will be deemed to be illegal. This judgement has put in serious jeopardy thousands of cases already decided all over the country because at a number of places all the three members have not always been in position.
- c) In metropolitan areas the requirement can not be met by the operation of only one Forum. In Delhi the number of cases so far instituted is about 4000; the present accumulation of about 2000 cases necessitates long adjournments of 6 to 9 months as stated above. National Commission has also suggested that more Forums need to be created at Delhi. Similar position will arise in other metropolitan cities.
- d) Staff position in most of the states, for the State Commissions as well as District Forums, continues to be unsatisfactory. It is necessary to lay down the patterns of staff for these. It is suggested that in each Forum should have one Head Clerk-cum-Reader, one senior stenographer, one typist, two clerks and two peons, and each State Commission should be equipped with one Superintendent-cum-Registrar, one senior stenographer, two clerks, one typist and two peons. The problems of accommodation are also of obvious importance. At a number of places the Forums and State Commission have been established in the District Courts; arrangements for them are not satisfactory and need to be given consideration.
- e) There are reports that the Presidents of District Forums and State Commissions have to constantly look to the State Civil Supplies Departments for sanction of funds for various requirements of stationary and equipment etc. They should be allocated specific funds and given powers of heads of departments.

**STATEMENT SHOWING IMPLEMENTATION OF CONSUMERS PROTECTION ACT**

(It shows the position relating to District Forums in April 1991)

**DISTRICT FORUMS**

State	No. of Distts.	Approved Govt. claim	Our Report	Notified Govt. claim	Our Report	Govt. claim	Functioning Our report	Remarks
1	2	3	4	5	6	7	8	9
Andhra Pradesh	23	-	-	-	-	23	23	Functioning through existing District Judges one day in week
Arunachal Pradesh	11	-	-	-	-	11	11	Claimed to be covering all districts
Assam	23	-	-	23	-	23	-	Stated to be 'Constituted'
Bihar	36	-	35	-	-	1	2	Accommodation & staff have yet to be provided
Gujarat	19	-	-	-	3	18	1	More may have recently started operating
Goa	2	-	-	-	-	1	1	
Haryana	13	-	-	-	-	1	2	Two are functioning in the entire state
Himachal	12	-	-	-	-	1	1	One functioning for entire state
Karnataka	24	-	-	-	-	24	4	Four functioning for entire state
Kerala	14	-	-	-	-	14	3	Three functioning for entire state
Madhya Pradesh	45	-	-	-	-	9	9	Nine functioning for entire state
Maharashtra	30	26	-	3	-	1	3	Three functioning for entire state
Manipur	8	-	-	8	-	-	5	Three covering all districts
Meghalaya	5	-	-	-	-	-	3	
Mizoram	8	-	-	-	-	-	-	
Nagaland	7	-	-	-	7	-	13	Operating through District Judges, one day in week.
Orissa	13	-	-	-	-	-	-	Only "notified"
Punjab	12	-	-	-	12	12	6	Six operating for 21 districts
Rajasthan	21	21	4	-	-	-	-	Six operating for 21 district
Sikkim	8	-	-	-	-	-	6	
Tamil Nadu	21	-	-	-	3	21	6	
Tripura	8	-	-	-	-	-	12	Twelve reported functioning
Uttar Pradesh	63	-	51	-	-	63	3	Three functioning for entire state
West Bengal	17	14	-	-	-	2	1	
Andaman Nicobar	2	-	-	-	-	-	1	
Chandigarh	1	-	-	-	-	-	1	
Dadar, Nagar Haveli	2	-	-	1	-	1	1	
Delhi	1	-	-	-	-	-	1	
Demman Diu	2	-	-	2	2	1	1	
Lakshadweep	1	-	-	-	-	-	1	
Pondicherry	1	-	-	-	-	-	1	

**COPY OF THE ORDER PASSED BY SUPREME COURT ON 5-8-1991**

"This matter has been pending here for about three years now. With a view to making the Act operate effectively and for the benefit of the consumers, we have made various orders. At our request, Mr Justice Eradi, Chairman of the National Commission, has gone round the entire country and made his reports. Deficiencies indicated in his report have been highlighted in the submissions in Court and we have also made different orders to meet the loop-holes indicated in the report of Mr Justice Eradi; yet we find that in most of the States, the statutory scheme is not fully operative yet.

The Act envisages appointment of a District Forum in every District. Though the Act has been in force for about four years now, we find that in most of the States the practice prevalent is of appointing a forum at the divisional level or appointing the District Judge as Ex-Officio Chairman of the District Forum. On account of this position, many consumers who has smaller grievances to ventilate are not able to go to the divisional headquarter, under the Act are not able to sit to work everyday. As a consequence the District Forum sits only once a week. The Statement of institutions placed before us indicates that inflow is more than the disposal. It is obviously on account of the fact that full attention is not possible to be given by the District Forum to the complaints.

We have told counsel appearing for the different States as also the learned Additional Solicitor General and there are no two opinions, that the scheme of the statute is that every District must have its Forum. If that be the legislative mandate, there can be no dispute that most of the States have failed to comply with the statutory requirement.

We direct that within two months from today, every District shall have a District Forum which would be presided over by an exclusively appointed Judicial Officer in terms of the prescription of the statute. In such Districts only, where the minimum monthly load is not above 150 consistently for a six month period, it would be open to the State Government with the concurrence of the High Court continue a sitting District Judge to do this work but the District Judge should devote attention to complaints under the statute on the alternate days of every week which would mean that he should be sitting as a consumer court on three days a week. We do not intend to divert judicial attention from normal work by our order and if the High Court is of the opinion that this would affect the normal judicial work, it is open to the High Court not to agree to this arrangement and that would mean that in those areas, the State Government will have an obligation to appoint a whole time Judicial Officer.

Compliance report shall be furnished by the appropriate authorities in every State to the Registry of this Court in the shape of an affidavit within two weeks after two months. We must make it clear that we intend strict follow-up action to be taken. If there by any failure in future, we would require contempt action to be initiated for violation of our directions.

An amendment to the Act is in contemplation as we are told at the Bar. There is some amount of dispute as to whether the amendment contains provisions for giving administrative and superintending jurisdiction to the National Forum over the state Commissions and to the State Commissions over District Forums. Experience shown that on account of want of such authority, the National Forum is not able to exercise

appropriate jurisdiction over the State Forums are not able to exercise appropriate control over the District Forums. Proper operation of the statute requires both administrative and judicial superintendence. This is a lacuna in the statute. Realising the defect, we had pointed out earlier that the requisite forums should be conferred with the power of superintendence and we commend to the Union Government as quickly as possible to remove the deficiency by conferring appropriate power of superintendence on the State and the National Commissions. Until that is done, we direct that to meet the situation, the National Commission would be entitled to exercise administrative jurisdiction over the State Commissions and the State Commissions would be entitled to exercise such administrative jurisdiction in their respective areas of control. This order shall be forwarded to the National Commission as also to the state Commissions forthwith.

Learned Additional Solicitor General says that the Govt. of India has cleared the setting up of a second Forum in Delhi and has approached the High Court for necessary concurrence. We request the learned Chief Justice of the Delhi High Court to clear the recommendations with in fortnight from today so that the District Forum may be set up by 1-9-1991.

The Writ Petitions are directed to be listed on 22-10-91.

Sd/-  
(P.B. SAWANT)

sd/-  
(RANGANATH MISRA  
Chief Justice of India

LETTERS TO THE CONSUMERS ORGANISATIONS AND LETTERS ISSUED TO THE CHIEF SECRETARIES AND THE G.O.I. SECRETARY OF CIVIL SUPPLIES & PDS

**All Organisations of Consumers in the country.**

### **IMPLEMENTATION OF THE CONSUMERS PROTECTION ACT**

You would be aware that from COMMON CAUSE we have been pursuing in the Supreme Court the matter of effective implementation of the Consumers Protection Act in the expeditious setting up of Forums in all the Districts of the country, the effective functioning of the District Forums and State Commissions, the provision of proper staff and accommodation to them, and appropriate administrative control of the National Commission and the State Commissions over the District Forums, etc.

