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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1159 of 2017

Order reserved on: 18-9-2017

Order delivered on: 13-10-2017

1. Mr Suresh Gupta, Aged about 47 years, S/o Mr Ram Ji Gupta, Shri Hanuman Bhawan, Jal Vihar Colony, Civil Line, Raipur, Chhattisgarh

2. Mrs. Nirmala Gupta, Aged about 78 years, W/o Dr. Shanta Ram Gupta, K-9, Anupam Nagar, Raipur, Chhattisgarh

3. Mrs. Shilpa Aglave, Aged about 47 years, W/o Mr. Ravindranath Aglave, Opp. Anmol Super Bazar, Vasant Vihar, Raipur, Chhattisgarh

4. Mr. Swarna Kanta Sharma, Aged about 69 years, W/o late J.C. Sharma, Jaihind Chowk, Kapa, Lodhipara, Raipur, Chhattisgarh

---- Petitioners

Versus

1. Municipal Corporation Raipur, Through the Commissioner, Nagar Nigam Head Office, Near Mahila Police Thana, Gandhi Udyan, Raipur, Chhattisgarh

2. State of Chhattisgarh, Through Secretary, Department of Urban Administration & Development, Govt. of Chhattisgarh, Mahanadi Bhawan, Naya Raipur, Chhattisgarh

---- Respondents

For Petitioners:	Mr. Kishore Bhaduri and Mr. Vaibhav Shukla, Advocates.
For Respondent No.1:	Mr. H.B. Agrawal, Senior Advocate with Mrs. Prabha Sharma, Advocate.
For Respondent No.2 / State: -	Mr. Gary Mukhopadhyay, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Invoking the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India, the petitioners herein called in question the resolution dated 21-10-2016 passed by the Municipal

Corporation, Raipur, imposing property tax on the mobile towers affixed on the rooftops of the petitioners' buildings and also consequentially praying for quashing of the bill pursuant to the demand notices Annexure P-1, stating inter alia that such an imposition is not sustainable and contrary to the provisions contained in the Chhattisgarh Municipal Corporation Act, 1956 (for short, 'the Act of 1956').

2. Essential facts requisite to challenge the impugned order are as under: -

3. The petitioners are owners of the buildings on which the telecom companies have affixed their mobile towers on the rooftops and they are being operated by the telecom companies. Mobile towers are being owned by the telecom companies and they have also taken permission from the Municipal Corporation by paying permission fees and the same is being renewed on payment of annual renewal fees from time to time. The Municipal Corporation, Raipur on 21-10-2016 vide resolution No.3 has resolved under Section 132(1)(a) of the Act of 1956 to impose ₹ 20,000/- annual property tax per mobile tower with 10% increase every year.

4. This writ petition has merely been filed on the ground that the mobile tower is not covered under the meaning of land and building under Entry 49 List II of the Constitution of India, as such, the Municipal Corporation has no authority to levy the property tax. The imposition of property tax on the mobile towers has also been challenged alternatively on the ground that the property tax, if any, has to be imposed in accordance with Section 135 of the Act of

1956 read with the Chhattisgarh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 (for short, 'the Rules of 1997'). Therefore, to resolve and impose property tax at the rate of ₹ 20,000/- per mobile tower per annum is arbitrary and contrary to the provisions contained in the Act of 1956 and the rules made thereunder.

5. Return has been filed opposing the writ petition stating that the order impugned is appealable and the tax imposed is within the authority of the Corporation.

6. Mr. Kishore Bhaduri, learned counsel for the petitioners, would submit that mobile towers have been erected by the telecom companies on the rooftop of the buildings owned by the petitioners and the telecom companies are tenants. He would further submit that mobile towers are not included within the meaning of building as defined under Section 5 (7) of the Act of 1956 and, therefore, it is not land and building within the meaning of Entry 49 List II and relied upon a decision of the Supreme Court in the matter of **Ahmedabad Municipal Corporation v. GTL Infrastructure Limited and others**[1]. He would alternatively submit that property tax, if any, imposable is only under Section 135 of the Act of 1956 by determination of annual letting value and the rate of tax would be as provided under Section 135. Therefore, the impugned order imposing ₹ 20,000/- per mobile tower per annum is arbitrary and contrary to Section 135 of the Act of 1956.

7. On the other hand, Mr. H.B. Agrawal, learned Senior Advocate

1 (2017) 3 SCC 545

appearing for respondent No.1, would submit that the impugned order is appealable under Section 184 of the Act of 1956 and the mobile towers are covered within the meaning of “building” under Section 5 (7) of the Act of 1956 as held by the Supreme Court in **Ahmedabad Municipal Corporation** (supra) and therefore levy of property tax on the mobile towers erected on the rooftop of the petitioners' building is valid and strictly in accordance with law.

8. I have heard learned counsel for the parties, considered the rival submissions made herein-above and gone through the records minutely and critically as well.

9. The short but interesting question that arises for determination is, whether the Municipal Corporation, Raipur is empowered to impose property tax on mobile towers under Section 132(1)(a) of the Act of 1956 within its territorial jurisdiction and / or alternatively, whether the mobile towers having been classified as a building, respondent No.1 has competence to levy ₹ 20,000/- per annum per mobile tower under Section 132(1)(a) of the Act of 1956 or the property tax to be imposed should be in accordance with the Rules of 1997.

