

BEFORE THE ESTATE OFFICER, PRAGATI MAIDAN,
NEW DELHI

In the matter of:

India Trade Promotion Organisation

...Petitioner

Versus

M/s. Palace Restaurant

...Respondent

FINAL ORDER/AWARD

1. This case relates to the disputes between ITPO and M/s. Palace Restaurant; and vide its judgment dt. 18.09.2021, Ld. Principal District & Sessions Judge/Appellate Authority, Patiala House Courts, New Delhi had remanded back the case to the Estate Officer for conducting the proceedings afresh and deciding the matter in accordance with law.

Brief facts/background of the case:

2. An agreement dt. 13.11.2001 was executed between India Trade Promotion Organisation (ITPO), a Government of India Enterprise, Pragati Bhawan, Pragati Maidan, New Delhi (Hereinafter would be referred to as 'Petitioner' and M/s. Palace Restaurant (Hereinafter would be referred to as 'Respondent') for a period of 7 years for operating a 'Food & Beverage Outlet' in Pragati Maidan Complex on certain terms & conditions, as laid down in the Agreement.

3. Since certain disputes had arisen between the parties, the petitioner had filed an Application/Petition on 05.09.2012 under Section 7 of the Public Premises (Eviction of



Unauthorised Occupants) Act, 1971(hereinafter would be referred to as 'PP Act') against Respondent before the Estate Officer, Pragati Maidan, New Delhi for recovery of Rs.1,00,45,042.80, inter alia, mentioning that the Respondent were offered the licence vide letter dated 02.11.2000 for a period of 7 years with respect to running a Food & Beverage outlet (Kiosk No-4) at Pragati Maidan; the Respondent accepted the terms and conditions; a Licence Agreement was also executed & signed by the Petitioner and Respondent on 13.11.2001, in this regard; the possession of the premises was given to the Respondent on 03.11.2000; the petitioner had submitted that during the possession of the premises, certain disputes arose and the said disputes were referred to Sole Arbitrator, Shri D. P. Bagchi, IAS (Retd.); the Sole Arbitrator vide Award dated 23.03.2006 was pleased to reject the claim of the Respondent; the Petitioner had further submitted that since the term of the license was to expire on 02.11.2007, the Petitioner sent a letter dated 20.09.2007 to the Respondent for handing over the peaceful and vacant possession of the licensed premises; the Respondent were also requested to clear all its outstanding dues. However, the Respondent failed to comply with the request of the Petitioner; the Respondent challenged the above Award by way of filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 in the Hon'ble High Court of Delhi and vide order dated 05.10.2007, the Hon'ble High Court was pleased to pass the following order:-

"List the objections for hearing in the category of 'Short Cause Matters" on 24.03.2008. In the meanwhile, the Respondent (ITPO) is directed to maintain status quo in relation to the site in possession of the petitioner"



The petitioner had further submitted that the Respondent in spite of expiry of the license agreement did not vacate the licensed premises; the Hon'ble High Court vide its order dated 24.03.2008 was pleased to permit the Petitioner to initiate eviction proceeding against the Respondent. **The eviction proceedings were initiated against the Respondent and finally they vacated the premises on 10.06.2011 in terms of Supreme Court order;** the Respondent had signed an undertaking accepting the term of license for 7 years i.e. from 03.11.2000 to 02.11.2007 and Respondent also undertook to hand over the vacant and peaceful possession of the licensed premises on the expiry of the license agreement i.e. on 03.11.2007; however, the Respondent failed to vacate the licensed premises after the expiry of the license term so they are liable to pay damages for un-authorised occupation of the premises under clause K.4 of the License Agreement; along with the licensed premises, the Respondent were also in un-authorised occupation of the appurtenant green area; the Respondent have paid damages double rate of the license fee for the licensed premises for the period from 03.11.2007 to 31.03.2011, however, they have not paid the damages at double the rate of license fee for un-authorised occupation of the appurtenant green area. There exists no separate license agreement for the said appurtenant green area; since the Respondent were continuing on the licensed premises un-authorisedly and disputing Petitioner's genuine demand of dues, a recovery petition was filed before Ld. Estate Officer on 24.08.2009 to recover an amount of Rs. 24,42,467/- lying unpaid in different heads of account up-to May, 2009; Recovery-I is still sub judice before the Learned Estate Officer; since the Respondent have been disputing the Petitioner's demand of various dues payable in respect of scheduled premises during their