Our case has been taken up on a number of occasions in the Supreme Court before the Bench presided over by the Chief Justice of India. All the State Governments and Union Territories of the country have been made Respondents in the case and almost 30 lawyers have been appearing in the case on each hearing. The undersigned has represented COMMON CAUSE and has been pursuing this important matter.

It is a matter of gratification for the consumers movement in the country that the Chief Justice of India has been taking keen interest in the expeditious establishment of the Forums and State Commissions, and in their effective functioning. Various directives have from time to time been issued by the Court, and it is due to these directives that the State Governments have been forced to expedite some action. Even then, as I have submitted before the Court, the implementation of the Act continues to be tardy and inadequate. There are 455 districts in the country. The Forums have started properly functioning, according to the requirements of the statute, only in a few districts. Mostly the Forums have been set up on the basis of giving powers to the District Judges who hold consumers courts only one day in the week. Alternatively, the Forums have been set up at Divisional Headquarters, expecting the consumers to go all the way to them for redressal of their grievances. These arrangements are obviously very unsatisfactory, and I have been bringing this to the notice of the Court.

The Supreme Court has now issued orders on the 5th August 1991 directing all the State Governments to set up the District Forums within two months and to report to the Court. This is a very welcome outcome of our efforts. The State Governments have been told that the Supreme Court will initiate contempt of court proceedings where there is default on the part of the State Govt.

This is a great step forward in the implementation of Consumers Protection Act. We request all Consumers Organisations in every State and Union Territory to immediately take up this matter with the Chief Secretary or Secretary of Civil Supplies and pursue the matter with him. The consumers organisations at the headquarters of the State should take the particular initiative and tell the Chief Secretary/Civil Supplies Secretary that in the event of non-establishment of the Forums and non-compliance with the orders of the Supreme Court they will take up the matter with COMMON CAUSE to ask for contempt proceedings to be started by the Supreme Court against the concerned officers.

We should be kept informed about the progress of the work and the initiatives taken by the Consumers Organisations in this regard. Kindly send us a complete and self-contained report by the end of September '91. We earnestly hope that your Organisation will do the needful.



The Chief Secretaries, of the States and Union, Territories in India

**SUB: IMPLEMENTATION OF CONSUMERS PROTECTION ACT**

You would be aware that the Consumers Protection Act has not so far been satisfactorily implemented in most of the States and Union Territories in the country. This is very unfortunate indeed, because this disables effective action to be taken by the consumers to seek redressal of their grievances.

The public interest organisation COMMON CAUSE had filed a Writ Petition in the Supreme Court of India. Division Bench of the court presided over by the Chief Justice of India has now issued the order on the Writ Petition directing the States and Union Territories to ensure that the District Forums, as provided for in the Act and on the lines recorded in the order, are set up within two months and they have been asked to report compliance. Next date of hearing of the case is 22nd October 1991.

We trust that the Registry of the Supreme Court must have transmitted copies of the order to the State Governments and Union Territories. However, we reproduce the order for ready reference.

It will be observed that in this order the Supreme Court has stated that contempt proceedings can be initiated for defaults of compliance with this order. We have written to all the consumers organisations in the country to ensure that the State Governments and Union Territories comply with this direction of the Supreme Court, and to report to us the defaults where they take place, for enabling us to take up the matter in the court on the next hearing for initiation of the contempt proceedings.

We earnestly hope that for providing the requisite machinery to the consumers for redressal of their grievances the State Governments and Union Territories will take immediate steps to comply with this important and explicit direction of the Supreme Court.

Mr. B. K. Goswami, SECRETARY, Civil Supplies & PDS  
Ministry, Govt of India.

Yours would perhaps be aware of the order passed by the Supreme Court on 5th August on our writ petition regarding inadequate implementation of the Consumers Protection Act. I enclose a copy for ready reference.

You will observe that the Bench of the Court, presided over by the Chief Justice of India, has issued the order to the State Governments and the Union Territories that they must set up the District Forums within a period of two months. They have to report back compliance, and the case is fixed for 22nd October '91. The order is self-explanatory in regard to the nature of compliance required.

This is a very welcome development for the Consumers movement. I have written the attached letter to all the 400 odd consumers organisations on our list. I have requested them to ensure appropriate compliance with the order. In the event of non-compliance by any State I will ask for contempt of court proceedings against the Chief Secretary/Civil Supplies Secretary of the State.

I feel that at this stage a letter from you to the Chief Secretaries will be very appropriate. You might like to impress on them that the Forums must be established as contemplated in the Act and that steps should also be taken to create consumers awareness in the State so that people can take advantage of the courts thus established. These steps are necessary in the interest of stimulating an effective consumers movement in the country.

## CALLING COMMON CAUSE

We receive a large variety of suggestions, representations and demands from practically all corners of the country. This bespeaks of faith of the people in our being able to deliver the goods, and we are deeply grateful to them for it. But, we have limitations. It is impossible for any organisation, whatever may be its resources, to deal with such enormous and multifarious demands. It is of fundamental importance that local associations and organisations of the people should strengthen themselves, develop capability of studying the individual problems, help the solving of problems by knocking effectively at the doors of concerned agency, organisation, or department which has to deal with the problem, or devise competence to take the matter to court. By the adoption of such strategies COMMON CAUSE has been successful in accomplishing the numerous tasks it has pursued. This was done for the purpose of demonstrating how the problems can be solved and grievances redressed. The examples set by COMMON CAUSE need be followed up by the local organisations and associations. They cannot take the plea that they don't have the resources and competence; these are available in plenty at the local level and the need is of harnessing these for the public good and with dedicated effort.

As illustration of the type of suggestions and demands we have received from various parts of the country during the past one month we give below some of them. These are from among large number of letters which come to us on vast variety of subjects. We have of course initiated action wherever and to whatever extent it was possible.

(1) **Insurance Mediclaim policies for over-70.** Suggestion has been received from a New Delhi member that we must take up with the concerned government authorities as well as General Insurance Corporation that persons of ages above 70 should also be allowed to take Mediclaim insurance policies. At present the Mediclaim policies are given to Indian citizens only upto the age of 70 years. It has been urged that medical aid is greatly required for those who cross 70 years; there is no reason why they should be deprived of this facility. This matter has been taken up with the government authorities. Initial reaction received by us is that the insurance authorities are prepared to give Mediclaim policies to those who are over 70 years provided they have been under Mediclaim policies prior to the attainment of 70 years. The matter continues to be further followed-up.

(2) **Taxation of Pensions.** We have received representations against levy of Income Tax on pensions. It has been contended by some pensioners that whereas Death-cum-Retirement Gratuity and Provident Fund are not subject to the levy of Income Tax the item of pension is made subject to it. Pension is a monthly stipend spread over the remaining life of a pensioner for providing him sustenance and as a reward for the services rendered by him during the working years of his life. Besides the Gratuity and Provident Fund the commutation received by the pensioner, comprising the aggregate of the commuted portion of his pension, is also exempt from Income Tax. In view of the provisions for exemption from Income Tax of the Gratuity, Provident Fund and pension commutation amount it is obviously desirable that the Government of India should consider the matter of according exemption to the quantum of pension from the levy of Income Tax. We have taken up this matter with the Government of India and will continue to follow it up.

(3) **Public Interest Writ Petitions.** Suggestion was received from a member in Pune that COMMON CAUSE should consider filing a Writ Petition in the Supreme Court on the question as to why expenditure should have to be incurred by the Central PWD for renovation, re-furnishing and expansion of security requirements on a new residence when a new Prime Minister takes over the reins of office, particularly in the context of the requirements of austerity. Details have been furnished to us as to how the matter should be taken to the Supreme Court including the submission of photographs of the residences occupied by the previous Prime

Ministers. Another suggestion made by the same member is that we should also file a writ petition in the Supreme Court to secure a direction that the government should not spend the precious foreign exchange on the visits abroad of dignitaries and Members of Parliament etc. The expenditure being incurred on the Festival of India in Germany is also included in this suggestion. We have replied to the member that we scrupulously avoid taking up subjects which may have political ramifications and that in any case we would not like to be labelled as a busybody filing public interest petitions on every conceivable issue.

