
2017 eGLR_HC 10006416

Before the Hon'ble MR M R SHAH, JUSTICE the Hon'ble MR. B.N. KARIA, JUSTICE

RELIANCE JIO INFORCOMM LIMITED Vs. STATE OF GUJARAT AND ORS.

SPECIAL CIVIL APPLICATION No: 5322 of 2017 , Decided On: 21/03/2017

MR MIHIR JOSHI, SENIOR ADVOCATE with MR KUNAL NANAVATI, with MR KUNAL J. VYAS, for NANAVATI ASSOCIATES, for the Petitioners MS MANISHA LAVKUMAR, GOVERNMENT PLEADER with MR HARDIK VORA, AGP for the Respondent(s) No. 1

M. R. SHAH, J. [1.0] As common question of law and facts arise in both these petitions, both these petitions are decided and disposed of by this common judgment and order.

[2.0] In both these petitions under Article 226 of the Constitution of India, respective petitioners have challenged the impugned demand notices issued by the respective Municipal Corporations demanding the property tax on the respective Mobile Towers installed by the respective petitioners.

[2.1] At the outset it is required to be noted that this is the second round of litigation and the attempt on the part of the respective Telecommunication Service Providers to avoid payment of property tax on the Mobile Towers. Earlier mobile telecommunication service providers like the petitioners raised the question of levy of property tax on Mobile Towers and also challenged the vires of section 145A of the Gujarat Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "GPMC Act") before this Court. The respective telecommunication service providers like the petitioners succeeded before this Court and the Division Bench of this Court declared section 145A of the GPMC Act as ultra vires to the Constitution of India more particularly legislative Entry No.49 of List II and held that Mobile Towers cannot be stated to be a "building" and therefore, to levy the tax on Mobile Towers treating the same as "building", is beyond the competence of State Legislature to provide for taxation. That by common judgment and order dated 16.12.2016 passed in Civil Appeal Nos.5360 - 5363/2013, the Honble Supreme Court has allowed the said appeals and quashed and set aside the decision of the High Court and has held "Mobile Towers" as "land and building" and therefore, it is held that the State is having the competency to enact the law to levy the tax on Mobile Towers. At this stage it is required to be noted that during the pendency and final disposal of the appeals before the Honble Supreme Court against the decision of the Division Bench of this Court, the Honble Supreme Court stayed the judgment and order passed by the Division Bench of this Court and stayed the order of refund passed by the High Court, on condition that the respective Corporations deposit the amount already collected, before the Honble Supreme Court. The Honble Supreme Court also clarified that the respective Corporations may determine the tax on Mobile Towers under the GPMC Act and raise the demand on the respective Mobile Towers, however, such demand shall not be enforced until disposal of the appeals. The Honble Supreme Court also observed that the determination of such tax shall be subject to the final decision in the appeals. Consequently, during the pendency of the appeals before the Honble Supreme Court, the

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recovery of tax was kept in abeyance. That thereafter when the Honble Supreme Court set aside the order passed by the Division Bench of this Court and held against the respective petitioners - Telecommunication Service Providers and upheld the vires of section 145A of the GPMC Act, when the respective Corporations raised the demand of the property tax on the Mobile Towers for the past period as well as current periods, at that stage again the respective petitioners - Telecommunication Service Providers have preferred the present Special Civil Applications again challenging the demand of property tax on the Mobile Towers, which is the subject matter of the respective petitions.

[3.0] Shri Mihir Joshi, learned Senior Advocate has appeared on behalf of the respective petitioners in the respective petitions. Ms. Manisha Lavkumar, learned Government Pleader has appeared with Shri Hardik Vora, learned Assistant Government Pleader on behalf of the State of Gujarat. We have heard learned Counsel appearing on behalf of the respective parties at length.

[4.0] Shri Mihir Joshi, learned Counsel appearing on behalf of the petitioners has vehemently submitted that the impugned demand of property tax at the rates fixed under the relevant Taxation Rules and applying the same to the Mobile Towers is absolutely illegal.

[4.1] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioners that unless and until and as so provided under Section 145A of the GPMC Act, the State Government determines the maximum rates of tax on Mobile Towers, there cannot be any demand of property tax on the Mobile Towers.

[4.2] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioners that if the impugned property tax bills are seen it reveal that same are based upon calculation of property tax on the basis of the factors, multipliers, location, age of the building etc. which are, as per the relevant Taxation Rules applicable to Land and Buildings. It is submitted that the impugned notices / bills as such nowhere refer to the rate as prescribed under Section 145A of the GPMC Act. Therefore, it is submitted that the impugned notices / demand of property tax on the Mobile Towers are issued without following the procedure as prescribed in the Statute more particularly Section 145A of the GPMC Act.

[4.3] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioners that it is true that the Honble Supreme Court has upheld the vires of Section 145A of the GPMC Act, however the Honble Supreme Court has treated and/or considered the "Mobile Tower" as "land and building" only for the purpose of Entry 49 of List II of the Constitution of India. It is submitted that as such from the judgment and order passed by the Honble Supreme Court by which the Honble Supreme Court has held section 145A of the GPMC Act constitutionally valid, the Honble Supreme Court has not specifically observed that the "Mobile Towers" shall be treated and/or considered as "land and building" for the purpose of levy of property tax under the provisions of the GPMC Act. It is submitted that only for the purpose of considering the legislative competence of the State to

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impose tax on Mobile Towers, the "Mobile Towers" are held to be "land and building" within the meaning of Entry 49 of List II of the VIIth Schedule to the Constitution.

[4.4] It is submitted that assuming that Section 145A of the GPMC Act is held to be ultra vires and/or constitutionally valid and the competence of the State Government to impose the tax on Mobile Towers, considering Entry 49 of List II of the VIIth Schedule to the Constitution is upheld and/or held to be valid, in that case also, considering section 145A of the GPMC Act, unless and until maximum rates are prescribed by the State Government, in that regard, there cannot be any demand of property tax on the Mobile Towers under / as per the General Taxation Rules. It is submitted that as per Section 145A of the GPMC Act, in case of none of the Corporations, the State Government has come out with any Notification prescribing the maximum rates of tax on the Mobile Towers as required under Section 145A of the GPMC Act. It is submitted that therefore, the impugned demand of property tax on the Mobile Towers by the impugned bills is absolutely illegal and contrary to the provisions of the Statute which deserves to be quashed and set aside.

[4.5] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioners that section 145A of the GPMC Act is a special provision for levy of property tax on Mobile Towers. It is submitted that therefore unless and until the maximum rates are prescribed by the State Government as required / provided under Section 145A of the GPMC Act and any procedure as per section 99 of the GPMC Act is followed, there cannot be any demand of property tax on the Mobile Towers and that too on the basis of the General Property Tax Rules applicable to buildings and lands.

[4.6] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioners that the Property Taxation Rules shall be applicable with respect to the property tax levied under section 129 or section 141AA of the GPMC Act and not under Section 145A of the GPMC Act.

[4.7] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioners that as such "Mobile Tower" cannot be said to be a building and/or even land. It is submitted that the term "building" is defined under Section 2(5), term "land" is defined under Section 2(30). It is submitted that "Mobile Tower" is separately defined under section 2(34AA). It is submitted that therefore the "Mobile Tower" cannot be said to be either building or land as per section 2(5) and section 2(30) of the GPMC Act and therefore, the Corporation cannot demand the property tax on Mobile Towers treating the same as building or land, under the General Property Tax Rules applicable to the building and land.

[4.8] Shri Joshi, learned Counsel appearing on behalf of the petitioners has taken us to various provisions of the GPMC Act more particularly Sections 127, 127C, 129, 141AA, 141B, 99 and 145A of the GPMC Act in support of his submissions that the Corporation cannot demand the property tax on the basis of the general property tax applicable to the building and land and that the

demand of tax on the basis of the general property tax applicable to the lands and building is contrary to the aforesaid provisions of the Statute.

