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क्र./प्रां/मार्गदर्शन/विविध/2024/46/95/121 भोपाल, दिनांक 24/10/2024

प्रति,

आयुक्त,
नगरीय प्रशासन एवं विकास संचालनालय,
शिवाजी नगर, भोपाल।

विषय: कृषि उपज मंडी समितियों पर नगरीय निकायों द्वारा अधिरोपित सेवा प्रभार के संबंध मे।

संदर्भ:- नगरीय विकास एवं आवास विभाग, मध्यप्रदेश शासन का पत्र क्रमांक 1208/1168/2022/18-3 दिनांक 23/03/2022

उपरोक्त विषयांर्तगत संदर्भित पत्र का अवलोकन हो, जिसके माध्यम से माननीय सर्वोच्च न्यायालय द्वारा सिविल अपील संख्या 9458-9463/2003 (राजकोट नगर निगम विरुद्ध भारत संघ और अन्य) में पारित आदेश दिनांक 19/11/2009 के अनुक्रम में शासकीय विभगों एवं संस्थाओं के भवनों पर सेवा प्रभार का भुगतान किये जाने का लेख किया गया है।

उक्त अनुक्रम में कतिपय नगरीय निकायों द्वारा कृषि उपज मंडी समितियों को सेवा प्रभार के भुगतान हेतु मांग पत्र जारी किये गए हैं, किन्तु मांग पत्रों में सेवा प्रभार/शुल्क की गणना का आधार, प्रदत्त सेवाओं का विवरण एवं समरूप सेवाओं हेतु निजी संपत्ति पर लगने वाले प्रभार की दर आदि अंकित नहीं है।

यहां यह उल्लेख करना आवश्यक है कि मध्य प्रदेश कृषि उपज मंडी अधिनियम, 1972 की धारा 9(3) के परंतुक में प्रावधान है कि *"मंडी-प्रांगण, उपमंडी प्रांगण के लिए या बोर्ड के प्रयोजन के लिए उपयोग में लाये गए परिसरों के संबंध में यह नहीं समझा जाएगा कि वे यथास्थिति नगरपालिका निगम, नगरपालिका परिषद, अधिसूचित क्षेत्र, ग्राम पंचायत या विशेष क्षेत्र विकास प्राधिकारी की सीमाओं में सम्मिलित हैं।"*

लेख है कि माननीय सर्वोच्च न्यायालय के आदेश दिनांक 14/10/2008 (CA 1921/2006) द्वारा कृषि उपज मंडी अधिनियम 1972 की धारा 9(3) का उल्लेख करते हुए मंडी समितियों पर नगर निगम द्वारा संपत्तिकर के अधिरोपण संबंधी याचिका को ख़ारिज करते हुए मंडी समिति के पक्ष में निर्णय पारित किया गया है ।

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अतः उपर्युक्त तथ्यों और परिस्थितियों को दृष्टिगत रखते हुए नगरीय निकायों को प्रदेश की कृषि उपज मंडी समितियों पर किसी प्रकार का सेवा प्रभार/शुल्क अधिरोपित नहीं करने बाबत् निर्देश प्रसारित करना चाहेंगे।

संलग्न : उपरोक्तानुसार।

(एम.सेलवेन्द्रन)
प्रबंध संचालक सह आयुक्त
म.प्र. राज्य कृषि विपणन बोर्ड
भोपाल

क्र./प्रां/मार्गदर्शन/विविध/2024/46/95/122 भोपाल, दिनांक 25/10/2024

प्रतिलिपि:- सूचनार्थ एवं आवश्यक कार्यवाही हेतु।

1. स्टाफ ऑफिसर, अपर मुख्य सचिव, मध्य प्रदेश शासन, नगरीय विकास एवं आवास विभाग।
2. निज सहायक, सचिव, मध्य प्रदेश शासन, किसान कल्याण तथा कृषि विकास विभाग।
3. अपर संचालक(वित्त), म.प्र. राज्य कृषि विपणन बोर्ड भोपाल।
4. संयुक्त संचालक, म.प्र. राज्य कृषि विपणन बोर्ड, आंचलिक कार्यालय.....(समस्त) की ओर आवश्यक कार्यवाही हेतु।
5. भारसाधक अधिकारी/सचिव, कृषि उपज मण्डी समिति (समस्त) .....जिला.....(समस्त) की ओर प्रेषित कर निर्देशित किया जाता है कि उक्त संबंध में आपके क्षेत्र के नगरीय निकायों को सूचित कर किसी भी प्रकार का सेवा प्रभार/शुल्क अधिरोपित नहीं करने हेतु अवगत कराये।

