

Recommendations of the Valuation Committee for the year 2018-19

Under Bye Law-5 of the New Delhi Municipal Council (Determination of Annual Rent) Bye-Law 2009, the Chairperson, NDMC has constituted the Valuation Committee comprising of the following members to give its recommendations for the Financial Year 2018-19:-

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| 1. | Sh. Dharmendra,
Jt. Secretary (Land & Estate) | Chairman |
| 2. | Ms. Juhi Mukherjee
Dy. Commissioner/DM,
New Delhi Distt. | Member |
| 3. | Mrs. Renu Jagdev,
Addl. Commissioner (Revenue),
North DMC, | Member |
| 4. | Dr. Sandeep Thakur ,
Sr. Research Officer, NIUA. | Member |
| 5. | Sh. Pawan Chopra, Dy. Director,
(Local Bodies), U.D. Deptt.
Govt. of NCT of Delhi, | Member |
| 6. | Sh. Murari Lal Sharma
Director (Tax), NDMC. | Convener/Member |

The meetings of the committee have been held on 09/02/2018, 15/02/2018, 23/02/2018 & 27/02/2018. The committee was informed that the NDMC's (Determination of Annual Rent) Bye Laws, 2009 were challenged by some of the Tax Payers in the Hon'ble High Court of Delhi by filing various writ petitions. The Hon'ble High Court of Delhi vide its common judgement and final order dated 10/08/2017 in the WP(C)No. 3348/2010 in the case of "Association of concerned citizens of New Delhi and others Vs. NDMC & Others, had set aside the said Bye laws, 2009 on the ground of their being ultra virus of the NDMC Act.

Subsequently, the NDMC has filed SLP (C)No. 23186-23213/2017 in the Hon'ble Supreme Court of India. While listing the matter on 22/11/2017 for final disposal, the Hon'ble Supreme Court, vide its order dated 22/09/2017, also observed as under:-

"The High court has directed refund of the amount with interest, only after re-assessment order. Therefore, in the meantime, it would be open to the petitioner not to do this exercise."

Thereafter, the arguments of NDMC and opposite counsels were heard by the Hon'ble Supreme Court on various dates in November and first week of December 2017. During proceedings held on 07/12/2017, the Hon'ble Supreme Court, while listing the matter for further arguments on 16/01/2018, also observed and gave following directions :-

"we find that some of the house owners / assesses have filed the special leave petitions challenging the High Court's order as they want to pay the property tax in accordance with the Bye Laws, 2009, the New Delhi Municipal Council will have no objection to accept the tax from those assesses. In view of this, all such parties or other assesses, who may not have come to court, shall be at liberty to pay the property tax in accordance with the Bye Laws, 2009. This, however, shall be subject to final outcome of these matters."

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The committee was apprised that in view of above observations & orders of the Hon'ble Supreme Court, a public notice was issued in various Newspapers and uploaded on NDMC website on 10/12/2017, apprising the tax payers regarding aforesaid order of the Hon'ble Supreme Court and requesting the tax payer to make payment of property tax on the basis of Bye Laws, 2009.

Subsequently, during proceeding held on 16.01.2018 in the Hon'ble Supreme Court of India, the Hon'ble Court was apprised that approximately 95% Assesseees have accepted the New Bye Laws and pursuant to the order dated 07.12.2017 of the Hon'ble Supreme Court, they have come forward voluntarily and deposited the Property Tax on the basis of Self Assessment. It was submitted before the Hon'ble Court, on behalf of NDMC, that the grievances which are stated by the respondents in respect of their properties, can be looked into by the Valuation Committee, which may be having its sitting within two weeks and may give its report in this behalf within five weeks. While allowing the NDMC to undertake aforesaid exercise, the Hon'ble Supreme Court vide its order dated 16/01/2018 adjourned the matter to 06.03.2018 & directed the petitioners (NDMC) to file the written submissions during this period.

The NDMC has provided the copies of short synopsis and representations received from the following respondents of SLP, which were filed pursuant to the order dated 07/12/2017 and 16/01/2018 of the Hon'ble Supreme Court :-

1. Association of concerned citizens of New Delhi.
2. Babar Road Colony Lease Holders Association.
3. HOTEL QUEEN ROAD PVT. LTD. (SLP CIVIL NO 23206/2017)
4. RESPONDENT NO 35,36 & 43 (HOTEL JANPATH, ASHOKA & SAMRAT)
5. RESPONDENT IN SLP(C) No. 23195/2017, i.e. JASDEV SINGH AND HARDEV SINGH
&
MODERN SCHOOL DELHI IN SLP(C) No. 23194/2017
6. NEW DELHI TRADERS ASSOCIATION (R-16).

