

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 4541 of 2017****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH****Sd/-****and****HONOURABLE MR.JUSTICE B.N. KARIA****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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VODAFONE MOBILE SERVICES LIMITED....Petitioner(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:

MR MIHIR JOSHI, SR. ADVOCATE with MR SANDEEP SINGHI for SINGHI & CO, ADVOCATE for the Petitioner(s) No. 1

MS MANISHA LAVKUMAR, GOVERNMENT PLEADER with MR HARDIK VORA, AGP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE M.R. SHAH**and****HONOURABLE MR.JUSTICE B.N. KARIA****Date : 23/03/2017****CAV JUDGMENT****(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

[1.0] By way of this petition under Article 226 of the Constitution of India, the petitioner as such challenges the levy of General Property Tax on IBS / Booster installed by the petitioner. The petitioner has also by way of amendment prayed for an appropriate writ, direction and order to declare Section 141B of the Gujarat Provincial Municipal Corporations

Act, 1949 (hereinafter referred to as “GPMC Act”) as ultra vires to Article 243X of the Constitution of India. By way of amendment the petitioner has also prayed for an appropriate writ, direction and order to strike down Rule 8B of the Taxation Rules (Amendment), 2001 (hereinafter referred to as “Taxation Rules”) under Chapter VIII of Schedule A to the GPMC Act as arbitrary to the extent the same provide for computation of levy of Tax on Mobile / Microwave Towers.

[2.0] At the outset it is required to be noted that as such the levy of Tax on Mobile Towers by the respondent No.2 Corporation has been upheld by the Division Bench of this Court in recent decision 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** and by detailed judgment and order and for the reasons stated in the said judgment and order, the Division Bench has negated the similar challenge to levy of property Tax on Mobile Towers. The aforesaid is not disputed by Shri Joshi, learned Counsel appearing on behalf of the petitioner.

[2.1] However, it is the case on behalf of the petitioner that in the case before the Division Bench of this Court in Special Civil Application No.2693/2017 and even in subsequent decision rendered in Special Civil Application No.5322/2017 the Division Bench had considered the levy of property Tax on Mobile Towers. It is the case on behalf of the petitioner that as such in the present case the dispute is with respect to the levy of property Tax on IBS / Booster, which according to the petitioner cannot be termed as and/or equated with Mobile Tower. It is further submitted that in the present petition some additional grounds are also raised which were not raised in Special Civil Application Nos.2693/2017 and 5322/2017, which are not sought to be raised in the present petition.

[2.2] It is the case on behalf of the petitioner that the petitioner, for the purpose of providing telecommunication services, is required to establish a cellular mobile network which comprises of various telecom sites. That each of which have two components viz. (1) Passive Infrastructure and (2) Active Infrastructure. That Passive Infrastructure comprises of a Mobile Tower, a pre-fabricated shelter made of insulating polyurethane foam etc. whereas the Active Infrastructure comprises of the Electronic equipment like Base Transceiver Station / Microwave Antennae and other Active Telecom Equipment. It is the case on behalf of the petitioner that it become necessary for technical reasons for uninterrupted coverage of services, to install in building solutions of micro sites, booster sites etc. and therefore, cellular operators worldwide are increasingly using such small sites to address reception problems in large building, residential or commercial areas as an IBS site to boost signal strength and provide high quality in-house coverage at an additional high cost just to ensure that the subscribers enjoy high quality seamless connectivity and does not experience any call drops. It is the case on behalf of the petitioner that therefore the petitioner is installing IBS / Booster which cannot be said to be Mobile Towers. It is the case on behalf of the petitioner that IBS / Booster is a just fraction of the site of telecom site and can be clearly distinguished from a telecom site. That an IBS / Booster set does not comprise of a Mobile Tower, but consist of a small structure made up of 2 to 4 poles of 4 inch diameter upto 6 meter in height on which a booster is affixed. That the booster is supported by a single pole of about 2 meter height. That the construction of IBS / Booster site does not require construction of any permanent or semi-permanent structure, and it comprises of only poles, antenna, a microwave dish, and supporting equipment, all of which are light weight and easily movable and therefore, the IBS / Booster site cannot be said to be Mobile Towers and therefore, the levy of Tax on such IBS / Booster treating the same as Mobile Towers is absolutely

illegal, without authority under the law and therefore, violative of Article 243X of the Constitution of India.

