

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 455 OF 2005

MARS Enterprises, having its Office
Off. Intercontinental Airport Approach
Road, Marol, Andheri (E), Mumbai-400
058 } **.....Petitioner**

: Versus :

**Mumbai Municipal Corporation of
Greater Mumbai**, having its office at
Mahapalika Marg, C.S.T. Mumbai
400 001 } **....Respondent**

WITH

WRIT PETITION NO. 589 OF 2001

**Oil & Natural Gas Corporation
Ltd.**, a company incorporated under
the Companies Act, 1956 having its
registered office at Jeevan Bharti,
New Delhi-110 001. } **...Petitioner**

: Versus :

**1. Mumbai Municipal Corporation
of Greater Mumbai**, having its office
at Mahapalika Marg, C.S.T. Mumbai
400 001.

2. The Municipal Commissioner
Brihanmumbai Mahanagar Palika,
Mahanagar Palika Marg, Fort,
Mumbai-400 001.

**3. Shri. Z.S. Sudrik, Assistant
Assessor & Collector/G North
Ward**-having his office at S/(North)

Ward, Room No.27, Harishchandra
Velve Marg, Dadar, Mumbai-400 028.

**4. Shri. S.T. Dongre, Deputy
Assessor & Collector (City),** Office
of the Assessor and Collector,
Brihanmumbai Mahanagar Palika,
Mahapalika Marg, Fort, Mumbai-400
001. } **...Respondents**

Mr. Arup Dasgupta with Ms. Sonam Ghiya and Ms. Drshika Hemnani i/by. Jhangiani Narula & Associates, for the Petitioner in WP-455/2005.

Mr. S.A. Bhalwal with Mr. Kundanlal Patil i/by. Vyas & Bhalwal, for the Petitioner in WP-589-2001.

Mr. A.Y. Sakhare, Senior Advocate with Mr. Rohan Mirpurey i/by. Mr. Sunil Sonawane, for M.C.G.M.-Respondent.

CORAM : A.S. CHANDURKAR,

MANISH PITALE &

SANDEEP V. MARNE, JJ.

Judgment Resd. on : 16 August 2024.

Judgment Pron. on : 23 August 2024.

JUDGMENT : (Per Sandeep V. Marne, J.)

1) Upon noticing conflicting views of Division Benches of this Court on the issue of liability of owner/occupier not consuming water supplied by the Municipal Corporation to pay water tax and water benefit tax, the learned Single Judge (V. M. Kanade J.) has made a reference to the larger Bench vide order dated 28 March 2007 to consider the following issues:

(i) Whether the Corporation has a power to levy tax under Section 140(a)(i) of the said Act on the actual supply of water?

(ii) Whether the water benefit tax, as envisaged under Section 140(a)(ii) of the said Act, could be levied irrespective of the actual consumption of water since it pertains to maintenance of the system?

(iii) Whether the Corporation is entitled to levy fixed tax apart from water charge which is levied for actual consumption of water?

2) When the larger Bench took up the issues for consideration, it noticed that one of the conflicting judgments rendered by the Division Bench of this Court in ***Harish Lamba V/s. Municipal Corporation of Greater Mumbai and Ors.***¹ was challenged before the Supreme Court in Special Leave to Appeal (Civil) No. 210023/2007. Therefore, by order dated 1 February 2008, the larger Bench thought it appropriate to await the judgment of the Supreme Court and the Reference was adjourned by order dated 1 February 2008. When the Reference was again taken by the larger Bench for consideration on 6 February 2009, it was noticed that leave was granted by the Supreme Court and the Special Leave Petition was converted into Civil Appeal No.142/2009. The Full Bench therefore adjourned the reference *sine-die* with liberty to the parties to move the Court after Supreme Court decided the issue.