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un-authorized occupancy, a sum of Rs. 1,00,45,042.80 is recoverable from the Respondent as per detail given below:

Sl.No.	Head of Account & Claims Period	Amount in Rs.
1	Damage charges (Double of the normal licence fee for the period from 01.04.2011 to 10.06.2011)	3,99,241/-
2	Damage charges on green area (Double of the normal green area charges) from 03.11.2007 to 10.06.2011	19,47,980/-
3	Damage charges of fittings/equipments	4,57,059/-
4	Electricity consumption charges from 08.03.2011 to 10.06.2011	45,003/-
5	Conservancy charges from 01.02.2011 to 10.06.2011	1,18,169/-
6	Property tax on Unit Area Method basis from 01.04.2004 to 10.06.2011	39,33,494/-
7	Service tax on damage charges (Space Rent) from 01.06.2009 to 10.06.2011	8,38,786/-
8	Interest on delayed payments from 01.06.2009 to 31.03.2012 @ 24% p.a.	23,05,301.80
	Total	1,00,45,042.80

The petitioner had prayed for passing an order directing the respondent to pay Rs.1,00,45,042.80.

4. That the respondent had filed their reply to the above petition filed under section 7 of the PP Act on 21.4.2015 and further point-wise replied each of the claims of the



petitioner and prayed for the dismissal of the claim of the petitioner with exemplary costs in favour of the respondent and direction to the petitioner to pay Rs.35,06,264.13.

5. That in July, 2015, the petitioner filed their rejoinder to the reply filed by the respondent, inter alia, mentioning that the reply filed by the respondent is untenable and deserves to be set aside being devoid of any merits and further denied the entire contents of the reply filed by the Respondent unless specifically admitted and finally prayed for allowing the petition in terms of the prayer clause and the reliefs claimed by the petitioner along with costs in favour of the petitioner.

6. That evidence on behalf of the petitioner (Ms. Sangeeta Sharma) was submitted on 23.10.2015 with 15 exhibits. In her evidence, with regard to property tax she mentioned that *MCD had introduced Unit Area Method w.e.f. 01.04.2004 for the collection of Property Tax. Accordingly, the Petitioner filed Return and deposited Property Tax to MCD on self-assessment basis every year in respect of entire Pragati Maidan including K-4 premises at the rate prevailing for the particular financial year. As per revised guidelines of MCD, the entire area (covered/paved/open/green) which is commercially used, has been taken into account for the calculation of Property tax. As per clause G-2 of the Licence Agreement, the onus of the payment of property tax to MCD is on the Petitioner. Accordingly, the Petitioner has been remitting payment of Property Tax to MCD in respect of entire Pragati Maidan including K-4 location. The Respondent paid the demanded Property Tax to the Petitioner on the basis of provisional invoices sent upto their licensed term ie upto 02.11.2007. Since the Respondent overstayed beyond the*



licensed term, the demand of revised Property Tax on Unit Area Method basis for the period from 01.04.2004 to 31.03.2009 for Rs. 18,40,926/- was sent to them vide letter dated 08.03.2010. On receipt of said demand, the Respondent reacted vide their letter dated 18.03.2010 which was well replied by the Petitioner vide letter dated 18.05.2010. Invoice of Property Tax for the period from 01.04.2009 to 31.03.2010 for Rs.5,29,855/- was sent on 06.07.2010 and for the period from 01.04.2010 to 31.03.2011 for Rs. 7,94,783/- on 11.02.2011. The Respondent reacted vide letter dated 23.02.2011 which was again well replied by the Petitioner vide letter dated 28.04.2011 and Respondent were again requested to remit Rs. 37,78,892/- i.e. difference of revised property tax from 01.04.2004 to 31.03.2009 i.e. Rs.25,87,628/-, (Rs.3,96,481/-) for the period from 01.04.2009 to 31.03.2010 and property tax for the period from 01.04.2010 to 31.03.2011 for Rs. 7,94,783/-. The Respondent shown resentment on the Petitioner's letter dated 28.04.2011 and sent a letter dated 10.05.2011, whereby the Respondent requested the petitioner to withdraw the notice dated 28.04.2011. Thereafter, a Final Notice dated 12.05.2011 was also sent to the Respondent requesting them to remit Rs.37,78,892/- towards property tax in addition to other dues mentioned in the Final Notice. In between, the party also paid a sum of Rs. 1,33,374/- as against our demand of Rs.5,29,855/- for the period from 1.04.2009 to 31.03.2010. The last demand of property tax amounting to Rs. 1,54,602/- for the period from 01.04.2011 to 10.06.2011 was sent to the Respondent vide invoice No. 20110017 dated 16.06.2011 and at the end position of recoverable dues towards property tax amounting to Rs. 39,33,494/- from Respondent was summarized.