10. Before dwelling into the main issue involved herein, it would be appropriate to notice the status of the Municipalities including the Municipal Corporation.

11. The Constitution of India has suffered amendment by the Constitution (Seventy-fourth Amendment) Act, 1992 with effect from 1-6-1993 and by the said amendment, Part IXA has been inserted into the Constitution with the heading “The Municipalities”.

Section 243P of the Constitution of India is the definition clause, clause (e) provides that "Municipality" means an institution of self-government constituted under article 243Q. Article 243Q(1) of the Constitution provides that there shall be constituted in every State, (a) a Nagar Panchayat for a transitional area, that is to say, an area in transition from a rural area to an urban area; (b) a Municipal Council for a smaller urban area; and (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part. Thus, Part IXA of the Constitution confers upon the Municipal Corporation a constitutional status as a basic democratic unit. Article 243X of the Constitution states about the power to impose taxes by, and Funds of, the Municipalities. It provides as under: -

> "**243X. Power to impose taxes by, and Funds of, the Municipalities.**—The Legislature of a State may, by law, —
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> (a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;
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> (b) assign to a Municipality such taxes, duties, tolls, and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;
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> (c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and
>
> (d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom,
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> as may be specified in the law."

12. Thus, a constitutional status has been conferred upon the Municipal Corporation, it has competence to levy and collect taxes

subject to authorisation by the State and, therefore, to authorise the Municipal Corporation, firstly the State Legislature itself has been authorised by law with the power of imposing tax which it passes or delegates to the Corporation.

13. This would bring me to the provisions of the Chhattisgarh Municipal Corporation Act, 1956. Part-IV, Chapter XI, of the Act of 1956 deals with Taxation. Section 132 (1) (a) of the Act of 1956 deals with the power of Corporation to levy the property tax and states as under: -

> "**132. Taxes to be imposed under this Act**.—(1) For the purpose of this Act, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, the following taxes, namely :–
>
> (a) a tax payable by the owners of buildings or land situated within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 135, 136 and 138;"

14. A focused glance of the aforesaid provision would show that the Municipal Corporation is entitled to levy property tax subject to any general or special which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, in India. The property tax is payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or lands, subject to the provisions of Sections 135, 136 and 138 of the Act of 1956. Section 135 of the Act of 1956 provides imposition of property tax. Basically it provides the rate of property tax. Section 136 is exemption to

property tax stating that the property tax levied under Section 135 shall not be levyable in respect of the properties mentioned in clauses (a) to (k). Section 138 provides annual letting value of land or building that has been incorporated by the M.P. Act No.18 of 1997. For determination of annual letting value under Section 138, the rules namely the Chhattisgarh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 have been enacted by the State Legislature. As noticed herein-above, under Section 132 (1) (a), property tax is payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or lands.

15. Now, the question is what is the meaning of building. The word "building" has been defined in Section 5 (7) of the Act of 1956 which states as under: -

> "building" includes a house, outhouse, stable shed, hut and other enclosure or structure whether of masonary, 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 but does not include a tent or a temporary shed erected on ceremonial or festive occasions;"

16. A studied perusal of the definition contained in Section 5 (7) of the Act of 1956 would show that the key word employed in the above definition is "structure" (metal or otherwise), meaning thereby that any structure whether of metal or any other material and whether used as human dwelling or otherwise, is building irrespective of its nature and purpose for which it is to be used and the only exception carved out in this definition clause is, temporary shed

erected on ceremonial or festive occasions which does not fall within the definition of “building”.

17. In the **Black's Law Dictionary**, Fifth Edition, the word “building” has been defined as under: -

> “Structure designed for habitations, shelter, storage, trade, manufacture, religion, business, education and the like. A structure or edifice enclosing a space within its walls and usually, but not necessarily, covered with a roof.”

18. In the **Webster Comprehensive Dictionary**, International Edition, “building” has been defined as under: -

> “An edifice for any use; that which is built, as a dwelling house, barn, etc. (2) The occupation, business or art of constructing. (3) The act or process of erecting or establishing.”

19. “Building” has also been defined in the **Stroud's Judicial Dictionary**, Fourth Edition at 334. What is a “building” must always be a question of degree and circumstances; its “ordinary and usual meaning is, a block of brick or stone work, covered in by a roof”. The ordinary and natural meaning of the word “building” includes the fabric and the ground on which it stands.

20. In the **Oxford English Dictionary**, the word “building” has been defined to mean, “that which is built, structure, edifice, structure of the nature of a house built where it is to stand”.

21. Thus, from the aforesaid definitions, it is quite apparent that structure of metal whether used as a human dwelling or otherwise is exigible to the property tax. Mobile towers are fitted on the rooftop of the building owned by the petitioners. So definitely, it is not being used as human dwelling. Now, the word “otherwise” has

also been used in the definition clause, Section 5 (7) of the Act of 1956. The word “otherwise” has been considered by the Supreme Court from time to time and its interpretation is no longer *res integra* and it has been defined by the Supreme Court.