[2.3] Shri Joshi, learned Counsel appearing on behalf of the petitioner has submitted that if the IBS / Booster sites are considered and/or treated as Mobile Towers for the purpose of levy of General Property Tax in that case levy of property Tax on Mobile Towers under the provisions of the GPMC Act and the relevant Taxation Rules will be governed by the decision of the Division Bench of this Court in the case of ATC Telecom Tower Corporation Private Limited & Anr. (Supra).

[2.4] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioner 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 Commercial-B category. It is submitted that it is not known on what basis has the respondent Corporation classified Mobile / Microwave Towers under Commercial-B 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 Commercial-B 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”.

[2.5] It is further submitted by Shri Joshi, learned Counsel appearing on behalf of the petitioner that section 141B(3)(a) of the GPMC Act provides that the rate of Tax determined under sub-section (1) read with sub-section (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 vires* to Article 243X of the Constitution of India.

[2.6] Now, so far as the challenge to the *vires* of Section 141B of the GPMC Act as *ultra vires* Article 243X of the Constitution of India and the prayer to strike down Rule 8B of the Taxation Rules under Chapter VIII

of Schedule A to the GPMC Act is concerned, Shri Joshi, learned Counsel appearing on behalf of the petitioner has submitted that Article 243X of the Constitution of India permits that the Legislature of a State, may, by law authorize the Municipality to levy, collect and appropriate such Taxes etc. in accordance with such procedure and subject to such limits as may be specified in the law. It is submitted that the law authorizing the Municipality to levy; collect and appropriate Tax must have been passed by the Legislature of the State and the Legislature itself must prescribe the procedure and the limits. It is submitted that for the purpose of Article 243X of the Constitution of India, “law” will not include Rules, Regulation, Notification etc. It is submitted that on the one hand in clause (b) of sub-section (3) of Section 141B of the GPMC Act the Legislature has prescribed the limits for levy of property Tax on non-residential buildings, while on the other hand in sub-section (4) of Section 141B of the GPMC act, Legislature empowers the Corporation to increase or decrease the rate of Tax subject to the Rules. It is submitted that therefore and in such circumstances section 141(3)(b) is rendered redundant, as the Corporation under Section 141B(4) may increase or decrease the rate of Tax, which may exceed the limits prescribed under Section 141B(3)(b). It is submitted that therefore, section 141B(4) of the GPMC Act to the extent it provides powers to the Corporation to increase or decrease the rate of Tax is *ultra vires* Article 243X of the Constitution of India.

No other submissions have been made.

Therefore, the main contention on behalf of the petitioner in the present petition is **whether a General Property Tax on IBS / Booster site can be levied under the provisions of the GPMC Act or not?**

Making above submissions, it is requested to admit / allow the present petition and quash and set aside the impugned demand of

property Tax on the IBS / Booster Sites treating the same as Mobile Towers and applying the relevant General Property Tax Rules applicable to lands and buildings.

[3.0] Ms. Manisha Lavkumar, learned Government Pleader has appeared on behalf of the State on the advance copy being served. It is vehemently submitted that as such the issue involved in the present petition is squarely covered by the decision of this Court in the case of ATC Telecom Tower Corporation Private Limited & Anr. (Supra). It is submitted that as such the Hon'ble Supreme Court in Civil Appeal Nos.5360 – 5363/2013 while upholding the constitutional validity of section 145A of the GPMC Act has held that the "Mobile Towers" are "buildings". It is submitted that therefore once the IBS / Booster fall within the definition of "Mobile Towers", the General Property Tax under the provisions of the GPMC Act and the Taxation Rules treating the same as "building" shall be leviable.

[3.1] Now, so far as the challenge to the *vires* of section 141B of the GPMC Act is concerned, it is submitted that even the said issue is now not *res integra* in view of the decision of the Division Bench of this Court in the case of **Adani Gas Limited vs. Ahmedabad Municipal Corporation and Others** rendered in **Special Civil Application No.11459/2012** and other allied matters.

Making above submissions, it is requested to dismiss the present petition.

