2020 INSC 318

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9350-9351 OF 2019
(arising out of SLP (C)NOS.29261-29262 OF 2019)

FOOD CORPORATION OF INDIA ...APPELLANT(S)

VERSUS

BRIHANMUMBAI MAHANAGAR PALIKA & ORS. ...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN,J.

This appeal has been filed by the Food Corporation of India challenging the judgment dated 05.05.2016 of Division Bench of Bombay High Court in Writ Petition No. 2672 of 2001 by which judgment the writ petition filed by the Food Corporation of India (hereinafter referred to as "FCI") challenging the demand made by Municipal Corporation of Greater Mumbai of property tax has been dismissed.

2. The brief facts necessary to be noted for deciding this appeal are: -

2.1 The Government of Bombay acquired land at Village Poisar and at Village Magathane, Borivali for Government of India prior to the year 1964. Upon completion of the acquisition proceedings, the lands vested in the Government of India and the Government of India constructed the godowns and silos on the acquired land for storage of food grains.

2.2 FCI was set up under the Food Corporations Act, 1964 with the purpose of undertaking the purchase, storage, movement, transport, distribution and sale of food grains and other food stuff.

2.3 on 28.10.1988, a notice demanding non-agricultural tax was issued to the FCI and the FCI protested against the levy of non-agricultural tax and filed a writ petition, which was dismissed by learned Single Judge on 10.11.1988. A Letter Patent Appeal No.259 of 1989 was filed by the FCI, which was allowed by the Division Bench vide its

judgment dated 03.12.1992 holding that land vested in Central Government on which godowns were constructed, hence, Central Government was not liable to pay taxes for non-agricultural use of land as per Article 285 of the Constitution of India.

2.4 The Government of India wrote a letter dated 17.02.1992 to FCI, New Delhi stating that the land for godowns was acquired by the erstwhile Government of Bombay for Government of India on which godowns were constructed by the Government of India and when the FCI came into being in 1965, these godowns alongwith other godowns of the Government were transferred to FCI during the period from 1966 to 1969. The Government of India, however, has not executed any conveyance deeds for these godowns with the FCI and legal ownership of these godowns still vests in the Government, the Status of FCI, therefore, is that of an occupier.

2.5 Letters and demands were issued by Municipal Corporation of Greater Bombay (hereinafter referred to as "Corporation") demanding property tax in respect of property situate in Dattapada Road, Borivali owned by FCI. A demand notice dated 04.09.2001 was issued by the Corporation asking to make payment for the period from 01.03.1969 to 31.03.1997 and taxes from 01.04.1997 onwards. The FCI protested the demand claiming exemption from payment of property tax as per Article 285 of the Constitution of India, the property being owned by the Central Government. The plea of the appellant was not accepted and a further notice dated 24.09.2001 was issued asking for payment of property tax. The properties were also attached.

2.6 A Writ Petition No. 2672 of 2001 was filed by the FCI, in which FCI has prayed to declare the demand for payment of property tax as illegal. Prayer was also made to issue a writ of prohibition prohibiting the respondents,

their servants and agents in pursuance of letter dated 04.09.2001 and 24.09.2001. The Corporation decided the claim of the FCI. A Division Bench of the Bombay High Court relying on the judgment of this Court in **Food Corporation of India Vs. Municipal Committee, Jalalabad and Another, (1999) 6 SCC 74** dismissed the writ petition vide judgment dated 02.02.2002. A review petition was filed by FCI to review the judgment, which too was dismissed on 04.10.2002. The FCI filed a special leave petition against the judgment dated 02.02.2002 as well as against the order dated 04.10.2002 in review petition. It was contended before this Court that High Court erred in relying on the judgment of the Court in **Food Corporation of India Vs. Municipal Committee, Jalalabad (supra)** without referring to the earlier Division Bench judgment of Bombay High Court in Civil Appeal No. 259 of 1999 dated 03.10.1992 wherein the Division Bench had held that properties in dispute in the present case is owned by the

Central Government and not by FCI. This Court after noticing the submissions of both the parties allowed the appeals, set aside the impugned judgment of the High Court observing that since the High Court has not gone into these questions, the matter is remitted back to the High Court for fresh decision in accordance with law. All the contentions were left open.

2.7 After the above judgment of this Court dated 26.07.2006, the Division Bench of the Bombay High Court by judgment dated 05.05.2016 again dismissed the Writ Petition No.2672 of 2001. Special Leave Petition No. 24251 of 2016 was filed questioning the judgment dated 05.05.2016. This Court noticed the submissions made by FCI and by order dated 26.08.2016 observed that it would be more appropriate for the petitioner (FCI) to approach the High Court by filing a review petition. After the judgment of this Court dated 26.08.2016, review petition was filed,

which too was dismissed by non-speaking order dated 11.09.2018 by the Division Bench of the Bombay High Court.

2.8 These appeals have been filed against the Division Bench judgment dated 05.05.2016 dismissing the writ petition and order dated 11.09.2018 dismissing the review petition.

3. We have heard Shri Neeraj Kishan Kaul, learned senior counsel appearing for the appellant and Shri Pallav Shishodia, learned senior counsel appearing for the Corporation.

4. Shri Neeraj Kishan Kaul, learned senior counsel submits that demand of property tax is exempted by virtue of Article 285 of the Constitution of India. It is submitted that the property (godowns) with regard to which property tax has been demanded is owned by Central Government, hence, the payment of tax is exempted. It is submitted that a Division Bench of the Bombay High Court in its judgment dated 03.12.1992 by quashing the demand of non-agricultural assessment tax

by the State Government has categorically held that the property is owned by the Central Government. The Division Bench in the impugned judgment has not considered the effect of the Division Bench judgment dated 03.12.1992. It is further submitted that even when this Court granted liberty to the appellant to file a review petition against the judgment dated 05.05.2016, after noticing the submissions of the appellant, the review petition too was dismissed by non-speaking order without considering any of the submissions of the appellant. It is submitted that to be entitled to levy tax under Article 285(2), the Corporation must establish three things, firstly that the property in question is liable to tax prior to commencement of the constitution; secondly, that the tax has been continuously collected by the State on that property; and thirdly that the State in which the authority collected the tax was collecting the same pre and post Constitution. It is submitted that property tax was never levied by the Corporation prior to the commencement of the Constitution of India and it was only after decision dated 17.01.1997 of the arbitrator appointed under Section 144(2) of Mumbai Municipal

Corporation Act, 1888 that the properties belong to the FCI, the Corporation started demanding property tax from the appellant. It is submitted that jurisdiction of the arbitrator appointed under Section 144(2) is limited to fixing the rateable value of Government owned properties and he had no jurisdiction to decide the question whether the properties were to be excluded from the Government list. Learned senior counsel further submits that Corporation has erroneously relied on judgment of this Court in the case of **Food Corporation of India Vs. Municipal Committee, Jalalabad (supra)**, which was a case dealing with the properties owned by the FCI and has no application in the facts of the present case. It is submitted that property being property of Central Government was clearly exempted from payment of property tax.