प्रबंध संचालक सह आयुक्त
म.प्र. राज्य कृषि विपणन बोर्ड
भोपाल

(16)

मध्यप्रदेश शासन
नगरीय विकास एवं आवास विभाग
मंत्रालय

क्रमांक 1208/1168/2022/18-3 दिनांक 23/03/2022

प्रति,

समस्त अपर मुख्य सचिव/प्रमुख सचिव/सचिव,
समस्त संभागीय आयुक्त,
समस्त विभागाध्यक्ष,
समस्त कलेक्टर,
मध्य प्रदेश।

विषयः– शासकीय विभागों एवं संस्थाओं के भवनों पर अधिरोपित सेवा प्रभार का नगरीय निकायों को भुगतान करने के संबंध में।

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मध्यप्रदेश नगर पालिक निगम अधिनियम, 1956 की धारा 136 तथा मध्यप्रदेश नगरपालिका अधिनियम, 1961 की धारा 127–क के प्रावधानों अनुसार संघ सरकार तथा राज्य सरकार के भवनों एवं भूमियों को संपत्ति कर से छूट प्राप्त है।

परन्तु मध्य प्रदेश नगर पालिक निगम अधिनियम, 1956 की धारा 132–क की उपधारा (1), तथा मध्यप्रदेश नगरपालिका अधिनियम 1961 की धारा 127–ख की उपधारा (1) के प्रावधानों अनुसार वह जल, प्रदाय जल निकास एवं मलवहन, ठोस अपशिष्ट प्रबंधन तथा अन्य किसी प्रकार की प्रदान की गई सेवाओं के लिए उपभोक्ता प्रभार अधिरोपित करेगी। इसके अतिरिक्त उपरोक्त धाराओं की उपधारा (2) के खण्ड (एक) के प्रावधानों अनुसार नगरीय निकास उन भवनों एवं भूमियों पर भी उपभोक्ता प्रभार अधिरोपित करेंगे जो संपत्तिकर से छूट प्राप्त है।

सर्वोच्च न्यायालय के आदेश दिनांक 19 नवम्बर 2009 के अनुसार नगरीय निकाय सरकारी संपत्तियों पर जल प्रदाय, सफाई, सीवरेज तथा अन्य सामान्य सेवाओं जैसे– पहुँच मार्ग, पथ प्रकाश तथा ड्रेनेज उपलब्ध कराने के बदले में सेवा प्रभार अधिरोपित कर सकते हैं जो कि निजी संपत्ति पर लगने वाले संपत्ति कर का 75 प्रतिशत, 50 प्रतिशत अथवा 33.33 प्रतिशत होगा तथा प्रदान की गई सेवाओं की मात्रा पर आधारित होगा तथा वह राज्य सरकार की संपत्तियों पर लगने वाले सेवा प्रभार से अधिक नहीं होगा। (सर्वोच्च न्यायालय के आदेश की प्रति संलग्न है (परिशिष्ट–1))

सर्वोच्च न्यायालय के आदेश के संदर्भ में शहरी विकास मंत्रालय, भारत सरकार द्वारा पत्र क्रमांक K-11025/26/2003-UCD दिनांक 17 दिसम्बर 2009 के माध्यम से केन्द्र शासन के समस्त विभागों को सेवा उपकर भुगतान करने के निर्देश जारी किये गये हैं। (परिशिष्ट–2)

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इस संदर्भ में उपसचिव, नगरीय विकास एवं पर्यावरण विभाग, मध्य प्रदेश द्वारा शासन के समस्त विभागों से नगरीय निकायों को उनके द्वारा निर्धारित सेवा प्रभार का भुगतान करने हेतु परिपत्र क्रमांक एफ 6-7/2013/18-3 दिनांक 20.10.2015 जारी किया गया। (प्रति संलग्न है परिशिष्ट-3)