The brief of objections /submissions given by the above Respondents of SLP, are noted as under:-

1. REPRESENTATIONS OF R-1, ASSOCIATION OF CONCERNED CITIZENS OF N.DELHI
 - A. Large portion of land falling under the jurisdiction of NDMC is not capable of being built upon viz. properties in Lutyen's Bungalow Zone ('LBZ'), properties falling within 'prohibited areas' and 'regulated areas' declared by Archeological Survey of India ASI.
 - B. These limitations compel the respondent to leave the said portion of the property vacant/unconstructed.
 - C. These three restrictions make it impossible to construct on the entire plot of land, and result in large portions of these plots becoming unconstructed/ vacant land that are not capable of being built upon. It is completely discriminatory vis-à-vis properties situated outside such areas to levy heavy taxes on such vacant land when development there upon is strictly prohibited, thus violating section 63(2) which provides tax, only on land capable of being built upon.
 - D. Factors such as location, neighborhood, corner plot, architectural style, etc. play a significant role in ascertaining the rent of a property would fetch much more so than simply the size alone, yet these factors are ignored in the by-laws, which equate a property in B.K Dutt Colony with one on Dr. APJ Abdul Kalam Road.

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- E. Section 66 of the NDMC Act creates three categories of properties i.e those which have been let, those which have been sublet and those that are not let out at all. The Impugned By-laws, however, create an entirely different method of categorization.
- F. The Bye-Laws seek to tax the property not on the basis of its use but on the basis of legal status of owner. This is discriminatory as many owners of property hold the rights in the property through a company, firm, trust etc.

ISSUE A & B HAVE BEEN RAISED BY MAJORITY OF THE RESPONDENTS WHO HAVE FILED WRITTEN SUBMISSIONS

2. BABAR ROAD COLONY LEASE HOLDER ASSOCIATION

- A. In terms of the NDMC bye-laws, 2009, all the properties falling in the NDMC area are taxed based on the same parameters. It is therefore urged that the area be divided into separate slabs of Rs. 1200, 1000 and 800 per sq. meter of covered area based on the location and facilities being provided by NDMC in the area.
- B. An occupancy factor of 3 has been prescribed for residential properties let out on rent, which is wholly arbitrary and unreasonable. It is prayed that the same may be reduced to 2 for residential premises for parity with UAM in the MCD areas. There is no basis for such major discrepancies with other parts of the same city.
- C. At present, property tax on vacant land is levied in accordance with Section 63(2) of the NDMC Act, 1994 which indicates the fixation of ratable value at the wholly arbitrary and exorbitant rate of 5% of the estimated capital value of land. This provision may be read down in accordance with Bye-Law 4(2) of the 2009 Bye-Laws.
- D. Under the present scheme of assessment to tax, if any part of the property from the whole building is rented out, the approach which is adopted is that the self occupancy rebate is denied even on the self occupied portion. It is therefore prayed that rebates should be allowed on the self-occupied portions of the property.
- E. The occupancy factor of 1.2 for self occupied properties was introduced last year for plot area more than 200 sq meters to be increased to 300 sq. meters so that all the properties in Bengali Market are eligible. As of now only plots of size of 212.5 sq. yards are eligible which is unfair to the plots across the same road measuring 262.5/287.5/325 sq yards.
- F. Under the present scheme of taxation, all the floors except basement are leviable/eligible to tax based on the same factors. It is submitted that a new factor of 0.75 be introduced for covered area on the 2nd floor similar to a 0.5 factor applicable for basement.

3. HOTEL QUEEN ROAD PVT. LTD. (SLP CIVIL NO 23206/2017)

- A. Bye laws do not take into consideration different kind of properties located in NDMC area and has fixed a uniform rate for all properties by classifying properties in the manner not provided under the NDMC act. Thus violating Section 61 & 66 of the Act.
- B. All properties constructed prior to 1960 have been given uniform age factor, properties has further been classified as special category viz hospitals/ hotels/cinema halls / clubs / guest houses etc. There is no basis for such classification.

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C. By law 3(2) provides automatic increase / revision of the rateable value with the revision of circle rate which are not mentioned under any provision of the Act.

D. By laws also do not take into consideration the size/ largeness of the plot and do not provide for any rebate on unearned increase and hence ought not be subject to property tax (ref: P.N. Sikand Vs. CIT AIR1977SC1691). The bye laws completely fail to take into account the unique features of the NDMC area especially the fact that some of the properties are leasehold properties with different kinds of restrictions and conditions. The lessee like the respondent herein cannot sublet/ transfer without prior sanction of the lessor in writing. This permission shall be subject to terms as may be specified including the aspect of 'unearned increase' to the extent of 100%, which has been completely ignored and not considered by the Petitioner herein.

E. It is unreasonable and impermissible to levy tax on both constructed portion and land appurtenant thereto independently. The same is violative of Section 63, which does not provide for tax on vacant land.

4. RESPONDENT NO 35,36 & 43 (HOTEL JANPATH) (HOTEL ASHOKA) (HOTEL SAMRAT)

A. Bye law 3 is arbitrary as it seeks to fix entire value of land falling in jurisdiction of New Delhi at the circle rate of Rs. 43,000/- per square meter and further seeks to calculate the value of the property at an arbitrary factor, being Factor 3 for the Club, Guest Houses, Cinema Halls and Hotels, without considering the status of the property and classification of such Hotels etc.