5. Shri Pallav Shishodia, learned senior counsel appearing for the respondents refuting the submissions of the learned senior counsel for the appellant contends that the appellant is liable to pay property tax. He submits that as per Section 146 of the Mumbai Municipal Corporation Act [Bom. III of 1888], the levy

is on actual occupier and the appellant being actual occupier of the premises is, thus, clearly liable to pay the property tax. For the purpose of liability to pay the property taxes what is required is that the concerned person who holds the property immediately from the Government is in occupation and use of the property in question. It is immaterial in what capacity such person is in occupation of the property exigible to taxes. It is submitted that the appellant cannot claim exemption from taxes under Article 285 as the FCI is distinct entity from Central Government and the so-called ownership of Central Government with respect to the property in question occupied by FCI is of no consequence as far as the tax liability is concerned. Section 143(1)(b) of the Act, 1888 is not attracted. The levy under Act, 1888 is a pre-Constitution levy and, therefore, Article 285(2) of the Constitution of India applies. Article 285(2) carves out an exception to clause (1) and saves the levy which any authority within the State was levying on the property of the Union to which such property immediately before the commencement of the Constitution was liable. Under the Act, 1888, the premises vesting

in the Central Government were liable for property tax on the date of commencement of the Constitution. There is no law enacted by the Parliament after coming into force of the Constitution, which prevent the respondent – Municipal Corporation from levying the tax on the premises vesting in the Government.

6. Shri Kaul in rejoinder submits that ownership still vests in the Central Government when the owner is not liable, occupier cannot be held to be liable to pay property taxes. The judgment of this Court in **Food Corporation of India Vs. Municipal Committee, Jalalabad (supra)** was a case where FCI was the owner of the property, hence the said case has no applicability in the facts of the present case. The arbitrator appointed under Section 144(2) went wrong in holding that FCI owns the property. His jurisdiction was only to determine the rateable value insofar as services rendered by the Corporation namely water charges etc., which the appellant is willing to pay. He further submits that the appellant is also willing to pay the amount in lieu of general tax to be determined in accordance with Section 144 of Act, 1888.

7. We have considered the submissions of the learned counsel for the parties and have perused the records.

8. The main question to be determined in this appeal is as to whether the property in question is exempted from payment of property tax by virtue of Article 285 of the Constitution of India. The High Court in the impugned judgment has primarily relied on Section 146 of the Act, 1888 in rejecting the claim of exemption under Article 285 of the Constitution of India. According to the High Court, the appellant being occupier of the godowns will be primarily liable to pay the property taxes. The main reasons of the High Court in rejecting the claim of the appellant are contained in paragraphs 12 and 15, which are as follows:-

> "**12.** The contention of the petitioner is that in view of clause 1 of Article 285, since the lands and godowns in respect of which property taxes are levied are the properties of the Government of India, the same are exempted from taxes imposed by a State or any other Authority within the State. Clause 2 of Article 285 carves out an exception to clause 1. If any Authority within the State was levying any taxes on the property of the Union of India to which such property was immediately before the commencement of the Constitution of India liable or treated as liable, the taxes can continue to be levied till the Parliament by a law otherwise provides. Under the said

> Act of 1888, the premises vesting in the Government of India were liable for property taxes on the date of commencement of the Constitution of India. The words "Government" appearing in sub-section 1 of section 146 was substituted for the words "the Crown" by the Adaptation of Indian Laws Order in Council. Thus, as per the provisions of the said Act of 1888, the property of the Union of India within the jurisdiction of the said Corporation was liable for levy of property taxes immediately before the commencement of the Constitution of India. There is no law enacted by the Parliament after coming into force the Constitution of India which prevents the said Municipal Corporation from levying the taxes on the premises vesting in the Government. Therefore, Article 285 is of no help to the petitioner in view of applicability of clause 2 of Article 285 of the Constitution of India.
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> **15.** In view of the provisions of the said Act of 1888, the petitioner will not be entitled to the benefit of clause 1 of Article 285 and in view of sub-section (1) of section 146 of the said Act of 1888, the petitioner being the occupier of the godowns will be primarily liable to pay property taxes."

9. For considering the respective submissions of counsel for the parties, we first need to look into the statutory provisions pertaining to the assessment of property tax as well as the provisions of exemption from payment of tax on the property belonging to Central Government. Chapter VIII of the Act, 1888 deals with "Municipal Taxation". Section 139 provides

that "for the purposes of this Act, taxations to be imposed shall consist property taxes and other taxes. Sections 143, 144 and 146, which are relevant for the present case are as follows:-

> "**143. General tax on what premises to be levied.**
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> (1) The general tax shall be levied in respect of all buildings and lands in Brihan Mumbai except—
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> (a) buildings and lands or portions thereof exclusively occupied for public worship or for charitable purposes;
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> (b) buildings and lands vesting in Brihan Mumbai used solely for public purposes and not used or intended to be used for purposes of profit or in the Corporation, in respect of which the said tax, if levied, would under the provisions hereinafter contained be primarily leviable from the Government or, the corporation respectively;
>
> (c) such buildings and lands vesting in, or in the occupation of, any consul de carriers, whether called as a consul general, consul, vice-consul, consular agent, pro-consul or by any other name of a foreign State recognised as such by the Government of India, or of any members (not being citizens of India) of staff of such officials, and such buildings and lands or parts thereof which are used or intended to be used for any purpose other than for the purpose of profit.

(2) The following buildings and lands or portions thereof shall not be deemed to be exclusively occupied for public worship or for charitable purposes within the meaning of clause (a), namely: —

(c) those in which any trade or business is carried on; and

(d) those in respect of which rent is derived whether such rent is or is not applied exclusively to religious or charitable purposes.

(3) Where any portion of any building or land is exempt from the general tax by reason of its being exclusively occupied for public worship or for charitable purpose, such portion shall be deemed to be a separate property for the purpose of municipal taxation.

144. Payment to be made to the Corporation in lieu of the general tax by the Central Government or the State Government as the case may be.

(1) The Central Government or the State Government, as the case may be, shall pay to the corporation annually, in lieu of the general tax from which buildings and lands vesting in Government are exempted by clause (b) of section 143, a sum ascertained in the manner provided in sub-sections (2) and (3).

(2) The rateable value of the buildings and lands in Brihan Mumbai vesting in Government and beneficially occupied, in respect of which but for the said exemption, general tax would be leviable from the Central Government or the State Government, as the case may be, shall be fixed by a person from time to time appointed in this behalf by the State Government with the concurrence of the

corporation. The said value shall be fixed by the said person, with a general regard to the provisions hereinafter contained concerning the valuation of property assessable to property-taxes, at such amount as he shall deem to be fair reasonable. The decision of the person so appointed shall hold good for a term of five years, subject only to proportionate variation, if in the meantime the number or extent of the building and lands vesting in Government in Brihan Mumbai materially increases or decreases.

