NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.149/2013

MUNICIPAL CORPORATION OF DELHI(S) **APPELLANT(S)**

VERSUS

SRI AUROBINDO EUDCATION SOCIETY (REGD.) & ANR. **RESPONDENT(S)**

WITH

C.A. No.1102/2013

C.A. No.1104/2013

C.A. No.18308/2017

C.A. No.1103/2013

C.A. No. /2024
(@SLP(C) No.39787/2013)

C.A. No. /2024
(@SLP(C) No.39786/2013)

C.A. No. /2024
(@SLP(C) No.4926/2014)

C.A. No. /2024
(@SLP(C) No.5344/2014)

C.A. No.709/2013

C.A. No.707/2013

C.A. No. /2024
(@SLP(C) No.17978/2014)

C.A. No. /2024
(@SLP(C) No.24732/2015)

C.A. No.5935/2014

C.A. No. /2024
(@SLP(C) No.17980/2014)

C.A. No.695/2013

C.A. No.152/2013

C.A. No.151/2013

C.A. No.150/2013

C.A. No.18307/2017

C.A. No.18310/2017

C.A. No.696/2013

C.A. No.697/2013

C.A. No.704/2013

C.A. No.698/2013

C.A. No.699/2013

C.A. No.701/2013

C.A. No.702/2013

C.A. No.706/2013

C.A. No.18306/2017

O R D E R

Leave granted in SLP(C) No. 39787/2013, SLP(C) No. 39786/2013, SLP(C) No. 4926/2014, SLP(C) No. 5344/2014, SLP(C) No. 17978/2014, SLP(C) No. 24732/2015 and SLP(C) No. 17980/2014.

The Municipal Corporation of Delhi (hereinafter referred to as the "MCD") the appellant herein has assailed the judgment of the Division Bench of the Delhi High Court dated 23.08.2012 passed in twenty-six writ petitions filed by the respondents herein.

In the said writ petitions, the challenge was to the unit area method of levying property tax in Delhi introduced by virtue of the Delhi Municipal Corporation (Amendment) Act, 2003 (hereinafter referred to as the "Amendment Act 2003"). The said Amendment Act, 2003 as well as the Delhi Municipal Corporation (Property Taxes) Bye Laws, 2004 (hereinafter referred to as the "Bye Laws 2004")

were sought to be declared as unconstitutional and being *void ab initio.* It is necessary to state that the challenge to the Amendment Act 2003 as well as the Bye Laws 2004, was made by the twenty-six petitioners who are mostly educational institutions, education societies, schools (private unaided schools). The challenge which was common to all the petitions was founded on the following contentions:

> **"(1) the Legislative Assembly for the National Capital Territory lacked the legislative competence to enact the Amendment Act, 2003;**
>
> **(2) the presidential assent in the manner stipulated in Article 239AA (3)(c) was absent;**
>
> **(3) the unit area method was not the recognized system of valuation;**
>
> **(4) there were no guidelines for exercise of power under Section 116A and for classification;**
>
> **(5) that flat rate of taxation under the unit area method was imposed which was arbitrary and discretionary and therefore, illegal."**

All the writ petitions were considered together and it has been noted in the impugned order that there were twenty-two petitions filed by private unaided schools on legislative competence.

The MCD has succeeded on all the aforesaid contentions inasmuch as the Division Bench of the High Court has negatived the contentions raised by the Writ Petitioners (Respondents herein). However, the MCD is aggrieved by what has been reasoned and observed and directed in paragraphs 55 to 59 of the impugned judgment inasmuch as the High Court had opined that the criteria for the determination of the use factor based solely on the

collection of fee was incorrect inasmuch as those schools charging higher fees could not be regarded as serving a public service. The High Court has also opined that perhaps one use factor could be assigned to all schools which are not profit making irrespective of the fee structure and possibly a higher use factor could be assigned in schools which are being run on a profit making basis. Consequently, the High Court directed that the grievance of the writ petitioners with regard to the use factor assigned to school buildings be re-considered by the MCD and its Municipal Valuation Committee ("MVC" for short) in light of the observations made and not on the basis of the fee structure alone and possibly a single use factor could be assigned. The High Court in light of the aforesaid observations by way of an interim arrangement directed that since Government/Government-aided schools have been assigned use factor one '1', the same would be applicable for all schools till the exercise was completed by the MVC and the MCD in light of the discussion in the judgment.