[4.9] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioners that even otherwise the impugned demand of property tax on Mobile Towers is ultra vires to Article 243X of the Constitution of India. It is submitted that as provided under Article 243X of the Constitution of India, State Government cannot impose any tax without authority under the law. It is submitted that therefore when the procedure as required under Section 145A of the GPMC Act has not been followed and the State Government has not prescribed any maximum rate of tax on the Mobile Towers, the impugned demand of property tax can be said to be without the authority under the law and therefore, ultra vires the Article 243X of the Constitution of India.

[4.10] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioners that even the computation employed by the respondent Corporation for levy of tax on mobile towers, allegedly as per the Taxation Rules under Chapter VII of Schedule A to the GPMC Act, is palpably arbitrary, and in the circumstances such levy of tax on mobile towers is required to be quashed and set aside. It is submitted that while computing the tax sought to be levied on mobile towers, "use factor" has been considered on the basis that such mobile towers / microwave tower fall under CommercialB category. It is submitted that it is not known on what basis has the respondent Corporation classified mobile / microwave towers under CommercialB category. It is submitted that in fact the activity carried out through the mobile tower is industrial in nature, and therefore classification of mobile towers under CommercialB is arbitrary and wrongful. It is further submitted that while denying that mobile / microwave towers fall under Commercial category, it is not known as to on what basis the respondent Corporation has prescribed the Occupancy factor for mobile / microwave towers to be "2".

[4.11] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioners that section 141B(3)(a) of the GPMC Act provides that the rate of tax determined under subsection (1) read with subsection (2) shall not be less than Rs.10 per sq. meter of carpet area and more than Rs.40 per sq. meter of carpet area in case of residential buildings. It is submitted that further, section 141B(3)(b) provides that the rate of tax determined under section (1) read with sub section (2) shall not be less than Rs.20 per sq. meter of carpet area and more than Rs.80 per sq. meter of carpet area in case of buildings other than residential. It is submitted that therefore, clearly a ceiling limit is provided for taxing the properties under Section 141B of the GPMC Act. It is submitted that respondent Corporation, has, by virtue of exercise of powers under Section 453 read with section 454 of amended Schedule A to add "factors" to be multiplied with the base rate for arriving at the final rate of tax per sq. meter for the purpose of mobile towers. It is submitted that the rate determined by the Corporation for mobile towers of the petitioner in one case is Rs.28 per sq. meter. However, after taking into consideration the "factors", the rate of property tax for the said mobile tower on the aforesaid tenement amounts to Rs.302 per sq. meter, which is beyond the ceiling limit provided under Section 141B(3) of the GPMC Act. It is submitted that even section 141B(4) does not empower the Corporation to add "factors" mentioned therein as multiplier so as to determine and levy tax beyond the ceiling limit prescribed under Section 141B(3) of the GPMC Act. It is submitted that therefore imposition of the property tax is therefore clearly illegal and ultra

viros to Article 243X of the Constitution of India

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Making above submissions, it is requested to admit / allow the present petitions and quash and set aside the impugned demand of property tax on the Mobile Towers treating the same as land and building and applying the relevant General Property Tax Rules applicable to lands and buildings.

[5.0] Heard Shri Joshi, learned Counsel appearing on behalf of the petitioners.

At the outset it is required to be noted that as such the issue involved in the present petitions is squarely covered by the decision of the Division Bench of this Court dated 07.03.2017 in the case of ATC Telecom Tower Corporation Private Limited & Anr. vs. State of Gujarat and Others rendered in Special Civil Application Nos.2693/2017 and other allied matters, by which similar challenge to the levy of property tax on mobile towers has been negated by this Court and considering the decision of the Honble Supreme Court in the case of Civil Appeal Nos.5360 - 5363/2013, by which the Honble Supreme Court has upheld the constitutional validity of Section 145A of the GPMC Act by holding that "mobile towers" are "building". The Division Bench of this Court has also considered the definition of "building" contained in section 2(5) of the GPMC Act and has observed and held that "mobile towers" can be said to be "building" as defined under Section 2(5) of the GPMC Act. Shri Joshi, learned Counsel appearing on behalf of the respective petitioners is not disputing that as such the issue involved in the present petition is squarely covered against the petitioners in view of the decision of the Division Bench of this Court in the case of ATC Telecom Tower Corporation Private Limited & Anr. (Supra) however, has submitted that in the present petitions two additional grounds are raised as per grounds E and E1, which were not canvassed before the Division Bench at the time of decision in the case of ATC Telecom Tower Corporation Private Limited & Anr. (Supra).

[5.1] While dismissing the similar petitions in which the levy / imposition of the general tax / property tax on the mobile towers were challenged, the Division Bench of this Court has observed and held as follows:

"[11.0] Heard learned Counsel appearing on behalf of the respective parties at length.

At the outset it is required to be noted that this is another attempt on the part of the respective cellular operators / telecommunication service providers avoiding to pay the property tax on Mobile Towers. Earlier the respective cellular operators / telecommunication service providers challenged the demand of property tax on Mobile Towers and the vires of section 145A of the GPMC Act and they have lost before the Honble Supreme Court. After the Honble Supreme Court held section 145A of the GPMC Act constitutionally valid / intra vires and thereafter when the respective Corporations / Nagar Palikas have again raised the demand of property tax, present petitions are filed now again challenging the demand of property tax on Mobile Towers.

At this stage it is required to be noted that during the pendency of petitions before this Honble Court earlier and in the earlier round of litigation, the respective cellular operators / telecommunication service providers were directed to deposit / pay 50% of the property tax on the Mobile Towers and rest of the demand was stayed. That the respective cellular operators / telecommunication service providers paid 50% of the property tax. That the Division Bench of this Court held Section 145A of the GPMC Act ultra vires and consequently set aside the demand of property tax on Mobile Towers and directed to refund the property tax so deposited by the respective cellular operators / telecommunication service providers. In the appeals before the Honble Supreme Court against the decision of the Division Bench of this Court, the Honble Supreme Court while admitting the SLP, stayed the operation of the order passed by the Division Bench of this Court and also stayed the order passed by the Division Bench to refund the property tax already collected, however on condition that the respective Corporations / Nagar Palikas to deposit the same. By way of interim order the Honble Supreme Court directed the respective Corporations to raise the demand of property tax, however actual recovery was stayed, during the pendency and final disposal of the appeals before the Honble Supreme Court. That thereafter after the judgment and order passed by the Honble Supreme Court quashing and setting aside the judgment and order passed by the Division Bench of this Court, while upholding the vires of section 145A of the GPMC Act, also upheld the demand of property tax on the Mobile Towers, which were set aside by this Court. That thereafter the respective Corporations / Nagar Palikas have issued the impugned bills and raised the demand of property tax again for the past period as well as current period. Under the circumstances, as such thereafter it will not be open for the respective petitioners - cellular operators / telecommunication service providers again to challenge the demand of property tax which as such were already challenged and subject matter of the petitions before this Court in earlier round of litigation and before the Honble Supreme Court. At this stage it is required to be noted that as such the very bills / demand of property tax were challenged before this Court as well as before the Honble Supreme Court and at that time no submissions were made before the Honble Supreme Court and/or no grievance was made before the Honble Supreme Court which is now made. As such by impugned demand of property tax / bills the respective Corporations have sought to recover the property tax on the Mobile Towers which ultimately came to be upheld by the Honble Supreme Court. At this stage it is required to be noted that as observed hereinabove no submissions / grievance was made before the Honble Supreme Court with respect to the demand of property tax which is now made and infact the Honble Supreme Court has not reserved any liberty in favour of the Gujarat cases permitting the respective cellular operators / telecommunication service providers to agitate the issue with respect to the demand of property tax and the quantum thereof, as is made with respect to the cellular operators in the Bombay cases. In the case of cellular operators in the Bombay cases, in the operative portion, the Honble Supreme Court has specifically observed that so far as cellular operators in Bombay cases are concerned, it will be open for them to agitate the issue with regard to the retrospective operation of the assessment / demand of tax and the quantum thereof before the appropriate Forum, if so advised. No such liberty has been reserved in favour of cellular operators in the Gujarat cases. Therefore, once the Honble Supreme Court has allowed the appeals preferred by the Corporations and has quashed and set aside the judgment and order passed by the Division Bench of this Court upholding vires of section 145A of the GPMC Act and consequently upholding the demand of property tax on Mobile Towers. Thereafter, it will not be open for the petitioners to again agitate the issue with respect to the demand of property tax on Mobile Towers.