5. RESPONDENT IN SLP(C) No. 23195/2017, i.e. JASDEV SINGH AND HARDEV SINGH & MODERN SCHOOL DELHI IN SLP(C) No. 23194/2017

A. Prior to promulgation of NDMC Act 1994 area of New Delhi Municipal Committee was being administered by the Punjab Municipal Act 1911 wherein the definition of Annual Value as per section 3 (1)(e) of the Act, in case of any house or building, the gross annual rent of which cannot be determined under clause (b), 5% of the sum obtained by adding the estimated present cost of the erecting the building, less such amount as the Committee may deem reasonable to be deducted on account of depreciation (if any) to the estimated market value of the site and land attached to the building was provided but while promulgating the NDMC act 1994 the legislature dropped this definition all together and now is trying to bring in something which the legislature had rejected in the repealed Act, the same cannot be now permitted by way of 2009 bye laws.

B. Bye law No. 3 which pertains to the computation of the annual rent of special category of land and buildings, inter alia, stipulates that the annual rent of the buildings and land which are not normally let, as it is being used as a school, college, hotel or such other lands and buildings as may be specified by the valuation committee shall be computed at such percentage as may be determined by the valuation committee being not less than 5% and not more than 10% of the aggregate of the value of the land at circle rate of Rs.43,000 per square meter without deducting off unearned increase which in the current case is 100% which results in the market value of land at Rs.Nil in accordance with law as increased by the multiplication factor for user of the land specified in some Bye- law (3) and value of the covered space of the building at Rs.15,000 per sq.mt. of the covered space of the building as reduced by the age factor of the building specified.

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- C. Section 63 restricts the Annual Value of land capable of being built upon at the rate 5% Bye-law No. 3 enhances it from 5% to 10% which makes it ultra vires of Section 63 (2) of the Act. The said Bye-laws also does not take into account the unearned increase payable to the lessor.

6. NEW DELHI TRADERS ASSOCIATION (R-16) – Filed by Sh.Jayant Kr.Mehta, Adv.

- A. Excessive use and occupancy factors have been applied in the Bye-Laws.
- B. The taxes are far more excessive in NDMC area as compared to the MCD area.
- C. Bye-Laws are ultra vires and un-constitutional on the following grounds:
- There is no recompense and the tax is prohibitory
 - The tax is levied only on 20% of the area and the proceeds are used for entire 100% area.
 - The NDMC cannot arbitrarily assess tax on the basis of actual rent or even on expected hypothetical rent at its discretion.

The Committee was of the view that it should consider only the issues which are within its mandate as per provisions of Bye Laws, 2009. The Committee has also considered some of the issues /objections which have been raised by certain Tax Payers before the NDMC and have been brought to its notice. Accordingly, the Valuation Committee has deliberated and made recommendations on the following main issues:-

- Rateable Value (RV) of vacant plot, appurtenant to a building, which cannot be built upon.
- RV of residential premises owned by Companies/ Trusts/Firms and used by the Directors, Trustees, Employees of such Companies/Trusts, etc. for residential purposes.
- Uniform calculation of RV under entire NDMC area without considering the other factors and locality of the property.
- Issue of vacancy remission on uses /occupancy for less than 180 days.
- Classification of properties under Bye Law 2009.

Simultaneously, the Valuation Committee has also considered and made recommendations on all the issues which are mentioned under clause (i) to (v) of sub Bye Law (1) of Bye Law (5) of Bye Laws, 2009.

The Committee examined the concerned provisions of NDMC Act, 1994 and Bye Laws 2009 in detail and called for relevant information and inputs from the Property tax Department of the NDMC. Based on the detailed deliberations, discussions and examination of the information made available to the Committee, the recommendations of the Valuation Committee on various issues are given hereunder:-

1. Issue involved:- RV of open land appurtenant to a building

Some of the Tax Payers who challenged the NDMC (Determination of Annual Rent), Bye Laws 2009, have objected the assessment of open land appurtenant to a building on the ground that most of the open land in Lutyen's Zone is not allowed to be constructed due to restrictions of Lutyen's Zone or due to restrictions imposed on Properties near Archeological sites.

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The Committee noted that as per sub-Bye Law 2 of Bye Law-4, where the area of land is more than 1000 sq.mtr., the area not constructed upon on ground floor is liable to be assessed. The annual value of such unconstructed land is arrived at by multiplying the area of such land by base unit area value. The committee observed that Section 63 of NDMC Act is the main charging section for assessment of property tax. The Bye Laws 2009 have been made under Section 63(1) which prescribes for determination of RV of **lands or buildings** assessable to property tax. Therefore, the rateable value can be fixed for any land or building. Section 63(2) of NDMC Act deals with the rateable value of any land (vacant plot) which is not built upon but is capable of being built upon. Most of the land which is appurtenant to a building in NDMC area is not capable of being built upon, due to restrictions of building Bye Laws, therefore, such land is assessable under Section 63(1) of the Act.