परन्तु वर्तमान में शासकीय भूमि एवं भवनों पर अधिरोपित सेवा प्रभार का नियमित भुगतान विभागों द्वारा नहीं किया जा रहा है। सेवा प्रभार नगरीय निकायों का वैधानिक अधिकार है तथा उसके भुगतान न होने के कारण उनकी आय में भारी कमी आती है, जिसके कारण उनके द्वारा प्रदान की जाने वाली सेवाओं पर दुष्प्रभाव पड़ता है।

अतः सभी विभाग आवश्यकता होने पर नगरीय निकायों को सेवा प्रभार (पूर्व लंबित देयकों सहित) का भुगतान करने हेतु अधिरोपित किए गए सेवा प्रभार (लंबित देयताओं सहित) की मांग अनुसार आपके विभाग के अंतर्गत "22-कार्यालय व्यय, 011-किराया महसूल और स्थानीय कर" मद अंतर्गत बजट प्रावधान एवं भुगतान की कार्यवाही सुनिश्चित करें। वर्तमान वित्तीय वर्ष में यदि उपरोक्त मद में बजट प्रावधान नहीं किया गया है, तो #51-अन्य प्रभार 000-अन्य प्रभार से नगरीय निकायों के लंबित देयकों का भुगतान करना सुनिश्चित करें।

प्रमुख सचिव
नगरीय विकास एवं आवास विभाग
मध्यप्रदेश शासन

21/3/2022
प्रमुख सचिव
वित्त विभाग
मध्यप्रदेश शासन

पृ क्र /209/1167/2022/18-3 दिनांक 23/03/2022

प्रतिलिपि :-

1. आयुक्त नगरीय प्रशासन एवं विकास संचालनालय भोपाल।
2. समस्त संभागीय संयुक्त संचालक, नगरीय प्रशासन एवं विकास, संचालनालय, भोपाल।
3. समस्त आयुक्त, नगर निगम, म0प्र0।
4. समस्त मुख्य न.रि पालिका अधिकारी, नगर पालिका परिषद एवं नगर परिषद।

सूचनार्थ एवं आवश्यक कार्यवाही हेतु।

उपसचिव
नगरीय विकास एवं आवास विभाग
मध्यप्रदेश शासन

(85)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.9458-9463 OF 2003

Rajkot Municipal Corporation & Ors. ... Appellants
Vs.
Union of India ... Respondent

WITH

CIVIL APPEAL NO. 9457 OF 2003

Ahmedabad Municipal Corporation ... Appellant
Vs.
Union of India & Ors. ... Respondents

CIVIL APPEAL NO.9464 OF 2003

Rajkot Municipal Corporation & Anr. ... Appellants
Vs.
Union of India & Anr. ... Respondents

CIVIL APPEAL NOS.9465 OF 2003

Rajkot Municipal Corporation ... Appellant
Vs.
Union of India & Ors. ... Respondents

CIVIL APPEAL NO.6706 OF 2004

Vadodara Municipal Corporation ... Appellant
Vs.
Union of India & Ors. ... Respondents

ORDER

The Municipal Corporation of Rajkot, Ahmedabad, Jamnagar, and Vadodara in the state of Gujarat, which are statutory local municipal authorities under the Bombay Provincial Municipal Corporation Act, 1949 are the appellants in these appeals by special leave. The issue in these appeals relates to payment of service charges relating to supply of water, conservancy/sewerage disposal and other indirect services like approach roads with street lighting, drainage etc. provided by the said Municipal Corporations to properties owned by Union of India and its departments.

2. The appellant municipal corporations have been raising bills annually, in regard to the service charges payable by Union of India and its departments. When some of the bills were not paid, the municipal corporations resorted to attachment of the properties of Union of India, by invoking revenue recovery proceedings by treating the dues as arrears of taxes. Such actions of the appellants were challenged by Union of India in a batch of writ petitions before the Gujarat High Court which were disposed of by the impugned common order of the High Court dated 19.9.2002. The High Court allowed the petitions holding as follows :