[11.1] Even otherwise on merits also, for the reasons stated hereinbelow it cannot be said that the impugned demand of property tax on Mobile Towers as per the relevant taxation rules applicable to

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land and building is in any case illegal and/or contrary to the provisions of the Statute and/or law.

[11.2] The respective Corporations / Nagar Palikas have raised the demand of property tax on the Mobile Towers treating the same as land and building and applying the relevant taxation rules applicable to the land and building. However, it is the case on behalf of the respective petitioners - cellular operators that though the Honble Supreme Court has held the "Mobile Towers" as "building and land", the same is for the purpose of Entry No.49 of List II of the VIIth Schedule to the Constitution of India only and while considering the constitutional validity of section 145A of the GPMC Act only and the Honble Supreme Court has not treated or considered the "Mobile Tower" as "building" as defined under the provisions of the GPMC Act and therefore, it is the case on behalf of the respective cellular operators / telecommunication service providers that the impugned demand of property tax on "Mobile Towers" treating the same as "building" is bad in law and illegal and/or without authority under the law inasmuch as the State Government has not prescribed the maximum rate of tax on Mobile Towers as per section 145A of the GPMC Act. The aforesaid has no substance. There cannot be any two meanings, one for constitutional validity and another for the relevant Statute / Act. Once the "Mobile Towers" are treated as "building and land" by the Honble Supreme Court while upholding section 145A of the GPMC Act and having held that the "Mobile Towers" are "building and land" and therefore, the same shall fall in Entry 49 of List II of VIIth Schedule to the Constitution of India and therefore, the State Government is competent to impose the property tax on Mobile Towers, for all purpose the Mobile Towers are to be considered as building and land. The submission on behalf of the respective petitioners / cellular operators that for the purpose of Entry 49 of List II of VIIth Schedule to the Constitution of India, the Mobile Towers can be treated as building and land as held by the Honble Supreme Court, however the same cannot be treated and/or considered as building and land under the provisions of the GPMC Act is concerned, the same cannot be accepted. Once the Honble Supreme Court in the case of very cellular operators and while considering the very provisions of the GPMC Act more particularly section 145A of the GPMC Act has held and/or treated the Mobile Towers as building and land more particularly building for all purpose under the GPMC Act, the same are required to be treated and/or considered as building and land more particularly the building. Under the circumstances, the impugned demand of property tax on the Mobile Towers as per the relevant Taxation Rules applicable to buildings and land / building cannot be said to be without authority under the law and/or illegal as sought to be contended on behalf of the respective petitioners.

At this stage it is required to be noted that the Honble Supreme Court has considered and held "Mobile Towers" as "building and lands" even after considering the definition of "building" in the GPMC Act. In para 31 of the decision in Civil Appeal No.5630 - 5363/2013, the Honble Supreme Court has specifically observed that if the definition of "land and building" contained in the GPMC Act is to be understood, Mobile Tower is certainly a building. At this stage it is required to be noted that in the said decision the Honble Supreme Court has also taken a note of the fact of regulatory powers of the Corporations, Municipalities and Panchayat in the matter of installation, erection and operation of the "Mobile Towers" even before the specific incorporation of the Mobile Towers in the Gujarat Act by 2011 amendment and such control under the Bombay Act at all points of time and thereafter has observed that the aforesaid would be a valuable input to accord a reasonable extension of such power and control by understanding the power of taxation on "Mobile Towers" to be vested in the State Legislature under Entry 49 of List II of the VIIth Schedule to the Constitution of India. Under the circumstances, the "Mobile Towers" are to be treated as "building" and for all purpose and therefore, the Corporations are justified in demanding the tax on

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"Mobile Towers" treating the same as building and land, and under the Taxation Rules read with relevant provisions of the GPMC Act applicable to the land and building and applying the factors mentioned in the Taxation Rules read with section 141AA of the GPMC Act.

[11.3] Even otherwise even considering the definition of the "building" as contained in section 2(5) of the GPMC Act, it is very wide. As per subsection (5) of section 2, "building" includes a house, outhouse, stable, shed, hut and other enclosure or structure whether of masonry, bricks, wood, mud, metal or any other material whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths.....and the like. It is true that "Mobile Tower" is separately defined under Section 2(34AA) of the GPMC Act. However, it is required to be noted that "Mobile Tower" is separately required to be defined in view of the amendment in the year 2011 by which the Mobile Towers are "included" and sections 127 and 145A of the GPMC Act is amended. However, still considering the term "building" defined under Section 2(5) of the GPMC Act, still the Mobile Towers can be said to be the "building". As such as observed hereinabove, in the case of very cellular operators and while considering the provisions of the GPMC Act and sections 145A of the GPMC Act, the Honble Supreme Court has specifically observed and held "Mobile Towers" as "building".

[11.4] While considering the submissions made by the learned Counsel appearing for respective parties, the relevant provisions of the GPMC Act are required to be referred to and the reference of which have been made by the learned Counsel appearing for respective parties while making submissions on the demand of "property tax on Mobile Towers" treating the same as "land and building".

"Sec.2(5). "building" includes a house, outhouse, stable, shed, hut and other enclosure or structure whether of masonry, bricks, wood, mud, metal or any other material whatever, whether used as a human dwelling or otherwise, and also includes verandahs, fixed platforms, plinths, doorsteps, walls including compound walls and fencing and the like;

Sec.2(30) "land" includes land which is being built upon or is built upon or covered with water, benefits to arise out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street;

Sec.2(34AA) "Mobile Tower" means a temporary or permanent structure, equipment or instrument erected or installed on land or upon any part of the building or premises for providing telecommunication services.

Sec.2(49). "property tax" means a tax on buildings and lands in the city;

Sec.2(54) "rateable value" means the value of any building or land fixed whether with reference to any given promises or otherwise, in accordance with the provisions of this Act and the rules for the purpose of assessment to property taxes

2(1A)

Sec.99. Fixing of rates of taxes The Corporation shall, on or before the twentieth day of February, after considering the Standing Committees proposals in this behalf, determine, subject to the limitations and conditions prescribed in Chapter XI, the rates at which municipal taxes referred to in subsection (1) of section 127 shall be levied in the next ensuing official year and the rates at and the extent to which any of taxes referred to in subsection (2) of the said section which the Corporation decides to impose shall be levied in the next ensuing official year.

Sec.127. Taxes to be imposed under this Act. (1) For the purposes of this Act, the Corporation shall impose the following taxes, namely:

(a) property taxes ;

(b) a tax on vehicles, boats and animals :

[Provided that in the case of a local area constituted to be a City under subsection (2) of section 3, until the expiry of a period of two years from the appointed day or of such further period not exceeding two years as the State Government] at the request of the Corporation for such City may, by notification in the Official Gazette, specify, the provisions of this section shall have effect as if there had been substituted for the words "the Corporation shall impose" the words "the Corporation may impose".]

2[(1A) Notwithstanding anything contained in the proviso to subsection (1), in the case of the Municipal Corporation of the City of Rajkot, for a period of two years commencing on the 19th November, 1975, the provisions of subsection (1) shall have effect, and shall be deemed to have had effect, as if with effect on and from the 19th November, 1975 there had been substituted for the words "the Corporation shall impose" the words "the Corporation may impose" in the said subsection (1).]

(2) In addition to the taxes specified in subsection (1) the Corporation may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely:

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[* * * * *]

(b) Subject to and in accordance with the provisions of the Gujarat State Tax on Professions, Trades, Callings and Employments Act, 1976 (Presidents Act No.11 of 1976) and the rules made thereunder, a tax on professions, trades, callings and employments;]

(c) a tax on dogs; (d) a theatre tax ;

(e) a toll on animals and vehicles,4* * * * * entering the City,

(f) any other tax 6[(not being a tax on professions, trades, callings and employment)]8[or a tax on payments for admission to any entertainment] which the 8[State] Legislature has power under the9[Constitution] to impose in the10[State].