For ease of reference, we extract paragraphs 55 to 59 of the impugned judgment of the High Court, as under:

> **"55. In twenty-two (22) petitions of this batch, the petitioners are either schools or education societies or trusts which run schools in Delhi. Apart from the issues of legislative competence etc., which we have already dealt with, these 22 petitions raise the following common issues:-**
>
> **[WP(C) Nos.8723/2008, 9341/2009, 9750/2009, 11018/2009, 11019/2009, 11017/2009, 11020/2009, 11021/2009, 7691/2008, 11014/2009, 9812/2009, 11294/2009, 11590/2009, 11015/2009, 11586/2009, 9827/2009, 9838/2009, 7668/2008, 11290/2009, 10272/2009, 11016/2009, 9822/2009.]**
>
> **(a) The use factor (UF) for all schools should be 1 (as applicable for public purpose);**

(b) The UAV should be the same for all schools and must be independent of the areas in which they are located;

(c) There should be no vacant land tax in respect of playgrounds of schools.

56. Insofar as the issue of Use Factor (UF) is concerned, it must be pointed out that different UF's have been prescribed for different types of schools. They are as under:-

Sl. No.	Type of School	Use Factor (UF)
1.	Government / Government Aided	1
2.	Private Unaided - Fees upto Rs. 600/-per month	1
3.	Private Unaided - Fees Rs. 601/-to Rs. 1200/-per month	2
4.	Private Unaided - Fees above Rs. 1200/-per month	

From the above table, it is clear that government and government aided schools have been prescribed a Use Factor of 1 whereas private unaided schools have been prescribed the Use Factors of 1, 2 or 3 depending on the fee structure. Those schools (private unaided) which charge fees upto Rs. 600/-per month would have a Use Factor of 1, whereas those which charge fees from Rs. 601/-to Rs. 1200/-per month would have a Use Factor of 2 and those charging more than Rs. 1200/-per month would have a Use Factor of 3. Such a classification, according to the petitioners, falls outside the domain of permissible classification.

57. It is argued on behalf of the petitioners that private unaided schools also fulfill the public purpose of education. It was submitted that the education societies and trusts which run these schools without the aid and assistance of the government need to charge fees for sustaining the institutions. Just because they charge fees, they should not be subjected to higher property taxes by employing the aforementioned graded Use Factors. It was also submitted that the schools are run on a non-profit basis. It was also contended that if the quantum of aid given to the aided schools is taken into consideration, the cost to society at large would not be less than the fee charged by the petitioners in their

schools. Reliance was also placed on a Division Bench decision of the Karnataka High Court in Baldwin Girls High School, Bangalore v. Corporation of the City of Bangalore: AIR 1984 Karnataka 162, where a differentiation on the basis of aided and unaided schools for the purposes of exemptions from property tax was struck down. It was submitted that the lower Use Factors work in the same way as exemptions and, therefore, by the same logic the differentiation based on fees charged ought to be struck down.

58. On the other hand, it was contended on behalf of the respondents that there exists an intelligible differentia, first of all, between aided / government schools and private unaided schools and secondly, within the latter category depending on the fee structure. It was argued that unaided private schools which charge fees upto Rs. 600/-per month have been equated with government / aided schools inasmuch as they have been ascribed the same Use Factor of 1. Only those schools that charge higher fees are required to pay property taxes based on the Use Factors of 2 and 3. This is so because charging of higher fees entails profiteering and, therefore, schools charging higher fees cannot be regarded as serving a public purpose.