22. The Supreme Court in the matter of **Smt. Lila Vati Bai v. State of Bombay**[2] considered the contention raised on behalf of the petitioner therein how the word "otherwise" used in Explanation (a) to Section 6 of the Bombay Land Requisition Act, 1948, should be construed. It was observed as follows:-

> "11. It was contended on behalf of the petitioner that Explanation (a) to Section 6 quoted above contemplates a vacancy when a tenant (omitting other words not necessary) ceases to be in occupation upon termination of his tenancy, eviction, or assignment or transfer in any other manner. The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words "or otherwise" must be construed as ejusdem generis with the words immediately preceding them; and that therefore on the facts as admitted even in the affidavit filed on behalf of the Government there was in law no vacancy. In the first place, as already indicated, we cannot go behind the declaration made by the Government that there was a vacancy. In the second place, the rule of ejusdem generis sought to be pressed in aid of the petitioner can possibly have no application. The Legislature has been cautious and thorough-going enough to bar all a venues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature, when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party. The

2 AIR 1957 SC 521

> Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an all inclusive sense."

23. The Constitution Bench of the Supreme Court in the matter of **Kavalappara Kottarathil Kochuni @ Moopil Nayar and others Vs. The States of Madras & Kerala and others**[3] has held as under:-

> "50. ... The word "otherwise" in the context, it is contended, must be construed by applying the rule of ejusdem generis. The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary. On the basis of this rule, it is contended, that the right or the custom mentioned in the clause is a distinct genus and the words "or otherwise" must be confined to things analogous to right or contract such as lost grant, immemorial user etc. It appears to us that the word "otherwise" in the context only means "whatever may be the origin of the receipt of maintenance". One of the objects of the legislation is to by-pass the decrees of courts and the Privy Council observed that the receipt of maintenance might even be out of bounty. It is most likely that a word of the widest amplitude was used to cover even acts of charity and bounty. If that be so, under the impugned Act even a payment of maintenance out of charity would destroy the character of an admitted sthanam which ex facie is expropriatory and unreasonable."

24. In the matter of **M. V. Elisabeth and others v. Harwan Investment and Trading Pvt. Ltd.**[4] Their Lordships of the Supreme Court have held as under:-

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3 AIR 1960 SC 1080
4 1993 Supp(2) SCC 433

> "99. ……..The word 'otherwise' literally means in a different way. ……."

25. A Nine-Judges Bench of the Supreme Court in the matter of **S. R. Bommai and others v. Union of India and others**[5] has held as under:-

> "35. …….The expression 'otherwise' is of very wide import and cannot be restricted to material capable of being tested on principles relevant to admissibility of evidence in courts of law. ……."

26. Recently, Their Lordships of the Supreme Court in the matter of **Animal Welfare Board of India v. A. Nagaraja and others**[6] have held as under:-

> "39. Section 11(1)(a) uses the expressions "or otherwise", "unnecessary pain or suffering", etc. Beating, kicking, etc. go with the event so also torture, if the report submitted by AWBI is accepted. Even otherwise, according to AWBI, the expression "or otherwise" takes in Jallikattu, bullock cart race, etc. but, according to the State of Tamil Nadu, that expression has to be understood applying the doctrine of ejusdem generis. In our view, the expression "or otherwise" is not used as words of limitation and the legislature has intended to cover all situations, where the animals are subjected to unnecessary pain or suffering. Jallikattu, bullock cart races and the events like that, fall in that expression under Section 11(1)(a). The meaning of the expression "or otherwise" came up for consideration in *Lila Vati Bai v. State of Bombay* (AIR 1957 SC 521) and the Court held that the words "or otherwise" when used, apparently intended to cover other cases which may not come within the meaning of the preceding clause. In our view, the said principles also can be safely applied while interpreting Section 11(1)(a)."

33. The Supreme Court in the matter of **R & B Falcon (A) Pty. Limited Vs. Commissioner of Income Tax**[7] explained the meaning of term otherwise as under:-

> "22. A statute, as is well known, must be read in its entirety. What would be the subject matter of tax is

5 (1994) 3 SCC 1
6 (2014) 7 SCC 547
7 (2008) 12 SCC 466

contained in sub-sections (1) and (2). Sub- section (3), therefore, provides for an exemption. There cannot be any doubt or dispute that the latter part of the contents of sub-section (3) must be given its logical meaning. What is sought to be excluded must be held to be included first. If the submission of learned Solicitor General is accepted, there would not be any provision for exclusion from payment of tax any amenity in the nature of free or subsidized transport.

23. Thus, when the expenditure incurred by the employer so as to enable the employee to undertake a journey from his place of residence to the place of work or either reimbursement of the amount of journey or free tickets therefor are provided by him, the same, in our opinion, would come within the purview of the term “by way of reimbursement or otherwise”.

24. The Advanced Law Lexicon defines "otherwise". "By other like means; contrarily; different from that to which it relates; in a different manner; in another way; in any other way; differently in other respects in different respects; in some other like capacity."

