

**SARVODAYA CO-OPERATIVE HOUSING SOCIETY LTD.
B-74 A SARVODAYA ENCLAVE NEW DELHI-110017.**

Date:-09.08.2023

CIRCULAR NO. - 8/2023-24

The land measuring 0.40 acres at B-74, Sarvodaya Enclave, on which the building had been constructed was given by the DDA on a lease rent of Rs.1/- per annum to the Society (as per Perpetual Lease Deed dated 16.10.1973) solely for community purposes on the terms and conditions mentioned therein and any other use was restricted in law.

The Property was used for various social, cultural and academic activities for the residents of the Colony. The building was constructed in the years 1984-86 with a basement and one room on the ground floor. Additions and alterations were undertaken from time to time. Society decided to undertake further construction of the Community Centre which was earmarked for the said purpose, as and when the funds would become available the Society would seek approval from the concerned authorities.

Accordingly, on 27.2.1996, as a prerequisite for undertaking further construction the Society wrote to MCD requesting for a 'No Due Certificate' in respect of the payment of property tax for the said property. No response was received from them. Thereafter the then Managing Committee's senior Members wrote letters to various authorities for 'No Dues Certificate' from the MCD so that further construction could be carried out but no response was received from them. Instead of issuing 'No dues certificate', they issued a Notice dated 4.11.1996, seeking relevant documents pertaining to the constructed and rented portions of the Community Centre.

Prior to that the Community Centre office bearers had obtained rectification of the 'exparte' order dated 22-02-91 and got it revised and the correct rateable value of the Community Centre Property was fixed by the MCD vide its order of 04-11-1996.

The Office Bearers of then Managing Committee made representation to the MCD taking exception with respect to Use Factor – 4 applied by the MCD while accessing Rateable Value of Community Centre Property. However the committee managed to clear all dues regarding House Tax in respect of the property of Community Centre, Sarvodaya Enclave up to 31-03-04 against payment Dated – 28-03-2005 vide Receipt No. 1279379 for Rs. 349507/- as per the bill 25-02-2005 as settlement up to

the era when the MCD could raise the bill after which the self assessment system had commenced.

In the era of Self Assessment that is with effect from 01-04-2004, the Community Centre Management Committee kept on filling / paying as per the Self Assessment of the House Tax by applying Use Factor '1' (residential / public purpose)

After that some officials of MCD conducted an inspection report on 30.3.2006 and mentioned in that Report that the said property being a 'community hall' and was being misused. On 09.11.2006 some portion of the building was sealed on account of inter alia alleged misuse and MCD also issued Show Cause Notice on 23.2.2007 to the Society that in spite of demand notice, there was outstanding property tax and the same would now be recovered u/s 155 and 156 of the DMC Act, 1957 by attachment of movable properties due to non payment of dues of House Tax. The Society replied vide its letter dated 1.3.2007 and 12.3.2007 to the concerned Authority.

The then members of previous Managing Committee made constant efforts for de-sealing of the premises. Then DDA issued Show Cause Notice dated 31.3.2008 to the Society for misusing the property in contravention of the terms of the original lease deed. The Society in great detail submitted their reply through their letters dated 8.5.2008 and 7.6.2008. After some correspondence the said portion of building was finally de-sealed by the DDA and the Monitoring Committee set up by the Supreme Court of India vide letter Dated 30.9.2009 and 24.11.2009. It had remained sealed for about three years.

Again MCD issued Show Cause Notice dated 15.3.2010 to the Society but it did not point out any alleged discrepancy other than alleging outstanding dues of Rs. 4,60,463/- The Management replied vide its letter dated 31.3.2010 and requested that the details of outstanding amount may kindly be furnished so that the difference between the records with the MCD on one hand and the record with Community Centre on the other hand could be reconciled. However MCD did not reply to that letter. The MCD issued another Show Cause Notice dated 19.7.2013 to the Society alleging discrepancies in the Self-Assessment Property Tax Return in regard to the "Wrong Factor Taken" and Wrong Tax Rate bought w.e.f. 2010-11. Reply was submitted by the then Managing Committee on 27.7.2013 but MCD did not respond to the said letter.

Again MCD issued letter dated 16.6.2015 to Society mentioning that as per the information available with the MCD department the property/part of the property was being used for commercial purpose" and directed: "You are requested to file proper and timely self assessment property tax returns and deposit all past and future dues at the appropriate rate".

Another Show Cause Notice dated 20.11.2015 under Section 123 AB/D of the DMC Act was served alleging that there is commercial meter stated to have been installed in the aforesaid property but property tax for aforesaid property was not being paid as per commercial use. In this letter of Dated – 20-11-2015 the Dy. / Asst Assessor & Collector South Zone RK Puram gave an opportunity stating: **“In case of any clarification / difficulty in filling PTR, you may contact the concerned area Inspector / Assessing Officer at this office along with copy of electricity bill (showing the date of installation of commercial meter) and covered area of aforesaid property”**.