59. While we have no difficulty in agreeing with the respondents that there exists an intelligible differentia between government / government-aided schools on the one hand and private un-aided schools on the other, the question that needs examination is whether this differentia has a nexus with the object of such classification. The apparent and ostensible object is that schools which are not running as profit earning businesses ought to be treated at par with government / government-aided schools. That is apparent from the fact that government / government aided schools have a use factor of 1 and so do private unaided schools, which charge fees upto Rs. 600/-per month. The foundation on which the Use Factors of 2 and 3 are assigned to schools charging fees between Rs. 601/-and Rs. 1200/-per month and those charging fees in excess of Rs. 1200/-per month, respectively, appears to be the reasoning or, shall we say, assumption that these schools are profit making enterprises. But, what if that were not true? What if the schools charging higher fees were imparting a better quality of education with a better infrastructure without any individual or group of individuals profiteering from the enterprise? In such a situation, the nexus between the intelligible differentia and the object would disappear rendering the classification to be violative of article 14 of the Constitution. Therefore, a classification based merely on the fee structure would

not be a satisfactory means of achieving the object. Perhaps, one Use Factor could be assigned to all schools which are not profit making bodies/entities, irrespective of the fee structure. And, a higher Use Factor could be assigned to schools which are being run on a profit-making basis. We have no means to ascertain as to whether the petitioners before us fall into one or the other category. While we agree with the petitioners that the fee structure cannot be the sole determinative factor for ascribing a particular Use Factor, we are also clear that it is not for us to do this exercise. Consequently, we direct that this grievance of the petitioners with regard to the Use Factor assigned to school buildings be considered by the Corporation and the MVC in the light of observations made above. In the meanwhile, however, as we have found the classification based on fee structure alone to be violative of Article 14 of the Constitution and beyond the mandate of the amended Act of 1957, all schools, irrespective of the fee structure, would have to be assigned a single Use Factor. And, since government / government aided schools have been assigned a UF of one (1), that would be applicable for all schools till the exercise is completed by the MVC and the Corporation in the light of the discussion above."

Being aggrieved by the above, MCD has preferred these civil appeals.

We have heard learned counsel Ms. Madhu Tewatia for the appellant(s) and learned senior counsel Mr. Sunil Gupta, Mr. Kailash Vasdev, Mr. Sushil Dutt Salwan and learned counsel Mr. Pramod Dayal and Mr. S.S. Ray for the respondents-schools and educational institutions and perused the material on record.

Despite the pendency of these cases before this Court since the year 2013, we find that the controversy in these cases is in a very narrow compass. The reasons for saying so is because subsequent to the impugned judgment passed by the Delhi High Court and during the pendency of the civil appeals before this Court, the MCD which was earlier trifurcated and which have since been amalgamated as MCD had undertaken exercise of assigning use factor

in respect of the schools and other educational institutions are concerned from time to time. However, after the amalgamation of the three Municipal Corporations with effect from 01.03.2022, by Office Order dated 19.04.2023, the recommendations of the 5th MVC have been notified, a copy of which has been submitted by learned counsel for the appellant. We note that the said recommendations are with effect from 01.04.2023.

Learned counsel for the appellant therefore, submitted that the observations of the High Court that till the exercise of assigning a use factor is made by the respective MVCs of the Corporation, the interim arrangement that all government or government aided schools shall have use factor of '1' and therefore, the same would be applicable for all private schools is not just and proper.

She further submitted that owing to earlier trifurcation and subsequent amalgamation of the MCD, the latest order is dated 19.04.2023 which is effective from 01.04.2023, but on account of the interim arrangement by way of a direction issued in paragraph '59' the same has been made applicable for all schools coming within the jurisdiction of MCD irrespective of whether they had filed any writ petition before the High Court and such a broad direction could not have been issued by the High Court covering all schools/educational societies.

Learned counsel for the appellant further submitted that when a direction was issued to the MCD to reconsider the aspect of use factor to be applied by undertaking a fresh exercise and the same has been undertaken and notified at various points of time even

during the pendency of these appeals before this Court by the respective MCDs and subsequently by the latest Office Order dated 19.04.2023, the use factor redetermined from time to time and notified on the respective dates must be made applicable to all the schools including the respondent schools herein coming within the respective jurisdictions of the trifurcated MCD.