25. "Otherwise" is defined by the Standard Dictionary as meaning 'in a different manner, in another way; differently in other respects'; by Webster, “in a different manner; in other respects”.

26. As a general rule, “otherwise” when following an enumeration, should receive an ejusdem generis interpretation (per CLEASBY, B. Monck v. Hilton, 46 LJMC 167, The words 'or otherwise', in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as a are kindred to the classes before mentioned, (Cent. Dict.)"

27. The use of the word “otherwise” in the definition clause, Section 5 (7) of the Act of 1956, is not exhaustive and in fact, the word “otherwise” has been given an extended meaning to include other uses of the property which has not been included and not covered by the definition such as human dwelling. Thus, it is quite vivid that mobile tower is nothing but a structure of metal used for the purposes other than human dwelling and thus, it squarely falls

within the category of “building” as defined under Section 5 (7) of the Act of 1956.

28. At this stage, it would be appropriate to notice the decisions of the Supreme Court as well as foreign Courts in which similar kind of challenge has been entertained and the definition of “building” has been considered.

29. Lord Parker, CJ, in the matter of **Cheshire Country Council v. Woodward**[8] said “... it seems to me that when the Act defines a building as including any structure or erection and any part of a building so defined', the Act is referring to any structure or erection which can be said to form part of the realty, and to change the physical character of the land”.

30. The Queen's Bench Division as back as in the matter of **The Uckfield Rural District Council v. The Crowborough District Water Company**[9] was faced with a question whether a water tower could be built without submitting plans and sections to the District Council as required to be submitted for construction of a building. It was held that the water tower being a permanent erection was a building and the bye-laws made by the District Council applied to it.

31. In the matter of **Municipal Corporation of Greater Bombay v. Indian Oil Corporation**[10], the Supreme Court has dealt with the similar kind of challenge in respect of oil tanks for storage of petrol and petroleum products in the light of Section 3 (s) of the Bombay Municipal Corporation Act. Section 3 (s) of the Bombay Municipal

8 (1962) 1 All ER 517
9 (1899) 2 QB 664
10 AIR 1991 SC 686

Corporation Act states, as reproduced by the Supreme Court, as under: -

> "building" includes a house, outhouse, shed, hut and other enclosure or structure whether of masonry, bricks, wood, mud, metal or any other material whatever.

The Supreme Court after considering the dictionary definition of the word "building" as well as the word "structure" and certain English cases held as under: -

> "31. The tanks, though, are resting on earth on their own weight without being fixed with nuts and bolts, they have permanently been erected without being shifted from place to place. Permanency is the test. The chattel whether is moveable to another place of use in the same position or liable to be dismantled and re-erected at the later place? If the answer is Yes to the former it must be a moveable property and thereby it must be held that it is not attached to the earth. If the answer is yes to the latter it is attached to the earth. For instance a shop for sale of merchandise or eatables is a structure. The same could be sold by keeping in a push cart which has its mobility from place to place. Merely it is stationed at a particular place and business was carried on, it cannot be said that push cart is a shop. The fact that no nuts and bolts were used to imbed the tank to the earth by itself is not conclusive. Though the witness stated that the tank is capable of being shifted, as a fact the tanks were never shifted from the places of erection. By scientific process, the tanks stand on their own weight on the earth at the place of erection as a permanent structure."

32. Similarly, the Supreme Court in the matter of **Indian City Properties Ltd. and another v. The Municipal Commissioner of Greater Bombay and another**[11] held as under: -

> "19. The word 'structure' is used as a generic term so that while all buildings may be structures, all structures are not buildings. That structure which is not a building and is a platform, verandah, step, or some other such structure external to a building may be taken over by the Commissioner under Section 299(1) if it is within

11 AIR 2005 SC 3802

> the regular line of the street. The words "some other such" must be construed as structures similar or like platform, verandah and step. The words must be read ejusdem generis with the preceding words since the word 'such' means "of the type previously mentioned". {See Concise Oxford English Dictionary (10th Edn.)}. The word "other" has also been held to indicate that it must be construed ejusdem generis (Siddeshwari Cotton Mills (P) Ltd. v. Union of India, 1989 (2) SCC 458). The underlying characteristic or platforms, verandahs and steps is that they are not independent structures and are external to a building, that is they are attached to the outside and form an inessential part of a building. In our opinion, therefore in order to be a building for the purpose of Section 299 the structure would have to be an independent, permanent structure. Thus there is no repugnancy if one were to read the definition of building and Section 299 and in our opinion the word 'building' has been used in *Section 299* in the sense defined in Section 3(s).
>
> 20. Of the six items listed by the Commissioner in his report, learned counsel appearing on behalf of the respondents has, as we have noted earlier, already conceded that the part of the main structure described against serial No. 6 would be excluded from the purview of the action proposed in the impugned notice under Section 299. Even without the concession in our view, applying the test of independence and permanence each of the items fall within the definition of 'building' in Section 3(s) of the Act, and therefore, fall outside the purview of Section 299."

33. In the matter of **M.C. Mehta v. Union of India**[12], the Supreme Court in respect of ceiling of buildings being used in contravention of building and land use laws, observed that the definition of the expression "building" shows that it is very wide and encompasses any structure only excluding portable shelters.