3) In ***Municipal Corporation of Greater Mumbai V/s. Harish Lamba, Indian Inhabitant and Ors.***² the Supreme Court allowed Civil Appeal No. 142/2009 and set aside the judgment

¹ Writ Petition No.1206/1999 decided on 21 November 2006

² 2020 15 SCC 171

of Division Bench of this Court in ***Harish Lamba V/s. M.C.G.M*** (supra). When Petitions came up before the Division Bench on 17 March 2023, Municipal Corporation urged that the issues stood concluded by the judgment of the Apex Court in ***M.C.G.M. V/s. Harish Lamba*** (supra). However, the Division Bench noted that Reference to the larger Bench was pending and that therefore it would be appropriate that the larger Bench considers the Apex Court judgment and passes appropriate orders on the reference made. This is how the reference is listed before us for decision on the above quoted three questions.

4) Writ Petition No.455/2005 is filed by MARS Enterprises, which had undertaken redevelopment of the building at 5 Battery Street, Gordon House, Behind Regal Theatre, Mumbai, The building was originally owned by Mr. Manu Narang, after whose death, the same has devolved upon his heirs, who run business under the name MARS Enterprises. A water connection was provided to the building before undertaking the exercise of redevelopment. Petitioner requested for disconnection of water supply vide letter dated 9 June 1995 and the Municipal Corporation addressed letter dated 4 November 1997 to Petitioner informing about disconnection of the water supply. It appears that Petitioner used water tankers during the course of redevelopment of the building and after completion of construction, it applied for water connection. In the above background, Petitioners received Bill from the Municipal Corporation on 6 February 2004 demanding total property tax of Rs. 21,62,245/- which included levy of 'water tax' in Column No. 2 of Rs.8,77,042/- and levy of 'water benefit tax' of Rs. 1,68,662/-. It also included levy of sewerage tax.

5) MARS Enterprises has accordingly challenged Bill dated 6 February 2004, as well as order of the Investigating Officer dated 5 February 2004 in Writ Petition No. 455 of 2005 with further prayer to restrain the Municipal Corporation, *inter-alia*, from recovering the amount of water tax and sewerage tax. Though several other prayers are also raised in the petition, statement on behalf of Petitioner is recorded by the learned Single Judge in order dated 28 March 2007 that challenge to the property tax and sewerage tax is not being agitated in the present Petition as Appeal under Section 217 of the Mumbai Municipal Corporation Act, 1888 (**MMC Act**) was filed before the Small Causes Court by Petitioner. Petitioner accordingly has restricted the challenge in Writ Petition No.455/2005 only to the extent of demand of water tax by the Municipal Corporation. It is Petitioner's contention that since water was not actually consumed by it during the time when the supply was disconnected, it is not liable to pay water tax to the Municipal Corporation.

6) When Writ Petition No. 455 of 2005 came up before the learned single Judge on 28 March 2007, reliance was placed by Petitioner on Division Bench judgment of this Court in ***Harish Lamba Vs. MCGM*** (supra), as well as another Division Bench judgment in ***Nagpal Printing Mills & Anr. V/s. Municipal Corporation of Greater Bombay***³ as upheld by the Apex Court in ***Municipal Corporation of Greater Mumbai V/s. Nagpal Printing Mills & Anr.***⁴ Reliance was also placed before the learned Single Judge on judgment of the Apex Court in ***Municipal***

3 AIR 1988 Bom 91

4 AIR 1988 SC 1009.

Corporation of Greater Bombay V/s. Bombay Tires International Ltd.⁵

7) On the other hand, the Municipal Corporation relied upon judgment of Division Bench of this Court in ***The Wallace Flour Mills Co. Ltd. & Anr. V/s. Municipal Corporation of Greater Mumbai & Ors.***⁶ which relied upon judgment of Single Judge of this Court in ***The Municipal Commissioner of Bombay V/s. Akberali Jaferali Hirji***⁷. The Municipal Corporation also relied upon judgment of Single Judge of this Court ***Mangaldas N. Verma Charitable Trust V/s. Municipal Corporation of Greater Bombay & Ors.***⁸ Judgment of the Supreme Court in ***Indore Municipal Corporation Vs. Gujarat Co-operative Housing Society Ltd.***⁹ was also relied upon in support of the contention that the water tax could be levied in respect of the premises not only where the premises are connected by means of municipal pipes or government water pots but also where the premises are situated in the portion of the city in which the Commissioner had given public notice that the Corporation had arranged to supply water.