The committee has observed that the Section 2(42), Section 63(1) and Section 77 of NDMC Act, all prescribe to fix the rateable value of land or building. Therefore, while determining the rental value of a building, the NDMC can also determine the rental value of the open land of a plot which is not constructed upon. Though, in respect of built up properties having plot area upto 1000 sq.mtr., the rental value of open land of a plot has been exempted under Bye Laws but the same is assessable in respect of properties built up on plot area of more than 1000 sq.mtr. as per provisions of the Bye Law 2009. Under NDMC area, there are some properties having large/huge open area but the built up area is very marginal. In such cases, it is logical as well as reasonable to assess the rental value of open area of the plot because the rental value of such properties, having bigger size open area is quite high vis-à-vis the rental value of the similar built up property (with same covered area) having lower open plot area.

The committee is of the view that unconstructed portion of the land has substantial value which cannot be ignored in computation of the Annual Value of a property. It was also brought to the notice of the committee that in the NDMC area, open land is not easily available and the value of land is more in respect of those properties which have more unconstructed portion of land in comparison to the properties having lesser unconstructed land. The committee also noted some recent cases which appeared in the News Papers, reporting sale transactions of the big size properties of Lutyen Zone. It is on record that the properties in Lutyen Zone have fetched much higher price than the properties situated in Non-Lutyen Zone. This was confirmed by the Property Tax Department that one property at **Prithviraj Road, New Delhi**, which falls in Lutyen Zone having total plot area of **4925 sq. mtr.**, had been sold vide Sale Deed dated: 03.10.2016 against total sale consideration of **Rs.4,35,00,00,000/-** which gives average sale price of **Rs.8,83,248/- per sq. mtr.** Similarly, the other property of **Prithvi Raj Road, New Delhi**, also in Lutyen's Zone, having total plot area of **7142.70 sq.mtrs.** has been sold recently vide Sale Deed dated: 03.08.2017 against total sale consideration of **Rs.4,76,51,00,000/-** which gives average sale price of **Rs.6,67,129/- per sq.mtr.** On the other hand a property of **Babar Road, New Delhi** which is in Non Lutyen Zone, having total plot area of **639.39 sq. mtr.**, has been sold vide sale deed dated: 07.11.2017 against total consideration of **Rs.37,00,00,000/-** which gives average sale price of **Rs.5,78,676/- per sq. mtr.** As such, it can be inferred that the Sale Price in Lutyen's Zone is more than the Non Lutyen's Zone.

The committee has noted that in the case of properties having bigger size plots in the Lutyen / Restricted Zones, most of the owners / occupiers are enjoying such properties as Farm Houses. The unconstructed portion of land is also being used for parking, play ground, gardening, organizing functions, etc. As such, it cannot be said that the said open unconstructed area has no rental value. Even in many other municipalities, including the MCD, the Rateable Value of excess unconstructed open land of a plot is being assessed.

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However, the committee observed that use of such open lands in bigger size plotted properties is not allowed for further construction purposes due to restrictions imposed by the Central Government with regard to Lutyen Zone or Archeological sites / restricted zones. Therefore, a distinction is required to be made in respect of properties situated in such restricted zones vis-à-vis the properties where no such restriction is imposed and the constructions is allowed as per Building Bye Laws. **Accordingly, the committee recommends that Unit Area Value for unconstructed portion of the land may be reduced by 50% if the concerned property is located in the Lutyen / Restricted Zone. In respect of other zones where the building Bye Laws are applicable without any restrictions, the existing applicable Unit Area Value may continue.**

2. Issue involved:- Residential Premises owned by Company/ Firms/Trust etc.

Some of the tax payers have challenged the provision of Bye Laws given under explanation (i) of sub Bye Law 6 of Bye Law 4, which prescribes that the premises owned by companies, firm, trust, etc. and used by the Directors, Employees or Partners for residence or Guest House shall not be treated as self occupied by the owners. Their contention is that the use of the property, even if owned by Company, Firm, Trust, etc., remains residential. Such Tax Payers have contended that in most of the cases a Company/Firms/Trusts are formed which comprises the Directors/Partners/Trustees from within the family and as a family arrangement, the property is purchased in the name of Company/Firm/Trust and used by such Directors/Partners/Employees/Trustees for residential purposes only. It has been contended that if no rent is charged then such premises should be treated as a self occupied property of the Company/Firm/Trust for residential use.