She submitted that the pendency of these appeals before this Court would not imply that the exercise undertaken by the MVC insofar as the respective MCDs are concerned regarding the assignment of the use factor would have to be camouflaged on account of the interim arrangement made by the direction issued by the High Court in paragraph '59' which states that use fact of only '1' would be applicable for all schools, whether government or government aided schools or other private schools (Self Financing Institutions). She therefore, submitted that such a broad direction issued by way of an interim arrangement is prejudicial to the interest of the Revenue of the MCD and therefore, the said direction may be interfered with by this Court and consequently set aside.

Learned counsel for the appellant further submitted that there cannot be a uniform use factor for all the schools across the city of Delhi that the same would depend upon the different locations of all schools even though they may be fulfilling the same purpose of imparting education. That in fact the High Court has recognised the fact that the location of the schools would have a bearing on the use factor to be assigned as all the colonies or localities coming within the jurisdiction of the MCD which cannot obviously be

uniform or similar.

She submitted that in fact the High Court has accepted the contentions of the MCD in all respects except with regard to the directions issued by the High Court for redoing the exercise of assigning a use factor. She therefore, submitted that this Court may interfere in the matter and set aside that portion of the impugned judgment.

Per contra, learned senior counsel and learned counsel for the respondents submitted that these appeals are without merit; that in fact the writ petitioners before the High Court had not succeeded on all the aspects which they had agitated but only on the aspect regarding the assignment of the use factors of 2 and 3 insofar as schools are concerned which was on the basis of the fee structure which aspect the High Court has rightly struck down. It was contended that the High Court was also not right in observing that the use factor could be assigned to the schools based on the profit making basis as the same cannot be the basis for assignment of the use factor. It was urged that there are different variety of schools within the jurisdiction of MCD but the object of the running educational institutions is for imparting education and any profit that may arise thereto is only incidental and ancillary and to be used for the development of the school and there are many private educational institutions which are functioning on non-profit basis. Therefore, the observations of the High Court may be construed to be only as a suggestion or by way of an *obiter* and not as a direction to the MVC to be taken as a criterion while assigning the use factor for the school.

They further submitted that the High Court was right in striking down determination of the use factor based on the fee structure as the same would not have been a correct basis as it is an arbitrary basis for the assignment of use factor. They further supported the observations of the High Court that a single use factor must be assigned for all the schools located within the jurisdiction of the MCD and the said aspect may not be interfered with.

By way of reply, learned counsel for the appellant submitted that when the High Court has reserved liberty to the MCD to undertake a fresh exercise of determining the use factor, the observations that there ought to be a single use factor for all schools, whether government or private, aided or self financing educational institutions located in different parts of Delhi was also incorrect inasmuch as the very basis of imposition of property tax is on the basis of location, use and other such criteria and therefore, that portion of the High Court's order may be set aside.

Having heard learned counsel for the appellant-MCD and learned senior counsel and learned counsel for the respondents, as we have noted above, the controversy in these appeals is in a very narrow compass.

In respect of the schools and educational societies, the High Court considered the question as to whether the fee structure and the quantum of fees received by the respective Schools and educational institutions/societies could be the basis for determining the use factor. In paragraph '59' of the impugned judgment, the High Court has observed that the quantum of fees

received by the educational institutions could not be the sole basis of calculation/determination for the purpose of determining the use factor. Instead, one of the observations made was that the quantum of profit made by the educational institutions could be the basis for determination of the use factor, which would be irrespective of the fee structure. Secondly, the High Court has also opined that all schools, irrespective of the fee structure would have to be assigned a single use factor. We find that in view of the submissions made at the Bar the aforesaid two observations of the High Court would have to be construed as mere suggestions made to the appellant/MCD and in the nature of *obiter dicta* which would not bind MCD in determining the use factor afresh, particularly, when liberty was reserved to MCD to undertake a fresh exercise in this regard.

We agree with the submissions made by learned counsel for the respondents that while the High Court struck down the fee structure to be the sole basis for determination of the use factors in the matter of levy and collection of property tax, at the same time the High Court could not have stated that the quantum of profit could be a consideration for undertaking such an exercise. We think that the said observations of the High Court cannot really bind either the appellant(s) or the respondents herein and at best it could be considered to be a suggestion or in the nature of an *obiter*, not binding on the parties to the *lis*.