34. In a very recent decision in the matter of **Ahmedabad Municipal Corporation v. GTL Infrastructure Limited and others**[13], the Supreme Court has considered the issue whether mobile tower can come within the fold of "land and building" appearing in Schedule

12 AIR 2005 SC 1325
13 (2017) 3 SCC 545

VII List II Entry 49 of the Constitution of India and observed in no uncertain terms that mobile towers fall within the ambit of phrase "land and building". Paragraphs 29, 30 and 32 of the report state as follows: -

> "29. Coming specifically to the expression "building" appearing in Schedule VII List II Entry 49 in view of the settled principles that would be applicable to find out the true and correct meaning of the said expression it will be difficult to confine the meaning of the expression "building" to a residential building as commonly understood or a structure raised for the purpose of habitation. In *State of A.P. v. Hindustan Machine Tools Ltd.*[14] a tax on a building housing a factory has been understood to be a tax on building and not on the factory or its plant and machinery. A general word like "building" must be construed to reasonably extend to all ancillary and subsidiary matters and the common parlance test adopted by the High Court to hold the meaning of levy of tax on building and machinery does not appear to be right keeping in mind the established and accepted principles of interpretation of a constitutional provision or a legislative entry. A dynamic, rather than a pedantic view has to be preferred if the constitutional document is to meet the challenges of a fast developing world throwing new frontiers of challenge and an ever changing social order.
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> 30. The regulatory power of the corporations, municipalities and panchayats in the matter of installation, location and operation of "mobile towers" even before the specific incorporation of mobile towers in the Gujarat Act by the 2011 Amendment and such control under the Bombay Act at all points of time would also 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 Schedule VII List II Entry 49.
>
> 32. Viewed in the light of the above discussion, if the definition of "land" and "building" contained in the Gujarat Act is to be understood, we do not find any reason as to why, though in common parlance and in everyday life, a mobile tower is certainly not a building, it would also cease to be a building for the purposes of

14 (1975) 2 SCC 274 : AIR 1975 SC 2037

> List II Entry 49 so as to deny the State Legislature the power to levy a tax thereon. Such a law can trace its source to the provisions of Schedule VII List II Entry 49 List II to the Constitution."

35. Therefore, in the light of the dictionary definition and the principles of law laid down by Their Lordships of the Supreme Court in aforesaid judgments, particularly following the mandate of the Supreme Court in **Ahmedabad Municipal Corporation** (supra), I do not have slightest hesitation to hold that mobile tower is covered within the meaning of building as defined in Section 5 (7) of the Act of 1956.

36. Relying on the decision of the Supreme Court in **Ahmedabad Municipal Corporation** (supra), it was argued by Mr. Bhaduri, learned counsel for the petitioners, that the Gujarat Local Authorities Laws (Amendment) Act, 2011 to which the Ahmedabad Municipal Corporation relates to, specifically inserted the expression "mobile tower" and also inserted a Section named "Tax on mobile towers" and as such, the definition of building as contained in law relating to the Gujarat Local Authorities Laws (Amendment) Act, 2011, is not different from the one in the Act of Chhattisgarh and in absence of identical amendment in the Chhattisgarh Municipal Corporation Act, 1956, it cannot be argued that in Chhattisgarh the building includes mobile tower.

37. It is further argued that there is no specific charging provision for tax on mobile tower, therefore, imposing tax by the Municipal Corporation is arbitrary and without authority of law, as there is a clear cut amendment in the Gujarat Act by the Gujarat Local

Authorities Laws (Amendment) Act, 2011 thereby the Ahmedabad Municipal Corporation has been empowered to levy property tax on mobile towers.

38. I have already held herein-above that mobile tower itself falls within the meaning of “building” under Section 5 (7) of the Act of 1956. The Act of 1956 was enacted as M.P. Act No. 23 of 1956 and came into force with effect from 25-10-1956 and at the time when the Act of 1956 was enacted, such towers definitely were not in realm of law makers.

39. The Supreme Court in the matter of **State of Maharashtra v. Dr. Praful B. Desai**[15] while considering the principles of interpretation of an ongoing statute, the Code of Criminal Procedure, relying upon the commentary titled Statutory Interpretation, Second Edition of Francis Bennion laid down as under: -

> "It is presumed the Parliament intends the Court to apply to an ongoing Act a construction that continuously updates its wordings to allow for changes since the Act was initially framed. While it remains law, it has to be treated as always speaking. This means that in its application on any day, the language of the Act though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as a current law.
>
> In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the original intention. Accordingly, the interpreter is to make allowances for any relevant changes that have occurred since the Act's passing, in law, in social conditions, technology, the meaning of words and other matters. ... That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal

15 AIR 2003 SC 2053

> developments. The drafter will foresee the future and allow for it in the wording.
>
> An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials."

40. Similarly in the matter of **Suresh Jindal v. BSES Rajdhani Power Limited**[16], it was held by the Supreme Court that creative interpretation of the provisions of the statute demands that with the advance in science and technology, the Court should read the provisions of a statute in such manner so as to give effect thereto.