(2A) Where the Corporation has adopted the levy of property tax on capital value of buildings and lands, the capital value of buildings and lands in Brihan Mumbai vesting in Government and beneficially occupied, in respect of which but for the said exemption, general tax would be leviable from the Central Government or the State Government, as the case may be, shall be the book value of such buildings or lands in Government records and such capital value shall hold good for a term of five years, subject only to proportionate variation, if in the meantime the number or extent of the buildings and lands vesting in Government in Brihan Mumbai materially increases or decreases.

(3) The sum to be paid annually to the corporation by the Central Government or the State Government, as the case may be, shall be eight-tenth of the amount which would be payable by an ordinary owner or buildings or lands in Brihan Mumbai, on account of the general tax, on a rateable value or on capital value, as the case may be, of the same amount as that fixed under sub-section (2), or sub-section (2A), as the case may be.

146. Primary responsibility for property taxes on whom to rest.

(1) Property-taxes shall be leviable primarily from the actual occupier of the premises upon which the said taxes are assessed, if such occupier holds the said premises immediately from the Government or from the corporation or from a fazendar.

Provided that the property-taxes due in respect of any premises owned by or vested in the Government and occupied by a Government servant or any other person on behalf of the Government for residential purposes shall be leviable primarily from the Government and not the occupier thereof.

(2) Otherwise the said taxes shall be primarily leviable as follows, namely:—

(a) if the premises are let, from the lessor;

(b) if the premises are sub-let, from the superior lessor;

(c) if the premises are unlet, from the person in whom the right to let the same vests;

(d) if the premises are held or occupied by a person who is not the owner and the whereabouts of the owner of the premises cannot be ascertained, from the holder or occupier; and

(e) if the premises are held or developed by a developer or an attorney or any person in whatever capacity, such person may be holding the premises and in each of whom the right to sell the same exists or is acquired, from such holder,

developer, attorney or person, as the case may be:

Provided that, such holder, developer, attorney or person shall be liable until actual sale is effected.

(3) But if any land has been let for any term exceeding one year to a tenant, and such tenant or any person deriving title howsoever from such tenant has built upon the land, the property taxes assessed upon the said land and upon the building erected thereon shall be leviable primarily from the said tenant or such person, whether or not the premises be in the occupation of the said tenant or such person."

10. In British India, prior to the passing of the Government of India Act, 1935, the question of exemption of Crown property from taxation was not definitely settled. Different High Courts have expressed divergent views. The Government of India Act, 1935 for the first time provided for exemption of certain public property from taxation. Section 154 of the Act, 1935 provided for exemption from all taxes imposed by, or by any authority within, a Province or Federated State all the properties vested in His Majesty whereas Section 155 contained exemption of Provincial Governments and Rulers of Federated States

in respect of Federal taxation. Sections 154 and 155 are as follows:-

> "**154. Exemption of certain public property from taxation.-** Property vested in His Majesty for purposes of the government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State:
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> Provided that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto.
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> **155.Exemption of Provincial Governments and Rulers of Federated States in respect of Federal taxation**-(1) Subject as hereinafter provided, the Government of a Province and the Ruler of a Federated State shall not be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing, arising or received in British India;
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> Provided that-
>
> (a) where a trade or business of any kind is carried on by or on behalf of the Government of a Province in any part of British India outside that Province or by a Ruler in any part of British India, nothing in this subsection shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith, or any income arising in connection

therewith, or any property occupied for the purposes thereof;

(b) nothing in this subsection shall exempt a Ruler from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.

(2) Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date."

11. The main provision of Section 154 although exempted properties vested in His Majesty from all taxes imposed by a Province or Federated State or any authority within but proviso contains an exception to the main provision, which provided that any property so vested which was immediately before the commencement of Part III of the Government of India Act, 1935 was liable, or treated as liable, to any such tax, shall continue to be liable, or to be treated as liable, thereto so long as that tax continues. The commencement of the Part III of the Government of India Act, 1935 was w.e.f. 01.04.1937. The Constitution of India continued the exemption of taxation of the properties of Central Government from the taxation by State or any authority

as well as the State property from Central taxation under Article 285 and Article 289. The proviso to Section 154 was retained as sub-article(2) of Article 285. Article 285 and Article 289 of the Constitution are as follows:-

> **"285. Exemption of property of the Union from State taxation.--** (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.
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> (2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.
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> **289. Exemption of property and income of a State from Union taxation.--** (1) The property and income of a State shall be exempt from Union taxation.
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> (2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.
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> (3) Nothing in clause (2) shall apply to any trade or business, or to any class

of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government."

12. The provisions of Articles 285 and 289 are complimentary to each other. Section 154 of Government of India Act, 1935 came for consideration before Calcutta High Court in **Governor-General of India in Council Vs. Corporation of Calcutta, AIR (1948) Cal. 117.** Justice B.K. Mukherjea (as he then was) allowed the appeal of Governor-General in Council holding that the property in question was exempted from municipal taxes, with which opinion, Ormond, J. while writing a separate opinion agreed. In the above case, the Calcutta Corporation assessed the premises in the year 1937 on account of substantial additions to and alteration of the premises in the year 1941 and 1942. Objection was taken to the valuation by the Governor General of India in Council on the ground that under Section 154 of Government of India Act, all buildings which were not in existence prior to 01.04.1937 when Part III of Government of India Act, 1935 came into operation, and which were consequently not subjected to any assessment before April, 1937 were exempted from all taxes, and could not be assessed to municipal

rates. The contention was not accepted by the Executive Officer of the Calcutta Corporation and an appeal was filed by the appellant to the Small Cause Court Judge, which was also dismissed. An appeal was filed in the High Court against the above judgment. Justice B.K. Mukherjea while interpreting Section 154 laid down following in paragraphs 10 and 13:-

> "**10.** ……Whatever is property for purposes of taxation under a particular statute and is vested in His Majesty for purposes of Federation would be exempted from taxation under Section 154, Government of India Act, unless it was liable to tax on 31-3-1937, and ex hypothesi, a property which was not in existence on 31-3-1937, cannot be said to be liable to tax on that date……"
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> **13.** Our conclusion therefore is that the additional buildings raised on premises No. 7, Gun Foundry Road after 31-3-1937 are exempted from payment of consolidated rates under the Calcutta Municipal Act and the present assessment is to be made on the basis of the land and buildings as they existed on 31-3-1937, excluding all additions made subsequent to that date."

13. Ormand, J. in paragraphs 28 and 29 laid down following:-

> "**28.** The sole question in this appeal is the narrow one whether, firstly, new buildings on the same land and secondly, alterations, additions and improvements made in a building which existed before 1-4-1937, are properties which were "immediately before 1-4-1937 liable or

treated as liable to the tax." Now for property to have been liable to the tax before 1-4-1937, it is self-evident that that property must have been in existence before 1-4-1937. Equally, I think, this must be so for property "treated as liable" to the tax. There could have been no liability attached to a non-existent thing; nor could there have been any treatment of a non-existent thing. It is outside the power of comprehension to conceive of any property which could have been "treated as liable to tax" if that property was not in a state of physical existence at the time.