(4) **Service promotions in nationalised banks.** A member from Allahabad has suggested that we should initiate action to help the inclusion of clerks/cashiers in the list of promotions to officers rank in nationalised banks. Details have been furnished re: the mark-sheets presently prescribed for the conducting of examinations for the purposes of such promotions. The promotions relating to cut-off dates for accounting of completed years of service, in relation to this matter, has also been highlighted. The matter is being taken up with the department concerned with banking in the Ministry of Finance.

(5) **Non-availability of smaller currency notes.** A member from Delhi has complained that extreme difficulties are being experienced in securing new currency notes of Rs 2 and Rs 5. His contention is that the new currency notes of smaller denominations are being used for making garlands in large quantities for being utilised for purposes of marriages and various social and festival occasions. It is unfortunate that this type of practice has developed in certain parts of the country. We will refer this matter to the Ministry of Finance for any possible appropriate action.

(6) **Tonic claim.** A member from Madras has written that a certain tonic, named Amrit Kalash, is being publicised as effective for treating all sorts of various ailments. Details of the advertisements have been forwarded to us. We have referred this matter to the Director General of Investigation & Registration of the MRTP Commission.

(7) **Hospitalisation facilities.** The Secretary of a pensioners association of Kerala has suggested that we should take up with the Kerala government the requirements of earmarking a hospital in Kerala for meeting the requirements of central government pensioners because, it is claimed that the pensioners entitled to CGHS facilities, are not presently in a position to benefit from any available hospital facilities. We have asked for a more detailed and comprehensive note on the subject from the pensioners association for enabling it to be taken up with the Kerala state government.

(8) **Age concession for civil service examination.** A member from Bhopal has suggested that we should take up with the Union Public Service Commission the question of giving age concession of two years to candidates for Civil Services examinations who had to take the third chance in 1986 when the age limit was suddenly decreased from 28 to 26 years. It has been urged that immediate decision requires to be taken on this matter so that the deserving candidates do get the chance, which was deprived to them due to hasty decision, by making a fourth attempt for passing the examination. The matter is being further pursued for determining appropriate action.

(9) **LPG connection.** A handicapped person of New Delhi has urged that his claim for getting a LPG agency may be taken up with the concerned Ministry of the Government of India. He says that he had approached the Ministry of Welfare for such allotment and they had forwarded the claim to the Ministry of Petroleum & Chemicals but that no decision has yet been taken. He feels seriously aggrieved that out-of-turn allotments of LPG agencies, as well as petrol outlets have been given by the Ministry of Petroleum & Chemicals and that he is a person who can claim eligibility under the prescribed rules for such out-of-turn allotments.

(10) **Complaint against a publisher.** An advocate of New Delhi has complained that a certain publisher had advertised the publication of a series of Tax Journal at a stipulated aggregate price which was later enhanced without any justification and that the promised volumes of the Journal have not been supplied, with the result that it has caused loss to him as well as to various other purchasers of the Journal. He suggested that this matter should be taken up by COMMON CAUSE to the National Commission established under the Consumers Protection Act because it is a matter of serious dereliction on the part of the publisher and of wide significance to the advocates. We have communicated to the advocate the obvious difficulties in attempting to take this matter to the level of National Commission, the jurisdiction of which extends to cases involving claims of more than Rs ten lakhs.

(11) **Illegal encroachment on public lawns.** A member from New Delhi has complained about alleged illegal encroachments by certain individuals on the public lawns set apart for the use of residents of the locality. This matter had previously been referred to us and we had taken it up with the concerned authorities dealing with the colony.

(12) **Transport buses.** A member from New Delhi has seriously complained about the absence of window panes in the DTC buses, inadequately written destination numbers on the buses, non-effective utilisation of the buses moving to and from depots and general non-effective utilisation of the DTC buses, to the detriment of the revenues of the Corporation. We have referred this matter to the Chairman of the Delhi Transport Corporation.

(13) **Building Plan.** An advocate from Calcutta has written that we should file a complaint before the National Commission established under the Consumers Protection Act in relation to his claim of loss incurred due to non-sanction by the Calcutta Municipal Corporation of his application for completing the construction of a building. He claims that he had secured sanction for construction of a five-storeyed building thirty years ago, that he could construct only three storeys and he applied for renewal of sanction of the remaining two storeys which the Corporation has failed to give. He took the matter to the Calcutta High Court but it is claimed that the High Court has not given any definite decision. He then instituted a regular suit in the city civil court against Calcutta Municipal Corporation for mandatory injunction. Obviously the matter relates to a civil dispute; it cannot be taken before the National Commission. We have informed the member accordingly.

(14) **Telephone Directory.** A consumers organisation of Mysore has complained that there have been omissions of telephone numbers in the Mysore district telephone directory of 1990. Details had been furnished, and it is stated that no action has been taken by the telephone authorities in spite of repeated efforts of the organisation. We have referred the matter to the Department of Telecommunications.

(15) **Allegation of loan fraud.** A member from New Delhi has complained that for construction of addition to his house he was looking for a source of finance. He was put in touch with the agent of a company claiming to be engaged in housing finance. He was assured that he could get a loan of Rs three lakhs in 90 days if he deposited 25 per cent i.e. Rs 75000 as security. He was assured that simultaneously with depositing of the security he shall get a post-dated cheque which he could encash on the 90th day and that it would be treated as first instalment of loan. He was assured that his entitlement had been approved by the loan sanctioning authority of the company. He applied for the loan and paid Rs 75,000 towards security and Rs 6,000 as processing fee. He complains that till now he has not received any official communication from the finance company re: the fate of the loan and his letters remain unanswered. The finance company had claimed to be functioning on the guideline's laid down by the National Housing Bank. This matter is of a nature which may possibly involve an attempt of cheating. However, it is being further examined for determining the antecedents of the finance company. Appropriate advice will then be transmitted to the member.

(16) **Electricity charges.** A member from new Delhi has furnished details in relation to the calculations of electricity charges based on the new schedule prescribed by Delhi Electricity Supply Undertaking. His contention is that the present procedure adopted by DESU of sending two-monthly bills, or delaying recoveries over periods of three months or four months, involve positive loss to the consumers based on the charges prescribed in the new schedule. The schedule has prescribed certain charges on unit basis upto first 100 units, next 100 units etc. The matter was referred to DESU for their examination, and they have explained that the prescribed lower charges in the schedule are charged in respect of the two or four months for which the bill is sent.

17, **Maruti cars.** A consumer organisation of Madras has asked us to take interest in the matter of delay in the delivery of Maruti Cars, stating that a numbers of complaints have been received by them about such delay of the Maruti cars as also of Premier and Hero Honda vehicles. It is stated that it probably involves deliberate delay on the part of manufacturers to deliver the motor-vehicles awaiting further enhancement of prices. We have asked for further informations.

18. **Deposits.** A large number of complaints keep coming to us re: deposits made by individuals for allotment of scooters of a well known company. This matter had been taken up by us with the National Commission and orders have been issued for refund of all deposits along with interest. There have been delays on the part of the company in effecting refunds. This matter will continue to be further pursued where necessary.

19. **Telephone bills and Electricity bills.** A large number of complaints keep coming to us from various places re: wrong received by them relating to telephone charges and electricity charges. In regard to the wrong bills sent by Delhi Electric Supply Undertaking we have already taken up the matter in a comprehensive complaint submitted before the National Commission established under the Consumers Protection Act. We have suggested that where any wrong bill is sent to a consumer, which has to be later corrected., the Electric Supply Undertaking should compensate the consumer to the extent of Rs. 100 for each wrong bill. We have also suggested that where, on the ground of non-payment of a bill a notice for disconnection of electricity is issued to a consumer, in relation to a bill which is subsequently found to be wrong, the Electric Supply Undertaking should compensate the consumer to the extent of Rs. 500. The Delhi Electric Supply Undertaking has, in its reply, contended that they have been able to reduce the extent of wrong billing from about 6 per cent rate of only about 3 per cent. The total number of electricity consumers in Delhi is of the order of 16 lakhs. Obviously, even 3 per cent of this total number of consumers, would take the figure to almost about 50,000 wrong bills every bills cycle. This matter is now before the National Commission for consideration as to whether the consumers, who receive wrong bills and have to knock about to the various offices of the Undertaking for getting them corrected, should be compensated.