At that stage the Society did not take the opportunity to show the electric meter CA – 100085910 as domestic in existence of records and also did not refer to the meter installed by Airtel for limited area for Commercial use and the case was not contested on merit at an appropriate time for the rectification of the excessive House Tax Calculated by the application of Use Factor -4 instead of Use Factor – 1. The Society only replied in generic way without referring to the objections as required to the replied and stated vide their letters dated 14.12.2015 and 11.3.2016 that “property was used for social and recreational purpose only for members and residents of the colony at large.”

The Management of the Society had also made various representations vide letters dated 31.3.2016, 28.6.2016, 8.7.2016 etc. to the MCD mentioning that property is used for the Community Purpose for the members of the Society which has Senior Citizen room, library/reading room, one ladies room, office room, drop boxes of the Delhi JAL board, IGL etc. Society holding seminars/meetings free of cost to the MCD and other NGOs/Social Organizations and Health Camp/Dengue Awareness etc.

The MCD was repeatedly informed that the applicable use factor for the determination of the Annual Value is Use Factor - I alone was applicable for residential/public purpose and not Use Factor 4 which was for commercial buildings only.

Under Rule 9 (b) of the Delhi Municipal Corporation (Property Tax) Bye – Laws 2004 read with Section 116A(1)(f) of the DMC Act, it is clear that the use of “subject property” is not covered within the ambit of “Business building”. “Business building” is defined as any building which is used for transaction of business or for keeping of accounts and records or similar other purposes. It is neither the case of the MCD that “subject property” is used for any of the purposes defined there-under, nor it is borne from the record that “subject property” was used for any transaction of business, etc.

On the contrary, it is clear that the use of “subject property” is strictly within the trappings of “public purpose” under Rule 9(i)(iv) of the Delhi Municipal Corporation (Property Tax) Bye Laws 2004 read with Section 116A(1) (f) of the DMC Act i.e. the purposes of socio-cultural complex...registered societies recognized by the

Corporation. Thus, the Property Tax ought to be assessment of "subject property" on the basis of Use Factor of "residential/Public purpose" – 1

The Delhi Municipal Corporation illegally and arbitrarily passed a non-speaking Assessment Order dated 9.3.2016 under Section 123 D of the DMC Act – whereby the tax liability qua the "subject property" was re-assessed/suo-moto assessment/revised with Use Factor 4 for commercial buildings – resulting in four-fold increase in the tax liability, retrospectively with effect from 1.4.2004.

The same was an illegal exercise of jurisdiction under Section 123D of the DMC Act. The Office bearers/Members of the then Managing Committee were shocked after receiving such huge demand. They informed the Delhi Municipal Corporation that no commercial activity was being carried out at the said property. Office bearers/Members also paid a physical visit to the office of the Municipal Corporation of Delhi on 29.03.2016 and wrote a letter providing details of the expenditure received and collected from 2013-14 to 2015-16 and requested the MCD to apply a Use Factor of '1' (residential/public purpose) instead of '4' (commercial).

This request was followed up by multiple letters in 2016 and 2017 by the then Managing Committee. But there was no response came from MCD barring the letter dated 29.12.2016, stating that there were arrears of Rs. 4, 60,463/- up to 31.3.2004 to be paid and informing the Society about the Amnesty Scheme 2016-2017.

The then Managing Committee continued its attempts to sort out this issue with the Municipal Corporation of Delhi (Property Tax) by way of many representations and letters. The then Managing Committee had also preferred Rectification/Revisions proceedings – in respect of the Assessment Order dated 09.03.2016. The MCD vide its letter dated 03.08.2021 sought further clarification/documents from the Society and granted personal hearing on 10.08.2021. Some Members of the then Managing Committee had visited the Office of the MCD and also issued a detailed letter dated 10.08.21 explaining that "subject property" is used only for community purpose for the benefit of the members of the Sarvodaya Cooperative Housing Society Ltd. such as Yoga, Card Room, Library, Dance etc. Due to the Rectification of the Assessment Order dated 09.03.2016 was under process the MCD could not raised a Demand Notice in respect of thereof.

Again MCD issued yet another Notice dated 27.07.2017- where under it was falsely alleged that no Self-Assessment Property Tax Return was filed by the Society for the period of 2004-05. The allegation was wrong. The Society had been duly filing Self-Assessment Property Tax Returns. After that MCD issued another Notice dated 29.09.2021 and alleged that "non-domestic meter is stated to have installed in the aforesaid property, but property tax for aforesaid property was not being paid a per use (CA - 100085910)".