[(2A) Notwithstanding anything contained in subsection (1) or subsection (2), no tax or toll shall be levied on motor vehicles save as provided in section 20 of the Bombay Motor Vehicles Tax Act 1958, (Bom. LXV of 1958).]

(3) The municipal taxes shall be assessed and levied in accordance with the provisions of this Act and the rules.

(4) Nothing in this section shall authorize the imposition of any tax which the 8[State] Legislature has no power to impose in the 10[State] under the 9[Constitution].

Sec.129. Property taxes of what to consist and at what rate leviable: For the, purposes of subsection (1) of section 127 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the City:

(a) a water tax at such percentage of their rateable value as the Corporation shall deem reasonable, for providing a water supply for the city:

Provided that the Corporation shall, with the previous sanction of the State Government, fix the minimum amount of such tax to be levied and may fix different minima for different classes of properties:

Provided further that the minimum amount of such tax to be levied shall

(i) in respect of any one separate holding of land or of any one building (not being premises used exclusively for residential purpose) or of any one portion of a building which is let as a separate holding and which is not used exclusively for residential purpose, be not less than five rupees per mensem for any official year commencing on the first day of April 1993;

(ii) in respect of any premises used exclusively for residential purpose, be not less than three rupees per mensem for any official year commencing on the first day of April 1993;

(b) a conservancy tax at such percentage of their rateable value as will in the opinion of the Corporation suffice to provide for the collection, removal and disposal, by municipal agency, of all excrementitious and polluted matter from privies, urinals and cesspools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such matters:

Provided that corporation shall, with the previous sanction of the State Government fix the minimum amount of such tax to be levied and may fix different minima for different classes of properties;

Provided further that the minimum amount of such tax to be levied in respect of any one separate holding of land or of any one building or of any one portion of a building which is let as a separate holding shall be not less than two rupees per mensem for any official year commencing on the first day of April 1993 and that the amount of such tax to be levied in respect of any hotel, club, industrial premises or other large premises may be specially fixed under section 137:

Provided also that while determining the rate at such tax under Section 99 or 150, the Corporation may determine different rates for different classes of properties;

(c) a general tax of not less than twelve per cent. 5 [but not more than thirty per cent.] of their rateable value, which may be levied, if the Corporation so determines on a graduated scale;

[*****]

[(d) betterment charges leviable under Chapter XVI.]

Sec.141AA : Property taxes of what to consist and at what rate leviable For the purposes of subsec. (1) of Sec. 127, property taxes shall comprise the following taxes which shall, subject to exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the City:

(a) a water tax at such percentage of the amount of general tax levied under Sec. 141B as the Corporation shall deem reasonable, for providing water supply for the City:

Provided that the Corporation shall, with the previous sanction of the State Government, fix the minimum amount of such tax to be levied and may fix different minima for different classes of properties:

Provided further that the minimum amount of such tax to be levied shall,

i. in respect of any one separate holding of land or of any one building (not being premises used exclusively for residential purpose) or of any one portion of a building which is let as a separate

ii. in respect of any premises used exclusively for residential purpose, be not less than three rupees per mensem for any official year;

(b) a conservancy and sewerage tax at such percentage of the amount of general tax levied under Sec. 141B as well in the opinion of the Corporation suffice to provide for the collection, removal and disposal of all excrementitious and polluted matters from privies, urinals and cesspools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such matters:

Provided that the Corporation shall, with the previous sanction of the State Government, fix the minimum amount of such tax to be levied and may fix different minima for different classes of properties.

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Provided further that the minimum amount of such tax to be levied in respect of any one separate holding of land or of any one building or of any one portion of a building which is let as a separate holding shall be not less than two rupees per mensem for any official year and that the amount of such tax to be levied in respect of any hotel, club, industrial premises or other large premises may be specially fixed under Sec. 137: Provided also that while determining the rate of such tax under Sec. 99 or 150, the Corporation may determine different rates for different classes of properties;

(c) a general tax which may be levied in accordance with the provisions of Sec. 141B, if the Corporation so determines on a graduated scale;

(d) betterment charges leviable under Chapter XVI.

Explanation.

i. Where any portion of a building or a land is liable to a higher rate of the general tax, such portion shall be deemed to be a separate property for the purpose of municipal taxation. The water tax for providing water supply for the City and the conservancy tax for the collection, removal and disposal of all excrementitious and polluted matters from privies, urinals and cess pools and for efficiently maintaining and repairing the municipal drains may be levied and collected jointly as water and sewerage charges at the rate based on the carpet area and the type of the property.

Sec.141B : General tax at what rate leviable

(1) For the purpose of clause (c) of Sec. 141AA, general tax", property tax shall, subject to such exceptions and conditions hereinafter provided, be levied annually on building and lands in the city at such rate per square meter of the carpet area of building and of the area of lands (hereinafter to as "the rate of tax) as the corporation may determine.

(2) For the purpose of levy of tax on buildings in the city under sub section (1)

(a) the buildings be classified into residential buildings and buildings other than residential; and

(b) the corporation may determine one rate of tax for residential buildings and other rate of tax for building other than residential; Provided that it shall be lawful for the corporation to determine for residential buildings, the carpet area of which does not exceed forty square metres, such rate of tax as is lower than the rate of tax determined for residential buildings generally under this subsection.

(3) The rate of tax determined under subsection (1) read with subsection (2) shall not

(a) in respect of residential buildings, be less than ten rupees per square metre of carpet area and more than forty rupees per square metre, such rate of tax as is lower than the rate of tax determined for residential buildings generally under this sub section.

(b) in respect of buildings other than residential, be not less than twenty rupees per square metre of carpet area and more than eighty rupees per square metre of carpet area.

(4) The Corporation may, subject to rules, increase or decrease or neither increase nor decrease the rate of tax determined under subsection (1) read with sub section (2) and (3), ,

(a) in the case of residential buildings, having regard to the following factors, namely: ,

(i) in market value of the land in the area of the city in which the buildings are situate

(ii) the length of the time of the existence of the buildings .

(iii) the type of the buildings, and

(iv) whether the buildings are occupied by owners or tenants,

(b) in the case of buildings other than residential, having regard to the following factors, namely:

(i) The market value of the land in the area of the city in which the buildings are situate,

(ii) the length of the time of the existence of the buildings, (iii) the purpose for which the buildings are used, and

(iv) whether the buildings are occupied by owners or tenants.

(5) In lieu of the general tax" leviabale under subsection (1) read with sub section (2) and (3), there shall be levied annually on,

(a) residential huts, and

(b) residential tenements in a Chawl, each such tenement having carpet area not exceeding twenty five square metres, Such amount of tax as the Corporation may determine:

Provided that the amount so determined shall not be less than such amount as the State Government may, by notification in the official Gazette, specify.

Sec.145A. Tax on Mobile Towers. (1) A tax at the rates not exceeding those prescribed by order in writing by the State Government in this behalf from time to time shall be levied on Mobile Towers from the person engaged in providing telecommunication services through such Mobile Towers.

(2) The Corporation shall from year to year, in accordance with section 99, determine the rates at which the tax shall be levied.]

[11.5] The Taxation Rules are provided in Chapter VIII which are framed in exercise of powers under Section 454 of the BPMC/ GPMC Act. The Special Taxation Rules are amended by Taxation Rules (Amendment)2001 under the provision of Section 454 of the GPMC Act and had come into force from 1st April 2001. Under the said Taxation Rules (Amendment) 2001 after Rule 8, Rule 8A, 8B, 8C, 8D and 8E are added and the Rule 8A is titled as increase or decrease of rate of property tax having regard to the factors specified in sub section (4) of Section 141(B). Rule 8A to 8D which are relevant for the purpose of present petitions area as under:

Increase or Decrease of Rate of Property tax having regard to Factors specified in subsection (4) of Section 141B.

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8A.

(1)The rate of tax determined for the residential buildings under sub section (1) read with sub section (2) & (3) of section 141 B (hereinafter referred to as the specified rate) shall be increased or decreased or neither increased nor decreased according to sub rules (2), (3), (4) and (5).