[4.0] Heard Shri Joshi, learned Counsel appearing on behalf of the petitioner.

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 Hon'ble Supreme Court in the case of Civil Appeal Nos.5360 – 5363/2013, by which the Hon'ble 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, he has submitted that in the present petition few more additional grounds are raised, which were not canvassed before the Division Bench of this Court in the case of ATC Telecom Tower Corporation Private Limited & Anr. (Supra). It is also the case on behalf of the petitioner that in the present case the levy of property Tax on the IBS / Booster is under challenge which was not there before the Division Bench as before the Division Bench the question was with respect to the levy of property Tax on Mobile Towers. It is the case on behalf of the petitioner that IBS / Booster cannot be treated as a Mobile Tower and therefore, the property Tax on the IBS / Booster sites treating the same as Mobile Towers cannot be levied under the provisions of the GPMC Act and applying the relevant General Property Tax Rules applicable to the lands and buildings.

[4.1] Now, so far as the main contention on behalf of the petitioner that

as the petitioner has installed / constructed / put the IBS / Booster only and therefore, on IBS / Booster site there cannot be any levy of property Tax treating the same as Mobile Towers as the IBS / Booster site cannot be said to be Mobile Towers is concerned, it is to be noted that it is the case on behalf of the petitioner itself that the IBS / Booster is just a fraction of the size of a Telecom Site and consist of a small structure made up of 2 to 4 poles of 4 inch diameter upto 6 meter in height on which a booster is affixed. A booster is supported by a single pole of about 2 meter height. It also comprises of only poles, antenna, a microwave dish, and supporting equipment. In light of the above what is required to be considered is whether such IBS / Booster can be considered as a Mobile Tower and/or “building” under the GPMC Act or not. Mobile Tower is defined under Section 2(34AA) of the GPMC Act. As per Section 2(34AA) of the GPMC Act, “Mobile Towers” 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. It cannot be disputed that IBS / Booster is installed for providing telecommunication services and it can be said to be a part of providing telecommunication services. It is used to boost the signal strength and provide high quality and highest coverage and to ensure that the subscribers enjoy high quality, seamless connectivity and does not experience any call drops. Even as per the petitioner so pleaded in the petition, telecom service providers like the petitioner are allowed to have adequate booster sites as per technical requirement to supplement network in the areas of black holes and dark spots, the issue of call drop cannot be adequately addressed in short term and therefore, they are providing / installing such IBS / Booster on the IBS / Booster sites. Therefore, as such it can be said to be a part of the telecom services. Therefore, the IBS / Booster shall fall within the definition of section 2(34AA) of the GPMC Act and therefore, the same can be said to be Mobile Tower under the provisions of the GPMC Act.

[4.2] As held by the Hon'ble Supreme Court in the earlier round of litigation in its decision in Civil Appeal Nos.5360 – 5363/2013, the Hon'ble Supreme Court has treated and considered the Mobile Towers as “building”. Therefore, as the “IBS / Booster Sites” can be considered / treated as “Mobile Towers” and therefore, the “building” and therefore, the General Property Tax under the GPMC Act and the relevant Taxation Rules which are framed in exercise of powers under Section 454 of the GPMC Act is leviable on such IBS / Booster Sites treating the same as “building / land”.

Even otherwise as held by the Division Bench of this Court in the case of ATC Telecom Tower Corporation Private Limited & Anr. (Supra), even considering the definition of “building” contained in section 2(5) of the GPMC Act, the Mobile Towers can be said to be “building”. Considering the definition of “building” contained in section 2(5) of the GPMC Act, even the structure of IBS / Booster fall within the definition of “building” as contained in section 2(5) of the GPMC Act. Considering the definition of “building” as contained in section 2(5) of the GPMC Act, it is very wide. As per sub-section (5) of section 2 of the GPMC Act, “building” includes 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. Therefore also, even the IBS / Booster will fall within the definition of “building”. In any case as observed hereinabove IBS / Booster towers can be said to be Mobile Tower as defined in section 2(34AA) of the GPMC Act and therefore, “building” as held by the Hon'ble Supreme Court in the case of ATC Telecom Tower Corporation Private Limited & Anr. (Supra) and therefore, on such IBS / Booster sites the General Property Tax is leviable under the provisions of the GPMC Act and the relevant Taxation Rules which are framed in exercise of powers under Section

454 of the GPMC Act. Under the circumstances, the levy of General Property Tax on such IBS / Booster sites which is a part of the telecommunication services cannot be said to be illegal and/or without authority under the law and/or in violation of Article 243X of the Constitution of India.