At this stage the objection taken by the MCD in respect of electric meter could have been met by quoting the category of electric meter as residential as per record of CA No. 100085910. Instead of dealing with the specific objection once again the reply offered by the dealing member of Society was rather generic than specific to the objection. The House Tax matter could well be then handled as required to get the rectification about the use factor on the basis of existing residential category meter against CA No. 100085910 and the same exists even today. The Society vide its letter dated 11.10.21 to MCD had informed them that the Self-Assessment Property Tax Returns for the period 2018-19, 2019-20 and 2020 -2021 were not only filed within stipulated time but also taxes were paid in respect thereof. The society filed self assessment and deposited requisite house tax as envisaged by the worthy Managing Committee then in office. However the specific objection ought to have been met in time, was not done and the factor – 4 applied by the MCD could not be substituted by factor – 1 therefore the liability of house tax increased.

On 21.12.2021 MCD issued another Demand Notice under section 154 of the DMC Act demanding a huge sum of Rs. 49, 77,634/- as on 31.3.2016 and Rs. 23, 88,311 as on 31.03.21. The then Managing Committee vide letter dated 27.12.21 stated that the Property had been leased from Delhi Development Authority and was used for Community purpose only and welfare activities such as get-together of senior citizens, children dance, painting competition, celebration of Republic Day or Independence etc.

The Managing Committee also sought further time to respond to said Demand Notice, since the election of the New Management Committee of the Society was under process and wider discussion and consultation was needed to respond to the same as well as due to the threat of COVID 19 pandemic. Again MCD issued letter dated 30.3.22 threatening coercive steps for recovery of alleged outstanding tax. Then Society vide its letter dated 2.4.2022 sought further time to respond to the letter dated 30.3.2022 and Demand Notice in view of the election process of the Management Committee being under process.

After that certain officials of the Municipal Corporation of Delhi reached the said property and threatened to enforce their illegal demand of payment of tax - which was in complete violation of the DMC Act and the rules framed there under, rules of natural justice and every notion of fair play and justice.

The Managing Committee received another notice for payment of the outstanding amount. However, MCD also announced 'Samriddhi Scheme' 2022-23 wherein the interest and penalty accrued on outstanding arrears were to be completely waived off in the scheme. Municipal Corporation of Delhi requested the Society to avail of this facility and benefit from the scheme.

Some Members of the then Managing Committee had decided to file a Writ Petition on various grounds that MCD was illegally demanding Property Tax for the Society building by applying a Use Factor of '4' for commercial usage, instead of '1' for residential/public purpose. The property was used solely for the benefit of the residents and community of the residential colony of Sarvodaya Enclave and there was no commercial usage carried out in Society building. MC also tried to make a ground that MCD had failed to consider that Society had been regularly filing its property tax returns paying property tax on self-assessment basis under Section 123B of the DMC Act, since the year 2004 on Use Factor 1 and the Returns filed by the Society and the same had attained finality under Section 123b (10) of the DMC Act.

After detailed discussions Writ Petition was drafted in 2022 but was not filed because some members suggested that if Society had filed Petition it would be an another financial burden on the Society because as per the history of old court cases filed by the Society from time to time, a huge amount was spent and also decision had never come in favour of the Society in some other cases such as that of enhancement of Compensation case etc.

After the last elections held in February 2023 when the present Management Committee took over, it looked into the all aspects of the House Tax issue and thought it worthwhile to go for a practical solution to the House Tax Assessment and Payment Problem. The new Committee after deliberations decided to avail the time bound 'Samridhi Scheme' 2022-2023 announced by the MCD rather than taking chances by instituting a long drawn court case which could not be well founded due to earlier loose handling of the matter as well as there would be no guarantee for winning a court case against the MCD and the same could result into piling of the liabilities of House Tax. At the same time there was a scheme in hand duly announced by the MCD and the same was offering attractive rebates on one time clearing of all pending liabilities of House Tax and the scheme was to be availed within a specified time.

The present Management Committee met (for the fourth time) on 28-03-2023 which was attended by Shri S.S. Lamba (President), Ms. Bhaswati Mukherjee (Vice President), Shri Anil K Goyal (Secretary), Shri Manjit Singh & Shri Manish Mittal (Both Joint Secretaries) and Members Shri Anshuman Khanna, Shri Kanwar Narayan, Shri K Bhushan, Shri Kuldeep Singh, Ms. Jyotsna N Sharma. Ms Shefali Mittal (Secretary SERWA) was a special invitee.