The petitioner's witness was also cross-examined in 2016. Thereafter, respondent also filed their affidavit by way of evidence of one Shri Manoj Kumar, being the partner of the respondent in March, 2016. *In his evidence, the respondent with regard to property tax submitted that green area was offered pursuant to separate contract which is absolute and separate from the main contract dt. 13.11.2001. The contract in respect of green area provides for payment of lump sum licence fee. There is no prescription therein requiring the respondent to pay property tax separately. The licence fee so payable includes property tax. As such the demand of property tax in respect of the green area is not maintainable. So far as the originally licensed premises, it is stated that respondent has been making payment of property tax to the petitioner as per the invoices raised by the petitioner from time to time. After a period of around 4 years after the respondent vacated the premises, the petitioner has slapped the respondent with the present petition. There is no proof that the petitioner has paid to MCD more than what is recovered from the respondent. Even otherwise without consulting the respondent any payment made unilaterally by the petitioner to MCD is at its own peril and the respondent cannot be made liable to make good that payment. This is without prejudice to the plea of the respondent that entire claim in respect of property tax is barred by limitation and liable to be rejected. Assuming what is stated in the petition in respect of the property tax is correct, as per the petitioner it is demanding amounts in respect of property tax from 2010, however the present petition has been filed in the year 2014. As such the petition is grossly barred by limitation. Cross-examination of this witness was also done in March, 2016. In April, 2017, written submissions on behalf of respondent was filed. The written submissions were also filed by the petitioner on 1.8.2017.*



7. On 19.2.2018, earlier Estate Officer passed a detailed Award and awarded Rs.66,56,239/- in favour of the petitioner against each of the claim as under:-

Sl. No.	Head of account & claims period	Amount (in Rs.)
1.	Damage charges (double of the normal licence fee for the period from 1.4.2011 to 10.6.2011)	3,99,241/-
2.	Damage charges of fittings/equipments	4,57,059/-
3.	Electricity consumption charges from 8.3.2011 to 10.6.2011	45,003/-
4.	Conservancy charges from 1.2.2011 to 10.6.2011	1,18,169/-
5.	Property tax on Unit Area Method basis from 1.4.2004 to 10.6.2011	39,33,494/-
6.	Service Tax on Damage charges (space rent) from 1.6.2009 to 10.6.2011	8,38,786/-
7.	Interest on delayed payments for the period from 1.6.2009 to 31.3.2012 @ 9% p.a.	8,64,487/-
	Total	66,56,239/-

8. Against the Award of the Estate Officer passed on 19.02.2018, an appeal was filed by the respondent. Ld. Principal District & Sessions Judge/Appellate Authority, New Delhi vide its judgment dated 18.09.2021 disposed of the appeal filed u/s 9 of the PP Act by the respondent whereby the impugned order dated 19.02.2018 passed by the Estate Officer, Pragati Maidan, New Delhi was challenged.

9. That in the order, Ld. District Judge observed, inter alia, *"that the Estate Officer is appointed under the PP Act and the proceedings conducted are quasi-judicial in nature. The Estate Officer is expected to conduct the proceedings in accordance with the principles of natural justice. The Estate Officer is obliged to record the evidence and to give the detailed reasons for arriving at the conclusion.*



10. Ld. District Judge further mentioned that the Respondent have agreed to pay the amount on account of Damage Charges of Rs.3,99,241/- and Electricity Consumption Charges of Rs.45,003/- for the period from 08.03.2011 to 10.06.2011 & Conservancy Charges of Rs.1,18,169/- for the period from 01.02.2011 to 10.06.2011.