29. This being so, it follows that the only taxable property brought within the exception contained in the proviso is property which was in physical existence before 1-4-1937. The four conditions which it would be necessary for the Corporation to establish to bring the property within the proviso would be:(1) Physical existence of the property before 1-4-1937, (2) Liability of that property to the tax then, (3) Physical existence of the same property now, that is to say, for the current period for which tax is sought to be levied and (4) Liability of the property (if it were not Crown property) to the tax now. The contention relied upon on behalf of the Corporation, if analysed must come to this, that though a thing in itself was not in existence before 1-4-1937, yet if it is now in existence in a situation resting on, or attached to, or forming part of, some particular area of land or building, which formed the taxable unit before 1-4-1937, then that thing is itself taxable. It is said that what is being taxed is the unit of property and that that unit of property can now be taxed in its new form; that is to say, inclusive of the new thing on it, which did not previously exist: for the reason that the same unit of property had

existed before 1-4-1937 in an old form without that new thing."

14. The Calcutta High Court in the above judgment while interpreting Section 154 has held that proviso to Section 154 shall be applicable for taxing property owned by His Majesty only when such property was subject to tax on 31.03.1937 or earlier. The property which came into existence subsequent to 01.04.1937 is not to be covered by proviso and held covered by the main provision of Section 154 and not exigible to property tax. The above judgment of the Calcutta High Court was noticed with approval by Federal Court in **The Corporation of Calcutta Vs. The Governors of St. Thomas School, Calcutta, AIR 1949 F.C. 121.** In the case before Federal Court, the premises containing land and building were owned by St. Thomas School, which buildings were constructed before April, 1942. In April, 1942, the premises were requisitioned under the Defence of India Act for the purposes of the Government of the Federation. Several buildings were constructed by the Central Government. In the assessment made in the last quarter of 1944-45, the cost of all the additional structures erected by the Central Government

were taken into account while fixing the annual value. The respondents objected to the assessment and the contention that the value of the buildings put up by the Central Government should be excluded in the revaluation was rejected by Deputy Executive Officer, against whose decision an appeal was filed in the Court of Small Causes. The Court of Small Causes accepted the contention of the respondent and held that the structures put up by the Central Government were exempt from municipal taxes and therefore should not be included in the valuation. The Judge, Small Causes Court relied on judgment of the Calcutta High Court in **Governor-General of India in Council Vs. Corporation of Calcutta (supra)** and dismissed the appeal of the Corporation. The Corporation filed the appeal before the High Court. While dismissing, Federal Court laid down following in paragraph 12:-

> "**12.** This reasoning also leads to the rejection of the second contention of the appellants. The contention is that as the unit of taxation is the area mentioned in the schedule to the agreement and as that unit was subject to taxation before April 1937, the exemption in favour of the Crown given in Section 154 could not be availed of. Whether any particular property falls within the exemption provided in Section 154, Government of India Act, must depend on what is "property" within the meaning of

> that section and not on what is regarded as a unit for purposes of assessment under a local Municipal Act. The question in whether what is sought to be taxed is property and, if so, whether the same is vested in the Government. If the answer to both these is in the affirmative, the question is whether that property was liable to tax before April 1937. In the present case the answer is clearly in the negative because the additional structures were all put up after 1942 and therefore were not subject to the municipal tax before April 1937. The result is that all the contentions' of the appellants urged before us are rejected. The appeal, therefore, fails and is dismissed with costs."

15. The Division Bench of the Calcutta High Court in **The Corporation of Calcutta Vs. Union of India, AIR 1957 Calcutta 548** had occasion to consider Article 285(2) of the Constitution. The Division Bench referred to and relied on the earlier judgment of Calcutta High Court in **Governor-General of India in Council Vs. Corporation of Calcutta (supra).** The Division Bench noticed the Scheme of exemption as contained in the Section 154 of the Government of India Act, 1935 and has extensively referred to Division Bench judgment in **Governor-General of India in Council Vs. Corporation of Calcutta (supra)** and laid down following in paragraph 11:-

> **"11.** The Constitution retained and re-employed the same phrase which, as the above observations show, had already been judicially interpreted in the same manner as we have done on the present occasion. That is a strong pointer to the legislative intent and amply supports our construction of the words 'treated as liable' as used in Article 285(2) of the Constitution and, if that construction is correct, there can possibly be no doubt, in the facts of the two instant cases, that the present disputed assessments are valid. The safeguard, so far as Union properties are concerned, is contained in the reservation in the very clause in question, reserving power to the Parliament to provide otherwise. Until, however, Parliament does so provide, Union properties which were treated as liable to a particular local tax immediately before the coming into force of the Constitution would remain liable for the same. Admittedly the disputed premises (as belonging to the Central Government and owned by it) were actually assessed to Municipal tax, and such tax was being paid and realised also, immediately before the, commencement of the Constitution. The premises, therefore, on the above construction of the Article, were 'treated as liable' to such tax on that date. Admittedly also. Parliament has not, so far, by law, otherwise provided, as it has undoubtedly the power to do under Article 285(2) of the Constitution."

16. We had noticed above the fact that godowns in questions were constructed by the Central Government after completion of the acquisition in the year 1964. The submission which has been pressed by Shri Kaul is that the buildings in question being not liable or

treated to be liable for property tax immediately before the commencement of the Constitution, the respondents cannot claim the benefit of Article 285(2). Although, it is not disputed by the respondents that the godowns in question were not subject to property tax immediately before the commencement of the Constitution but submission, which has been pressed by Shri Shishodia is that under Act, 1888, the property of Central Government was exigible to tax immediately before commencement of the Constitution, hence, the conditions of Article 285(2) are fulfilled and Corporation is fully entitled to levy property tax on the appellant.

17. Before proceeding further, we may notice the factum of ownership of the property including the godowns thereon. As noticed above, the land was acquired by the State of Bombay for the Central Government and it was the Central Government, which constructed the godowns thereon. The earlier Division Bench judgment of Bombay High Court dated 03.12.1992 in Civil Appeal No. 259 of 1989 has been referred to and relied by the appellant, by which judgment, the Division Bench has

set aside the levy of non-agricultural assessments as imposed on the appellant. The Division Bench in the above judgment has also accepted the case of the appellant that legal ownership of the land and the structures vests with the Government. In paragraph 33 of the judgment, following was laid down:-

> "**(3).** Shri Saraf, learned counsel appearing on behalf of the Government of Maharashtra, submitted that the Corporation is occupier of the lands and as occupant is liable to pay non-agricultural assessment. The submission overlooks that the right to recover assessment from the occupier is an enabling provision but cannot be imported when the original owner is not liable to pay taxes. The power to recover assessment from the occupier is available provided the original owner is not available but is liable to pay the taxes. In view of the return filed on behalf of Government of India, it is clear that the land still vests in Government of India and consequently, the owner is not liable to pay any assessment. As the Central Government is not liable to pay assessment, it is not open for the State Government to recover the same from the Food Corporation of India who is merely occupier of the lands and holder of the godowns on behalf of the Government of India. In our judgment, the claim of the State Government for recovery of NA assessment and service of notices cannot be sustained."

18. The above status of the ownership of the property as noticed by the Division Bench in its judgment dated

03.12.1992 has not been questioned before us. We, thus, proceed to consider the submissions of the parties accepting the property including the construction thereon to be owned by the Government of India.