> "None of the impugned demand notices or recovery orders intimating attachment of the properties of the Union Government are referable to any contract and these have obviously been issued by the Municipal Corporation under the purported exercise of powers to recover service charges in lieu of property taxes. When the taxes themselves could not be levied except by removing the exemption by law made by the Parliament as contemplated by Section 285(1), the embargo cannot betaken away by any implication arising from such administrative communications. Even if the respondents were entitled to recover any compensation on the basis of any alleged assurances of the Central Government, the nature of their demand would have been entirely different and not as has been made in all these matters by way of recovery notices for tax dues and coercive action for recovery of such dues. The attempt to base the contention now on quasi-contract theory and entitlement for compensation for services rendered, cannot cloud the nature of the demand notices and the orders of recovery which are issued under the provisions of the said Act and the Rules having bearing on the aspect of levy and recovery of Municipal taxes No exemption can be spelt out from the communication of 1954 and 197 which can make any inroad in Article 285(1) of the Constitution.
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> x x x x x x x
>
> It is thus clear to us that, in absence of any notification under Section 184(1) of the Railways Act, 1989 or under the corresponding provision of Section 135(1) of the Act of 1890, and in absence of any contract as contemplated under sub-section (4) of the corresponding provision of Section 135 of the Act of 1890, it was not open to any of these corporations to impose any tax or service charges in lieu of tax under the said Act and effect recovery by issuing the impugned demand notices and other coercive orders. Admittedly, there is no law enacted by the Parliament, withdrawing the exemption from Municipal taxes, as contemplated by Article 285(1) in respect of the properties occupied by the Postal Department or Office of the Accountant General. Obviously, therefore, the recovery of property taxes or service charges in lieu of such taxes as is sought to be done under the impugned demand notices and orders issued for the coercive recovery of the

Municipal taxes under the said Act, is ultra vires the powers of the Municipal Corporation. All the impugned notices, demand notices as well as other orders issued by these Municipal Corporations for effecting recovery of service charges in lieu of taxes are, therefore, hereby set aside.

Rule is made absolute in each of these petitions accordingly, with no order as to costs. If any amount is deposited pursuant to the interim orders, that may be refunded to the Union of India."

3. The said order was challenged by the appellant Municipal Corporations on the ground that the words "exempt from all taxes imposed by a State or by any authorities within the State" occurring in Article 285 of the Constitution of India do not include service charges claimed by them in respect of properties owned by the Union of India. They also contend that the arrangement arrived at and referred to in the communications / circulars the Government of India dated 10.5.1954, 29.3.1967, 28.5.1976 and 26.8.1986 were enforceable agreements between the Government of India and the Municipal Corporations, which had nothing to do with Article 285. The municipal corporations also contended that section 135(1) and 184(1) of the Railways Act, 1989 exempted the Railways only from payment of taxes and not from payment of service charges.

4. Article 285 of the Constitution provides that :

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"(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."

"(2) Nothing in clause (1) shall, until Parliament bylaw 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 is liable or treated as liable, so long as that tax continues to be levied in that State."

5. In Union of India & Ors. v. State of Uttar Pradesh & Ors.- 2007 (11) SCC 324, this Court upheld the decision of the High Court that charges for supply of water or for other services rendered under any statutory obligation, is a fee and not tax. It was held that the Union of India was liable to pay such charges and should honour the bills served in that behalf. Referring to Section 52 of the UP Water Supply and Sewerage Act,1975, it was held that the charges were loosely termed as "tax", that the nomenclature was not important and what was charged is a fee for the supply of water as well as maintenance of the sewerage system, and such service charges are to be considered as a fee and were not hit by Article

285 of the Constitution. It was further made clear that what was exempted by Article 285 was a tax on the property of Union of India but not a charge for service which were being rendered in the nature of water supply or for maintenance of sewerage system.

6. When these appeals were earlier listed for hearing, both sides agreed that they will attempt a broad consensus on several pending issues and narrow down the areas of controversy and agree for a dispute resolution mechanism. We are told that in pursuance of it, discussions were held among various departments of the Government of India with the Department of Urban Development. In pursuance of it, an affidavit dated 9.4.2009 has been filed on behalf of Union of India crystallizing its stand on various issues. Union of India has now agreed in principle for the following:

(i) It is liable to pay service charges to the municipal corporations for providing services like supply of water, conservancy/sewerage disposal, apart from general services like approach roads with street lights, drains etc.