(2).Location Factor

The specified rate shall be increased or decreased having regard to the class of the area in which the residential buildings are situate, as follows, namely :

(a) The specified rate shall be increased by multiplying it by 1.60 in respect of the buildings situate in the area classified as A;

(b)The specified rate shall be increased by multiplying it by 1.10 in respect of the buildings situate in the area classified as B;

(c)The specified rate shall be decreased by multiplying it by 0.90 in respect of the buildings situate in the area classified as C;

(d)The specified rate shall be decreased by multiplying it by 0.60 in respect of the buildings situate in the area classified as D.

Provided that The Municipal Corporation may increase the multiplying factor shown in (a) to (d) above not exceeding overall limit of 40% of the factor value indicated there in.

(3).Age Factor

The specified rate shall be decreased or neither be increased nor be decreased having regard to the length of the time of the existence of the residential building as follows, namely :

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(a) The specified rate shall be neither increased nor decreased in respect of the buildings, the length of the time of the existence of which does not exceed ten years,

(b) The specified rate shall be decreased by multiplying it

(I) by 0.85 in respect of the buildings, the length of the time of the existence of which, exceeds ten years but does not exceed twenty years.

(ii) by 0.70 in respect of the buildings, the length of the time of the existence of which, exceeds twenty years but does not exceed thirty years,

(iii) by 0.60 in respect of the buildings, the length of the time of the existence of which exceeds thirty years but does not exceed forty years,

(iv) by 0.50 in respect of the buildings, the length of the time of the existence of which exceeds forty years.

Provided that The Municipal Corporation may increase the multiplying factor shown in (a) to (b) (I), (ii), (iii) & (iv) above not exceeding the overall limit of 40% of the factor value indicated there in.

(4) Type of building Factor

The specified rate shall be increased or decreased or neither be increased nor be decreased having regard to the type of the residential buildings as follows, namely :

(a) The specified rate shall be increased by multiplying it by it 1.50 in respect of the buildings which are independent bungalows.

(b) The specified rate shall be neither increased nor decreased in respect of the buildings, which

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(c) The specified rate shall be decreased by multiplying it : (I) by 0.70 in respect of the buildings which are flats;

(ii) by 0.70 in respect of the buildings which are situate in pol or on village site land;

(iii) by 0.50 in respect of the buildings situate in the chawls, consisting of tenements (dwelling units) each having carpet area exceeding twentyfive square metres.

Provided that The Municipal Corporation may increase the multiplying factor shown in (a) to (c) (I), (ii), & (iii) above not exceeding the overall limit of 40% of the factor value indicated there in.

(5) Occupancy Factor

The specified rate shall be increased or neither be increased nor be decreased having regard to the occupancy of the residential buildings by owners or tenants as follows, namely :

(a) The specified rate shall be neither increased nor decreased in respect of the buildings which are occupied by owners

(b) The specified rate shall be increased by multiplying it by 2.0 in respect of the buildings, which are occupied by tenants.

"Provided that The Municipal Corporation may increase the multiplying factor shown in (a) & (b) above not exceeding the overall limit of 40% of the factor value indicated there in.

(6) The ultimate rate of tax to be levied in respect of a building shall be derived by multiplying the specified rate by such number as is obtained by multiplying each number relating to increases or decreases referred to sub rules (2), (3), (4) and (5) and relevant to the building.

(7) The ultimate amount of tax to be levied in respect of a building shall be determined by multiplying the carpet area of the building by the ultimate rate of tax derived as per sub rule (6) above.

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Provided that the amount of tax determined under sub rule(7) above shall not be less then such amount as the Corporation may, from time to time, determine, provided further that the amount so determined shall not be less then the amount the state government may, by notification in official Gazette, specify under sub section (5) of section 141 B of the Act.

(8)In lieu of property tax leviabale under sub rule (7) an amount of tax as the Corporation may determine from time to time shall be levied annually on

(a) Residential huts

(b) Residential tenements (dwelling units) in a chawl, each such tenement having carpet area not exceeding 25 sq. metres.

Provided that the amount so determined shall not be less than the amount, the state government may, by notification in official Gazette, specify under the provision of sub section (5) 141 B of the Act.

Explanation:

For the purpose of levy of tax under this rule where an addition is made to an existing building where by the carpet area of that building is increased, such addition shall be treated as a separate building and the length of its existence shall be computed from the year in which the addition is made.

Provided that if any minor additions/alterations are made on the same floor of the building which results in the increase of carpet area not exceeding 10 % of the carpet area of the building, such addition shall not be treated as a separate building and the area of such additional construction shall be added in the carpet area of the building on record prior to such addition.

Illustration I.

Assuming that the specified rate of tax is Rs. Ten per square metre and there is a residential building having carpet area of fifty square metres and it

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" falls in area classified as B under sub rule (2) of Rule 8A,

" is of 25 years age

" is a flat

" is occupied by tenant

the ultimate amount of the property tax payable will be determined as under based on sub rule (2) to (7).

FORMULA

Ultimate amount of property tax payable =

carpet area of the residential building x specified rate of tax x (location Factor as applicable x age Factor as applicable x type of building Factor as applicable x occupancy Factor as applicable) Factors applicable to the building:

Carpet area of residential building :- 50 sq mtr

Specified Rate of Tax. Location Factor :- Rs.10

Location factor :- 1.10

Age factor :- 0.70

Type of building Factor :- 0.70

Occupation Factor :- 2

Calculations:

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Ultimate amount of Property tax of the flat = 50 sq.mtr X Rs.10 X (1.10 x 0.70 x 0.70 x 2) = 50 x 10 x 1.078 = Rs. 539 If the same building is occupied by landlord the ultimate amount of tax will be Rs. 269.50 but the person liable to pay tax will be required to pay the minimum amount of tax as may be determined by the corporation under the proviso of sub rule 7 of Rule 8A.

ILLUSTRATION II

Assuming that the specified rate of tax is Rs. Ten per square metre and there are four different types of residential properties viz. R1, R2, R3 and R4 having carpet area of 50 sq.metres.

The ultimate amount of property tax payable will be worked out as under:[SEE TABLE IN GLR]

If this amount happens to be less than the minimum amount of property tax the corporation may determine under the proviso of SubRule 7, the minimum amount of tax so determined shall be payable.

8B. Increase or Decrease of Rate of Property Tax determined for the buildings other than residential.

(1)The rate of tax determined for the buildings other than residential, under subsection (1) read with subsection (2) & (3) of section 141B (hereinafter in this rule referred to as the designated rate) shall be increased or decreased or neither be increased nor be decreased according to subrules (2), (3), (4) and (5).

(2)Location Factor :

The designated rate shall be increased or decreased having regard to the class of the area in which buildings other than residential are situate, as follows, namely :

(a) The designated rate shall be increased by multiplying it by 1.60 in respect of the buildings situate in the area classified as I;

(b) The designated rate shall be increased by multiplying it by 1.10 in respect of the buildings situate in the area classified as II;

(c) The designated rate shall be decreased by multiplying it by 0.9 in respect of the buildings situate in the area classified as III;

(d). The designated rate shall be decreased by multiplying it by 0.60 in respect of the buildings situate in the area classified as IV.

Provided that The Municipal Corporation may increase the multiplying factor shown in (a) to (d) above not exceeding the overall limit of 40% of the factor value indicated there in.

(3) Age Factor

The designated rate shall be decreased or neither be increased nor be decreased having regard to the length of the time of the existence of the buildings other than residential as follows, namely :

(a) The designated rate shall be neither increased nor decreased in respect of the buildings, the length of the time of the existence of which does not exceed ten years

(b) The designated rate shall be decreased by multiplying it

(I) by 0.85 in respect of the buildings, the length of the time of the existence of which, exceeds ten years but does not exceed twenty years.

(ii) by 0.70 in respect of the buildings, the length of the time of the existence of which, exceeds twenty years but does not exceed thirty years,

(iii) by 0.60 in respect of the buildings, the length of the time of the existence of which exceeds thirty years but does not exceed forty years,

(iv) by 0.50 in respect of the buildings, the length of the time of the existence of which exceeds forty years.

Provided that The Municipal Corporation may increase the multiplying factor shown in (a) to (b) (I), (ii), (iii) & (iv) above not exceeding the overall limit of 40% of the factor value indicated there in.