19. What is the content and meaning of the expression as occurring in sub-article (2) of Article 285, "prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable so long as that tax continue to be levelled in that tax." Whether Constitution framers intended to clothe any authority within the State from levying any tax on any property, which property was liable or treated to be liable to tax or whether mere power to tax the property of Union prior to the commencement of the Constitution is sufficient to continue such power after the enforcement of the Constitution irrespective of as to whether a property was subject to tax in the State or not. The Constituent Assembly Debate in the above context throws a considerable light on the intention of the

Constitution framers on the content and meaning of Article 285 as now contained in the Constitution of India.

20. Draft Article 264 which came for consideration before the Constituent Assembly on 9th September, 1949 was to the following effect:

"Article 264

The Honourable Dr. B.R. Ambedkar (Bombay: General): Sir, I move:

"That for article 264, the following article be substituted :-

Exemption of property of the Union from State Taxation.	"264.(1) The property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State

(2) Nothing in clause (1) of this article shall, until Parliament by law otherwise provides, prevent any local authority within a State from imposing any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable so long as that tax continues to be levied in that State."

I will speak after the amendments have been moved, if there is any debate."

21. Amendments were moved to the Draft Article. Several members in the Constituent Assembly spoke in favour of making the property of the Union subject to all taxes imposed by a local authority within the State, save insofar as the Parliament may by law otherwise provide. Shri R.K. Sidhwa in his speech stated that in the event Article 264 as proposed is passed the local authorities shall lose substantial amount of Revenue which they are getting from taxes realise from properties of the Central Government.

22. Dr. B.R. Ambedkar replying the debate has dealt with clause (2) of proposed Article 264. Dr. B.R. Ambedkar in his reply stated that intention of clause (2) of Article 264 is to maintain the *status quo*, that is those municipalities which are levying any particular tax on the properties of the Union immediately before the commencement of the Constitution will continue to levy those taxes. Following is the reply made by Dr. B.R. Ambedkar:

> "**The Honourable Dr. B.R. Ambedkar:** Sir, I will first refer to the provisions contained in clause (2) of the proposed article 264. I think it would be agreed that the intention of this clause (2) is to maintain the *status quo*. Consequently under

> the provisions of clause (2) those municipalities which are levying any particular tax on the properties of the Union immediately before the commencement of the Constitution or on such property as is liable or treated as liable for the levy of these taxes, will continue to levy those taxes. All that clause (2) does is that Parliament should have the authority to examine the nature of the taxes that are being imposed at present. There is nothing more in clause (2), except the saving clause, viz., "until Parliament by law otherwise provides". Until Parliament otherwise provides the existing local authorities, whether they are municipalities or local boards, will continue to levy the taxes on the properties of the Centre. Therefore, so far as the *status quo* is concerned, there can be no quarrel with the provisions contained in article 264.
>
> The only question that can arise is whether the right given by clause (2) should be absolute or should be subject to the proviso contained therein, until Parliament otherwise provides. In another place where the matter was discussed I submitted certain arguments for the consideration of the House."

23. The Constituent Assembly adopted Article 264 as proposed by one addition in clause (1) by adding the words "save insofar as the Parliament may by law otherwise provide".

24. This Court has occasion to consider the provisions of Article 285 clause (2) of the Constitution in **Union**

of India owner of the Eastern Railway vs. The Commissioner of Sahibganj Municipality, (1973) 1 SCC 676. The question which came for consideration before this Court has been noted in paragraph 1 which is to the following effect:

> "The only question which falls for determination in these two appeals by certificate is whether the respondent Municipality is entitled to levy and collect taxes on 32 blocks of buildings some constructed after March 31, 1937 and some after January 25, 1950."

25. In paragraphs 13 to 16, this Court observed that 32 blocks of buildings were vested in the Union after April 1, 1937, and some of them after Constitution came into existence, these properties could be made liable to pay tax to the Municipality only if Parliament by law provided to that effect. Paragraphs 13 to 16 are as follows:

> **"13.** The 32 blocks of buildings were not in existence before April 1, 1937. These 32 blocks of buildings were therefore not vested for purposes of the Government of the Federation before the commencement of Part III of the 1935 Act. The 32 blocks of buildings were thus exempt from all taxes imposed by any authority within a province until a Federal law otherwise provided. Section 4 of the 1941 Act did not provide for payment of taxes in respect of Railway property. Section 3 of the 1941 Act stated that a Railway Administration shall be

liable to pay any tax in aid of the funds of any local authority if the Central Government by notification in the Official Gazette declares it to be so liable. It is an admitted feature in these appeals that there was no notification under Section 3 of the 1941 Act declaring the Railway properties to be liable to pay any tax in aid of the funds of any local authority.

14. Under Article 285 of the Constitution property of the Union was exempt from all taxes until Parliament by law otherwise provides. There is no such law providing for taxation of Railway property.

15. Clause (2) of Article 285 speaks of liability of Railway property to pay taxes where such property was immediately before the commencement of the Constitution liable or treated as liable to pay any tax levied by any authority within a State. These 32 blocks of buildings were not liable to pay any tax because they were not in existence before April 1, 1937 or before the commencement of the Constitution.

16. The High Court was in error in construing the notification issued in 1911 under the 1890 Act to continue by virtue of the provisions contained in Section 4 of the 1941 Act. These 32 blocks of buildings vested in the Union some of them after April 1, 1937 and some after the Constitution came into existence. These properties could be made liable to pay tax to the Municipality only if Parliament by law provided to that effect."

26. This Court also in the above judgment has approved the Federal Court judgment in **Corporation of Calcutta vs. Governors of St. Thomas' School, Calcutta, AIR 1949**

FC 121. Following was laid down in paragraphs 17 and 18:

> **"17.** The High Court referred to the decision of this (*sic*) Court in *Corporation of Calcutta* v. *Governors of St. Thomas' School, Calcutta* and held that the ruling in that decision did not apply to the facts in the present appeals by reason of Section 4 of the 1941 Act rendering the properties liable to tax. The High Court misconstrued the provisions of Section 4 of the 1941 Act. The decision of this (*sic*) Court in *St. Thomas' School case*[1] directly applies to these appeals. St. Thomas' School was situated at 4, Diamond Harbour Road, Calcutta. The buildings were constructed before April 1942. The premises were assessed to consolidated rates under the Calcutta Municipal Act. In April 1942, the premises. were requisitioned for the purposes of the Central Government. After the requisition the Central Government erected several structures on the premises. In 1944-45, there was a general revaluation by the Corporation of Calcutta. The cost of the Additional structures erected by the Central Government was taken into account in determining the annual value of the premises. The Governors of St. Thomas' School objected to the valuation and claimed that the value of the buildings put up by the Government should be excluded in the revaluation. The Calcutta High Court held that Section 154 of the Government of India Act, 1935 applied to the buildings constructed by the Central Government and the proviso to Section 154 of the 1935 Act was not applicable. This Court held that the buildings constructed by the Central Government were vested in the Government. In view of the fact that the Additional structures were put up by the Central Government after 1942, it was held that

> these were not subject to municipal tax before April 1937.
>
> **18.** The 32 blocks of buildings in the present appeals were not in existence before April 1, 1937 and January 26, 1950. The notification under the 1890 Act did not apply to these 32 blocks of buildings. There is no law declaring these 32 blocks of buildings to be liable to payment of municipal tax as claimed by the respondent Municipality."