(ii) It will pay service charges to the Municipal Corporations, for the services, as stated in its circulars dated 10.5.1954, 29.3.1967, 25.5.1976 and 26.8.1986, but will not pay any taxes.

(iii) Having regard to the fact that only service like supply of water could be metered and other services like drainage, solid waste management, approach roads, street lighting etc., could not be metered, the percentage of property tax will be worked out as service charges, on the basis of instructions issued by the Ministry of Finance.

(iv) The concerned Ministry of the Union to which the property belongs will enter into separate contracts with the respective municipal corporation for supply of services and payment of service charges and pay the bills for annual service charges regularly.

(v) Union of India and its departments will periodically review the arrangements with the respective municipal corporations, as suggested by its Advisory committees and make modifications or revisions in the rates of service charges.

(vi) Wherever properties of state government are exempted, such exemption shall apply to properties of central government also. Under no circumstances, the service charges payable by

the Union of India will be more than the service charges paid by the state government.

(vii) The arrangement will not affect the legal rights conferred by the appropriate laws, in regard to any property held by the Union.

7. The Union of India has also stated that taking note of the relevant circumstances, it has decided to pay service charges at the following rates: (a) 75% of the property tax levied on private owners, where the properties of the Union are provided by the municipal corporations with all services/facilities as were provided to other areas within the municipal corporation;(b) 50% of the property tax levied on private owners, in regard to properties of the Union, where only some of the services/facilities were availed; and (c) upto a maximum of one-third (33 and 1/3%) of the property tax levied on private owners in regard to properties which did not avail any of the services provided by the municipal corporation, as they were self-sufficient on account of all services being provided by the Union itself.

8. It was also clarified that where no services were availed from the municipal corporation, a rate within the ceiling of 33 and 1/3% of the property tax, will be negotiated and settled having regard to the relevant circumstances. In so far as properties of Indian Railways are concerned, it was stated that as it owns properties in virtually every municipal corporation in India and normally all its properties do not utilise the services provided by municipal corporations, Railways propose to pay only a token service charge of 5% or such other rate as may be agreed by mutual negotiations.

9. Learned counsel for the appellants submitted that the appellant municipal corporations submitted that they were broadly in agreement with what has been stated and agreed by Union of India in the said affidavit. The appellant-Municipal Corporations also confirmed and agreed:

(i) that they will not levy or demand any "property tax" in respect of the properties belonging to Union of India and used for the purposes of the government;

(ii) that the demands will relate only to service charges for direct services like supply of water and conservancy/sewerage disposal services, and other general services such as approach roads with street lighting, drainage etc.;

(iii) that they broadly agreed to the rates of service charges agreed by Union of India; and

(iv) that if there is defaults or if negotiations with the concerned departments for in regard to service charges fail they will not take any coercive steps for recovery (like cutting off supplies) nor resort to revenue recovery proceedings, but will take recourse to other remedies available to them in law for recovery.

10. The appellants however expressed reservations only in regard to the stand of the Railways that it will only pay nominal service charges at 5% of the property tax. They point out that there can be no property of Railways which can be termed as 100% self sufficient in regard to services, as common indirect services provided by the Municipal Corporation (like approach roads with street lighting etc.)will be enjoyed by them. They also drew our attention to the fact that Ministry of Railways (Railway Board)had also issued a circular dated 24.7.1954, similar to the circulars issued by the Government of India, Ministry of Finance, providing for payment of part of the property tax, as services charges for water, scavenging etc. The learned Solicitor General however stated that she was not sure whether the said circular continues in force or was superseded by other circulars. Be that as it may.

11. In view of the above, there is no need to consider the appeals on merits. We dispose of appeals and pending applications by recording the following broad agreement between the parties:

(i) The Union of India and its departments will pay service charges for the services provided by the appellant municipal corporations. They will not pay any property tax. The service charges will be paid at 75%, 50% and 33 1/3% respectively of the property tax levied on private owners, depending upon whether Union of India or its department is utilising the full services, or partial services or nil services. The Union of India represented by its concerned department will enter into agreements/understandings in regard to service charges for each of its properties, with the respective municipal corporation.