(4) Use Factor

The designated rate shall be increased or neither be increased nor be decreased or decreased having regard to the purpose for which the buildings other than residential are used, as follows, namely:

(a) The designated rate shall be increased by multiplying it

(I) by 7.0 in respect of the buildings used as under : Bank, Dispensary, Hospital, Clinic, Maternity home, Laboratory, Central Government office, State Government office, Local bodies office, Post office, Commercial and / or industrial office, Oil companies office, Offices of Corporations, Tuition classes, Typing institute, godowns and warehouses of the properties falling in the above categories Commercial properties and those buildings which do not fall within any other subclause of this clause.

(ii) by 6.0 in respect of the buildings used as under : Shop, Hotel, Restaurant, Entertainment Places, Open air theatre, Petrol pump, Service station, Cinema, 8 Shop, Hotel, Restaurant, Entertainment Places etc. Club house, Gymkhana, Clubs mess, Lodging, Lodging and Boarding, Party plots (except community halls), Dish antennae, Pager antennae towers, Sign board, hoarding, Mobile phone towers, godowns and warehouses of the properties falling in the above categories.

(iii) by 2.0 in respect of the buildings used as under: Electricity Power House, Electric sub station, Aerated Water Factory, Bhattha, Brass Works, Brick and ceramic works, Cement Articles, Clay mfg. Unit, Chemical Factory, Confectionery, Dairy, Distillery, Foundry, Flour Factory, Iron Factory, Zinc Factory, Silver ornament Factory, Jaggary manufacturing unit, Leather manufacturing unit, Lime chakki, Lime bhatthi, Oil extraction, Paper manufacturing, Plastic Factory, Pottery, Sagol manufacturing, Soap manufacturing Sugar manufacturing, Tin Factory, Tobacco Factory, Work shop, Factory SteamGill, AutoGarage, Factory A, B, C, D, E, F, Mill, Power loom, Hand loom, Bleaching, Bone washing, cotton spinning & dyeing, dyeing bleaching, Dhanadal Factory, Leather processing, Screen printing, Sulfur processing, Starch processing, Variyali processing, Wool processing, Cold storage, Wood pulping, Bhatthiyaw kpana, Repairing works, Nursery (flower plants)

Animal market, Cattle stable, Poultry farm, Kennel, Milk cattle stable, Weigh bridge, Binding press, Printing press, Process studio, Photo studio, Common effluent treatment plant, Godowns and Warehouses of the properties falling in the all above categories. Industrial units and Factories (only for processing and manufacturing units):

(iv) by 2.0 in respect of the buildings used as under : Educational and Social Institutions Private Nursery (BalMandir), Private and Govt. Schools, Private and Govt. Colleges, University campus, Museum, Community halls, Social institutes run by public charitable trust (for the welfare of women, old people, deaf, dumb and blind, physically handicapped, mentally retarded people) and non grantable schools.

(b) The designated rate shall be neither increased nor decreased in respect of the buildings used as under :

Water tank, Water pump room, Drainage pumping stations, Dhobighat, Grantable schools run by Public Charitable Trust, BoardingLodgingHostels run by 9T Public Charitable Trust and Religious Institutions, Dharmashala, Ashram, Library.

(c) The designated rate shall be decreased by multiplying it by 0.0 in respect of buildings used as under:

Temple, Mosque, Derasar (Jain Temple), Church, Roza, Tombs, Gurudwara (Sikh Temple), Apasara, Darga, Agiyari, Samadhi, Graveyard, Kabrastan, Crematorium, Well, Havada, Hamam Khana (Public Bath), Mattina Akhada, Madrasa, Pathshala, Free Water Parab, Gandhi Ashram-Sabarmati, Kocharab AshramPaldi, Sardar Ptel Smarak Trust, Lal Darwaja Sardar Patel Memorial Trust, Shahibaug And Other National Smaraks

"provided that if any commercial activity is being conducted in any of the above buildings shown in (c) above, the portion of building used for such purpose shall be assessed according to its use

"further Provided that The Municipal Corporation may increase the multiplying factor shown in (a) to (c) above not exceeding the overall limit of 40% of the factor value indicated there in.

"further Provided that The Commissioner with the prior approval of Municipal Corporation may change classification of use as shown in 4 (a) (I to iv), (b), (c) above.

(5) Occupancy Factor

The designated rate shall be neither be increased nor be decreased or increased having regard to the occupancy of buildings other than residential as follows, namely :

(a) The designated rate shall be neither increased nor decreased in respect of the buildings which are occupied by owners

(b) The designated rate shall be increased by multiplying it by 2.0 in respect of buildings, which are occupied by tenants.

"Provided that The Municipal Corporation may increase the multiplying factor shown in (a) to (b) above not exceeding the overall limit of 40% of the factor value indicated there in.

(6).The ultimate rate of tax to be levied in respect of a building shall be derived by multiplying the designated rate by such number as is obtained by multiplying each number relating to increase or decrease referred to in sub rules (2), (3), (4), and (5) and relevant to the building.

(7)The ultimate amount of tax to be levied in respect of a building shall be determined by multiplying the carpet area of the building by the ultimate rate of tax derived as per sub rule(6) above.

"Provided that the ultimate amount of tax determined under sub rule (7) above shall not be less than such amount as the Corporation may, from time to time, determine, provided further that the amount so determined shall not be less than such amount the state government may, by notification in official gazette, specify under sub rule (5) of section 141 B

Illustration 1 :Assuming that the designated rate of tax is Rs. 22/ per square metre and a building which is of other than residential type is having a carpet area of TwentyFive square metres and it:

" falls in area classified as II under sub rule (2)of Rule 8B.

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" is of 25 years age

" is a shop

" is occupied by a tenant

The ultimate amount of property tax payable will be determined according to the following formula based on subrule (2) to (7) 8B.

FORMULA

Ultimate amount of property tax payable =

carpet area of the building other than residential x designated rate of tax x (location Factor as applicable x age Factor as applicable x use of building Factor as applicable x occupancy Factor as applicable) Factors applicable to the building:

Carpet area of residential building :- 25 sq mtr

Specified Rate of Tax. Location Factor :- Rs.22

Location factor :- 1.10

Age factor :- 0.70

Type of building Factor :- 0.70

Occupation Factor :- 1.0

Calculations: Ultimate amount of property tax of the shop = 25 sq mtr X Rs. 22 X (1.10 x 0.70 x 6.0 x1) = 25 x 22 x4.62 = Rs.2541/

If the same building is occupied by tenant the ultimate amount of tax will be Rs. 5082/

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 Illustration II.

Assuming that the designated rate of tax is Rs. 22 per square metre and there are four buildings viz. NR1, NR2, NR3, and NR4 which are buildings of other than residential type having carpet area as shown in the table below, then the ultimate amount of tax will be worked out as under:[SEE TABLE IN GLR]

8C. Property Tax on lands.

The property tax for a commercial / industrial units shall be levied at following rates:

(I)100% for buildings with R.C.C. Roof,

(ii)85% for buildings having Pacca Walls but nonRCC roof,

(iii)75% for buildings having enclosed sheds with corrugated or iron or cement sheets with non-RCC roof.

(iv)65% for nonenclosed buildings or sheds I.e.open shed with roof

(v)30% for open land used for commercial or industrial purpose of the ultimate rate referred to in sub rule (6) of rule 8B at which property tax would have been leviable on a building other than residential building as if

(1)Such building were situate on such land.

(2)Such building had the same carpet area as the area of the land, (3)Such buildings were used for a commercial / industrial purpose similar to the one for which the land is used.

(4)The time for its existence had commenced from the date which the land was first used for any

commercial/industrial purpose and

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(5)Such building were occupied by the person using land as tenant or owner.

8D. Power of Commissioner to classify areas of City.

(1)For the purpose of subrule (2) of rule 8A the Commissioner shall classify the area of the city in which residential buildings are situate into four classes namely A, B, C and D having regard to the market value of the lands in the area. The classification so made shall be subject to revision once in every four years.