27. The above Constitution Bench judgment of this Court clearly lays down that exemption from payment of taxes on the properties of Central Government as available under clause (1) of Article 285 can be denied only when the property in question was exigible to the Municipal Tax prior to the commencement of the Constitution or any Parliamentary law provides for properties to be exigible to pay tax to the Municipality.

28. Article 285 clause (2) again came for consideration before the Constitution Bench of this Court in **Union of India vs. City Municipal Council, Bellary, (1979) 2 SCC 1,** explaining the content of clause (2) of Article 285. Following was laid down in paragraph 7:-

> "7……The property of the Union is exempt from all taxes imposed by a State or by any authority within a State. But Parliament may by law provide otherwise and then any

tax on the property of the Union can be imposed and levied in accordance with the said law. But then an exception has been carved out in clause (2). The exception is not meant for levying any tax on such property by any State; but it is merely for the benefit of any authority including the local authority like the Municipal Council in question. Clause (1) cannot prevent such authority from levying any tax on any property of the Union if such property was exigible to such tax immediately before the commencement of the Constitution. The local authority, however, can reap advantage of this exception only under two conditions namely, (*1*) that it is "that tax" which is being continued to be levied and no other; (*2*) that the local authority in "that State" is claiming to continue the levy of the tax. In other words, the nature, type and the property on which the tax was being levied prior to the commencement of the Constitution must be the same as also the local authority must be the local authority of the same State to which it belonged before the commencement of the Constitution. On fulfilment of these two conditions it is authorised to levy the tax on the Union property under clause (2). As in the case of clause (1) it lies within the power of Parliament to make a law withdrawing the exemption of the imposition of the tax on the property of the Union, so in the case of clause (2) it is open to Parliament to enact a law and finish the right of the local authority within a State to claim any tax on any property of the Union, a right it derived under clause (2). That is to say, in both the cases the ultimate power lies with Parliament."

29. The Constitution Bench has also approved the Calcutta High Court judgment in **Governor-General of**

India in Council vs. Corporation of Calcutta, AIR (1948) Cal 116(2).

30. Durga Das Basu in Commentary on Constitution of India while commenting on Article 285, Clause (2), has also said that the property must have been in physical existence immediately before the commencement of the Constitution. In 8th Edition under the heading "Article 285, Clause (2): Power of Local Authorities to Tax Union Property" following has been stated:

> "**ARTICLE 285, CLAUSE (2): POWER OF LOCAL AUTHORITIES TO TAX UNION PROPERTY**
>
> **Saving of existing taxation**
>
> This clause is in the nature of a Proviso upon cl.(1). But it empowers Parliament to cut down the exception introduced by cl.(2). Any local tax on Union property which is saved by cl.(2) shall cease to be valid as soon as Parliament by law provides to that effect.
>
> While cl.(1) enumerates that property of the Union shall be exempted from any State or local taxation, cl.(2) saves the existing power of local bodies to tax Union property so long as Parliament does not legislate otherwise. Thus, the *status quo* as to local taxation is maintained, but Parliament is given the power to control such taxation.
>
> Article 285(2) does not permit levy of any tax by a State; it only benefits "the

authority within the State", such as the municipal body.

"Liable or treated as liable"

These words mean that in order to come within the Proviso, the property must have been in physical existence immediately before the commencement of the Constitution. There could have been no liability attached to a non-existent thing; nor could there have been any treatment of a non-existent thin. New buildings and structures erected on the land after the aforesaid date, are therefore, exempt from tax though the land on which they have ben erected may be liable to tax under cl.(2).

The conditions necessary to bring a property within cl.(2) in order to make it liable to taxation are:

(a) Physical existence of the property immediately before the commencement of the Constitution.

(b) Liability of the property to the tax on that date;

(c) Physical existence of the property now, i.e., at the time when the tax is sought to be levied;

(d) Liability of the property to tax now;

(e) The tax in question must be the 'same tax' as that which was levied or leviable at the commencement of the Constitution;

(f) The local authority seeking to levy the tax must be in the same State to which the pre-Constitution authority belonged;"

31. From the above discussion we arrive at the conclusion that for the applicability of clause (2) of Article 285, the property on which tax is sought to be proposed ought to have been subject to property tax before the commencement of the Constitution. Since, object of the Article 285(2) of the Constitution was to continue the levy of the such tax which local authority was enjoying prior to the commencement of the Constitution so as to maintain the *status quo* regarding the financial resources of Municipal Corporation to avoid the complete exemption from property of Central Government as provided under Article 285(1). In the present case the constructions on which the property tax is sought to be imposed by Municipal Corporation came into existence only after 1964 and were not subject to property tax prior to the commencement of the Constitution, hence condition for applicability of Article 285(2) is not satisfied. Resultantly the Municipal Corporation is not competent to impose property tax denying the exemption under Article 285(1) of the Constitution.

32. Shri Shishodia has placed reliance on the judgment of this Court in **Food Corporation of India vs. Municipal Committee, Jalalabad and another, (1999) 6 SCC 74.** Shri Shishodia submits that this Court in the above case has held that Food Corporation of India is not exempt from taxation under Article 285. The question which came for consideration before this Court has been noticed in paragraph 7 which is to the following effect:

> **"7.** The question that arises before us is: If the property of the Corporation is the property of the Union of India and, thus, exempt from taxation imposed by the State or any authority within a State. Authority in the present case would include local authority. A Constitution Bench of this Court in *Electronics Corpn. of India Ltd.* v. *Secy., Revenue Deptt., Govt. of A.P.*,(1999)4 SCC 458, has held that a government company is distinct from the Central Government and cannot claim exemption from taxation under Article 285 of the Constitution. The case of the Corporation cannot be any different. The Act under which it is constituted specifically makes the Corporation a body corporate having the attributes of a company."

33. This Court in the above case relying on Constitution Bench judgment in ***Electronics Corporation of India Ltd. and others*** **Vs.** ***Secretary Revenue***

***Department, Govt. of Andhra Pradesh and others*, (1999)4 SCC 458**, held that the Corporation is a distinct entity from the Union of India and is not exempt from taxation under Article 285. The Constitution Bench in **Electronics Corporation of India Ltd. (supra)** held that Article 285 is not applicable where assessee is an entity, separate and different from Union Government. The Constitution Bench in paragraph 22 laid down following:

> "22……Article 285 does not apply when the property that is to be taxed is not of the Union of India but of distinct and separate legal entity. Each of the appellants being companies registered under the Companies Act, they are entities other than the Union of India."