11. In respect of Property Tax on Unit Area Method basis, Ld. District Judge considered that the Estate Officer had wrongly awarded the amount of Rs.39,33,494/- for various reasons. The District Judge further observed that ITPO has not led any evidence to the fact that they had paid the amount to MCD on account of property tax in respect of the public premises. ITPO had not produced even an iota of evidence to prove this claim. The Estate Officer has mechanically allowed this amount merely on the asking of ITPO. The Estate Officer is not supposed to work as a mouthpiece of the Department. Furthermore, for the amount for the period 01.04.2004 to 10.06.2011, it has not been explained why this demand was made while the first recovery petition was filed. ITPO did not examine any witness from MCD or the concerned authority. Ultimately, Ld. District Judge considered that the matter regarding the property tax is liable to be remanded back to the Estate Officer for the purpose of taking evidence on this point and then to return the findings.

12. Ld. District Judge further held that in respect of Damage Charges for Fittings/Equipments, the Estate Officer had awarded the amount of Rs.4,57,059/-. However, the District court did not find any evidence on the record on which basis the Estate Officer had reached to the conclusion that this amount is liable to be awarded.



Consequently, Ld. Distt. Judge considered that in the absence of any evidence, the Estate Officer had fallen into error in awarding this amount.

13. Ld. Distt. Judge held that in respect of Service Tax on Damage Charges, the Estate Officer had not given any basis for awarding this amount; and there is no evidence on the record, on the basis of which the Estate Officer had reached to the conclusion.

14. Ld. District Court finally held/mentioned that since the only claims on account of Damage Charges, Electricity Consumption Charges and Conservancy Charges have been awarded, therefore, the interest was also to be calculated afresh. Hence, the matter was remanded back to the Estate Officer and further observed that Estate Officer shall conduct the proceedings afresh and decide the matter in accordance with law.

15. With the above observations, the appeal filed by the respondent against the award of the Estate Officer was disposed of by the Ld. Distt. Judge and the parties were directed to appear before the Estate Office on 4.10.2021.

16. I, as Estate Officer, was nominated by a Gazette Notification in March, 2022 and this matter was scheduled on 5.4.2022. On that day, the petitioner was present, however, respondent was not present. Ld. Counsel for the petitioner briefed on the points to be adjudicated. In respect of property tax, the petitioner was directed to get the exact and complete calculations from MCD and both the parties were directed to file their brief written submissions. On 30.5.2022, Ld. counsel for the respondent was present, besides Ld. counsel for the petitioner. They were once again directed to file their brief written submissions. On 25.8.2022, both the parties were directed to file



their written submissions. On 14.9.2023, both the parties filed their respective written submissions.

17. In their written submissions, the respondent briefed about the case. They submitted that though not liable to pay the amounts, or having already paid, to put an end to the controversy, agreed to pay the below mentioned amounts during the proceedings of the matter before the Ld. District Judge.

Sl. No.	Head of account	Amount (in Rs.)
1.	Damage charges (double of the normal license fee for the period of from 1.4.2011 to 10.6.2011)	3,99,241
2.	Electricity consumption charges from 8.3.2011 to 10.6.2011	45,003/-
3.	Conservancy charges from 1.2.2011 to 10.6.2011	1,18,413.
	Total	5,62,413/-

The respondent replied to the remaining claims of the petitioner as under:

"PROPERTY TAX ON UNIT AREA METHOD BASIS FROM 01.4.2004 TO 10.6.2011: -

- (i) *Property tax claimed on the basis of Unit Area Method from 1.4.2004 to 10.6.2011. In the said behalf, it is reiterated, that Green Area was offered pursuant to separate contract which is absolute and separate from the main contract dated 13.11.2001. The contract in respect of Green Area provides for payment of lump sum license fee. There is no prescription therein requiring the Respondent to pay property tax separately. The license fee so payable, includes property tax. As such, demand of property tax in respect of*



the Green Area is not maintainable. So far as the originally licensed premises is concerned, it is stated that Respondent has been making payment of property tax to the Petitioner/ITPO as per the invoices raised by Petitioner/ITPO from time to time. After a period of around 4 years, after the Respondent vacated the premises, Petitioner/ITPO has slapped the Respondent with the present petition. There is no proof that the Petitioner/ITPO has paid to MCD more than what is recovered from the Respondent, which factum is also noted in order dated 18.09.2021 passed by Shri. Dinesh Kumar Sharma, Principal District & Sessions Judge, Appellate Authority, Patiala House Court, New Delhi. Even otherwise, without consulting the Respondent any payment made unilaterally by Petitioner/ITPO to MCD is at its own peril and the Respondent cannot be made liable to make good that payment.