Another aspect of the matter which we need to consider is with regard to the direction issued by the High Court that until a fresh exercise is carried out for determining and assigning the use

factor insofar as the educational institutions/schools are concerned, the use factor of '1' should be applicable in respect of all schools.

Learned counsel for the appellant/MCD submitted that as a result of this direction, MCD has been deprived of determining the use factor of '2' or above by making the amendments. This would result in loss of revenue to MCD. It was submitted that if this direction is to be implemented then in respect of those educational institutions which had paid as per the earlier regime as per the use factor which has been delineated in paragraph '56' of the impugned judgment refund has to be made to all such educational institutions. Therefore, learned counsel for MCD submitted that the aforesaid directions may be set aside inasmuch as the loss of revenue on account of interim arrangement is an important aspect which may be taken note of by this Court.

We find force in the contentions of learned counsel for the appellant-MCD that the High Court, while striking down the basis for the determination of the use factor being based on fee structure was violative of Article 14, was not also correct while observing that all schools, irrespective of the fee structure would have to be assigned a single use factor. If that was so, then there was no need for the High Court to reserve liberty to the MCD to undertake an exercise of assigning a use factor in accordance with the location of the schools within the jurisdiction of MCD and also on other criteria.

We, therefore, agree with the contention of learned counsel for the appellant MCD and we hold that the interim direction issued

by the High Court assigning the use factor as '1' till the fresh exercise is to be completed in the determination of criteria of assigning the use factor is to be restricted only in the case of the persons, who filed the writ petitions before the High Court and not extended en-masse to all other educational institutions or societies. Further, insofar as those institutions are concerned, who have complied with the varying use factors which has been determined in the earlier regime are concerned and paid the property tax accordingly including the respondents herein there shall be no refund of the amounts paid to MCD.

We therefore set aside that portion of the observations of the High Court.

What has been highlighted by learned counsel for the appellant is with regard to another aspect of the interim arrangement that was put in place by the High Court pending the exercise of assigning a fresh use factor insofar as the schools are concerned. The High Court has observed that until the exercise is completed all schools in Delhi, whether government or government aided schools or private schools (Unaided and self financing schools) would have to be assigned use factor of '1'. We find that such a broad direction could not have been given by the High Court in respect of all schools in Delhi. At best it could have been only restricted to those writ petitioners who had approached the Court and who had been successful before the High Court in establishing that the determination of the use factor on the basis of the fee structure was erroneous.

The further contention of the learned counsel for the appellant(s) was that even insofar as the respondents are concerned, the direction would have to be modified inasmuch as the new criteria as determined would have to be made applicable from the year 2003 onwards. But for the earlier period what was determined would apply. We cannot accept the said submission vis-a-vis the original writ petitioners before the High Court inasmuch as nothing prevented the MCD from re-determining criteria for the use factor at an early date. The impugned judgment is dated 23.08.2012, however, the determination has been made only in the year 2016 and thereafter, in the years 2020 and 2023. Therefore, we find that sufficient time has lapsed for determining the said criteria and therefore, at this stage it may not be proper to modify the same insofar as the writ petitioners before the High Court are concerned.

In the circumstances, we restrict the direction which has been given in respect of the "all schools" in Delhi to only twenty-six schools, educational institutions societies, which were the petitioners before the Delhi High Court and not to anybody else.

It is needless to observe that w.e.f. the date of notifying the criteria on 30.09.2020 or even earlier and thereafter w.e.f. 2023, not only the writ petitioners who filed the writ petitions before the High Court but all others who are amenable to the payment of property tax insofar as schools and educational institutions/societies are concerned, will have to comply in terms of the said direction which was only till the completion of the

determination of the criteria of the use factor.