8) This is how the learned single Judge noticed conflict in the views in judgments rendered by two Division Benches on liability of owner/occupier to pay waters taxes when water is not consumed and therefore referred the three issues to the larger Bench.

⁵ 1998 (3) Bom. C.R. 436 SC.

⁶ Writ Petition No.514 of 2002 decided on 19 December 2002

⁷ (1934) 36 Bom L.R. 990

⁸ Writ Petition No. 1390/2006 decided on 8 March 2007.

⁹ 1992 Supp. (2) SCC 457

9) Writ Petition No. 589/2001 is filed by Oil and Natural Gas Corporation Ltd (**ONGC**) challenging Notice of Demand dated 29 November 2000, as well as warrant of attachment dated 26 February 2001, *inter alia* on the ground that in absence of actual supply of water, water tax and sewerage tax could not have been levied. Petitioner-ONGC is in possession of land at 'H' Block, Bandra Kurla Complex and was paying property taxes in respect of the same to the Municipal Corporation, which did not include water tax or sewerage tax. ONGC submitted plans for construction of the building to MCGM in 1998 and in this background, Bill dated 29 November 2000 was raised by the Municipal Corporation levying water tax @ 130% and sewerage tax of 70% of the rateable value of the plot. This is how Petitioner-ONGC has questioned levy of water tax and sewerage tax on the ground that no water or sewerage connection was procured by it in the plot. The petition was admitted by order dated 18 November 2002. When petition was called out for final hearing on 25 November 2011, the Division Bench directed that the petition would be taken up only after Reference to the larger Bench was decided in Writ Petition No.455/2005. When Writ Petition No. 589 of 2001 came up before Division Bench alongwith Writ Petition No. 455/2005, common order dated 17 March 2022 was passed observing that it would be appropriate for the larger Bench considers the Supreme Court's judgment in ***Harsih Lamba*** and passes appropriate order in the Reference. This is how, Writ Petition No. 589 of 2001 is also placed before us along with Writ Petition No. 455 of 2005.

10) As observed above, one of the conflicting views noticed by the learned Single Judge in order dated 28 March 2007 was by the Division Bench in ***Harish Lamba Vs. MCGM*** (supra), in which

it was held that if water is not consumed, the owner/occupier is not liable to pay water tax. The judgment delivered by the Division Bench on 21 November 2006 became subject matter of challenge before the Apex Court in Civil Appeal No. 142 of 2009 and the Apex Court has set aside the judgment of the Division Bench on 22 October 2019. Since the judgment of Division Bench in ***Harish Lamba Vs. MCGM*** no longer survives, now there is no conflict of views, in that sense.

11) We have heard Mr. Dasgupta, the learned counsel appearing for Petitioner in Writ Petition No.455/2005, Mr. Bhalwal, the learned counsel appearing for Petitioner-ONGC in Writ Petition No. 589/2001 and Mr. Sakhare, the learned Senior Advocate appearing for Respondent-Municipal Corporation

12) The learned counsel are *ad idem* that all the three questions referred to the larger Bench stand concluded by the judgment of the Apex Court in ***Harish Lamba***. It would be therefore necessary to consider the law expounded by the Apex Court in ***Harish Lamba*** for answering the questions referred to us. Before doing so, it would be apposite to make a quick reference to the statutory provisions under the MMC Act relating to water tax, water benefit tax and water charges for better understanding of the three questions referred to us.