- (ii) *As regards damage charges on Green Area at double the rate of normal green area charges from 03.11.2007 to 10.6.2011, it is stated that Green Area was separately allotted to the Respondent vide letter dated 19.6.2003 @ Rs.42.35 per sq. mtr. The Respondent, vide offer letter dated 20.07.2003, accepted the offer and as such a concluded contract in respect of Green Area came into existence. The Petitioner/ITPO sought to withdraw the Green Area by letter dated 08.8.2003 which was objected to, by the Respondent since a concluded contract in respect of the Green Area had come into being between the parties. As a result, disputes arose, which were referred to*



arbitration before Shri. D. P. Bagchi, IAS (Retd.), Sole Arbitrator. The Ld. Arbitrator, who by Award dated 23.3.2006 quashed letter dated 8.8.2003 of the Petitioner/ITPO seeking to withdraw earlier letter dated 19.6.2003. The Ld. Arbitrator also held that "proposal for permission to use the Green Area has culminated into a concluded contract. The payments made by Respondent to the Petitioner/ITPO, for use of the Green Area includes property tax". In fact, this Hon'ble Forum in its order dated 06.2.2015, adjudicating the disputes between the parties held that contract for Green Area is absolute and separate from the main contract made on 13.11.2011, between the parties and there was no prescription for the Respondent to pay double amount. In fact, by order dated 06.2.2015 (supra), the then Estate Officer has held that Petitioner/ITPO is not entitled to double the rate of license fee for Green Area. The said portion of the order of Estate Officer is reproduced herein below for convenience of this Hon'ble Forum.

"a. The claim of Petitioner for Rs. 13,84,728/- for charges of green area at double the rate is not tenable as the contract for green area is absolute and separate from the main contract signed between the parties on 13.11.2001. Clause K.3 of the agreement dated 13.11.2001 attracts the damages at double the rate. However, green area has been allotted to the respondent much later i.e. on 19.6.2003. The allotment letter does not have any penalty clause to charge the license fee for green area at double the rate. This has also been confirmed by the Sole Arbitrator in his final order 23.3.2006. Further, both the



contracts are independent and have no relation with regard to terms and conditions. The petitioner has failed to submit any substantial document before this Forum to prove beyond doubt that the respondent should pay the damage charges for green area at double the rate in consideration of license agreement signed between the parties on 13.11.2001. They have already made the payment of license fee for allotment of green area. Thus, the respondent is not liable to pay the green area charges at double the rate.

(iii) Aggrieved by Award passed by Shri. D.P. Bagchi, I.A.S. (Retd.), Ld. Arbitrator, the Respondent filed a petition u/s 34, The Arbitration & Conciliation Act, 1996, seeking setting aside of the said Award being OMP No. 321/2006.

(iv) By Order dated 05.10.2007, Hon'ble Delhi High Court directed the Petitioner to maintain status quo in relation to the site in question. By a subsequent order dated 24.03.2008, the Hon'ble Delhi High Court permitted the Petitioner herein to initiate eviction proceedings in respect of the suit premises against the Respondent under the said Act. However, the earlier order dated 05.10.2007 continued by way of orders dated 10.12.2010 passed by Hon'ble Delhi High Court which was upheld in Order dated 20.1.2011 passed by Hon'ble Delhi High Court in LPA preferred by the Appellant therein/ ITPO. The aforesaid judgment and order was challenged by the Petitioner/ ITPO by way of Special Leave to Appeal (Civil) in Hon'ble Supreme Court of India, titled SLA No. 6444/2011, which was dismissed through Order dated 01.04.2011, in favour of the Respondent, whereof it was held as under,

"In view of the undertaking given by the Respondent before the High Court, that they shall



vacate the premises on or before 10 June, 2011, no interference is called for. We may, however, observe that no further extension shall be granted. The Special Leave Petition is dismissed with aforementioned observations."