The Committee deliberated the issue and found that the key issue involved is not of 'Use' but of the 'Occupancy'. The committee observed that many Companies, Firms or Trusts have acquired Residential Properties in NDMC area and the same are being used either as Guest House or for Residential purposes of the Directors / Trustees or employees. In such cases, the owner companies / Firms / Trusts also get direct or indirect monetary benefits against usage of such properties by their employees. It is also seen that many Companies/Firms offer rent free residential accommodation to their employees as a part of salary package given to them. Logically, such salary package take into account the rent which is not being charged from such employees. The residential premises owned by a Company but occupied by its employee cannot be construed as self occupied by the Company. A Company, Firm or a Trust has separate identity other than the individuals. The Directors, Trustees, or Partners, etc. are broadly treated as employee of such Company/Trust and as such, if such residential properties which are owned by Company, Firm or Trust but are used by its employees/ guests, cannot be treated as self occupied.

However, the committee would like to clarify that if any residential premises owned by a Company, Trust, Firm etc. is not used and remains vacant, either the Vacancy Remission should be given as per provision of the NDMC Act or the assessee should be allowed to use the occupancy factor applicable for vacant residential properties in the PTRs.

3. Issue involved:- Uniform criteria in the Bye Laws, 2009 to determine RV of properties falling in different localities of NDMC area

Some of the tax payers have challenged the uniform calculation of annual/rateable value of the properties stating that the area/locality where such property is situated has not been considered in the Bye Laws. Their contention is that the rateable value of any property, as per provisions of Section 63(1), shall be on the basis of annual expected hypothetical rent of such property and a wide

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gap of rentals exists in the residential properties situated in B.K. Dutt Colony, Bengali Market, etc. on one hand and the Jor Bagh Colony and Golf Link Colony, etc. on the other hand. Similarly, there is a big difference of rentals between the commercial properties situated in Gole Market, Bhagat Singh Market, Shanker Market, etc. on one hand and Khan Market, Connaught Place, Sarojini Nagar Market, etc. on the other hand. Their submission is that the Bye Laws, 2009 do not reflect the true rental value of the properties.

Section 63(1) of the NDMC Act prescribes that *"The rateable value of any lands or buildings assessable to any property taxes shall be the annual rent at which such land or building might reasonably be expected to let from year to year less a sum equal to ten per cent of the said annual rent which shall be in lieu of all allowances for cost of repairs and insurance, and other expenses, if any, necessary to maintain the land or building in a state to command that rent. Provided that in respect of any land or building the standard rent of which has been fixed under the Delhi Rent Control Act, 1958 (59 of 1958) the rateable value thereof shall not exceed the annual amount of the standard rent so fixed"*.

The Committee deliberated that in the Bye Laws 2009, the NDMC has adopted the minimum rental value prevailing in entire NDMC area and not average or the maximum rental value. This is a type of '**Reserve Price**' below which no property would be available on rent in any area of NDMC. The Committee found that as per calculation given under Bye Laws, 2009, **the monthly per sq.ft. rent** for residential self occupied properties built up in the plot size of upto 200 sq.mtr. and commercial/non-residential properties, comes to as under:-

Year	Rent per sq.ft Residential self occupied	Rent per sq.ft Residential rented	Rent per sq.ft Commercial/ Non-residential self occupied	Rent per sq.ft Commercial/ Non-residential rented
2009-10	Rs. 3.87	Rs. 11.61	Rs. 23.23	Rs. 69.70
2010-11	Rs. 3.87	Rs. 11.61	Rs. 15.48	Rs. 46.44
2013-14	Rs. 4.65	Rs. 13.95	Rs. 18.58	Rs. 55.73
2016-17	Rs. 4.65	Rs. 13.95	Rs. 27.87	Rs. 55.73

The above hypothetical rents calculated under Bye Laws, 2009 are far lower than the actual prevailing rentals in any area of NDMC. The Committee was informed that even in the B.K. Dutt Colony, the prevailing minimum market rent in respect of residential properties is approx. Rs.30 per sq.ft p.m. and Rs. 100 per sq.ft. per month in respect of commercial/ non-residential rented properties. Therefore, the Committee noted that the annual value (rent) arrived under Bye Laws, 2009 are the bare minimum and all the residential / non-residential property owners/ tax payers have been benefitted .

For argument sake, if the NDMC fixes different Unit Area Values for different localities of NDMC Area, then someone may claim that the entire area of NDMC is categorized under category 'A' for valuation purposes, then how the NDMC can fix separate Unit Area Value for different localities. Almost all the property owners of NDMC area have been benefitted with the new system of assessment. Only few of them whose properties were being assessed on standard rent basis prior to 2009 are having grievances because they still want to be assessed on standard rent basis though the said principle of standard rent is no more available and the expected rental value in their cases has been fixed as per calculation under New Bye Laws, 2009. The Committee also noted that the Babar Road Association who is representing the property owners of low rental value area, has supported the Bye Laws, 2009, in the Hon'ble Supreme Court by filing an SLP against the order dated 10/08/2017 of the Hon'ble High Court of Delhi vide which Bye Laws, 2009 were struck down.