13) Section 140 of the MMC Act provides for levy of property taxes comprising of water tax, water benefit tax, sewerage tax, additional sewerage tax, general tax and education cess. Section 140 provides thus:

140. Property taxes leviable on rateable value, or on capital value, as the case may be, and at what rate.—

(1) The following property taxes shall be leviable on buildings and lands in Brihan Mumbai, namely:

(a)(i) the **water tax** of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for providing water supply;

(ii) an additional water tax which shall be called “**the water benefit tax**” of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for meeting the whole or part of the expenditure incurred or to be incurred on capital works for making and improving the facilities of water supply and for maintaining and operating such works:

Provided that all or any of the property taxes may be imposed on a graduated scale.

(b)(i) the sewerage tax of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for collection, removal and disposal of human waste and other wastes;

(ii) an additional sewerage tax which shall be called the “sewerage benefit tax” of so many per centum of their rateable value, or their capital value, as the case may be, as the Standing Committee may consider necessary for meeting the whole or a part of the expenditure incurred or to be incurred on capital works for making and improving facilities for the collection, removal and disposal of human waste and other wastes and for maintaining and operating such works;

General tax

(c) a general tax of not less than eight and not more than fifty per centum of their rateable value, or of not less than 0.1 and not more than 1 per centum of their capital value, as the case may be, together with not less than one-eighth and not more than five per centum of their rateable value or not less than 0.01 and not more than 0.2 per centum of their capital value, as the case may be, added thereto in order to provide for the expense necessary for fulfilling the duties of the corporation arising under clause (k) of Section 61 and Chapter XIV:

Provided that, the Corporation shall not levy property tax leviable under this clause, on residential buildings or residential tenements, having carpet area of 46.45 sq m (500 sq ft) or less.

Explanation.— For the purposes of the above proviso, the term “residential buildings or residential tenements, having carpet area of 46.45 sq m (500 sq ft) or less” means the residential buildings or residential tenements, existing on the date of coming into force of the Mumbai Municipal Corporation (Amendment) Act, 2019, having carpet area of 46.45 sq m (500 sq ft) or less and recorded with such area in the municipal records on 1-1-2019 or in respect of which the permission to occupy has been granted by the Corporation permitting such area to be occupied after such date of coming into force of the said Act.

Education cess

(ca) the education cess leviable under Section 195-E;

(cb) the street tax leviable under Section 195-G.

(d) betterment charges leviable under Chapter XII-A.

(2) Any reference in this Act or in any instrument to a water tax or a halalkhor tax shall after the commencement of the Bombay Municipal Corporation (Amendment) Ordinance, 1973, be construed as a reference to the water tax or the water benefit tax or both, or the sewerage tax or the sewerage benefit tax, or both as the context may require.

(emphasis added)

14) Perusal of Section 140 of the M.M.C. Act shows that there are two distinct components of property taxes relating to water. Under Section 140(1)(a)(i), ‘water tax’ can be levied at a particular percentage of rateable value or capital value as may be determined by the Standing Committee *‘for providing water supply’*. Under Section 141(1)(a)(ii), an additional water tax, which is called *‘water benefit tax’* is leviable at a prescribed percentage of rateable value or capital value as determined by the Standing Committee *‘meeting the whole or part of the expenditure incurred or to be incurred on capital works for making and improving the facilities of water supply and for maintaining and operating such works.’* Thus ‘water tax’ is levied for making available the facility of water supply in the area of Municipal Corporation, whereas ‘water benefit tax’ is levied for defraying the expenses incurred for providing and

improving the infrastructure needed for such water supply and also for its maintenance and operation.