(v) It is only subsequently on 29.10.2010 i.e. when the period of 10 years, which the Respondent herein claimed was the term, had expired, the Hon'ble Court vacated the interim protection granted on 05.10.2007. As such during the period 05.10.2007 and 29.10.2010, the Respondent remained in possession of the suit premises pursuant to orders passed by Hon'ble Delhi High Court. The occupation during the aforesaid period cannot be termed as unauthorized. That being the case, there is no question of the Respondent being charged double the license fee. It is stated that since the matter was pending, the Respondent made payment of license fee for the premises at double the rate till 30.03.2011. For the period between 05.10.2007 and 29.10.2010, the Petitioner is liable to refund License Fee since Respondent was paying double the rate whereas, the Petitioner is entitled to the original license fee. The amount which the Respondent has paid in excess is Rs. 35,06,264.13 which the Petitioner is liable to pay to the Respondent along with interest.

(vi) The details of the alleged dues of property tax are given on Page 9 of the Petition. A perusal of the same would show that the Petitioner sought recovery of property tax in respect of premises originally licensed and the Green Area licensed separately. In the said behalf it is reiterated that Green Area was offered pursuant to separate contract which is absolute and separate from the main contract dated 13.11.2001. The contract in respect of the Green Area provides for payment of lump sum license fee. There is no prescription



therein, requiring the Respondent to pay property tax separately. The license fee so payable includes property tax. As such the demand of property tax in respect of the Green Area is not maintainable.

(vii) So far as the originally licensed premise is concerned, it is stated that the Respondent made payment of property tax to the Petitioner as per the invoices raised by the Petitioner from time to time. After a period of around 4 years after the Respondent vacated the premises, the Petitioner slapped the Respondent with the present petition. There is no proof that the Petitioner has paid to MCD more than what is recovered from the Respondent, which factum is also noted in order dated 18.09.2021 passed by Shri. Dinesh Kumar Sharma, Principal District & Sessions Judge, Appellate Authority, Patiala House Court, New Delhi, details of which are mentioned in the foregoing paragraphs. Even otherwise without consulting the Respondent, any payment made unilaterally by the Petitioner to MCD is at its own peril and the Respondent cannot be made liable to make good the payment.

II. SERVICE TAX ON DAMAGE CHARGES FROM 01.6.2009 TO 10.6.2011:-

(i) As stated herein above, the Respondent is not liable to pay any damage charges. Therefore, there is no question of the Respondent paying any Service Tax, thereupon. As such the demand on the said ground is liable to be rejected.

III INTEREST: -

(i) Since the Respondent is not liable to make any payment, there is no question of the



Respondent making payment of interest. As such the demand is liable to be rejected.

It is stated that present petition is barred by principles of Order II Rule 2 of the Code of Civil Procedure as the Petitioner/ITPO had filed another petition against the Respondent under Section 7 of the said Act on the same cause of action. While doing so, since the present claims were omitted, the Petitioner cannot file another petition seeking recovery of the said amounts.

The respondent finally stated that the petition was grossly barred by limitation. The Respondent vacated the premises on 10.6.2011 and the present petition has been filed after a lapse of around 3 years from the said date. Therefore, it is liable to be rejected. It was further stated that before filing the petition, Petitioner/ITPO has not given any notice to the Respondent, as required under the said Act. On this ground alone, the Petition is liable to be rejected.

18. Also, petitioner filed their written submissions in September, 2022. The petitioner, at the outset, briefed the facts of the case and submitted, inter alia, that the possession of the premises was handed over to the respondent on 3.11.2000; that the respondent had admittedly kept on occupying the premises of the petitioner illegally from 2.11.2007 even after expiry of the license agreement/contract dated 13.11.2001 and only after the order dt. 1.4.2011 of Hon'ble Supreme Court, whereby respondent gave its undertaking to vacant the premises, vacated the said premises on 10.6.2011; that the respondent have not paid the damages at double the rate of license fee for un-authorised occupation of the appurtenant green area as it has been admitted on behalf of respondent in cross examination "It is



correct that Respondent never paid damages charges at double the rate of the normal charges in respect of the appurtenant green area". However, there existed no separate license agreement of the said appurtenant green area.