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The committee observed that as per provisions of Sub Bye Laws (1) (iv) of Bye Law 5, the Valuation Committee may recommend "any other relevant factors as may be necessary for determining the bonafide annual value of land and building". Therefore, even if the Valuation Committee considers to introduce a new factor based on locality of the property, it will require detailed information regarding the actual prevailing rentals in respect of entire NDMC area for which the NDMC will have to make a detailed study regarding rentals prevailing in various residential and non-residential areas of the NDMC so that the localities having similar rental value may be clubbed together and be assigned appropriate locality factor.

The representatives of the property Tax Department of NDMC informed the Committee that the detailed study regarding actual prevailing rent in different areas of NDMC may take considerable time, therefore, the Committee deems it fit to defer the decision on introduction of locality factor for consideration by the Valuation Committee for the next year, subject to final orders/judgement of the Hon'ble Supreme Court in the pending SLP.

4. Issue involved:- Vacancy Remission on Use and occupancy of the property:-

Some of the tax payers have claimed before the Hon'ble Supreme Court that by introducing the Bye Laws, 2009, the NDMC has taken away their right to claim vacancy remission for the period below 180 days. They claimed that if their property is rented for more than 180 days in a year and remains vacant for less than 180 days in a year, they cannot claim vacancy remission as per provisions of above quoted explanation given under Sub Bye Law 6 of Bye Law 4.

As per explanation No. (ii) given under Sub Bye Law 6 of Bye Law 4, "for a particular year, the use factor and the occupancy factor shall be determined on the basis of uses/ occupancy prevailing for more than 180 days in that year. In case the occupancy factor is determined as "others" and the premises actually remains vacant for part of the year, the property will be eligible for vacancy remission as per provisions below the heading "Remission & Refund" under Chapter -VIII relating the "Taxation" of the New Delhi Municipal Council Act, 1994(44 of 1994)".

The Committee observed that the above objection of the assesses is not maintainable. This provision was made in Bye Laws to save the tax payers from harassment of mid year revision of RV on account of changed occupancy. It is actually the NDMC which losses the revenue on account of above quoted explanation and it is actually beneficial for the Tax Payers. If a property is vacant for more than 180 days, the assessee can use occupancy factor of '1' in the PTR. However, if such property is rented after filing of Property Tax Return (PTR), the NDMC cannot take the benefit of such rented occupancy. On the other hand, if the assessee files the PTR on the basis of rented occupancy and the premises is rendered vacant after filing of PTR, he can claim the vacancy remission as per provisions given under Chapter -VIII of NDMC Act, as clearly explained in the above quoted explanation given under Sub Bye Laws 6 of Bye Law 4.

5. Other issues :- Classification of properties under Bye Law 2009

Besides above objections, most of the respondents have also challenged the classification of properties made in the Bye Laws. Some have stated that there should have been further distinction of properties depending upon the location, neighborhood, corner plot, architectural style, width of the road etc. which, they contend, play a significant role in ascertaining the hypothetical rent of a property.

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The Valuation Committee feels that it will be a very difficult exercise to draw the lines of distinction. The Bye Laws, 2009, were framed by the NDMC in order to bring transparency and to remove the element of arbitrariness in the assessment of property tax. Even if the Valuation Committee considers to evolve further classification based on the above mentioned criteria, it is expected to be too complex and it may leave too much discretion in the hands of Assessing Authorities, the removal of which was the main objective of the Bye Laws, 2009. The Valuation Committee feels that the present classification of properties and factors used to determine the rateable value is simple which can be understood even by the common man to enable him to calculate the Rateable Value on his own. No doubt, in a simple classification of properties, some gets advantage and the others may suffer disadvantage but that should not become the ground to complicate a simple system of assessment because bringing more classifications and factors will always be an endless process. Therefore, the Valuation Committee is of the view that the present classification of properties and factors may continue and no additional criteria for assessment be introduced.

6. Apart from the above matters, the valuation Committee has to give its recommendations under clause (i) to (v) of the Bye Laws 5(1) of the New Delhi Municipal Council(determination of Annual Rent) Bye Law-2009 and the same are as under:-

i) **Lands and buildings to be categorized as special category of lands and buildings for the purposes of Bye-law 3:-**

The Valuation Committee for the year 2009-10 has already included Gas Godown, Coal Depot, Petrol Pumps, LPG/CNG stations, properties of the Union of India / State Governments, Embassies, Prasar Bharti, Schools, Hostels, Hospitals, Libraries, Colleges, Religious Places, Public Utility buildings, Clubs, Guest Houses, Cinemas and Hotels as covered within the special category of properties.

The Committee was informed that no fresh application has been received from any Tax Payer for inclusion in the Special Category for assessment under Bye Law, (3) instead of Bye Law(4). Therefore, the Committee recommends that the existing category of properties, being assessed under Bye Law (3) may remain unchanged.