15) Perusal of the first two questions formulated by the learned Single Judge for reference would indicate that Question No.1 is in respect of 'water tax' under Section 141(1)(a)(i), whereas Question No.2 is in respect of 'water benefit tax' under Section 140(1)(a)(ii). As observed above, water tax is leviable for providing water supply, whereas 'water benefit tax' is leviable for meeting the expenditure incurred on capital works for making and improving the facilities of water supply and for maintaining and operating such works. Considering this marked difference between purposes for which 'water tax' and 'water benefit tax' is to be levied, the learned Single Judge has accordingly formulated Question Nos. 1 and 2. Question No.1 relates to power of Municipal Corporation to levy water tax under Section 140(1)(a)(i) on actual supply of water. Since water benefit tax is leviable for meeting the expenditure for water supply works, the learned Judge has formulated Question No. 2 as to whether the 'water benefit tax' can be levied under Section 140(1)(a)(ii) where there is no actual consumption of water. To paraphrase, the first question relates to power of Municipal Corporation to levy property tax in the form of 'water tax' when there is actual supply of water. As against this, when there is no actual supply of water, whether 'water benefit tax' can be levied since the same pertains to mere recovery of expenditure for erecting infrastructure for supply of water.

16) Having considered the context in which Question Nos. 1 and 2 relating to 'water tax' and 'water benefit tax' are formulated, we proceed to examine whether those two questions are answered by

the judgment of the Apex Court in ***Harish Lamba***. In case before the Apex Court, Respondent therein had requested for cutting of water supply to his premises and the Municipal Corporation had cut the water supply on 25 October 1993. Later, Respondent therein requested for provision of new water connection to the premises for which the Municipal Corporation demanded a deposit which he was unable to pay. Therefore, there was no water connection to the premises after 25 October 1993. In 1997, the Municipal Corporation started raising bills for the period from 1 October 1993, which included levy towards water tax and water benefit tax. Respondent filed Writ Petition before the Division Bench of this Court challenging the bills and warrant of attachment raised by the Municipal Corporation. The Division Bench of this Court allowed Writ Petition No. 1206 of 1999 by its judgment and order dated 21 November 2006 by relying upon judgment of the Apex Court in ***Nagpal Printing Mills*** (supra). The Municipal Corporation challenged the judgment of the Division Bench before the Supreme Court. In the above backdrop, one of the issues before the Supreme Court was whether water tax and water benefit tax form part of property taxes and were those taxes payable when the water connection was disconnected. The Apex Court took into consideration the statutory scheme of water tax, water benefit tax and water charges under the provisions of Sections 140, 141 and 169 of the M.M.C. Act and held that water tax and water benefit tax forms part of property taxes under Section 140 of the Act. It has further held that the levy of water tax and water benefit tax becomes payable as soon as the owner/occupant of the premises is in a position to avail water connection to his premises and the liability is inevitable in terms of Section 141 of the Act, even if water supply/water meter is disconnected. On the contrary, the water

charges under Section 169 of the Act can be recovered commensurate to the quantity of water actually supplied and consumed from the connection of water pipes or municipal water works to the premises is concerned. The Apex Court held that the Division Bench committed error in following the decision in *Nagpal Printing Mills*, which dealt with levy of water charges as against levy of water tax and water benefit tax involved in the case of *Harish Lamba*. The Apex Court held in paras-21, 22, 23 and 24 and 26 as under:

21. Section 169 is an enabling provision which empowers the standing committee to make rules for supply of water and for charging for the supply of water and for any fittings, fixtures or services rendered by the corporation. The extent to which such charges can be levied has been delineated in Section 169 of the Act. **This provision envisages levy of charges for the supply of water and further that if such supply materialises, water charges be levied in lieu of a tax (water tax/water benefit tax) prescribed under Section 140 of the Act.** Concededly, the primary liability to pay property tax in the form of water benefit tax is co-extensive with meeting the whole or part of the expenditure incurred or to be incurred on capital works for making and improving the facilities of water supply and for maintaining and operating such works, as the case may be in terms of Sections 140 and 141 of the Act. The levy towards property tax fructifies on fulfillment of conditions stipulated therefor in Section 139 read with Sections 140 and 141 of the Act. The extent of such levy is also predicated in Sections 140 and 141 of the Act. It is a compulsory imposition.