[4.3] As observed hereinabove, the levy of property Tax on the “Mobile Towers” treating the same as building / land under the provisions of the GPMC Act and the relevant Taxation Rules has been upheld by the Division Bench of this Court in the case of ATC Telecom Tower Corporation Private Limited & Anr. (Supra). Under the circumstances, for the reasons stated in the judgment and order passed by the Division Bench of this Court in the case of ATC Telecom Tower Corporation Private Limited & Anr. (Supra), the present petition challenging the levy of Tax on IBS / Booster Sites deserves to be dismissed.

[4.4] Now, so far as the submission on behalf of the petitioner 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 Commercial-B 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 law is concerned, while considering the aforesaid ground relevant provisions of the GPMC Act viz. section 141B of the GPMC Act and Taxation Rules which are framed in exercise of powers under Section 454 of the BPMC / GPMC Act more particularly Rules 8A, 8B, 8C, 8D and 8E. 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. Sub-section (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. Sub-section (2) of section 141B provides that for the purpose of levy of Tax on building in the city, under sub-section (1), the building be classified into residential building and building other than residential. As per clause (b) of sub-section (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 sub-section (1) read with sub-section (2) shall not be less than or more than as provided under sub-section (3) of section 141B of the GPMC Act. However, the aforesaid is required to be read along with sub-section (4) of section 141B of the GPMC Act. Sub-section (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 sub-section (1) read with sub-sections (2) and (3). That while increasing or decreasing the rate of Tax determined under sub-section (1) read with sub-sections (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 sub-sections (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 Taxation Rules, 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.

[4.5] 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 Hon’ble 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 Commercial-B 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.

[4.6] Now, so far as the submission on behalf of the petitioner that determination of Tax on the Mobile Towers of the petitioner 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 petitioner that section 141B(3) of the GPMC Act provides that rate of Tax determined under sub-section (1) read with sub-section (2) which can be less than and/or more than the amount mentioned in the said sub-section 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 petitioner 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. Sub-section (3) of section 141B of the GPMC Act is required to be read alongwith sub-section (4) of section 141B. Sub-section (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 sub-section (1) read with sub-sections (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 sub-section (4) of section 141B of the GPMC Act are that “the Corporation may increase or decrease, **rate of Tax determined under sub-section (1) read with sub-sections (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 sub-section (1) read with sub-sections (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 sub-section (1) read with sub-sections (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

sub-section (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 IBS / Booster sites of the petitioner is in anyway illegal and/or bad in law and *ultra vires* to Article 243X of the Constitution of India.

[4.7] Now, so far as the challenge to the *vires* of Section 141B of the GPMC Act and the submission on behalf of the petitioner that levy of General Property Tax as per the Rules as provided under Section 141B(4) of the GPMC Act and the submission that the same is *ultra vires* to Article 243X of the Constitution of India is concerned, the aforesaid issue is also now not *res integra* in view of the decision of the Division Bench of this Court in the case of Adani Gas Limited (Supra). While considering the constitutional validity of section 141B of the GPMC Act insofar as it provides for General Taxes as per the Taxation Rules, while holding that section 141B of the GPMC Act to levy General Property Tax as per the Taxation Rules is constitutionally valid and/or the same cannot be said to be *ultra vires* to Article 243X of the Constitution of India, the Division Bench of this Court in paras 16.1 to 16.9 has observed and held as under:

“16.1 To consider the aforesaid issue, the relevant provisions of the Act and the Rules are required to be referred to and considered.

16.2. 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 sub-section (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 sub-section (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 sub-section (c) of Section 141 AA for the purpose of sub-section (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 sub-section (2) of Section 141 B of the Act for the purpose of levy of Tax on the building in the city under sub-section (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 sub-section. As per sub-section (3) of Section 141 B the rate of Tax determine under sub-section (1) r/w sub-section (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. Sub-section (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 are as under:

Section 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 sub-section (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.