## ACTION LINE

Large number of issues of importance continue being taken by COMMON CAUSE with the concerned governmental and other authorities. These issues are are of general application, affecting large numbers of people. It is only rarely, and in cases where the matter has potential of wider application, that we take up issues of any individuals.

We give below information about some of the general issues of importance which have been taken up in past weeks.

(1) **Proposed enhancement of telephone charges for local calls.** There was reports that the government proposed introducing metering of local telephone calls for limiting the duration. We took up this matter with the Minister of Communications, protesting strongly against the proposal and highlighting that it would be a wrong step in the context of the present inadequacies of telephone system and would inevitably lead to enormous number of complaints from the users about wrong billing. It was also pointed out that the proposal of introducing the call metering system in the electronic exchanges would lead to serious complaints of

discrimination which would be challengeable in court. It has now been reported that the proposal has for the time-being shelved by the government.

(2) **Income Tax Tribunal.** We have written to the Minister of Finance of the Government of India bringing to his notice the need of an objective and intensive study of the working of Income Tax Tribunal. The Tribunal was created almost 1<sup>1</sup>/<sub>2</sub> a century ago for providing an avenue to the tax-payers to seek redressal of their problems relating to assessments of the tax. Instead, it is being used as a device by the officers of Income Tax Department to avoid taking final decisions and to pass the responsibility for it to the Tribunal. It has been brought to our notice that in almost 60 per cent cases decided by the Commissioners of Income Tax the department resorts to filing appeals before the Tribunal. In the Tribunal almost 80 per cent of the cases filed by the department are rejected. The department then resorts to the device of submitting references to the High Court. In the High Courts the cases languish for long years, and eventually most of the references and appeals filed by the department are dismissed. These procedures entail enormous wastage of manpower, talent and resources because in the Income Tax department nobody wishes to assume the responsibility of a final decision relating to revenue when at the level of Commissioner of Income Tax the order on an assessment dispute is passed.

(3) **Tax deduction at source.** There have been reports about the proposal of the Government of India to deduct tax at source on payments of the nature of commissions, interest on Time Deposits, withdrawal from National Savings Scheme, etc. Provision is stated to have been made that payments which do not exceed Rs 2500 in a year and those receiving payments exceeding Rs 2500 in a year who have no taxable income and file a declaration to this effect in the prescribed form, would be exempt from such deduction at source. This matter has been taken up by us with the Minister of Finance of the Government of India. It has been pointed out that this measure may create difficulties for the vast number of small investors who had invested their savings in debentures, shares and term deposits. There would be a large number of persons whose income from dividend payments etc. may be more than Rs 2500 in the year but who would not come within the income tax bracket; it would become extremely difficult for them to secure refunds of the tax deducted at source. On account of the difficulties in the present procedures for securing such refunds millions of people are likely to be adversely affected by this measure.

(4) **Old Age Pensions.** We have brought to the notice of the Chief Secretary of the Government of Rajasthan that in the scheme of Old Age pensions which is being implemented in the State certain problems are being encountered. The aged persons are being asked to secure verification of dates of birth and identification. Whereas these would obviously be essential requirements the procurement of such verification would involve very difficult procedures. We have suggested that where certification of date of birth may not be available; affidavit, attested by two known responsible persons of the locality, should be considered acceptable. We have also suggested that detailed information about the criteria of eligibility of the old age pension needs to be disseminated through the media.

(5) **Gazette of India.** We have written to the Principal Secretary to the Prime Minister in regard to the present procedure of printing the Gazette of India both in English and Hindi. Each issue of the Gazette carries pages printed in both the languages. While this is in accordance with the Constitutional obligation of the government we have expressed that it would serve the purpose appropriately if the gazette is published in Hindi and English separately. Those who wish to secure or purchase the copy in either of these languages would be able to do so, and it would lead to avoidance of enormous wastage of paper, printing and postage which presently come about by combining printing and transmission in both languages. The recipient offices can be asked by the issuing department to intimate the number of Hindi copies and English copies required by them. Sales can also be effected accordingly. We have urged that similar practice needs to be followed by

all departments and organisations of the Government of India as well as the State Governments. This has reference also to a suggestion previously communicated by us to the Central Board of Direct Taxes that wastage of expenditure on the printing of Income Tax Return Forms in English-Hindi combine should be avoided; these can be printed separately in English and Hindi, and those who wish to use the forms in either of these languages can secure them from the prescribed outlets.

**(6) Proliferation of teaching institutions.** We have referred to the MRTTP Commission the matter relating to extant proliferation of teaching and training institutions practically in all important urban areas. There is a general feeling that the services rendered by these mushrooming organisations are often of an indifferent nature, that they do not have the capability and expertise to match the claims they make through their advertisements and names, and the clients attracted by them have cause to be dissatisfied. We have urged the MRTTP Commission to examine the credentials, capacity and expertise of these organisations for determining whether the claims made by them are justifiable or these constitute unfair trade practices. In writing about the proliferation of teaching and training institutions we have also requested MRTTP Commission to look into the mushrooming development of Nursing Homes for determining whether they possess the requisite competence and expertise for providing the medical services of the standard claimed by them.

We have received reply from MRTTP Commission. They had already initiated action against certain teaching and training institutions as well as nursing homes. These institutions are located at various places in the country. They have shown readiness to examine the problem on the lines indicated by us with a view to minimising the problems created by such proliferation of the institutions and clinics.

**(7) Fraud through Post.** We have brought to the notice of the Police Commissioner of Delhi a blatant fraud which is being perpetrated on the gullibles, particularly the less informed elements of the society. This is being done through printed leaflets which are often circulated in the newspapers, ostensibly with the help of distributors of newspapers on some payment. These leaflets contain a simple puzzle which can be quite easily solved. They advertise attractive awards of radios and two-in-one etc, asking the people to send the solved puzzle through the P.O. address. When the person sends the solved puzzles he receives a printed note conveying to him congratulations for correctly solving the puzzle and asking him to send immediately a Money Order of a specified amount of Rs 52 for securing a two-in-one of Rs 400. It is obviously an attractive offer, and the gullible persons remit the amount through Money Order. After that they do not hear anything at all. The Money Orders sent to the P.O. address are collected by the perpetrators of fraud, most likely with the connivance of post office officials. This matter was initially taken up with the Director General of Posts. He expressed that it would be difficult for postal authorities to take any action because the P.O. authorisation has been accorded and the Money Orders are collected on the basis of such authorisation. We have now referred this matter to the Commissioner of Police for requisite investigation.

**(8) Unauthorised and illegal constructions.** There has generally been great concern and resentment among the residents in various parts of Delhi against inadequate efforts of administration in checking unauthorised construction activity and against flagrant violations of the building regulations. We have referred this matter to the central government Ministry of Urban Development. It had come up recently before a Division Bench of Delhi High Court. On our intervention in the case, and submission made before the court, the court directed the setting up of a committee under the chairmanship of the Secretary to the Government of India, Ministry of Urban Development, and consisting inter alia of the Chief Secretary of Delhi Administration, Commissioner of Delhi Municipal Corporation and the Administration of New Delhi Municipal Committee for urgent examination of the entire problem and submission of specific proposals to the court within two months. There is obviously urgent need of detailed and comprehensive examination of all the existing provisions relating to building regulations in the light of realistic recognition of the present day position of

highly escalated prices of land, large scale violations that have come about in the matter particularly of the user of land (conversion of residential into commercial use), increasing the built area, increasing the height, number of dwelling units etc. It is necessary to determine what further modifications require to be made in the Master Plan and relevant regulations for avoidance of the violations of the regulations.

## NEWS OF INTEREST

We give below news of some decisions and developments which would be of interest to the members.