22. If it is a compulsory imposition, the fact that the water is de facto utilised by the occupants or the owners of the building becomes insignificant. It is not a tax on income where the levy is linked to income. We are concerned with property tax, which becomes payable in respect of specified property. **Water Tax or Water Benefit Tax, in law, is a property tax and described by the legislature as being one of the component of property tax. That becomes payable as soon as the owner/occupant of the premises is in a position to avail of water connection to his premises in the prescribed manner. That liability is inevitable in terms of Section 141 of the Act,**

even if the water supply/water meter is later on disconnected.

23. Indeed, in case of disconnection of water supply/water meter the corporation cannot recover water charges under Section 169 of the Act. For, the water charges can be recovered commensurate to the quantity of water actually supplied and consumed from the connection of communication pipes or municipal water works to the premises concerned.

24. Reverting to the view taken by the High Court, we agree with the appellant that the High Court has palpably misapplied the decision in Nagpal Printing Mills (supra) by erroneously assuming that the present case was also a case of levy of 'water charges' referable to Section 169 of the Act. **The High Court completely glossed over the distinction between the concept of property tax in the form of water benefit tax on the one hand; and water charges in respect of the quantity of water actually consumed on the other hand. In the former case, being a property tax, it is a compulsory imposition and liability to pay the same accrues irrespective of the quantity of water supplied and consumed in the premises concerned.** That liability flows from Sections 139 read with 140 and 141 of the Act. The quantum of tax payable is specified by the standing committee from time to time on the basis of per centum of rateable value of premises or its capital value. The impugned demand notices, ex facie, are ascribable to Section 141 of the Act. The same in no manner can be construed as having been issued under Section 169 of the Act.

26. Having said this, we must conclude that the High Court misread the impugned demand notices as being under Section 169 of the Act, when in fact the same were for recovery of property tax in the form of water benefit tax under Section 139 read with Sections 140 and 141 of the Act. **The liability to pay such tax arises irrespective of disconnection of water supply/water meter including due to nonpayment of taxes, being a compulsory imposition.**

(emphasis ours)

17) Thus, in **Harish Lamba**, the Apex Court has distinguished the concepts of 'water tax' and 'water benefit tax' which form component of property taxes from that of 'water charges' which are to be paid on the basis of quantum of water actually

consumed. Since property taxes are compulsory imposition and the liability to pay water tax and water benefit tax accrues irrespective of consumption or otherwise of water in the premises. In our view, these findings of the Apex Court in **Harish Lamba** not only resolve the conflicting views taken by Division Benches, but also provide answer to Question Nos. 1 and 2 referred to us. Question No. 1 can accordingly be answered with our finding that the Municipal Corporation can levy 'water tax' under Section 140(1)(a)(i) of the MMC Act once the facility of water supply is made available to the owner/occupier of a property and whether he actually consumes water or not becomes immaterial. Similarly mere difference in the purpose behind levy of 'water benefit tax' which is to meet the expenditure on laying, operation and maintenance of pipelines, would make no difference as 'water benefit tax' is also a component of property tax and would accordingly be leviable on same pedestal as that of 'water tax'. Accordingly, Question No. 2 is answered with our finding that though 'water benefit tax' as envisaged under Section 140(1)(a)(ii) of the MMC Act is leviable for meeting of expenditure for providing, operating and maintaining the water supply facilities, the same can be levied irrespective of the fact whether there is actual consumption of water or not.

18) Question No. 3 is about entitlement of Municipal Corporation to levy fixed tax apart from 'water charge' which is levied for actual consumption of water. To paraphrase the question, whether 'water tax' and 'water benefit tax' are to be levied in addition to payment of 'water charges' or whether levy of 'water charges' is in lieu of water tax and water benefit tax? To answer the question, a quick reference to Section 169 of the Act would be necessary. Section 169 provides thus:

169. Rules for water taxes and charges.

(1) Notwithstanding anything contained in section 128, the [Standing Committee] shall, from time to time, make such rules as shall be necessary for supply of water and for charging for the supply of water and for any fittings, fixtures or services rendered by the Corporation under Chapter X and shall by such rules determine

(i) the charges for the supply of water by a water tax and a water benefit tax levied under section 140 of a percentage of the rateable value or the capital value, as the case may be, of any property provided with a supply of water; or

(ii) a water charge in lieu of a water tax, based on a measurement or estimated measurement of the quantity of water supplied; or

(iii) combined charges under clauses (i) and (ii); or

(iv) a compounded charge in lieu of charges under clauses (i) and (ii).