The petitioner further submitted in their written submissions that the MCD had introduced Unit Area Method w.e.f. 1.4.2004 for the collection of property tax. The petitioner was always diligent in filing and depositing the advance property tax to MCD on self-assessment basis every year in respect of entire Pragati maidan including K-4 premises at the rate prevailing for the particular financial year. As per revised guidelines of MCD, the entire area (covered/paved/open/green) which is commercially used, has been taken into account for the calculation of property tax. The respondent has clearly admitted that it had not paid any property tax and service tax for appurtenant green area.

It is further submitted by the petitioner that since there existed no separate agreement with respect to appurtenant green area, the respondent is liable to pay property tax of the appurtenant green area as per the revised guidelines of MCD. Moreover, the petitioner has raised the necessary invoices to the respondent which were duly addressed and delivered to the respondent without any dispute whatsoever. The respondent is liable to pay property tax as per PW-11(colly). The position of recoverable dues from the respondent towards property tax was explained and an amount of Rs.39,33,494/- was recoverable from the respondent.

The petitioner further submitted that the Respondent have not paid the entire property tax and petitioner has paid the property tax as per the Unit Area value of 630, the Respondent



are liable to pay property tax of Rs.39,33,494/- along with interest @ 9% per annum till the date of final payment. It was further submitted by the petitioner that the property tax for the whole Pragati Maidan was always remitted on time to the MCD and the calculations, invoices and letters with respect to the said period and copy of the letter of MCD dt. 24.7.2008 were annexed as Annexure-A (Colly.) along with their written submissions.

19. Both the parties were heard and during the course of arguments, it was confirmed by both the counsels that the original area was 186 sq. mtrs. (covered area) + 140 sq. mtrs. (open area) vide agreement dt. 13.11.2001. This was exclusive of property tax. However, the green area was 978 sq. mtrs. + 200 sq. mtrs. which was allotted later on in 2003. It was further argued by the respondent that the green area was only 978 sq. mtrs as per agreement of 2003. However, counsel for the petitioner rebutted the same by showing some documents that green area includes 200 sq. mtrs. in addition 978 sq. mtrs. During further arguments, both the counsels confirmed/agreed that green area was 1178 sq. mtrs. which includes 200 sq. (978 + 200). It was also confirmed by both the parties that the premises were vacated on 10.6.2011 by complying with the orders of the Hon'ble Supreme Court.

20. With respect to property tax, Ld. Counsel for the respondent submitted that as per agreement of 2001, they were liable to pay the property tax to ITPO (petitioner) on the basis of the demand/invoice raised by ITPO from time to time which they have paid and IPTO was further liable to deposit the same with MCD. However, Ld. Counsel for the petitioner argued that the respondent has not deposited the property tax as and when



demand/invoice was raised for the period 1.4.2004 to 10.6.2011. However, counsel for the respondent submitted that they have already paid the property tax to ITPO as and when they raised the demand for the said period. The counsel for the respondent further argued that ITPO has not deposited the said tax to MCD and a reference was invited to Hon'ble Distt. Judge order of 20-21 wherein Ld. Judge observed that there were no evidence to the effect that ITPO has deposited the tax with MCD. During further arguments, Ld. Counsel for the petitioner submitted the break-up of the claimed amount with respect to property tax amounting to Rs.39,33,394/-. He further submitted that the rates was revised in 2009 from Rs.270/- to Rs.630/- per sq. mtr. w.e.f. 1.4.2004. However, Ld. Counsel for the respondent submitted that they have already paid the property tax.

21. During further arguments, Ld. Counsel for the respondent submitted that appurtenant green area of 1178 sq. mtr. is not liable to property tax and is separate from the main agreement. Ld. Counsel for the respondent further submitted that whatever demand was raised towards property tax at that time by the petitioner, the payment was made. **However, he submitted that being old records which are not available, they cannot confirm this.** Ld. Counsel for the respondent further submitted that after the introduction of unit area method/revised rate, they have not made the payment since petitioner has not shown any evidence that they have deposited the same with the MCD on behalf of respondent.

22. It was ascertained from the records that the revised rate, after introduction of unit area method was applicable from 1.4.2004 since the category of Pragati Maidan



Complex was changed to A from E. As per the revised property tax document filed on 17.7.2009 which was shown by the petitioner at page No.108 of the written submissions filed by the petitioner on 14.9.2022 where it was ascertained the revised rate of property tax has been submitted with MCD along with payments thereof for the period 2004-05 to 2008-09. In the details also mentioned in the Annexure, the name of Palace Restaurant having area 460 + 1178 sq. mtr was there. The property return/document of 2009-10 also showed by the petitioner where they have paid the amount to MCD as lump sum amount for all the occupants of Pragati Maidan which includes Palace Restaurant(K-4).