(1) **Consumer Fund.** It appears that the government has approved the Finance Ministry proposal for setting up of a consumer welfare fund where Excise Duty refund ordered by courts and other authorities will be deposited. It is possible that the bill to set up the fund and to facilitate deposits of such refunds may be introduced in next session of the Parliament. The refunds which were being given to the manufacturers were held to amount to "unjust enrichment" since the manufacturers had already passed on the burden of the Excise Duty to the consumers through higher prices. Since the burden of the excess Excise collections has actually been borne by the consumers, the proposed consumer welfare fund would get the refund money and it is contemplated that it will be used for protecting and promoting the interests of consumers.

(2) **Non-supply of electricity connection.** A decision of considerable importance has been taken by the District Forum of East Godavari, Rajahmundry, on complaints submitted to it relating to non-supply of electricity connection on applications submitted by agriculturists who had installed electric motors for pumping out water for their fields. The officials of Electricity Board had certified that the service connection would be given when motor and accessories are ready and installed but at a later stage, when the motor had been installed, the connection was refused on the ground that the rules had changed. This was held to be a deficiency of the service which caused loss to the complainant. It was held that the Electricity Board could not be allowed to play with the vested rights of the consumers by unilaterally changing the rules to the disadvantage of the consumers. The applicants were made to suffer for no fault of theirs. The connections were ordered to be given in both cases which came up before the District Forum.

(3) **Non-functioning of Telephones.** Tamil Nadu State Commission Disputes has ordered the Madras Telephones to give a rebate in rental equivalent to 21 days to every subscriber whose phone was not working when the employees went on strike for that period. The General Manager of Telephones had directed the rebate to be given only to those who ask for it, contending that floodgates for rebate requests would be opened and all the 1.7 lakh subscribers of the State would ask for it even though only 30 per cent of the telephones were affected by the strike. State Commission directed that if any subscriber whose phone was dead did not get rebate he could invoke the penalty clause by writing to the Commission.

(4) **Defaults of railways.** A passenger was sold a ticket but she later found that there was no train. The matter was complained to the State Commission, for determining whether the railways could get away with it on the plea that the passenger ought to have verified the Time Table. The State Commission decided otherwise and directed the railways to pay compensation of Rs. 7,500 to the passenger. The passenger held a positive booking for on ward and return journey; the reservations had been confirmed. When she reached the railway station she was told that the train leave only on five days in a week and that on that particular day it was not scheduled to run.

(5) **Another default of railways.** The State Commission of Madras has held that railways cannot allot seats.



in a train to VIPs overlooking the claim of a waitlisted passenger. Compensation of Rs. 1,000 was ordered to be given to the passenger who was in the Waiting List and was not allowed a seat in the A/c Chair Car whereas two VIPs, who were holding only non-A/c tickets, were allotted the seats. This was held to be a case of sheer arbitrariness. It was held that all are equal before the law and the doctrine of equality before the law, enshrined in Article 14 of the Constitution, could not be allowed to be violated or tampered with.

- (6) **Defaults of LIC.** There has been a general feeling that monopoly sector, such as that of the Life Insurance Corporation, has the unfortunate habit of holding up payment by repudiating policy-holders' claim on small technical grounds for years on end. The matters relating to such defaults have in the recent months been taken to the State Commissions and District Forums. Recently the State Commission of Gujarat has come out with an important judgement accepting the principle of punitive damages against LIC. The matter had been taken by the Consumers Education & Research Society of Ahmedabad on behalf of the widow that her claim for Rs 40,000 (twice the amount of Rs 20000, under the specific plan) was being questioned by the LIC on the grounds that the policy-holder had not disclosed correct information re: his health. The policy had been taken in the month of January and the holder unfortunately died in December. When the widow approached the LIC the claim was rejected. The State Commission held that there was no evidence of concealment of the correct information re: the health of the policy-holder and directed the LIC to pay the amount of Rs 40,000 with interest of 18%, in addition to the cost.
- (7) **Default of Courier.** The Orissa State Consumer Disputes Redressal Commission has recently penalised a courier company and its Manager for their negligence in sending to America a parcel containing very important documents. A fine of Rs 2500 has been imposed for giving compensation to the aggrieved consumer who had suffered the loss. A couple had gone from Calcutta to America to see their sick daughter. While in America they had requested for extension of the tenure of Visa, the Visa authorities had asked them to deposit the Birth and Marriage certificates required for the purpose. These documents were at Cuttack. On receiving Telex from them the son sent the documents immediately through courier to reach before the date prescribed by the Visa authorities. The parcel did not reach in time, with the result that extension of visa was not allowed; the couple had to return to India without securing the required extension. The State Commission held the courier company to have defaulted.
- (8) **Electricity bills.** We have received complaints that some unscrupulous tenants of residential and commercial premises do not pay their electricity dues, and when the tenants leave, the owners are burdened with the arrears. It is obviously in the interests of owners to occasionally check up whether the payments of electricity dues by their tenants have been made.
- (9) **Shares, Dividends etc.** We are not in a position to deal with the problems of shares, dividends, debentures etc, their non-allocation problems, or the problems relating to refund of deposits. The name of our organisation has been included in some list of investors guide without consulting us. Complaints relating to these matters should be sent, if necessary, direct to the Company Law Board (address: Company Law Board, Ministry of Industry, Shastri Bhawan, Dr Rajendra Prasad Marg, New Delhi-110001).

## OUR WRIT PETITION RE: PROPERTY TAX

We have filed a fresh writ petition in the Supreme Court. In it the Union of India, Chief Secretary of Delhi Administration, Commissioner of Delhi Municipal Corporation and Administrator of New Delhi Municipal Committee have been named respondents.

We reproduce below the basic essentials of this writ petition so that house owners etc should know the specific enunciation of the law we have sought on the question whether the recent amendments of Delhi Rent Control law have any linkage with the assessment of property tax and whether the changes made in the law, authorising the issue of notices for previous years in addition to the year of issue, are valid in law.

"PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING FOR ISSUANCE OF A WRIT OF MANDAMUS OR OTHER APPROPRIATE WRIT, DIRECTION OR ORDER DIRECTING THE RESPONDENTS, COMMISSIONER OF THE MUNICIPAL COMMITTEE, NOT TO BASE THE ASSESSMENTS OF RATEABLE VALUES, FOR THE PURPOSE OF PROPERTY TAX, ON THE AMENDMENTS OF DELHI RENT CONTROL ACT (AMENDMENT ACT 57 OF 1988) AND ON THE AMENDMENTS MADE IN SECTIONS 126 AND 67, RESPECTIVELY, OF THE DELHI MUNICIPAL ACT AND PUNJAB MUNICIPAL ACT, BY VIRTUE OF DELHI MUNICIPAL LAWS (AMENDMENT) ACT, NO: 10 OF 1989, AS THE ASSESSMENTS MADE ON THE BASIS OF THESE AMENDMENTS OF RESPECTIVE PROVISIONS ARE VIOLATIVE OF THE PROVISIONS OF ARTICLES 14 AND 21 OF THE CONSTITUTION OF INDIA.

### GROUND S

3. That pronouncements made by the Hon'ble Supreme Court in the two well-known cases, namely, *Dewan Daulat Rai Kapur v. New Delhi Municipal Committee* (A.I.R. 1980 S.C. 541) and *Dr. Balbir Singh & Ors. v. Delhi Municipal Corporation* (1985 S.C. 339) had enunciated the law in certain matters relating to the assessment of property tax. The judgement in the case of *Dr. Balbir Singh & Ors* (1985 S.C. 339) was in fact based on the Writ Petition (No. 6945 of 1982) which had been submitted by the Petitioner No: 1 had sought enunciation of the law related to assessment of property tax inter alia in relation to specific categories of properties, namely, self-occupied properties, rented properties, partly self-occupied or rented properties constructed on lease-hold and free-hold land, and properties constructed during the preceding few years when cost of construction and price of land had greatly escalated. The Writ Petition of the Petitioner No: 1 was argued over a number of hearings and eventually resulted in this judgement, *Dr. Balbir Singh & Ors. v. MCD* (1985 S.C. 339). It will be observed that in this judgement the position of assessment of property tax relating to these specific categories of properties was clarified in detail.