41. Principles of Statutory Interpretation (12th Edition 2010) in Chapter-4 by Justice G.P. Singh under the heading "Later Social, Political and Economic Developments and Scientific Inventions" states, as it is possible that in some special cases a statute may have to be historically interpreted "as if one were interpreting it the day after it was passed". But generally statutes are of the "always speaking variety" and the court is free to apply the current meaning of the statute to present day conditions[17]. There are at least two strands covered by this principle.

> "The first is that courts must apply a statute to the world as it exists today. The second strand is that the statute must be interpreted in the light of the legal system as it exists today[18]. Reference to the circumstances existing at the time of the passing of the statute does not, therefore, mean that the language

16 AIR 2008 SC 281

17 *R v. Ireland*, (1997) 4 All ER 225, p. 233 : (1997) 3 WLR 534 (HL) (LORD STEYN)

18 *McCartan Turkington Breen (a firm) v. Times Newspapers Ltd.*, (2000) 4 All ER 913, p. 926 (HL) (LORD STEYN)

used, at any rate, in a modern statute, should be held to be inapplicable to social, political and economic developments or to scientific inventions not known at the time of the passing of the statute. "Legislative standards are generally couched in the terms which have considerable breadth. Therefore a statute may be interpreted to include circumstances or situations which were unknown or did not exist at the time of enactment of the statute[19]."

42. The Rule of Dynamic Construction was held as under by the eminent Author:

"The question again is as to what was the intentions of the law makers: Did they intend as originalists may argue, that the words of the statute be given the meaning they would have received immediately after the statute's enactment or did they intend as dynamists may contend that it would be proper for the court to adopt the current meaning of the words? The courts have now generally leaned in favour of dynamic construction[20]. But the doctrine has also its limitations. For example it does not mean that the language of an old statute can be construed to embrace something conceptually different[21].

The guidance on the question as to when an old statute can apply to new state of affairs not in contemplation when the statute was enacted was furnished by Lord Wilberforce in his dissenting speech in *Royal College of Nursing of the U.K. v. Dept. of health and Social Security*[22]. Which is now treated as authoritative[23]. Lord Wilberforce said: "In interpreting an Act of Parliament it is proper, and indeed necessary, to have regard to the state of affairs existing, and known by Parliament to be existing, at the time. It is a fair presumption that Parliament's policy or intention is directed to that state of affairs. Leaving aside cases of omission by inadvertence, this being not such a case when a new state of affairs, or a fresh set of facts bearing on policy, comes into existence, the courts have to consider whether they fall within the parliamentary intention. *They may be held to do so, if*

19 *Senior Electric Inspector v. Laxminarayan Chopra,* AIR 1962 SC 159, p. 162 : 1962 (3) SCR 146

20 *Randal N. Grahm, A Unified Theory of Statutory Interpretation,* (2002) 23 Statute Law Review 91, p. 134

21 *Birmingham City Council v. Oakley*, (2001) 1 All ER 385, p. 396 (HL)

22 (1981) 1 All ER 545, pp. 564, 565 : (1982) AC 800 : (1981) 2 WLR 279 (HL)

23 *Fitzpatrick v. Sterling Housing Association Ltd.,* (1999) 4 All ER 705, pp. 710, 721, 739-740, 744 (HL)

they fall within the same genus of facts as those to which the expressed policy has been formulated. They may also be held to do so if there can be detected a clear purpose in the legislation which can only be fulfilled if the extension is made. How liberally these principles may be applied must depend on the nature of the enactment, and the strictness or otherwise of the words in which it has been expressed. The courts should be less willing to extend expressed meaning if it is clear that the Act in question was designed to be restrictive or circumscribed in its operation rather than liberal or permissive. They will be much less willing to do so where the new subject matter is different in kind or dimension from that for which the legislation was passed. In any even there is one course which the courts cannot take under the law of this country: they cannot fill gaps; they cannot by asking the question, 'What would Parliament have done in this current case, not being one in contemplation, if the facts had been before it?' attempt themselves to supply the answer, if the answer is not to be found in the terms of the Act itself[24]".

As stated by Lord Bridge: "When a change in social conditions produces a novel situation, which was not in contemplation at the time when a statute is first enacted, there can be no *a priori* assumption that the enactment does not apply to the new circumstances. If the language of the enactment is wide enough to extend to those circumstances, there is no reason why it should not apply[25]." Thus, when in the changed circumstances the common law fiction that by marriage the wife must be deemed to have irrevocable consented to sexual intercourse in all circumstance has become anachronistic, the husband can be convicted of rape under the Sexual Offences (Amendment) Act, 1976, if he was sexual intercourse with his wife without her consent[26].