Section 129. Property Taxes of what to consist and at what rate leviable:- For the, purposes of sub-section (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 cess-pools 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.]

SECTION 141AA : Property Taxes of what to consist and at what rate leviable

For the purposes of sub-sec. (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. 141-B 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. 141-B 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:

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. 141-B, 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.

SECTION 141 B : General Tax at what rate leviable

(1) For the purpose of clause (c) of Sec. 141-AA, 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 sub-section.

(3) The rate of Tax determined under sub-section (1) read with sub-section (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 sub-section (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" leviable under sub-section (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.

16.3. As per Section 454 of the GPMC Act, the Corporation may add to the (Schedule A) Rules. It also further provides that Corporation may make rules either prospective or retrospectively for the purpose of levy of property Tax under Section 141 AA. In the present case, in exercise of powers under Section 454 of the Act, the Corporation has framed the Rules namely Taxation Rules (Amendment 2001). The relevant rules for determination of the present Special Civil Applications are Rule 8A, 8B, 8C and 8D which are reproduced herein above in para 5.

16.4. From the aforesaid, provisions of the Act, Rules and the Taxation Scheme under the Act and Rules, Sections 99, 127, 139 and 141B of the GPMC Act can be termed as charging provisions, which provides for levy of Tax, rate on fixation as well as subject thereof. Rule 8A to 8E of the Rules are made by the Corporation and sanctioned by the State Government as per provision of Sections 454 and 455 of the GPMC Act and said rules provided for machinery and calculation of the Tax. It

cannot be disputed that Section 141B(1) specifically provides that for the purpose of clause (c) of Section 141AA, general Taxes shall be levied annually on buildings and lands. The aforesaid provisions also further provide the minimum and maximum rates which can be determined.

16.5. Section 141 B of the GPMC Act is sought to be held ultra vires on the ground that the same is in violation of Article 243 X of the Constitution of India. As stated above, it is the case on behalf of the respective petitioners that under Article 243 X of the Constitution of India legislature of a State, may, by law authorize the Municipality to levy, collect and appropriate such Taxes, duties, tolls and fees in accordance with such procedure and subject to such limits as may be specified in law. Thus, according to the petitioners the law authorizing the municipality to levy, collect and appropriate Tax must have been passed by the legislature of the State and that the legislature itself must prescribe procedure and the limits. It is the case on behalf of the respective petitioners that for the purpose of Article 243 X of the Constitution of India, the law will not include rules, regulations, notifications etc. According to the petitioners, no limits are prescribed in Section 141 of the BPMC/ GPMC Act for property Tax on land as the State legislature has prescribed the limits in Section 141 B of the GPMC Act for property Tax on building only. Thus, it is the case on behalf of the petitioner that with respect to the property Tax on land no limits are prescribed and therefore, the levy of property Tax on land is violative of Article 243 X of the Constitution of India. However, on fair reading of Article 243 X of the Constitution of India, it appears that said Article provides that the legislature of a State may by law authorize the Municipality to levy, collect and appropriate such Taxes, duties, tolls and fees in accordance with such procedure and subject to such limits as may be specified in law. Thus, it is enabling provision to empower the municipality to provide funds through Taxes, tolls etc. It does not provide as to which procedure has to be laid down and what limits are required to be specified. It also does not prescribe any maximum limit. The Constitution only provides only an outline of the Scheme for levy and imposition of Tax, fees.

16.6. At this stage, Article 243 X of the Constitution of India in which the the word law is used is also required to be referred to. The word law as used in clause (a) of Article 243 W is

necessarily to mean that the law enacted by the State legislature because of usage of the word such immediately preceding the word law. However, so is not the case under Article 243 X because under Article 243 X the word law is not qualified by the word such.

