**(1998) 07 DEL CK 0096**

**In the Delhi High Court**

**Case No :** CM (M) 328/98

Municipal Corporation of Delhi APPELLANT

Vs

M/s. Aries Developers Pvt. Ltd. RESPONDENT

**Date of Decision :** 28-07-1998

**Acts Referred:**

**Citation :** (1998) 5 AD 372 : (1998) 74 DLT 823 : (1998) 46 DRJ 654

**Hon'ble Judges :** S.N. Kapoor, J

**Bench :** Single Bench

**Advocate :** Ms. Madhu Tewatia, for the Appellant;

## Judgement

S.N. Kapoor, J.

1. This CM (M) has been filed against an order of remand in House Tax Appeal No. 205/96.

2. The operative portion of the impugned order reads as under:

"The case is remanded for assessment afresh in the light of the above observations with the directions to the Assessing Officer to afford due and proper opportunity of being beard to the appellant and make a reasoned order within a reasonable period."

3. Learned counsel for MCD Ms. Madhu Tewatia submitted that this judgment of Naresh Kumar Vs. Union of India and Others, relied upon by the learned District Judge has been set aside in Municipal Corporation of Delhi and another Vs. Naresh Kumar and others, . From the perusal of the judgment of MCD & Ors. Vs. Naresh Kumar & Ors., (supra), in SLP arising out of the judgment and order of this High Court in CWP 937/94, it is seen that in that case it has been held that though clause (c) exempts "agricultural lands and buildings from the levy imposed by Section 115(4). Clause (c), however, contains an exception within itself. The dwelling houses are excluded from the purview of agricultural lands and buildings." In paras 4, 6 and 7 question of land appurtenant to dwelling

house was considered. In para 6 following observations were made:

"6. The next question is - if a "dwelling house" is exigible to levy of general tax, how much of the adjacent land should be treated as an integral part of the dwelling house. In other words, the question is whether the entire land surrounding or abutting a farm house is subject to general tax along with the dwelling house. The answer to this question is: a dwelling house includes within its ambit such appurtenant land as is necessary for a proper and convenient enjoyment of the dwelling house. The extent of such appurtenant land is naturally a question of fact to be decided in each case. We have only stated the test. It is for the appropriate assessing authority to determine the extent of land which can be called appurtenant land to a given dwelling house."

4. The order of remand is not at all affected by the above observations in any manner for no observation has been made indicating to exclude all land excepting the dwelling house.

5. The extent of "appurtenant land" is naturally a question of fact to be decided in each case. When the learned Additional Judge passed an order to decide the matter in the light of the aforesaid judgment, he would have never intended to say that this judgment is to be followed even if it is modified or reversed by the Supreme Court. The intention is to follow the ratio of the court of record and in case there is ratio of the Apex Court then to follow the ratio of the Apex Court. Consequently, a proper reading of the order would mean that ratio in Naresh Kumar Vs. MCD'' case (supra), so long as it is not modified by the Apex Court, should be followed and in case it is modified or reversed then the ratio of the judgment of Apex Court has to be followed. It is a question of just proper reading. This judgment cannot be read otherwise. The order of remand indicates that the value of the land of 1.80 crores has been arbitrarily arrived at "by ignoring the sale deeds vide which the said farm house was purchased by the appellant", Silence about the cost of construction of the dwelling house and taking into consideration the total area measuring 2.5 acres for the purpose of considering the value of the land appears to be against the judgment of Naresh Kumar Vs. Union of India and Others, as well as Municipal Corporation of Delhi and another Vs. Naresh Kumar and others, and the provisions of Section 115(4)(c) of the DMC Act. Accordingly, I see no reason to interfere with the impugned order. Accordingly, the appeal is dismissed.