34. There cannot be any dispute to the proposition laid down by this Court in **Food Corporation of India vs. Municipal Committee, Jalalabad (supra)** and by the Constitution Bench in **Electronics Corporation of India Ltd. (supra)** Article 285 does not apply when the property that is to be taxed is not of the Union of India but a distinct and separate legal entity. Had the property in question which is sought to be taxed belonged to the Food Corporation of India, in the present case, the judgment of this Court in **Municipal**

Committee, Jalalabad (supra) as well as **Electronics Corporation of India Ltd. (supra)** would have applied in full force, but in the present case the property being that of the Central Government, both the above judgments are not applicable.

35. The submission which has been made by Shri Shishodia to support the levy of property tax on the appellant is that the appellant being occupier is liable to pay property tax in view of Section 146 of the 1888 Act. He submits that the primary responsibility for property tax being on occupier as per Section 146(1) of 1888 Act, the Corporation cannot escape from its responsibility to pay property tax. Sub-section (1) of Section 146 uses the expression "if such occupier holds the said premises immediately from the Government…….", the key words in the expression are "such occupier holds the said premises". The word 'holds' has various shades of meaning. Whether sub-section (1) of Section 146 will hold the occupier that is the appellant to pay the property tax even though the owner of the property Central Government is exempt

from paying property tax under Article 285(1) is the question to be answered.

36. The heading of Section 146 is "Primary responsibility for property taxes from whom to rest". When there is a claim of exemption from payment of property tax with regard to property owned by the Government of India, the question of primary responsibility or secondary responsibility loses its importance. When payment of property tax is exempt under Article 285(1) to tax the occupier runs counter to the very claim of exemption as delineated by Article 285. Section 146 of 1888 Act as it exists now has to be construed in a manner so as to give effect to the meaning and purpose of Constitutional protection granted under Article 285. The statutory provision, may it be Section 146 of 1888 Act, cannot be read in a manner so as to run contrary to a Constitutional provision.

37. In the event the claim of Municipality/Corporation to levy property tax is not covered by sub-clause (2) of Article 285, it cannot be allowed to take recourse

to any statutory provision or device to make exemption under Article 285(1) nugatory. We are, thus, not persuaded to accept the submission of Shri Shishodia that since the appellant is occupier of premises owned by Union of India, is liable to pay property tax under Section 146(1) of 1888 Act. Both the premises and building therein are entitled for exemption from payment of property tax under Article 285(1). At this stage, it is required to be noted that the FCI is not in occupation of the godowns owned by the Government of India as a lessee. Nothing is on record and it is also not the case on behalf of the Corporation that any rent/lease amount is being recovered from the FCI. It appears that FCI is permitted to occupy and use the godowns owned by the Government of India for the purpose of storage of the goods which are required to be transported to the different Fair Price Shops under the public distribution system.

38. We may notice some of the decisions which have been relied by Shri Shishodia in support of his claim. Shri Shishodia has relied on Division Bench judgment of Gujarat High Court in **F.C.I. vs. Gandhidham**

Municipality, (2002)43(2) GLR 1845. The submission which was pressed before the Division Bench of the High Court was that the Food Corporation of India, being an instrumentality of the State Government, is not liable to pay municipal taxes in view of Article 285 of the Constitution. From paragraph 2 of the judgment it is clear that land was originally owned by the Government of India and the said land was given to the appellant-Corporation for the purpose of construction of godowns. The Corporation made construction of godowns in the property. The contention which was raised by the Corporation has been mentioned in paragraph 2 of the judgment which is to the following effect:

> "**2.** On behalf of the appellant-Corporation Mr.N.K.Pahwa for Mr.Mr.P.M.Thakkar raised the contention that the Food Corporation of India, being an instrumentality of the State Government, is not liable to pay municipal taxes in view of Article 285 of the Constitution. This contention, in substance, is that the land was originally owned by Government of India and the said land is given to the appellant-Corporation for the purpose of construction of godowns and the appellant-Corporation is a statutory corporation, no doubt, is owned by Government of India and therefore in view of Section 99 of the Gujarat Municipalities Act read with Article 285 of the Constitution no tax can be levied upon the property constructed by the appellant-Corporation."

39. The Gujarat High Court held that the question involved in the appeal is settled by this Court in the judgment in **Food Corporation of India vs. Municipal Committee, Jalalabad (supra).** In paragraphs 4 to 6 Gujarat High Court held:

> "**4.** We have considered the submissions made by both the sides and also gone through the order passed by the learned single Judge. It will not be out of place to mention that the substantial question involved in this appeal is now settled by the Honourable Supreme Court in the case of FOOD CORPORATION OF INDIA. vs MUNICIPAL COMMITTEE, JALALABAD reported in (1999) 6 SSC 74, wherein the Honourable Supreme Court had considered the identical question and in para 7 of its judgment it was held as under:
>
> > "The question that arises before us is: If the property of the Corporation is property of the Union of India and, thus, exempt from taxation, imposed by the State or any authority within a State. Authority in the present case would include local authority. A Constitution Bench of this court in Electronics Corporation of India Ltd vs Secretary, Revenue Department, Govt. of Andhra Pradesh (1999) 4 SCC 458 has held that a Government company is distinct from the Central Government and can not claim exemption from taxation under Article 285 of the Constitution. The case of the Corporation can not be any different. The Act under which is constituted specifically makes the Corporation a body corporate having the attributes of a company."

> **5.** Further in para 11 of its judgment the Honourable Supreme Court has observed as under:
>
> > "even if the Corporation is an agency or instrumentality of the Central Government, that did not lead to the inference that the Corporation is a Government department. The reason is that Act has given the Corporation an individuality apart from that of the Government."
>
> **6.** In the above view of the matter, the law on the question is already settled by the Honourable Supreme Court and, therefore, the first contention of Mr.Pahwa that in view of Article 285 of the Constitution the Municipality cannot levy or collect taxes on the property of the Corporation has got to be rejected."

40. No exception can be taken to the above judgment of Gujarat High Court which has correctly relied on this Court's judgment in **Food Corporation of India vs. Municipal Committee, Jalalabad (supra) and Electronics Corporation of India Ltd. (supra)** when the property belonged to Corporation who has constructed the godowns, it was liable to pay municipal taxes and the Division Bench has rightly dismissed the appeal. The above judgment does not help the respondent, since, in the present case the construction was made by the Government of India and ownership of the Government of

India of the premises including the construction in the present case has not been questioned.