On the same principles, general words are construed to include new inventions and technological advances not known at the time when the Act was passed. It has, accordingly, been held that telephone is 'telegraph' within the meaning of that word in the telegraph Acts, 1863 and 1869 although telephone was not invented in 1869[27]; that a photographic copy is

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24 Note 11, *supra.*

25 *Combel Commodities Ltd. v. Siporex Trade, SA* (1990) 2 All ER 552, p. 557

26 *R v. R (rape : marital exemption)*, (1991) 4 All Er 481 : (1992) 1 AC 599 : (1991) 3 WLR 767 (HL)

27 *A.G. v. Edison Telephone Co. of London,* (1880) 6 QBD 244

'copy' under the Engraving Copyright Act, 1734[28]; and that an electric tram car is a stage carriage within the meaning of the Stage Carriage Act, 1832[29]. Similarly, 'broadcasting' has been held to be covered by the word 'telegraph' as used in the phrase 'telegraph & other works and undertaking' in section 92(1)(a) of the British North America Act, 1867[30]; and radio broadcasting has been held to be included in the expression 'postal, telegraphic, telephonic and other like services' under section 51(5) of the Australian Constitution[31]. Following the same principle, it has been held by the Supreme Court that the definition of 'telegraph line' in the Indian telegraph Act, 1885, which is included by reference in the Indian Electricity Act, 1910, is wide enough to take in electric lines used for the purpose of wireless telegraph[32]; the definition of 'cinematograph' contained in section 2(e) of the Cinematograph Act, 1952 and in Cinema Regulation Acts enacted by the States in 1952 will cover video cassette recorders/players (developed in 1970s) for representation of motion pictures on a television screen[33]; the word 'handwriting' in section 45 of the Evidence Act, 1872 will embrace typewriting although it was only in 1874 that the first practical typewriter was marketed[34] and evidence taken of a witness in America by video conferencing in India where the accused is being tried will satisfy the requirement of evidence taken in presence of the accused under section 273 of the Criminal Procedure Code enacted in in 1973 when the technique of video conferencing had not developed[35]. …"

43. It was further stated in the above-stated celebrated text as under:-

"When the new technological advances becoming known after the passing of the statute fall within the same genus covered by it and when its purpose would be defeated unless extension were made, the court may even be willing to strain the language a bit to cover the new advances. On these considerations section 1(1) of the Human Fertilisation and Embryology

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28 *Gambart v. Ball,* (1863) 32 LJCP 166

29 *Chapman v. Kirke,* (1948) 2 All ER 556

30 *In re, regulation and Control of Radio Communications in Canada,* (1932) AC 304 (PC)

31 *R v. Brislan, Ex parte, Williams,* (1935) 54 CLR 262

32 *Senior Electric Inspector v. Laxminarayan Chopra (supra)*

33 *Laxmi Video Theatres v. State of Haryana,* AIR 1993 SC 2328

34 *State v. S.J. Choudhary,* 1996(2) Scale 37, pp. 40, 41 : AIR 1996 SC 1491, p. 1496 : (1996) 2 SCC 428 (para 16).

35 *State of Maharashtra v. Dr. Praful B. Desai,* 2003 AIR SCW 1885 : (2003) 4 SCC 601 : AIR 2003 SC 2053

Act, 1990 which defines 'embryo' to mean 'a live human embryo where fertilization is complete' was construed to cover even an embryo produced not by fertilization but by cell nuclear replacement (CNR), a method developed by scientists after 1990, by reading the definition of embryo to mean 'a live human embryo where if it is produced by fertilisation fertilisation is complete[36].

Dealing with section 123 of the Indian Evidence Act, 1872, and the phrase 'affairs of the State', Gajendragadkar, J. observed: "If may be that when the Act was passed, the concept of Governmental functions and their extent was limited; and so was the concept of the words 'affairs of the State' correspondingly limited; but as is often said, words are not static vehicles of ideas or concepts. As the content of the ideas or concepts conveyed by respective words expand, so does the content of the words keep pace with the said expanding content of the ideas or concepts and naturally tend to widen the field of public interest which the section wants to protect[37]." Similarly while considering the word 'necessaries' in section 5 of the Admirality Courts Act, 1861, Sinha J. observed: "Global changes and outlook in trade and commerce could be a relevant factor.- What was not considered a necessity a century back may be held to be so now[38]."

A distinction is said to exist in this respect between ancient statutes and statutes which are comparatively modern. The principle is thus explained by Subbarao, J.: "It is perhaps difficult to attribute to legislative body functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of

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36 *R (On the application of Quintavalle) v. Secretary of State for Health,* (2002) 2 All ER 625, pp. 633, 637 (CA)

37 *State of Punjab v. Sodhi Sukhdev Singh,* AIR 1961 SC 493, p. 502

38 *Liverpool and London SP&I Association v. M.V. Sea Success & Asso. Ltd.* (2004) 9 SCC 512 (para 65)

> human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situation, if the words are capable of comprehending them[39]."

44. Thus, in view of aforesaid discussion, it is quite explicit that mobile tower is building within the meaning Section 5 (7) read with Section 132 (1) of the Act of 1956 and as such exigible to property tax by the respondent Municipal Corporation. It is held accordingly. The argument that mobile tower is not a building and therefore not exigible to property tax within the meaning of Section 132 (1) (a) of the Act of 1956 in absence of amendment to the Act, is hereby repelled accordingly.

45. The aforesaid determination of the question would lead me to the next question as to whether the property tax as levied to the tune of ₹ 20,000/- per mobile tower per annum is in accordance with law.