4. That as at the time of submission in 1982 by the Petitioner No. 1 of the previous Writ Petition which resulted in the above-mentioned judgement of *Dr. Balbir Singh & Ors* (1985 S.C. 339) similar serious situation has again emerged at Delhi grave exasperations and difficulties are being experienced by the owners of properties in the matter of their assessment to property tax by the Municipal Corporation of Delhi (MC) and New Delhi Municipal Committee (NDMC). During the past few months MCD and NDMC have issued notices to tens of thousands of owners of houses etc proposing to revise the rateable values, for purpose of levy of property tax, in a number of cases the proposed increase being 20 to 50 times. Information of the

Petitioners is that about 2,00,000 objections have been against these notices. There are already about 10,000 cases in the Courts including appeals against the assessments. It can be envisaged that there will be enormous increase of cases instituted in courts against the assessments. This has caused a very difficult and serious situation in as much as practically one-third of the owners of the total assessable properties in Delhi are feeling agitated and perturbed at the arbitrariness involved in the issue of these notices as well as at their discrimination and aberrations. This problem will be noticeable from the Annexures A, B and C received by Petitioners Nos: 2, 3 and 4 which are attached as illustration of the problem. Petitioner No.1 has got copies of numerous notices of similar nature; it is not considered necessary to burden the record with any more notices. Notices at Annexure A and B relate to residential properties; notice at Annexure C relates to commercial property. Attention is specifically invited to the proposed enhancement of rateable values of these properties and the reasons given for the proposed increases.

5. That the matters which presently need enunciations of the law and which are causing these various problems for the owners of property in Delhi are the following:-

(A) The Delhi Rent Control Act 1958 was amended with effect from 1-12-1988 by the Amendment Act 57 of 1988. The amendments effected the following modifications in the Act:-

- (i) Where the building is on rent and the rent is Rs. 3,500 per mensem, the property has been taken out of the purview of the Delhi Rent Control Act. Properties of rental below Rs. 3,500 p.m. continue to remain within the purview of the DRC Act.
- (ii) In the calculation of "Standard Rent" it has been prescribed in the amendment that whereas the standard rent was previously calculated at 8 1/4 per cent of the total cost of construction and price of land, this has been increased to 10 per cent.
- (iii) Provision has been made for enhancement of rent to the extent of 10 per cent every three years.

Objects and Reasons of the Amending Act showed that these 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 a 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;
- (c) to reduce litigation between landlords and tenants and to ensure expeditious disposal of disputes between them.

The matter for determination is whether these amendments have any linkage with the provisions for assessing the property tax and whether these have any automatic application to the provisions for assessment of property tax.

The MCD and NDMC have issued notices for revision of the assessments of property tax on the assumption that these amendments have automatic application to the provisions relating to assessment of property tax. This will be evident from the notices at Annexures A, B and C received by the Petitioners Nos: 2, 3 and 4.

**Annexures A,B**

(iii) In this context it is noticeable that the only existing linkage between the Delhi Rent Control Act and the provisions for assessment of property tax, in the Delhi Municipal Corporation Act, is contained under the following provision of Section 116 MCD Act. Other than this there is no linkage at all, and this linkage is only to the extent that when rateable value is assessed it cannot exceed the "standard rent" determinable under the provisions of Delhi Rent Control Act.

"Provided further that in respect of any land or building the standard rent of which has been fixed under the Delhi & Ajmer Rent Control Act 1952 the rateable value thereof shall not exceed the annual amount of the standard rent so fixed."

(iv) The problem for determination is whether in cases of properties where the Rent Control Law is not applicable i.e. in cases where any property is fetching more than Rs 3500/- per month rent or where the property has been constructed after 1.12.1988 (the date of enforcement of the amendments of Delhi Rent Control Act), the provisions of property tax assessment as contained in MCD Act (Section 113 to 135) have any linkage with the Rent Control Law. For instance, the amendment of Delhi Rent Control Act inter alia provides that rent can be increased by 10 per cent every three years.

The question for consideration is whether this provision for increase of rent every three years has automatic application by itself to the provisions for assessment of property tax in case of a property which is now outside the purview of Rent Control Law. Likewise, the question for consideration is whether the alteration of the percentage of  $8\frac{1}{4}$  per cent to 10 per cent for calculation of "standard rent" as provided in Section 6 of Delhi Rent Control Act, has relationship to the provisions relating to assessment of property tax where the property is now outside the purview of the Rent Control Law. These matters assume importance because MCD has in the past few months relied upon these amendments of Rent Control Law for proposing revision of the rateable values of large numbers of properties.

(v) Another connected matter in regard to the issue of these notices for revision of rateable values of property relates to the provisions of S.126 of the MCD Act under which the notices for such revision have been issued by MCD. Section 126 of MCD Act has the following provisions:-

"126. (I) The Commissioner may, at any time, amend the assessment list-

- (a) by inserting therein the name of any person whose name ought to be inserted; or
- (b) by inserting therein any land or building previously omitted; or
- (c) by striking out the name of any person not liable for the payment property taxes; or
- (d) by increasing or reducing for adequate reasons the amount of any rateable value and of the assessment thereupon; or
- (e) by making or cancelling any entry exempting any land or building from liability to any property tax; or
- (f) by altering the assessment on the land or building which has been erroneously valued or assessed through fraud, mistake or accident; or
- (g) by inserting or altering an entry in respect of any building erected, re-erected, altered or added to, after the preparation of the assessment list:

Provided that no person shall by reason of any such amendment become liable to pay any tax or increase of tax in respect of any period prior to the commencement of the year (in which the notice under sub-section (2) is given.)

(2) Before making any amendment under sub-section (1) the Commissioner shall give to any person affected by the amendment, notice of not less than one month that he proposes to make the amendments and consider any objections which may be made by such person."

It is clear that the revision of rateable value can be affected only in the circumstances stated in the sub-clauses of this Section 126 of the MCD Act. The only clause under which these notices can be contended to have been issued in clause (d). This clause provides that "adequate reasons" must be given in the notice for effecting the proposed revision. The notices issued by MCD in relation to amendment of the Delhi Rent Control Act state only that the revision is proposed to be due to the amendment of the Act, without specifying whether the relationship is to the rental, to any other provision of the amendment, or to the quantum of rental. Where, thus, there is failure to provide "adequate reasons" for the proposed revision the notice cannot be taken as valid.

(B) Amendment was effected in Section 126 of MCD Act by virtue of the Delhi Municipal Laws Amendment Act No. 10 of 1989 and corresponding in Section 67 of the Punjab Municipal Act which is applicable to the New Delhi Municipal Committee (Annexure D). By this amendment it has been provided that notices can be issued for revision of rateable values of the properties even for the previous two years, namely, 1988-89 and 1989-90, in addition to the notices for the year of issue 1990-91. This amendment has been used by MCD and NDMC to issue notices for revision of rateable values of properties even where the assessments had previously been made, for the three years. This has caused great concern and resentment to the large numbers of owners who have received these notices, and who are in tens of thousands. Illustrations of these notices will be evident from the notices placed at Annexures A, B and C received by Petitioners Nos. 2, 3 and 4. The issue of these notices have the following serious implications to the owners of properties:-

(a) When the assessment is eventually made on the basis of these notices, demanding payment of property tax for three years, the assessee will not be able to even appeal against the assessment unless they first pay up the entire amount due, because this is the position of the law as expounded in a recent decision of Delhi High Court. Where the assessment of property tax may run into, say, an amount of as much as Rs. 1,00,000 per annum, the assessee will have to first find the amount of Rs. 3,00,000 to make payment before his appeal can even be entertained.

(b) The amount of property tax is deductible from the income tax, where the assessments of income tax will have already been finalised for the previous two years, the owner will be deprived of the benefit of securing the deductions in relation to the previous years.