It has been informed to the Committee that some of the Government Properties are being used by respective Government / Union Government for commercial purposes and such properties are also being assessed under Bye Law (3). The Property Tax Department has informed that some Government Properties have been given on rent for commercial use. A clarification has been sought whether such Govt. Properties will be assessed under Bye Law-3 or Bye Law-4. The Committee has gone through the judgement dated 19.12.1996 of the Constitutional Bench of the Hon'ble Supreme Court in the case of NDMC & Others Vs. State of Punjab & Others (Civil Appeal No.1388 of 1971) and the order dated 19.11.2009 of the Apex Court in the case of Rajkot Municipal Corporation & Others Vs. UOI & Others (Civil Appeal No.9458-63/2003). As per first judgement, the Property Tax is leviable in respect of Government Properties if any commercial activity is being carried out on such properties. Whereas, the second judgement mandates about levy of service charges on Government Properties @ 75%, 50% or 33.3% of the Property Tax.

The provision of Government Properties under Bye Law (3) was made for the purpose of assessment of property tax of Government Properties being used for commercial purposes and for calculation of service charges in respect of other Govt. Properties, at the rate of applicable percentage. The Committee feels that the Bye Law (3) is applicable in respect of properties which are not normally let. Therefore, if any State Government / Union Government is doing commercial activity on its own, the Property Tax will be calculated under Bye Law (3). However, if any government property or part thereof has been given on rent for commercial purposes, such properties / part should be assessed under Bye Law (4).

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The Committee further observed that after implementation of NDMC (Determination of annual rent) Bye Laws, 2009 and adopting the recommendations of various Valuation Committee constituted from the year 2009-10 onwards, the property tax collection of NDMC, in the present scenario, has reached at satisfactory level. Therefore, the Committee does not recommend any change either in the land rate or construction rate for the purpose of assessment of any property under Bye Law 3 and the rates applicable during the year 2017-18 may continue for the year 2018-19.

ii) Base unit area value of owner occupied building which is put exclusively to residential use:

In view of the observations made under final para of recommendations (i) above, the Committee recommends that the existing Unit Area Value of Rs.1200/- per sq.mtr. may continue for 2018-19 as well.

iii) Percentage of the circle rate for valuation of land and cost of construction (for Bye Law 3):-

In view of the observations made under recommendations (i) above, the Committee recommends that the existing percentage to assess the annual value of the properties under Bye Laws-3, which is presently 6.5% of the estimated value of land and covered area, may continue for 2018-19 also.

iv) Relevant factors for increase in respect of each of parameters of the type of user, age, type of structure, occupancy, average rentals available in the building, locations of covered space and any other relevant factor.

In view of the observations made under recommendations (i) above, the Committee does not recommend any change. The existing multiplicative factors as applicable during 2017-18, may remain applicable during the year 2018-19.

v) Method of determination of rateable value of petrol pumps, towers hoardings, and to specify the area of the land to be included in the case of schools, colleges, clubs, etc. for Bye Laws 3.

As per sub Bye Law (1) (v) of Bye Law-5, the Valuation Committee shall recommend "method of determination of RV of Petrol Pumps, Towers, Hoardings and to specify the area of the land to be included in the case of Schools, Colleges, Clubs, etc for Bye Law-3".

The Committee noted that the earlier Valuation Committees have already prescribed the method of Determination of RV of Petrol Pumps, Gas Godown, Coal Depot etc. and none of such assessee is aggrieved with the recommended assessment method. Therefore, the Committee recommends to continue with the existing method of assessment in respect of this category.

Some of the Tax Payers who are respondents in SLP filed by the NDMC, have also challenged the valuation of entire land of the properties being assessed under Bye Law-3 on the ground that the aspects of "unearned increase" has not been considered in the Bye Laws 2009. The committee noted that the concept of unearned increase was linked with the fixation of Standard Rent of any property. The concept of Standard Rent is no more available in the DRC Act after the Judgement dated 18.01.2002 of the Hon'ble High Court of Delhi in the case of Raghunandan Saran Ashok Saran (HUF) Vs Union of India vide which Section-4, 6 & 9 of the DRC Act were declared as Ultra Virus the Constitution of India. When the proviso of Section 63(1) regarding Standard Rent has lost its relevance, the only thing left with is the reasonable hypothetical Annual Rent of any property, having no relevance with the Standard Rent or the unearned increase. As such, the Committee recommends to continue with the existing system of Assessment in respect of above class of properties, being assessed under Bye-Law-3.

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The Committee, however, observed that the Valuation Committee constituted for the year 2009-10 considered only the proportion of land area to be taken into consideration in assessing the Schools and Colleges and did not consider the other properties covered under Bye Law-3. On this aspect, the Valuation Committee for the year 2009-10 gave following recommendations:-

"Information was collected from the office of the L&DO and DDA on the rates of allotment of land for Schools and colleges, L&DO is not charging any premium for land allotted purely as a play ground to schools and colleges if it is not taken into account for FAR calculations. Accordingly the Committee recommends that the playground area should not be considered in arriving at the value of land under bye law 3. The remaining land is to be assessed as in other cases based on the circle rate".