46. As noted herein-above, Section 132 (1) (a) of the Act of 1956 clearly states that property tax has to be levied subject to the provisions of Sections 135, 136 and 138 of the Act. Section 138 of the Act of 1956 provides for annual letting value of land or building and sub-section (1) of it states as under: -

> "**138. Annual letting value of land or building**.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force, the annual letting value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf, on the basis of per square meter of the built up area of a building or land, as the case may be taking into consideration the area in which the building or land is situated, its location, situation, purpose for which it is used, its capacity for profitable user, quality of construction of the building and other relevant factors and subject to such rules, as may be made by the State Government in this behalf."

39 *Senior Electric Inspector v. Laxminarayan Chopra,* AIR 1962 SC 159, p. 163

47. This amendment has been inserted by M.P. Act No. 18 of 1997 and it provides that notwithstanding anything contained in the Act of 1956 or any other law for the time being in force, the annual letting value of any building or land, whether revenue paying or not, shall be determined as per the resolution of the Corporation adopted in this behalf, on the basis of per square meter of the built up area of a building or land, as the case may be.

48. In exercise of powers conferred under Section 433 read with Section 138 of the Act of 1956, the State Government has framed rules relating to determination of property tax of annual letting value of building/land i.e. the Chhattisgarh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 (the Rules of 1997). Rule 2 of the Rules of 1997 deals with definitions. Rule 3 deals with classification of municipal area. Rule 4 deals with classification of buildings and lands. Rule 5 relates to rate of annual letting value. Rule 6 is about adoption of resolution by Municipality. Rule 9 prescribes the manner of calculation of annual letting value. Rule 10 speaks about self assessment of the property tax and such other procedure has been prescribed therein. Therefore, levy of property tax has to be in accordance with Section 138 of the Act of 1956 and in accordance with the rules made thereunder i.e. the Rules of 1997.

49. Rate of property tax is prescribed in Section 135 of the Act of 1956. So, on the basis of annual letting value, property tax has to be imposed as per Section 135 of the Act of 1956. That procedure has to be adopted for determining property tax if land or building is

exigible to property tax.

50. It is the case of the petitioners that such an alternative ground has been taken in the writ petition as ground No.9.18 that even if mobile tower is classified as building under Section 132(1)(a) of the Act of 1956, the Municipal Corporation has no power to levy a fixed annual property tax of ₹ 20,000/- per annum per tower. The petitioners have also filed a resolution of the general body of the Corporation dated 21-10-2016 in which property tax on mobile tower is fixed as ₹ 20,000/- per annum per tower with increase of 10% per annum.

51. A careful perusal of the aforesaid resolution would show that it is not the case of the Corporation, even, that the annual letting value has been determined and by applying the rate of property tax as prescribed under Section 135 of the Act of 1956, property tax of ₹ 20,000/- per annum per tower, on mobile tower, has been prescribed. If that has not been done, then it is clearly impermissible in law and contrary to Section 138 of the Act of 1956 read with the Rules of 1997 and further read with Section 135 of the Act of 1956. The property tax has to be strictly determined in accordance with the provisions contained in Section 138 of the Act of 1956 and that is imperative in nature. Once property tax is not determined in accordance with the Act and the Rules, that is clearly vulnerable and liable to be quashed. Since in the present case, property tax particularly on mobile towers has not been determined in accordance with Section 138 of the Act of 1956 and the Rules made thereunder, therefore, it is liable to be quashed.

52. In conclusion, it is held that the mobile towers owned by the telecom companies and erected on the rooftops of the buildings of the petitioners are covered within the meaning of “building” as defined under Section 5 (7) of the Act of 1956 and they are subject to levy of property tax under Section 132 (1) (a) of the Act of 1956 and that property tax has to be determined in accordance with Section 138 of the Act of 1956 read with the Rules of 1997 as well as Section 135 of the Act.

53. As a fallout and consequence of aforesaid discussion, since property tax of ₹ 20,000/- per annum per tower is not in accordance with Section 138 of the Act of 1956 and the Rules made thereunder, it is liable to be quashed and is hereby quashed. Respondent No.1 is directed to determine property tax on mobile tower(s) strictly in accordance with the above-stated provision and then to issue fresh demand notice after such determination, in accordance with law. Consequently, the resolution dated 21-10-2016 only to the extent of levying property tax of ₹ 20,000/- per annum per tower as well as the demand note Annexure P-1 are hereby quashed.

54. The writ petition is partly allowed to the extent sketched herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1159 of 2017

Mr Suresh Gupta and others

Versus

Municipal Corporation Raipur and another

HEAD NOTE

Mobile towers are subject to property tax by Municipal Corporation in accordance with Section 132 of the Chhattisgarh Municipal Corporation Act, 1956 read with the Chhattisgarh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997.

शीर्ष टिप्पण

मोबाइल टावर्स (चल–दूरभाष स्तम्भ) छत्तीसगढ नगर निगम अधिनियम, 1956 की धारा 132 एवं सहपठित छत्तीसगढ नगर पालिका (भवन/भूमि के वार्षिक किराया मूल्य का निर्धारण) नियम, 1997 के अनुसार नगर निगम द्वारा सम्पत्ति कर के अधीन हैं।