6. That the matter relating to this amendment of Section 126 of MCD Act and Section 67 of the Punjab Municipal Act needs to be considered from the viewpoint of its Constitutional validity. In the original provision of Section 126 of MCD Act a clear mandate has been laid down that an owner of property tax cannot be issued notice for any year prior to the year of issue. This provision had obviously been made to avoid causing any harassment to the owners by the issue of notices in relation to any previous years. It is most unfortunate that resort has been taken by effecting these amendments in MCD Act and Punjab Municipal Act to enable these municipal authorities to issue notices, contrary to the clear intentions of the mandate, also for the previous two years for affecting the revision of rateable values. In this connection attention is

specifically invited to the "Objects & Reasons" relating to the amendment of MCD Act. It is recorded that the "Commissioner, Municipal Corporation of Delhi is called upon to make revisions in the assessment list for property tax". There is nothing in the above-mentioned Amending Act of the Delhi Rent Control Act wherein the Commissioner of MCD has been "called upon" to take this step. It has been submitted above, and is reiterated, that there is no linkage or relationship between the amendments made in the Delhi Rent Control Act and the provisions relating to property tax in MCD Act or Punjab Municipal Act. The only linkage with Delhi Rent Control Act is in the proviso of Section 126 MCD Act whereunder it is laid down that the rateable value should not exceed the "standard rent" fixed under the Delhi Rent Control Act; this linkage has no relevance to the provisions of the amendments of Delhi Rent Control Act which were affected for certain specified purposes as mentioned above. It can be inferred, therefore, that the reason put forth for affecting this amendment in the MCD Act and Punjab Municipal Act was itself wrong and misleading, the effect of this amendment can lead to the harassments which by explicit mandate were desired to be avoided in the original relevant provisions, and the issue of notices for revision of rateable values for previous two years can cause very serious deprivations to the owners as submitted above and in reality is tantamount to deprive the assessee the right of appeal against the assessment orders. On these grounds these amendments of Section 126 of MCD Act and Section 67 of Punjab Municipal Act are nothing but an exhibition of utter arbitrariness and involving extreme hardships to the owners of properties and as such violative of the provisions of Constitution.

7. That these matters of serious consequence for tens of thousands of owners of properties in Delhi, related particularly to the issue of large number of notices by MCD and NDMC proposing to revise their rateable values manifold, in some cases 50 times and more, were highlighted in the Writ Petition No.470 of 1991 submitted before the Hon'ble Supreme Court. When this Writ Petition came up before the Hon'ble Court an order (Annexure E) was issued directing that the matter should be taken up with the Delhi Administration for expediting the decision on High Powered Committee which was set up for examining the entire problem of property tax. Representative of Petitioner No.1 met Lt Governor of Delhi and urged that the decisions on the report of High Powered Committee be expedited. Reply is paced at Annexure F. The Petitioner No.1 thereafter took the initiative to submit a self-contained Writ Petition to the Delhi High Court so that the matter arising from the issues of these tens and thousands of notices to the owners in the area of MCD and NDMC may be dealt with by the Hon'ble High Court. The High Court took cognizance of the Writ Petition but disposed it of with the order dated the 12th July 1991 (Annexure G). The High Court has held that the Writ Petition is not admissible, on the grounds mentioned in the order. The Hon'ble Supreme Court, in the order dated 8th May 1991 had inter alia stated that the Petitioner could come back to Supreme Court if necessary. The Petitioner No.1 having exhausted all the efforts for securing redress from Delhi Administration as well as the Delhi High Court for the people in the matter of notices issued to tens of thousands of owners proposing to revise the rateable values of their properties, approaches the Hon'ble Supreme Court along with Petitioners No. 2, 3 and 4 whose notices are submitted as illustrations. It needs to be made clear made the Petitioners are not approaching the Hon'ble Supreme Court for filing appeal against the order of the Delhi High Court. The Petitioners, in the present Petition, are not seeking the setting aside of the notices issued by MCD and NDMC for revision of the rateable values of the properties. Instead, the Petitioners consider it necessary that the Hon'ble Supreme Court should, as in the previous two above-mentioned cases of Dewan Daulat Rai Kapur (A.I.R. 1980 S.C. 541) and Dr. Balbir Singh (1985 S.C. 339) consider the general above mentioned

matters of the law on the following two main issues:

- (a) Whether the amendments made in the Delhi Rent Control Act by the Amendment Act No. 57 of 1988 have linkage and relationship to the provisions relating to the property tax assessment and recovery embodied in Sections 113 to 135 of MCD Act and corresponding provisions of Punjab Municipal Act as applicable to NDMC, and consequently whether these respective municipal authorities are within their rights of making these amendments of Delhi Rent Control Act the basis for affecting revision of the rateable values and of property tax; and
- (b) Whether the amendment of Section 126 of MCD Act and Section 67 of Punjab Municipal Act as applicable to NDMC, by virtue of Delhi Municipal Laws Amending Act No.10 of 1989, enabling these municipal authorities to issue notices for the previous years 1988-89 and 1989-90, in addition to the year of issue 1990-91, and thereby subjecting the owners of properties to the levy of property tax also for the previous two years, is valid or violative of the provisions of the Constitution. In this connection it needs to be mentioned that the year for issue of such notices has since been further extended by an additional amendment, extending the period till 31-3-1992, till which time the notices can continue being issued for proposed revision.

8. The Petitioners have mentioned above in detail, in paragraph 6, about the Petition on allied matters submitted to the Delhi High Court and in coming up before the Hon'ble Supreme Court in terms of the direction contained in its Order dated 8th May 1991 on Writ Petition No. 470 of 1991, wherein it was stated that the Petitioner could come up again before the Hon'ble Supreme Court if necessary.

In the present Petition, however, the Petitioners are not seeking the quashing of notices issued by MCD and NDMC forming the subject matter of the Writ Petition which was submitted before the Delhi High Court. Instead, the Petitioners are seeking annunciation of the law by the Hon'ble Supreme Court on certain matters which have relevance to the provisions relating to issue of notices by MCD and NDMC for revision of rateable values for purposes of levy of property tax.

9. Subject to the explanation furnished in the above paragraphs the Petitioner has not filed any other Petition on the same subject before the Hon'ble Supreme Court or any High Court.

## PRAYERS

10. It is, therefore, respectfully prayed that the Hon'ble Court may kindly be pleased to:

- (i) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents, Commissioner of MCD and the Administrator of NDMC, not to base the assessments of rateable values, for the purpose of levy of property tax, on the amendments of Delhi Rent Control Act of 1958 by the Amending Act No.57 of 1988.
- (ii) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents, Commissioner of MCD and Administrator of NDMC, to disregard the provisions of the amendments made, respectively, in Section 126 of MCD Act and Section 67 of Punjab Municipal Act, by virtue of the Delhi Municipal Laws Amending Act No.10 of 1989, in the assessment of rateable values for purposes of levy of property tax; and

- (iii) pass such other and further order or orders or grant such further or other reliefs as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Drawn and Filed by:

H.D. SHOURIE, Director, COMMON CAUSE  
(IN PERSON)

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## OUR WRIT PETITION RE: APARTMENTS OWNERSHIP ACT

We given below the basic essentials of our writ petition filed in the Delhi High Court for non-implementation of the Delhi Apartments Ownership Act, Union of India, Lt Governor of Delhi, Chief Secretary of Delhi, Delhi Development Authority are among the respondents. The Court has issued show cause notice to them.

"PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING FOR ISSUANCE OF A WRIT OF MANDAMUS OR OTHER SUCH APPROPRIATE WRIT, DIRECTION OR ORDER TO THE RESPONDENTS TO TAKE URGENT APPROPRIATE STEPS TO INVESTIGATE THE CAUSES OF NON-IMPLEMENTATION OF THE PROVISIONS OF DELHI APARTMENTS OWNERSHIP ACT (58 OF 1986), AND TAKE APPROPRIATE AND URGENT STEPS TO ENSURE EXPEDITIOUS IMPLEMENTATION OF THE PROVISIONS OF THIS IMPORTANT STATUTE SO THAT THE PURPOSE OF WHICH IT WAS ENACTED FOUR YEARS AGO ARE FULFILLED.

### G R O U N D S

4. That the Delhi Apartments Ownership Act (58 of 1986) was enacted by the Parliament of India and came into force from 1st December 1987. Rules made were also framed under the Act. It was specified in the objects and reasons of the Act that it had been enacted "to provide for ownership of an individual apartment in a multi-storeyed building and of an undivided interest in the common areas and facilities appurtenant to such apartment and to made such apartments interest heritable and transferable and for matters connected therewith or incidental thereto". This Act was aimed at two important purposes, namely, (i) conferment of heritable and transferable rights in an apartment including undivided interest in the land, common areas and facilities and (ii) Establishment of Associations of apartments owners for management and control of the building and its common areas and facilities.