(2)For the purpose of subrule(2) of rule 8B, the Commissioner shall classify the area of the city in which buildings other than residential buildings are situate into four classes namely I, II, III and IV having regard to the market value of lands in the area. The classification so made shall be subject to revision once in every four years

(3)The market value of lands in the area referred to in subrule (1) and (2) above shall be determined by the Commissioner having regard to such Factors as deemed fit by him.

(4)For the purpose of sub rule (3) of Rule 8A and sub rule (3) of Rule 8B the Commissioner shall determine the length of the time of existence of residential building and other than residential buildings based on the information available with him or as may be obtained by him from the sources as he deems appropriate.

(5)For the purpose of sub rule (4) of Rule 8 B the Commissioner shall have the power to decide which property would fall in category mentioned in sub rule 4 (a) (I) (ii) (iii) and (iv) and sub rule 4 (b) and (c).

(6)In cases where cables/pipe lines are laid under ground/ over ground for commercial purposes and it is difficult to determine land value for the purpose of classification under sub rule (2) of rule 8 B the Commissioner shall determine the average land value for the purpose of determining the location Factor taking into consideration the factors he deems appropriate.

Explanation:

For the purpose of this sub rule the open land used for laying cables under ground / over ground, laying pipe lines under ground / over ground and for erecting any structure such as HT towers, poll mounted transformers for electricity, hoarding, dish antennae, mobile telephone/paging towers etc. on any land or building shall be construed as use of open land for commercial purpose and shall be taxed accordingly. The Commissioner shall have power to determine the area of land used/occupied under sub rule (6).

(7)The classification done by the Commissioner under subrule (1) & (2) above and decision taken by him under sub rule (4), (5) & 6 above shall be final and shall not be questioned in any court or before any authority.

[11.6] Section 99 of the GPMC Act provides for fixing of rates of taxes. As per Section 99 of the Act, the Corporation is required to determine after considering the Standing Committees proposals and subject to the limitations and conditions prescribed in Chapter XI and levy the tax at such rates. Under Section 127 of the Act, the Corporation shall impose the property tax either under Section 129 or under Section 141 AA and a tax on vehicles, boats and animals; and even on Mobile Towers. As per subsection (3) of Section 127 of the Act, the Municipal tax shall be assessed and levied in accordance with the provisions of the Act and Rules. As per Section 129 of the Act, for the purposes of subsection (1) of Section 127, the property tax shall comprise the water tax; conservancy tax and general tax. Section 129 of the Act also provides for property tax on what to consist and at what rate leviable. Section 139 of the Act provides for primary responsibility for property taxes. Section 141AA of the Act is with respect to the property tax on what to consist and at what rate leviable. As per subsection (c) of Section 141 AA for the purpose of subsection (1) of Section 127 a general tax which may be levied in accordance with the provision of Section 141 B, the Corporation so determines on a graduated scale. As per Section 141 B of the Act, for the purpose of clause (c) of Section 141 AA, a general tax shall subject to exceptions, limitations and conditions provided, be levied annually on buildings and lands in the city at such rate per square metre of the carpet areas of buildings and of the areas of lands as the Corporation may determine. As per subsection (2) of Section 141 B of the Act for the purpose of levy of tax on the building in the city under subsection (1), the buildings may be classified into residential buildings and buildings other than residential and the Corporation may determine one rate of tax for residential building and other rate of tax other than residential. It also further provides that it shall be lawful for the Corporation to determine for the residential buildings, the carpet area which does not exceed forty square metres, such rate of tax as is lower than the rate of tax determined for residential buildings generally under the subsection. As per subsection (3) of Section 141 B the rate of tax determine under subsection (1) r/w subsection (2) shall not in respect of residential building, be less than ten rupees per square meter of carpet area and more than forty rupees per square meter of carpet area and in respect of buildings other than residential, be not less than twenty rupees per square meter of carpet area and more than eighty rupees per square meter of carpet area. Subsection (4) of Section 141 B of the Act provides the guidelines / factors to be considered, subject to the Rules, for increase or decrease of the rate of tax with respect to the residential building and the building other than residential. Sections 99, 129, 141 AA and 141 B of the GPMC Act

[11.7] Thus, considering the scheme of the GPMC Act more particularly considering the aforesaid provisions the Corporation is authorized to impose the property tax either under Section 129 or

under Section 141A of the GPMC Act and the tax on Mobile Towers. Under the circumstances, the Corporation is authorized to demand the property tax on the Mobile Towers as per the applicable rates and the factors applicable to the buildings and as per the relevant Taxation Rules applicable to the buildings referred to hereinabove.

At this stage it is required to be noted that even in the relevant Taxation Rules provided under Chapter VIII which are framed in exercise of powers under Section 454 of the GPMC Act, there is a specific reference to the Mobile Towers. If the interest of the legislation was not to apply the relevant Taxation Rules with respect to the Mobile Towers, in the relevant Taxation Rules, there would not have been mention of Mobile Towers.

[11.8] As observed hereinabove the main contention on behalf of the respective cellular operators is that as the State Government has not prescribed by order in writing the maximum rate of tax as mentioned in section 145A of the GPMC Act and therefore, unless and until the maximum rates are prescribed by the State Government, the Corporations are not authorized to levy the tax on the Mobile Towers. However, it is required to be noted that while levying the tax on buildings the maximum and minimum rates are prescribed. As observed hereinabove section 127 of the GPMC Act authorizes the Corporation to levy the tax on Mobile Towers also. Subsection (2) of section 145A also provides that the Corporation shall from year to year in accordance with section 99 determine the rate at which the tax shall be levied. The similar provision is with respect to the tax on land and building etc. The relevant provisions of GPMC Act more particularly sections 99, 127, 129, 141AA and 145A are required to be read harmoniously and conjointly. If the aforesaid provisions are read together harmoniously and conjointly and as observed hereinabove the Mobile Towers are "building", it cannot be said that the demand of property tax / tax on the Mobile Towers is without authority under the law and/or illegal.

[11.9] It is submitted by Shri Trivedi, learned Counsel appearing on behalf of the Ahmedabad Municipal Corporation that as such the property tax is levied on the land on which the Mobile Towers are erected and therefore, relying upon the decision of the Honble Supreme Court in the case of Goodricke Group Ltd. (Supra), it is the case on behalf of the Corporation that the same is permissible. In the case before the Honble Supreme Court, cess was levied on tea estate at prescribed rate for each kilogram of green tea leaves produced in such estate and to that the Honble Supreme Court has observed that it amounts to tax on land measured by yield by quantum of tea leaves produced in tea estate and hence, covered by Entry 49 of List II of VIIth Schedule, which cannot be said to be a levy on the produce of land. In para 20 the Honble Supreme Court has observed and held as under:

"20. It is thus clear from the aforesaid decisions that merely because a tax on land or building is imposed with reference to its income or yield, it does not cease to be a tax on land or building. The income or yield of the land/building is taken merely as a measure of the tax; it does not alter the nature or character of the levy. It still remains a tax on land or building. There is no set pattern of levy of tax on lands and buildings indeed there can be no such standardisation. No one can say that a tax under a particular entry must be levied only in a particular manner, which may have been

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adopted hitherto. The Legislature is free to adopt such method of levy as it chooses and so long as the character of levy remains the same, i.e.. within the four corners of the particular entry, no objection can be taken to the method adopted. In the cases before us, the cess is no doubt calculated on the basis of the yield for every kilogram of tea leaves produced in a tea estate, a particular cess is levied. But that is well accepted mode of levy of tax on land. The tax is upon the land upon the tea estate which is classified as a separate category, as a separate unit, for the purpose of levy and assessment of the said cess quantified on the basis of the quantum of produce of the tea estate. It cannot be characterised as a tax on production for that reason. As pointed out in Moopil Nair, a tax on land is assessed on the actual or potential productivity of the land sought to be taxed". There cannot be uniform levy unrelated to the quality character or income/ yield of the land. And such levy has been held to be arbitrary and discriminatory.

Under the circumstances, the respective Corporations have rightly demanded the property tax on Mobile Towers as per the relevant Taxation Rules applicable to the "building and land".