In the opening remarks, the President in Chair highlighted the efforts involved in ensuring that the new team takes advantage of the pending house tax interest and penalty waiver scheme which was expiring on March 31, 2023. In this respect, President made an appeal to all honourable members for their contribution towards fund raising and recalled his own efforts to ensure that the House Tax dues of society

be got finalised and paid within the deadline announced by the MCD the same being available up to 31-03-2023.

The Secretary provided to the Members present an update on the house tax matter which as per reference of letters dated 21-12-21 had an outstanding demand of Rs 49,77,634/- (Rs. Forty Nine lakh, seventy seven thousand six hundred thirty four only) and Rs 23,88,111/- (Rs Twenty three lakh, eighty eight thousand three hundred and eleven only) plus interest and penalty as applicable.

Secretary further informed that in September 21, the MCD team had visited the community centre and their report had suggested the above facts. For this reason, an urgent request for re-inspection was made vide a letter also containing factual submission. MCD officials had undertaken a fresh inspection and it appeared that the outstanding demand could be brought under Rs 25 lakhs. The Committee needed to consider this option urgently to decide on the necessary steps towards this direction since taxes need to be paid before 31st March 2023.

After due deliberation, the following decisions were taken:

1. Efforts may be made to take benefit of scheme and reduce liability to the best extent possible.
2. If this is achieved then to make arrangement for funds to ensure availability of funds with Society to pay the House Tax before the due date.
3. In order to achieve this objective, the fixed deposit of Rs 10,00,000 in the bank account of the Society with Punjab National Bank would required to be encashed prematurely.
4. All MC Members expressed their willingness to give a non refundable one time contribution of Rs 10,000/- each an estimate based on tax demand within Rs 25 Lakhs with 250 Society Members contributing equally. Society Members would be informed of this after receiving the MCD order and with a detailed note on the matter. A summary paper circular would be prepared bringing the facts to the knowledge of Members Residents in a transparent manner through a meeting in due course.
5. To supplement the short term immediate need, all MC Members were requested to consider giving an interest free refundable deposit up to Rs 1,00,000 each on a voluntary basis, which would be returned from collection of Society Members voluntary contribution of Rs 10,000 each as per point four above. The entire process of announcement and collection may take six months or more to collect it. It would be utilised to pay off the interest free loan as bridge finance received. All loans will be paid pro rata to all the MC Members who have contributed towards such loan/deposits on a voluntary basis.

Therefore the Managing Committee decided to avail of this time bound scheme and requested MCD to calculate the amount based on facts. It was also mentioned in the letter that at present the Property was not under any commercial use. There was only some specified and limited non commercial activity. The MCD considered and accepted the request of the Managing Committee and after re-evaluation of the rateable value and the consequent House Tax an amounting to Rs 23 lakhs under the 'Samriddhi Scheme' which was paid by Cheque on 31-3-2023. Subsequently the MCD on clearance of dues issued a "No Dues Certificate" dated 11.05.23.

The amount paid to MCD has partly been given by the Members of the Present Committee as interest free loan and by liquidising some fixed deposit of Community Centre fund. Total amount to be funded by a voluntary contribution of Rs 10,000 from each society member which will recoup this historical cost of house tax including repayment of interest free loans availed from managing committee members.

Reasons for adopting the Samridhi Scheme:

- 1 The dues of house tax were getting accumulated and with overdue interest / penalty - it was estimated around Rs 1.50 crores.
- 2 The matter was hanging since year 2004 and with wisdom of all past committee members, it was not getting resolved as hoped.
- 3 The reasoning given by all earlier committees was not accepted by MCD as there is no precedence of any community centre getting assessed at Factor One as was requested by Society throughout.
- 4 There has been no legal judgement found / referred or guided by any lawyer which supported the reasoning of Society as was always requested in letters of society to MCD.
- 5 Writ petition with stay as thereafter in 5-6 or more hearings, would have costed a sizable amount with no assurance or guarantee any solution of the problem.
- 6 Any adverse court order would have attracted interest and the consequent extra burden.
- 7 The scheme being time bound there was no time to wait for the collection of funds from the members therefore the Honourable Member of the Managing Committee advanced interest free loan to fund the payment of standing liability for availing the scheme which offered substantial reduction of House Tax and settling the long pending problem in one go against payment of Rs 23 Lakhs.
- 8 The MCD officials were urged to conduct the inspection of the Community Centre Building on urgent basis and the same was got done in the last week of March 2023 before the scheme would close. The liability since 2004 till date was finally cleared. After payment was made as Rs 23 Lakhs the liabilities till date has become zero.



S.S. Lamba
President

To:- 1. All Members of Sarvodaya Co-operative Housing Society LTD.
2. Notice board

C.C:- Secretary , Sarvodaya Co-operative Housing Society LTD.