5. The Act contains the following important features:

- (i) Provisions of the Act were made applicable to all apartments in the multi-storeyed buildings,



whether constructed for residential, commercial or other specified purposes, by a person or an authority or a group housing cooperative society, before or after commencement of this Act, on free-hold or lease-hold land, where the number of apartments is four or more, and also in buildings of two or three apartments if the owner of such building makes requisite declaration as prescribed in the Act. It will thus be observed that this legislation has a very wide sweep and has relevance to practically all residential and commercial apartments in the Union Territory of Delhi.

(ii) It was provided in the Act that within three months from the date of its enforcement in the case of leased land, the lessee shall execute sub-lease in favour of each apartment owner where the building has already been constructed before the commencement of the Act, and where the building is constructed after the commencement of the Act such sub-leases shall be executed within three months after the possession of the particular apartment is delivered.

(iii) It was also provided in the Act that where any allotment or sales or other transfer of any apartment is made, the promoter (defined as the authority, or cooperative society by which or by whom the building has been constructed) shall within six months of commencement of the Act in case where building was constructed before the commencement of the Act, and within three months after such transfer in other cases, execute a Deed of Apartment containing all the prescribed particulars relating to the apartment. The promoter was held responsible for filing in the office of Competent Authority and deliver to the concerned allottee or transferee a certified copy of Deed of Apartment. The Deed of Apartment was declared to be a document which is to be compulsorily registered under the Registration Act of 1908 for registration accordingly.

(iv) Another provision made in the Act was that there shall be an Association of apartment owners for the purpose of administration of the affairs in relation to the apartments and property relating thereto and in particular management of common areas and facilities of the building. Model Byelaws for such Associations were to be notified by the Administrator appointed under the Act. Various provisions were made for ensuring proper maintenance and care of the property thus entrusted. The common areas and facilities, which were envisaged to be the important responsibility of the Association, were defined in the Act and include the land, foundations, columns, roofs, corridors, lobbies, stairs, staircases, fire escapes, entrances and exits of the building, as also the basements, parking areas, power installations and elevators and all the other areas and facilities thus defined. Every apartment owner was made, in terms of the Act, part owner of all such defined common areas and facilities.

(v) Three authorities were declared under the Act as competent Authorities for the purpose of the Act. These Authorities are: the Secretary to the Delhi Administration; Vice Chairman, Delhi Development Authority and the Land and Development Officer of the Central Government. Under the Act an "Administrator" has been defined as the Administrator of the Union Territory of Delhi (presently designated as the Lieut. Governor). The three Authorities declared as Competent Authorities and Secretary to the Government of India, Ministry of Urban Development, have been made respondents in the present Writ Petition. While provisions of far reaching importance have been incorporated in the Act, and while the Rules prescribed under the Act have already been promulgated, this important Act has remained practically a dead letter and no implementation of the Act has been effected on the lines provided in it even after the lapse of four years. The Act, as stated earlier, was made applicable to all buildings containing four or more apartments (and even to buildings containing two or three apartments, subject to specific declaration provided under the

Act), whether the apartments are residential or commercial, whether constructed by private builders, group housing society or Governmental authority, on lease-hold land or free-hold land. The application of the Act extends to the entire Union Territory of Delhi. Thus, all buildings in the Union Territory except those which have only one apartment practically come within the purview of this Act. It covers thus all DDA built flats, multi-storeyed buildings, all other similar buildings comprising flats residential or commercial. There are presently about 200,000 flats constructed by the DDA and at least about 1,50,000 other apartments, commercial and residential in the multi-storeyed and other buildings.

6. That it is a matter of serious concern to the citizens of Delhi and in particular to the hundred and thousands of owners of all these apartments that till now, even after the lapse of four years of the promulgation of this important Statute, not one single apartment owner has yet been able to get the Deed of apartment executed in his favour, no rights have been conferred to any apartment owner which in terms of this Act can be deemed to be heritable and transferable, no right of any apartment owner has yet been established to his share in the undivided common areas and facilities defined in the Act, not one single Association of apartment owners has yet been established in terms of the provisions made in the Act. The over-all result of these serious lapses has been that all sorts of stratagems of execution through power attorney have continued to be adopted by the owners of the apartments in effecting transfer of their interests in the apartments, and the promoters and builders of the multi-storeyed buildings are reported to have effected transfer of various parts of the common areas and facilities defined in the Act which were to be in the management and control of the Associations of apartment owners. Plea will obviously be taken by the promoters and builders that the portions of common areas and facilities had been transferred by them prior to the date notified in this behalf in the Act and disputes on this score will inevitably come about between Associations of the apartment owners and the promoters and builders. Maintenance of the buildings and common areas and facilities have continued generally to remain in the hands of the builders and promoters and the owners as well as their Associations have not been able to take any interest in them. The serious consequence of the absence of explicit rights of owners of the apartments is that for various purposes such as of claiming allowance of maintenance of apartments for purposes of assessment of income tax for income tax requirements, the owners remain handicapped.

7. The non-implementation of the provisions of this important Act, obviously due to certain omissions and commissions of the Delhi Administration and the Union of India, has brought about the situation where the interests of hundreds and thousands of the owners in apartments of Delhi stand jeopardised and have not been safeguarded as contemplated in the Act. This is a matter of a very serious consequence. The non-issue of Deeds of Apartments to the owners and the non-establishment of the Associations of owners of apartments and non-exercise of control and management of the common areas and facilities, continue to jeopardise their interests of ownership and exercise of ownership in relation to the common areas and facilities. These omissions and commissions on the part of the concerned authorities of the Delhi Administration and Union of India arise obviously from non-action of arbitrariness. As such they are violative of the provisions of the Articles 14 and 21 of the Constitution of India because of the inevitable deprivations caused to the owners in relation to the exercise of their ownership rights and interests. The Petitioner seeks the intervention of the Hon'ble Court for directing the Delhi Administration and Union of India to take appropriate steps to investigate the causes of the non-implementation of the provisions of this Act and to take appropriate steps for their expeditious implementation.

8. The Petitioner has not filed any similar or other Writ Petition on this matter before Hon'ble Court or any other High Court.

PRAYERS :

9. It is, therefore, respectfully prayed that the Hon'ble court may kindly be pleased to:

(i) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents, including the three Authorities nominated under the Act namely, Respondents Nos. 2, 4 and 5 to urgently report to the Hon'ble Court the detailed circumstances on account of which it has not been possible to bring about the effective implementation of this important Statute which was passed by the Parliament four years ago;

(ii) issue a writ of mandamus or any other appropriate writ, order or direction, directing the Respondents Nos. 1, 2 and 3 to urgently constitute a Committee of appropriate senior level officers alongwith representatives of the affected interests for regular and effective monitoring of the measure for the implementation of the provisions of this Act. and to take appropriate measures for overcoming the hurdles in the effective implementation of the Act;

(iii) issue a writ of mandamus or any other appropriate writ, order or direction to Respondents No.1 and 2 to submit to the Hon'ble Court the positive time table for implementation of the specific provisions of the Act of Sections 8 and 13 as well as the establishment of Associations of apartment as provided for in Section 15 of the Act for control and management of the common areas and facilities of the buildings and for their appropriate maintenance; and

(iv) pass such other and further order or orders or grant such further or other reliefs as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Drawn and filed by

H.D. SHOURIE  
Director

(IN PERSON)

(Contd. from p.1)

the municipal authorities of Delhi have used the amendment for notifying the enhancements. We have also filed a writ petition in the Delhi High Court against Delhi Administration for non-implementation of the important enactment Apartments Ownership Act which was enforced four years ago but under which not one apartment owner, out of about 300,000 in Delhi, has yet secured the ownership rights which are required for making the ownership transferable and heritable. In this issue we have reproduced the basic essentials of these two important writ petitions, basically with the objective of informing the people how they can themselves seek redressal of their grievances through the courts.

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