41. The next judgment relied by Shri Shishodia is **Ahmedabad Aviation & Aeronautics Limited vs. Govt. of Gujarat, 2014 SCC online Guj 15505.** In the above case Ahmedabad Aviation & Aeronautics Ltd., a public Limited Company had filed the writ petition for declaring that the Gujarat Municipalities Act, 1963 is not applicable to the petitioners with further prayer for direction to prohibit the respondent-Municipality from taking any coercive measures for recovering the municipal tax from the petitioner-Company. The Division Bench of the Gujarat High Court dismissed the writ petition. The petitioner was in occupation/possession and in use of Airfield which was given by the Government of Gujarat with regard to which right of user was granted by the Government of Gujarat through Department of Civil Aviation. There was Memorandum of Understanding between the Company and the Government. The Gujarat High Court in the above background held the petitioner liable to pay municipal tax. The case of the petitioner that it cannot be said that the petitioner is not in exclusive

occupation, possession and in use of the entire Airfield nor they can be said to be lessee, was rejected. The Gujarat High Court relying on Section 113(2) of the Gujarat Municipalities Act held the petitioner liable to pay tax. The Division Bench had also relied on the earlier judgment of the Gujarat High Court in **FCI v. Gandhidham Municipality (supra).** In paragraph 7.3 following was laid down:

> **"7.3** It is the case on behalf of the petitioners that as the petitioners cannot be said to be in exclusive occupation, possession and in use of the Airfield, Mehsana and they are permitted to use the Airfield / Airstrip on payment of user charges they cannot be said to be lessee and the MOU cannot be said to be a lease deed and, therefore, considering Section 113 of the Gujarat Municipalities Act the primary liability to pay the municipal tax would be upon the owner-Collector, Mehsana and not upon the petitioners as the petitioners cannot be said to be the lessee. The aforesaid seems to be attractive but has no substance. For the purpose of liability to pay the municipal tax, what is required to be considered is, whether the concerned person is in occupation and use of the property in question or not and it is immaterial whether he is in occupation as lessee or not. In the case of FCI Vs. Gandhidham Municipality (Supra) considering Section 113(2) of the Act the Division Bench of this Court has specifically observed and held that it is the occupier of the property, who is using the property and for the said purpose the occupier cannot get away from the liability to pay the tax of

> the local authority since the taxes are for the purpose of providing services to the residents or occupiers of the property."

42. The above judgment of the Gujarat High Court was on its own facts and was based on liability to pay municipal tax under Section 113(2) of the Gujarat Municipalities Act. In the above case there was no question pertaining to claim of any exemption from payment of tax from property of the Union. Thus, the above judgment in no manner helps the respondent in the present case.

43. The Division Bench of the High Court in the impugned judgment relying only on sub-section (1) of Section 146 held the appellant liable to pay property tax without giving any reason as to why the appellant is not entitled to exemption from payment of property tax under Article 285. The High Court has also not come to any conclusion that the Corporation is entitled to levy property tax on the strength of Article 285 clause (2). The judgment of the Division Bench, thus, cannot be sustained.

44. As noted above, learned counsel for the appellant during his submission has not disputed the liability of the Corporation to pay charges for services rendered by the Corporation including water charges. He has further stated that the Corporation is willing to pay amount in lieu of the general taxes as contemplated by Section 144 of 1888 Act. In paragraph 6 of Writ Petition No.2672 of 2001 filed by the appellant, liability to make payment of services charges or other services provided by the Corporation was not denied. We may further notice that in the Review Petition No.37 of 2016 which was filed by the appellant to review the judgment dated 05.05.2016 of the Division Bench of the Bombay High Court, in paragraph 20 following prayers were made:

> "20. Petitioner therefore pray that:-
>
> (a) This Hon'ble Court may be pleased to call for the Records and Proceedings in Writ Petition No.2672 of 2001 and after going through the legality, validity and propriety thereof, review and/or revoke the Order of this Hon'ble Court dated 05.05.2016 therein;
>
> (b) this Hon'ble Court may be pleased to direct the Respondent Nos.1 and 2 to conduct an enquiry in accordance with the provisions of Sections 143 and 144 of The Mumbai

Municipal Corporation Act, 1888 and decide the ratable value of the properties on which taxes were to be paid;

(c) pending the hearing and final disposal of the Review Petition, the Respondent Nos. 1 and 2 may please be restrained from either demanding the Property Tax and/or issuing any fresh tax bill and/or adopting any coercive steps for recovery of any property tax against the Petitioner;

(d) cost of the Petition may please be provided for;

(e) for such further and other reliefs as nature of the case may require."

45. From the above, it is clear that the appellant is not denying its liability to pay services charges and direction was sought to respondents to conduct an enquiry in accordance with the provisions of The Mumbai Municipal Corporation Act, 1888 and decide the ratable value of the properties on which taxes were to be paid.

46. At this stage, we may also notice the judgment of this Court in **Union of India and others vs. State of Uttar Pradesh and others, (2007) 11 SCC 324**, wherein it is held that water charges and sewerage charges levied by the Jal Sansthan against the Railways for the

services rendered by Sansthan were termed as taxes, charges were not taxes but fees for the services rendered by the Jal Sansthan which are not precluded by Article 285. This Court in paragraphs 11 and 23 laid down following:

> **"11.** The distinction has to be kept in mind between a tax and a fee. Exemption under Article 285 is on the levy of any tax on the property of the Union by the State, and exemption is not for charges for the services rendered by the State or its instrumentality which in reality amounts to a fee. In this connection, a reference was made to the decision of this Court in *Sea Customs Act (1878), S. 20(2), In re*[3]. This was a case in which a reference was made by the President of India with regard to levy of customs and excise duties on the State under Article 289 of the Constitution of India wherein Sinha, C.J., Gajendragadkar, Wanchoo and Shah, JJ. answered the question at para 31 as follows: (AIR p. 1777)
>
> > "*31*. For the reasons given above, it must be held that the immunity granted to the States in respect of Union taxation does not extend to 330duties of customs including export duties or duties of excise. The answer to the three questions referred to us must, therefore, be in the negative."
>
> **23.** In this case what is being charged is for service rendered by the Jal Sansthan i.e. an instrumentality of the State under the Act of 1975. Section 52 of the Act states that the Jal Sansthan can levy tax, fee and charge for water supply and for sewerage services rendered by it as water tax and sewerage tax at the rates mentioned

> therein. Though the charge was loosely termed as "tax" but as already mentioned before, nomenclature is not important. In substance what is being charged is fee for the supply of water as well as maintenance of the sewerage system. Therefore, in our opinion, such service charges are a fee and cannot be said to be hit by Article 285 of the Constitution. In this context it is to be made clear that what is exempted by Article 285 is a tax on the property of the Union of India but not a charge for services which are being rendered in the nature of water supply, for maintenance of sewerage system. Therefore, in our opinion, the view taken by the Division Bench of the Allahabad High Court is correct that the charge is a fee, being service charges for supply of water and maintenance of sewerage system, which cannot be said to be tax on the property of the Union. Hence it is not violative of the provisions of Article 285 of the Constitution."

47. We, thus, clarify that even though appellant is exempted from payment of property tax by virtue of Article 285 of the Constitution then liability to pay services charges for services rendered by the Corporation cannot be denied and learned counsel appearing for the appellant has very fairly stated so. In the result, we allow these appeals set aside the judgment of the High Court and held that the appellant is exempted and not liable to pay property tax under 1888 Act. However, the appellant is liable to pay services charges for the services rendered by the

Corporation and it shall be open for the respondents to conduct an enquiry in accordance with provision of Section 144 of 1888 Act to decide the rateable value of the property. Ordered accordingly. Parties shall bear their own costs.

.....J.
(ASHOK BHUSHAN)

.....J.
(M.R. SHAH)

New Delhi,
March 19, 2020.