16.7. Identical question came to be considered by the Full Bench of the Madhya Pradesh High Court in the case of Anil Kumar Gulati(supra), in para 22 and 24 the Full Bench of the Madhya Pradesh High Court has observed and held as under:

“22. The next contention that has been put-forth is relatable to realm of excessive delegation. Submission of learned counsel for the petitioners is that the Legislature while engrafting the provisions, namely, Section 126 of the Municipality Act and Section 138 of the Municipal Corporation Act in sub-section (1) has used the words 'as may be made by the State Government in this behalf' and such a prescription in the said enactments is not permissible inasmuch as the constitutional command is in favour of the Legislature alone. It is urged that the Legislature has abdicated its basic legislative powers. On a X-ray of the anatomy of both the provisions, it is luminescent that the Legislature after providing certain parameters in sub-section (1) of Section 128 as well as in sub-section (1) of Section 126 has mentioned 'subject to the rules, as may be made by the State Government in this behalf'. The Constitution has allowed the State Legislature to endow such powers by law. The term "law" has been defined under Article 13(3)(a) of the Constitution and the said definition stipulates that law includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage in the territory of India to have the force of law. The rules which are statutory have the force of law. The Municipalities Act as well as the Corporation Act has the provisions authorising the State Government to make rules. Section 138 of the Municipal Corporation Act and Section 126 of the Municipalities Act stipulate subject to such rules. The rule making power is vested with the State Government. When the procedure is so laid down and is a part of the enactment and it comes within the definition of the term "law" as per the Constitution. The real crux of the matter is whether the Legislature should have itself said everything and dealt with every spectrum in the statute or left some aspects to

be filled up or supplemented or backed by the rules. It is contended with vehemence that by such prescription not only there is violation of the provisions of the Constitution but there is abdication of the essential power of the legislative functions of the State Legislature. As far as the first facet of this contention is concerned, we are not at all impressed as the provisions in the Constitution use the word "law" made by the legislature. Legislature itself has authorised under the statute the State Government to made rules. The second question that forms a part of this submission is whether such a power could have been delegated. It is well settled in law that the Legislature cannot visualize all circumstances. Some power has to be conferred on the rule making authority for carrying out the purposes of the Act. There are certain parameters and guidelines to which we shall advert to at a later stage. The decisions rendered in the cases of *In re Art. 143, Constitution of India and Delhi Laws Act (1912)*, AIR 1951 332; *Western-India Theatres Ltd. v. Municipal Corporation of the City of Poona*, AIR 1959 SC 586; *Banarsi Das v. State of M. P.*, AIR 1958 SC 909; *D. S. Garewal v. The State of Punjab*, AIR 1959 SC 512; *The Corporation of Calcutta v. Liberty Cinema*, AIR 1965 SC 1107; *The Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi*, AIR 1968 SC 1232; *State of Mysore v. M. L. Nagade and Gadag* (1983) 3 SCC 253 : (AIR 1983 SC 762), *Darshanlal Mehra v. Union of India*, (1992) 4 SCC 28 : (AIR 1992 SC 1848), *Almitra H. Patel v. Union of India*, (1998) 2 SCC 416 : (AIR 1998 SC 993) support the proposition that the executive authority can be authorised to frame rules and work under the rules but the said rules should not transgress any of the constitutional provisions and should not travel beyond the scheme of the enactment as that is the source from which they draw their power. In this context, we may profitably refer to the decision rendered in the case of *Darshan Lal Mehra* (supra) wherein a contention was raised that Section 172(2) of the U.P. Nagar Mahapalika Adhiniyam, 1959 is unconstitutional because the Legislature has abdicated its basic function by delegating the essential legislative powers upon the Municipality to levy the Taxes enumerated in the Section. It was contended before the Apex Court that the said power was unguided and uncanalised. In that context the Apex Court held as under

(para 7 of AIR 1992 SC) :

"Section 172(2) of the Act authorises the Mahapalikas to impose the Taxes mentioned therein, "for the purposes of this Act". The objections and functions cast upon the Mahapalikas are laid down in various provisions of the Act. The Taxes under Section 172(2) of the Act, therefore, can be levied by the Mahapalikas only for implementing those purposes and for no other purpose. The Mahapalikas have to provide special civic amenities at the places where cinemas/theatres are situated. So long as the Tax has a reasonable relation to the purpose of the Act the same cannot be held to be arbitrary. The rate of Tax to be levied and the persons or the class of persons liable to pay the same is determined by inviting objections which are finally considered and decided by the State Government. There is no force in the argument that the legislature has abdicated its function to the Mahapalikas. The Tax is levied in accordance with the statutory rules framed by the State Government and the said rules are laid before each House of the State Legislature for not less than 14 days and are subject to such modifications as the legislature may make during the session they are so laid. In the view we have taken, we are supported by the judgments of this Court, in *Gopal Narain v. State of U. P.* (1964) 4 SCR 869 : AIR 1964 SC 370 and *Western India Theatres Limited v. Municipal Corporation of the City of Poona*, (1959) Supp (2) SCR 71 : AIR 1959 SC 586. We, therefore, reject the contention raised by the learned counsel for the petitioners."