(2) A person who is charged for supply of water under clause (ii) or (iv) of subsection (1) shall not be liable for payment of the water tax, but any sum payable by him and not paid when it becomes due shall be recoverable by the Commissioner as if it were an arrear of property tax due.

(3) Notwithstanding anything contained in section 146, the water taxes and charges shall be primarily recoverable from person or persons actually occupying the premises.”

(emphasis and underlining ours)

19) Thus, under Section 169 of the Act, ‘water charge’ based on measurement or estimated measurement of the quantity of water supplied can be levied only ‘*in lieu*’ of water tax. In para-21 of its judgment in **Harish Lamba**, the Apex Court has noticed that the levy of water charges under the Rules made under Section 169 of the MMC Act is only ‘*in lieu*’ of water tax and water benefit tax. Accordingly, the Apex Court has clarified in Para-26 of the judgment that once water supply facility is availed by an owner/occupant, he would be liable to pay only water charges on the basis of quantity of

water actually consumed in lieu of water tax or water benefit tax. In Para-26, the Apex Court has clarified as under:

26.....However, if the owner/occupant of the premises were to utilise the water supply facility made available to the premises through connection by means of communication pipes or municipal water works, as the case may be, the liability would be to pay only water charges on the basis of the quantity of water actually consumed, in lieu of property tax in the form of water tax or water benefit tax by virtue of Section 169 of the Act and in particular sub-section (2) thereof.

20) Thus, from provisions of Section 169(1) (ii) of the MMC Act, it is clear that the levy of water charges is in lieu of water tax. Though clause (ii) of subsection (1) of Section 168 uses only the word ‘water tax’, the Apex Court has held in **Harish Lamba** in paras-21 and 26 of the judgment that the levy of water charges would be in lieu of both water tax as well as water benefit tax. Therefore, once owner/occupier avails water supply facility and becomes liable to pay water charges under the provisions of Section 169(1)(ii) of the Act, payment of such water charges would be in lieu of water tax and water benefit tax. In short, it is not necessary for such owner/occupier to pay both water charges for actual consumption of water as well as water tax/water benefit tax. Question No. 3 is being accordingly answered accordingly.

21) The questions referred are accordingly answered as under:

- (i) The expression ‘*for providing water supply*’ appearing in Section 140(1)(a)(i) of the M.M.C. Act for levy of ‘water tax’ does not mean actual supply of water to owner/occupant and ‘water tax’ under Section 141(1)(a) (i) can be levied irrespective of the fact whether water is actually consumed by the owner/occupier or not.

- (ii) The 'water benefit tax' leviable under Section 140(1)(a) (ii) of the M.M.C. Act is also leviable irrespective of the fact whether the owner/occupier actually consumes the water or not even though 'water benefit tax' is for meeting the expenditure for providing, operating and maintaining the water supply facility and water works.
- (iii) The 'water charges' payable under Section 169(1)(ii) of the MMC Act is in lieu of payment of 'water tax' and 'water benefit tax' and that therefore, if the owner/occupier of the premises avails water supply facility, consumes water and pays 'water charges' on the basis of quantity of water actually consumed, payment of such 'water charges' would be in lieu of property tax in the form of 'water tax' or 'water benefit tax' and that therefore once 'water charges' are paid, it is not necessary for owner/occupier to once again pay either 'water tax' or 'water benefit tax'.

22) Since the questions referred to the larger Bench are answered, the petitions be placed before the Division Bench for passing appropriate orders.

(A.S. CHANDURKAR, J.)

(MANISH PITALE, J.)

(SANDEEP V. MARNE, J.)

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