It is also brought to our notice by learned counsel for the appellant as well as learned senior counsel and learned counsel for the respondents that office order dated 19.04.2023 with regard to implementation of the recommendations of the Fifth MVC by the MCD has been issued with effect from 01.04.2023 and the same is a subject matter of writ petitions before the Delhi High Court. It may also be that in respect of MVC 2019-2020 there are challenges to the notification issued by the MCD, subsequent to the passing of the impugned judgment and they are pending consideration before the High Court. In the circumstances, while taking note of the said submission we say that this order is applicable up to the period 31.03.2023 insofar as the respondents herein/writ petitioners before the High court, in this batch of cases are concerned. We also observe that the aforesaid discussion as well as the directions issued are only restricted insofar as the impugned order is concerned and the challenge to the re-determination of the use factor would be considered on its own merits.

Further, wherever adjustments of dues of property tax have been made in the case of writ petitioners before the High Court, the same shall not be re-opened. This is in order to give a quietus to the controversy.

The appeals are allowed and disposed of in the aforesaid terms.

The parties shall bear their respective costs.

Pending application(s), if any, shall stand disposed of.

. . . . . ,J
[B.V. NAGARATHNA]

. . . . . .,J
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
MARCH 21, 2024

ITEM NO.101 COURT NO.12 SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S).149/2013

MUNICIPAL CORP OF DELHI **Appellant(s)**

VERSUS

SRI AUROBINDO EUDCATION SOCIETY . & ANR. **Respondent(s)**

(IA No. 123393/2022 - EARLY HEARING APPLICATION)

WITH
C.A. No. 1102/2013 (XIV-A)

C.A. No. 1104/2013 (XIV-A)

C.A. No. 18308/2017 (XIV-A)

C.A. No. 1103/2013 (XIV-A)

SLP(C) No. 39787/2013 (XIV)

SLP(C) No. 39786/2013 (XIV)

SLP(C) No. 4926/2014 (XIV)

SLP(C) No. 5344/2014 (XIV)

C.A. No. 709/2013 (XIV-A)

C.A. No. 707/2013 (XIV-A)

SLP(C) No. 17978/2014 (XIV)

SLP(C) No. 24732/2015 (XIV)

C.A. No. 5935/2014 (XIV-A)

SLP(C) No. 17980/2014 (XIV)

C.A. No. 695/2013 (XIV-A)

C.A. No. 152/2013 (XIV-A)

C.A. No. 151/2013 (XIV-A)

C.A. No. 150/2013 (XIV-A)

C.A. No. 18307/2017 (XIV-A)

C.A. No. 18310/2017 (XIV-A)

C.A. No. 696/2013 (XIV-A)

C.A. No. 697/2013 (XIV-A)

C.A. No. 704/2013 (XIV-A)

C.A. No. 698/2013 (XIV-A)

C.A. No. 699/2013 (XIV-A)

C.A. No. 701/2013 (XIV-A)

C.A. No. 702/2013 (XIV-A)

C.A. No. 706/2013 (XIV-A)

C.A. No. 18306/2017 (XIV-A)

Date : 21-03-2024 These matters were called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Appellant(s) **Mr. Rakesh Kumar-i, AOR**

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For Respondent(s) **Ms. N. Annapoorani, AOR**
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Mr. Puneet Thakur, Adv.
Mr. Ashray Behura, Adv.
Mr. Deepak Parashar, Adv.
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Mrs. Rajani Shahi, Adv.
Mr. Subhash Chand Goyal, Adv.
Mr. Amir Yadav, Adv.
Ms. Shrishti Rawat, Adv.

Mr. Sushil Dutt Salwan, Sr. Adv.
Mr. Arjun Garg, Adv.
Mr. Pramod Dayal, AOR
Mr. Nikunj Dayal, Adv.
Mr. Rakesh Kumar, Adv.
Mr. Aditya Garg, Adv.

Mr. B. Krishna Prasad, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted in SLP(C) No. 39787/2013, SLP(C) No. 39786/2013, SLP(C) No. 4926/2014, SLP(C) No. 5344/2014, SLP(C) No. 17978/2014, SLP(C) No. 24732/2015 and SLP(C) No. 17980/2014.

The appeals are allowed and disposed of in terms of the non-reportable signed order.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA) **(MALEKAR NAGARAJ)**
COURT MASTER (SH) **COURT MASTER (NSH)**

(Non-Reportable signed order is placed on the file)