[11.10] Now, so far as the challenge to the demand of water tax and conservancy tax by the Corporation in some of the petitions is concerned, it is required to be noted that as per section 129 of the GPMC Act, for the purpose of subsection (1) of section 127, the property taxes shall comprise of (1) a water tax and (2) a conservancy tax. Section 129 of the GPMC Act authorizes the Corporation to levy water tax, for providing water supply for the city. It does not depend upon whether a particular person uses the water supplied by the Corporation or not. It also does not depend upon whether for a particular "building" any water is required to be consumed or not. Similar is the provision with respect to conservancy tax. Under the circumstances, the submission on behalf of some of the cellular operators that as for Mobile Towers water is not required and therefore, water tax / conservancy tax is illegal, cannot be accepted. The demand of water tax / conservancy tax is in consonance with the provisions of section 127 read with sections 129 and 141AA of the GPMC Act.

[11.11] Now, so far as the submission on behalf of the cellular operators that property tax leviable shall not be less than 12% but not more than 30% of the rateable value is concerned, it is required to be noted that there is an amendment in section 127 of the GPMC Act itself. As per section 127 of the GPMC Act, property taxes shall be either under Section 129 or under Section 141AA of the GPMC Act. After insertion of section 141AA of the GPMC Act, tax is levied / demanded on the basis of the carpet area. Under the circumstances, the impugned demand of tax on the Mobile Towers applying the taxation rules framed under Section 454 of the GPMC Act applicable to the buildings and lands etc. is absolutely just and proper."

[5.2] Now, so far as the submission on behalf of the petitioners that while computing the tax sought to be levied on mobile towers, the use factor has been considered on the basis that such mobile towers / microwave towers fall under CommercialB activity and that "occupancy factor" for mobile / microwave towers to be "2" and that the respondent Corporation has not provided any rationale behind determination of the "use factor" and "occupancy factor" and therefore, the alleged computation mechanism provided for levy of tax on mobile towers is palpably arbitrary and bad in

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law is concerned, while considering the aforesaid ground relevant provisions of the GPMC Act viz. section 141B and Taxation Rules (Amended), 2001 (hereinafter referred to as "Rules, 2001") which are framed in exercise of powers under Section 454 of the BPMC / GPMC Act more particularly Rules 8A, 8B, 8C, 8D and 8E are required to be referred to. The aforesaid provisions are already reproduced hereinabove. Considering the aforesaid provisions it appears that complete guidelines and the machinery has been provided while imposing the tax on the building in the city. Subsection (1) of section 141B of the GPMC Act permits the Corporation to levy general tax / property tax as per clause (c) of section 141AA of the GPMC Act, annually on building and lands in the city at such rate per sq. meter of the carpet area and of the area of the lands as the Corporation may determine. Subsection (2) of section 141B provides that for the purpose of levy of tax on building in the city, under subsection (1), the building be classified into residential building and building other than residential. As per clause (b) of subsection (2) of section 141B, the Corporation may determine one rate of tax for residential buildings and the other rate of tax for buildings other than residential. It is true that as per sub section (3) of section 141B the rate of tax determined under subsection (1) read with subsection (2) shall not be less than or more than as provided under subsection (3) of section 141B of the GPMC Act. However, the aforesaid is required to be read along with subsection (4) of section 141B of the GPMC Act. Subsection (4) of section 141B permits and/or authorizes the Corporation subject to Rules, increase or decrease or neither increase nor decrease the rate of tax determined under subsection (1) read with subsections (2) and (3). That while increasing or decreasing the rate of tax determined under subsection (1) read with subsections (2) and (3) of the GPMC Act, the factors which are mentioned in section 141B(4)(a) of the GPMC Act are required to be taken into consideration. Therefore, specific guidelines are provided under the GPMC Act itself while determining the rate of tax and/or increasing or decreasing the rate of tax determined under sub section (1) read with subsections (2) and (3) of the GPMC Act. It is not in dispute that the Taxation Rules are framed in exercise of powers under Section 454 of the GPMC Act and under Rules 8A, 8B, 8C, 8D and 8E of the Rules, 2001, complete guidelines and machinery is provided while determining the rate of tax and/or while increasing or decreasing the rate of property tax having regard to the factors specified in sub section (4) of section 141B of the GPMC Act.

[5.3] Under the circumstances, when the mobile towers are placed in the group of "use factor 6" along with shops, hotel, restaurant, dish antenna, pager antenna tower, signboard, hoarding etc. and the occupancy factor is mentioned as "2", it cannot be said that the same is arbitrary. As per the catena of decisions of the Honble Supreme Court and this Court in taxation matters some more latitude be given to put particular services in a particular class and/or to impose a particular tax in a particular class. As observed hereinabove a particular guidelines has been provided under the Statute itself and also under the Taxation Rules. Under the circumstances, it cannot be said that the respondent Corporation has committed any error and/or while determining the rate of tax and considering the "use factor" under CommercialB activity and occupancy factor as "2", any illegality has been committed and/or the same is bad in law and the same is contrary to the provisions of the Statute.

[5.4] Now, so far as the submission on behalf of the petitioners that determination of tax on the mobile towers of the petitioners is contrary to the ceiling limit prescribed under Section 141B(3) of the GPMC Act and therefore, the same is ultra vires the Article 243X of the Constitution of India is concerned, the aforesaid has no substance. It is the case on behalf of the petitioners that section 141B(3) of the GPMC Act provides that rate of tax determined under subsection (1) read with sub-

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section (2) which can be less than and/or more than the amount mentioned in the said subsection i.e. same cannot be less than Rs.20 per sq. meter of carpet area and more than Rs.80 per sq. meter of the carpet area in case of buildings, other than residential are concerned, and in the case of mobile tower of the petitioners same would be Rs.302 per sq. meter after applying the factors mentioned in the Taxation Rules, and therefore, as the same shall be more than maximum limit prescribed under Section 141B(3) of the GPMC Act and therefore, the same shall be bad in law, illegal and/or ultra vires to Article 243X of the Constitution of India. The aforesaid submission seems to be directive but has no substance. Section 141B of the GPMC Act is required to be read as a whole and the same cannot be read in piecemeal. Subsection (3) of section 141B of the GPMC Act is required to be read alongwith subsection (4) of section 141B. Subsection (4) of section 141B specifically authorizes and/or permits the Corporation to increase or decrease or neither increase nor decrease the rate of tax determined under section (1) read with sub sections (2) and (3), however subject to the Rules which may be framed for that. As observed hereinabove, what are the factors to be taken into consideration while increasing or decreasing the rate of tax determined under subsection (1) read with subsections (2) and (3) of the GPMC Act are provided under Section 141B(4)(a) of the GPMC Act. Therefore, the words which are used under subsection (4) of section 141B of the GPMC Act are that "the Corporation may increase or decrease, rate of tax determined under subsection (1) read with subsections (2) and (3) of the GPMC Act. Therefore, under the Statute itself it authorizes the Corporation to increase or decrease the rate of tax determined under subsection (1) read with subsections (2) and (3) of Section 141B of the GPMC Act. Therefore, rate of tax which are determined under sub section (3) of Section 141B of the GPMC Act also can be increased or decreased by the Corporation, however subject to the Rules. In the present case the Taxation Rules are framed by the Corporation in exercise of powers under Section 454 of the GPMC Act. Under the circumstances, when the Statute itself permits the Corporation to increase or decrease the rate of tax determined under subsection (1) read with subsections (2) and (3), the determination of the tax in the present case cannot be said to be either illegal and/or contrary to the provisions of the Statute and/or the same cannot be said to be ultra vires to Article 243X of the Constitution of India. If the submission on behalf of the petitioners is accepted, in that case the powers conferred under subsection (4) of Section 141 of the GPMC Act would become nugatory and/or otiose. As per the cardinal principle of law of interpretation of Statute while considering a particular provision of Statute, the Court is required to see that another provision of the Statute may not become nugatory and/or otiose. Under the circumstances it cannot be said that the determination of the property tax on mobile towers of the petitioners in anyway illegal and/or bad in law and ultra vires to Article 243X of the Constitution of India.

[6.0] In view of the above and for the reasons stated above, both the Special Civil Applications deserve to be dismissed and are, accordingly, dismissed.

Petition dismissed