23. It is also observed that payment has been made by ITPO as lump sum for all the occupants including Palace Restaurant. The documents relating to the lump sum payment receipts of MCD also shown by the petitioner. Ld. Counsel for the respondent informed that they visited MCD office, Civic Centre, Minto Road, New Delhi in the Deptt. Of Commercial Property Tax and met the official, Shri Jawahar Lal Kathuria where it was gathered that consolidated amount has been deposited by ITPO towards property tax and separate payment could not be ascertained in respect of K-4 Unit. Petitioner also showed different invoices amounting to Rs.39,33,394/- raised by them which include the differential amount towards property tax.

24. Final arguments were heard. Ld. Counsel for the respondent maintained that the petitioner deposited consolidated property tax with MCD and nowhere it shows that petitioner had paid property tax in respect of Palace Restaurant. Ld. Counsel for the respondent further submitted that they made payments against all the raised invoices.

Ld. Counsel for the respondent further submitted that they are unable to show any evidence/proof of making payments, etc. as documents/old records already got damaged. However, Ld. Counsel for the petitioner denied the arguments and mentioned that the claimed property taxes have not been paid by the respondent and ITPO deposited consolidated property tax with MCD for the entire Pragati Maidan which has been brought repeatedly in previous arguments also.

25. As regards service tax, both the parties could not argue or clarify the payment/collection and deposit of service tax of that period and also could not provide any document to substantiate their claims in respect of service tax, as sought on previous occasions.

26. Keeping in mind the observations of Ld. Principal and District Judge vide its Judgment dated 18.9.2021 and the written submissions/arguments/evidence/documents produced/made by both the parties during the proceedings and after perusing the old records available in the file, I find it reasonable to order the following(claim-wise) to conclude and in the interest of justice to this case as below:-

- (i) Claim towards property tax amounting to Rs.39,33,394/- for the period from 01.04.2004 to 10.06.2011:-

Since it has been established, after perusing the documents/evidence placed on record and during arguments also that the petitioner has already deposited consolidated property tax in respect of entire Pragati Maidan including (M/s. Palace Restaurant (K-4) and the fact that Unit Area method was introduced retrospectively by MCD i.e., w.e.f. 1.4.2004 and as the respondent has not paid the dues which includes the revised rate amount, accordingly this claim of Rs.39,33,394/- is awarded in favour of the



petitioner with cumulative interest @ 9% w.e.f. 5.9.2012 till the date of its realization from the respondent.

- (ii) Claim towards service tax on damage charges (Space Rent) from 01.06.2009 to 10.06.2011 amounting to Rs. 8,38,786/-:-

Since the petitioner could not substantiate this claim with any adequate evidence/documents during the entire proceedings, the claim of the petitioner towards service tax is not considered.

- (iii) Damage charges for fittings/equipments amounting to Rs.4,57,059/-:-

Since both the parties could not bring anything substantial during the entire proceedings, accordingly this claim of the petitioner is not tenable.

- (iv) Interest on delayed payments for the period from 1.6.2009 to 31.3.2012 @ 9% p.a. amounting to Rs.8,64,487/-:-

As per EO's decision dt. 19.2.2018 to charge interest @ 9% for the delayed payments for the period 1.6.2009 to 31.3.2012 amounting to Rs.8,64,487/-, this amount since not paid is awarded in favour of the petitioner with cumulative interest @ 9% pa w.e.f. 1.4.2012 till the date of its realization from the respondent.

The respondent is directed to pay the above amounts to the petitioner within 4 weeks from the date of this Final Order.

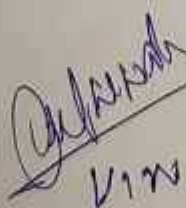
Copy of the Award is given to the parties.

Dated, the 12th December, 2023



(S.R. Sahoo)
Estate Officer




12/12/23
VINAYAK MAKHAN

ADVOCATE FOR RESPONDENT
M - 9810522185

Accepted Copy
D/2322/2018
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12/12/2023

Received the copy of Award
for PETITIONER