The Valuation Committee feels that before making any recommendation regarding area of land which may be included for assessment purposes in the case of properties (other than the Schools and Colleges), which are being assessed under Bye-Law-3, the NDMC should collect the information regarding terms and conditions of allotment of such land/building which are being assessed under Bye-Law-3 and who have objected the valuation of entire land of the property. Thereafter, a study should be carried out regarding the area of land of such properties which is eligible for being considered for FAR purposes. The information regarding the annual lease/license amount being paid to the land owning agency in respect of excess land which cannot be considered for FAR purpose, may also be compiled. As and when such information is collected and compiled by the NDMC, a fresh meeting of the Valuation Committee be convened to consider this issue and to make suitable recommendations.

While giving above recommendations, the Valuation Committee would also like to point out that various valuation Committees constituted for the year 2009-2010 onwards have considered the objections of the Tax Payer and have given relief to the Tax Payer in all the deserving cases, from time to time. Besides, the Council has also given various types of rebates to the tax payers after introduction of Bye Laws, 2009. Some of the important relief/rebates given are being summarized below:-

2009-10:-

- 1) Play ground area of schools was exempted from being considered in arriving at the value of land under Bye Law-3.
- 2) Reduced circle rate @ L&DO allotment rate were prescribed in respect of Petrol Pumps, Coal Depot & Gas Godowns. The value of land of Gas Godowns & Coal Depot was to be calculated @ Rs.1800/- per sq.mtr. under and the value of land of Petrol Pumps was to be calculated @ Rs.18,000/- per sq.mtr. under Bye Law-3, instead of Rs.43,000/- prescribed in the Bye Laws, 2009.
- 3) (a) A rebate of 50% of tax determined on RV up to Rs.1,00,000/-
(b) A rebate of 50% of tax in respect of aided Schools, Colleges & Hospitals.
(c) A rebate of 10% of tax in respect of unaided Schools.
(d) A rebate of 50% of tax in respect of Societies which are substantially supported by grants from Govt. of India or Govt. of NCT of Delhi.
(e) A rebate of 10% of tax in respect of buildings having roof top rain water harvesting system.
(f) A prompt payment rebate of 10% on the net tax after rebates from (a) to (e) above.

2010-11:-

- 1) Use factor for the commercial/non-residential properties was reduced from 6 to 4.
- 2) Location factor for basement and covered parking space was reduced from 0.5 to 0.25.
- 3) Rebates as applicable for 2009-10 continued. Further, a self occupancy rebate of 25% of property tax was also allowed in respect of properties owned by Senior citizens, women and physically challenged person.

2011-12 :-

- 1) Instead of circle rate of Rs.43,000/- per sq.mtr. reduced L&DO Institutional rates as applicable from 2009-10, onwards, were adopted to assess the value of land in respect of Govt. & Institutional properties. Accordingly, the value of land in respect of Government properties Schools, Colleges, Hospitals, Hostels, Institutions for public purposes, etc. have been assessed @ Rs.5128/- from the year 2009-10 as increased by 10% in the subsequent years. This has given substantial relief of tax to the Institutional properties as well as the service charges in respect of Government Properties.
- 2) In addition to the rebates mentioned under point No. 3 for the year 2009-10 and 2010-11, an additional rebate of 50% of the tax calculated on the rateable value upto Rs.5,00,000/- lacs was allowed in respect of all the residential properties. Further, the rebate in respect of unaided schools was increased to 20%.

2013-14 :-

While increasing unit area value from Rs.1000 to Rs.1200/- per.sq.mtr., the occupancy factor for self occupied residential properties up to an area of 200 sq.mtr. was reduced to 0.8.

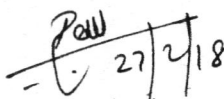
The Valuation Committee feels that the NDMC has already given sufficient relief to the Tax Payers from time to time in deserving cases. However, it recommends to resolve the grievances of any particular class of tax payers, if any, by giving appropriate relief by the Council u/s 124 of the NDMC Act, 1994.

The Committee further recommends that in future, before convening the annual Meeting of the Valuation Committee, the NDMC should ask all the tax payers through a Public Notice of not less than 30 days, to submit their objections / suggestions, if any, so that the Valuation Committee may consider such objections / suggestions and give suitable recommendations.

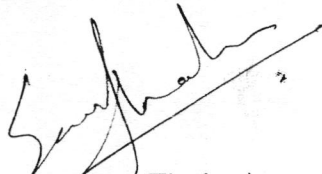
Recommended accordingly for further necessary action at the end of NDMC.

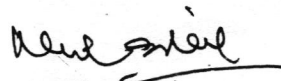
The above recommendations are subject to final orders of the Hon'ble Supreme Court of India in the SLP filed by the NDMC.


(Juhi Mukherjee)
(Member)


(Renu Jagdev)
(Member)


(Rawan Chopra)
(Member)


(Sandeep Thakur)
(Member)


(M.L. Sharma)
Convener/Member


(Dharmendra)
Chairperson