24. In view of the aforesaid enunciation of law what emerges is that the basic inherent legislative powers cannot be delegated but to have a functional measure to carry out the purposes of the Act, delegation to that extent is permissible. It is worth noting here that what is canvassed before us is a different kind of proponement. It is urged with rigorous vehemence that the Legislature should have enacted the law itself and should not have left it to the executive. If the aforesaid submission is tested on the touch-stone of the aforesaid pronouncement of law, in our considered opinion, the aforesaid argument

is totally without any substance inasmuch as the Legislature itself has enacted the provision and in the provision itself has authorized the State Government to make rules. No basic legislative function has been abdicated and, therefore, the said submission does not merit any consideration and we unhesitatingly repel the same..

16.8. Now, considering the scheme of the property Tax under the GPMC Act, Section 127(3) provides that Municipal Tax shall be assessed and levied in accordance with the provision of this Act and Rules. Pursuant to Section 127(3), the Municipal Corporation has framed the Rules in exercise of powers under Section 454 of the Act and are approved by the State Government. The rules provide procedure for assessment and collection of the levy. As observed by the Honble Supreme Court in the case of **M/s. Goodyear India Limited (supra)** and even otherwise there are three stages in the imposition of Tax. There is declaration of liability i.e. part of the Statue which determines what percent in respect of what property are liable. Section 127 provides for property Tax to be imposed under the Act. Section 141 AA provides as to the component of the property Tax and the rate at which it is leviable. Section 141 B provides for rate for general Tax on the building and land. Section 99 provides for fixation of rates of Tax every year by the municipal Corporation. Thus imposition of levy of Tax and rate of Taxation is provided by the Statute and the rules provides machinery for assessment and calculation and the rates are to be framed by the Municipal Corporation every year having regard to its need. It is required to be noted at this stage that even under Section 141 B of the Act there is a limit prescribed to levy the Tax on the the residential building and other than residential. Thus, considering the entire scheme of the property Tax under the GPMC Act and Rules it cannot be said that there is violation of Article 243 X of the Constitution of India as alleged. On harmonious construction and considering all the provisions of the Taxation under the Act and the Rules and for the reasons stated hereinafter, we are of the opinion that even there is provision for limits of the general Taxes even with respect to the land also (which shall be dealt with hereinafter).

16.9 Under the circumstances and for the reasons stated above, we are of the opinion that as such Section 141 B of the Act is not ultra vires to Article 243 X of the Constitution of

India on the ground that in the Act with respect to Tax on land no limits of Tax is provided. We are of the view that in the present case and while enacting Section 141 B of the Act i.e. levy and assessment of general Taxes on the land, provisions of Article 243 X are complied with as State legislature has enacted law i.e. Act for levy of Tax on the building and the land and the said law provide for framing the rules for machinery and calculation of Tax and accordingly Taxation Rules (Amendment) 2001 are framed.”

Under the circumstances and for the reasons stated above, it cannot be said that section 141B(4) of the GPMC Act which permits / authorizes the Corporation to increase or decrease the property Tax as per the Taxation Rules cannot be said to be *ultra vires* to Article 243X of the Constitution of India. As observed hereinabove, section 141B(4) of the GPMC Act is part of the Statute which permits and/or authorizes the Corporation to increase or decrease the property Tax as per the Rules. Section 454 of the GPMC Act permits and/or authorizes to frame the Rules and in exercise of powers under Section 454 of the GPMC Act, Taxation Rules are framed.

[5.0] In view of the above and for the reasons stated above, present Special Civil Application deserves to be dismissed and is, accordingly, dismissed.

Sd/-
(M.R. SHAH, J.)

Sd/-
(B.N. KARIA, J.)

Ajay