(ii) The above arrangement is open to modification or periodical revisions by mutual consent. In the event of disagreement on any issue, parties will resort to a dispute resolution mechanism by reference to a three Member Mediation Committee consisting of a representative of the Central government, a representative of the concerned municipal corporation, and a senior representative (preferably the Secretary in charge of the department of municipal administration) of the State of Gujarat.

(iii) If Railways or any other department of Union of India owning a property changes the agreement/understanding unilaterally, or fail to reach a settlement through the Mediation Committee in regard to any disputes, or fails to clear the dues, it is open to the concerned Municipal Corporation to initiate such action, as it deems fit in accordance with law by approaching the jurisdictional courts/tribunal for final and interim reliefs.

(iv) The municipal corporations shall not resort to coercive steps (such as stoppage of supplies / services) nor resort to revenue recovery proceedings for recovery of any service charge dues from Union of India or its departments.

(v) The service charges payable by Union of India will under no circumstances be more than the service charges paid by state government for its properties. Wherever exemptions or concessions are granted to the properties belonging to the state government, the same shall also apply to the properties of Union of India.

(vi) If the Railways does not to abide by the four general circulars of the Union of India dated 10.5.1954, 29.3.1967, 28.5.1976 and 26.8.1986 and the general consensus set out above, it is open to municipal corporation to take such action as is permissible in law.

.....J.
(R V Raveendran)

New Delhi;
November 19, 2009.

.....J.
(K.S. Radhakrishnan)

किया जाय, वहां उस पर 6 प्रतिशत प्रतिवर्ष की दर से ब्याज लगेगा जो किश्त के साथ देय होगा।

धारा **9.** बोर्ड या मंडी समिति के लिए भूमि का अर्जन –

(1) जब मंडी-क्षेत्र के भीतर की कोई भूमि इस अधिनियम के प्रयोजनों के लिए अपेक्षित हो और बोर्ड या मंडी समिति उसे करार द्वारा अर्जित करने में असमर्थ हो, तब राज्य सरकार, यथास्थिति बोर्ड या मंडी समिति के निवेदन पर, ऐसी भूमि को लैण्ड एक्वीजीशन ऐक्ट, 1894 (क्रमांक 1 सन् 1894) के उपबंधों के अधीन अर्जित करने की कार्यवाही कर सकेगी और उस अधिनियम के अधीन अधिनिर्णीत किए गए प्रतिकर का तथा किन्हीं अन्य प्रभारों का, जो कि उस अर्जन के संबंध में राज्य सरकार द्वारा उपगत किए गए हों, मंडी समिति द्वारा संदाय किया जाने पर, वह भूमि यथास्थिति बोर्ड या मंडी समिति में निहित हो जायगी।

[44][(2) कोई भूमि जो उपधारा (1) के अधीन बोर्ड या मंडी समिति के लिए अर्जित की जा चुकी हो और उसमें निहित हो, राज्य सरकार द्वारा इस प्रयोजन के लिए बनाए गए नियमों के अनुसार ही विक्रय के द्वारा, पट्टे के द्वारा या अन्यथा अंतरित की जाएगी।]

[45][(3) मध्यप्रदेश लैंड रेवेन्यू कोड, 1959 (क्रमांक 20 सन् 1959) में और उसके अधीन बनाए गए नियमों में, जहां तक कि वे भूमि के व्यपवर्तन, कृषि से किसी अन्य प्रयोजन के लिए भूमि के उपयोग में परिवर्तन हो जाने के परिणामस्वरुप भू-राजस्व के पुनरीक्षण तथा उससे आनुषंगिक अन्य विषयों से संबंधित है, अंतर्विष्ट कोई भी बात ऐसी भूमि को लागू नहीं होगी जो कि मंडी समिति द्वारा उपधारा (1) के अधीन अर्जित की गई हो या जो अंतरण द्वारा, क्रय द्वारा, दान द्वारा, या अन्यथा अर्जित की गई हो और किसी मंडी-प्रांगण या किसी उपमंडी प्रांगण की स्थापना के प्रयोजन के लिए उपयोग में लाई गई हो :

परंतु मंडी-प्रांगण, उपमंडी प्रांगण के लिए या बोर्ड के प्रयोजन के लिए उपयोग में लाये गए परिसरों के संबंध में यह नहीं समझा जाएगा कि वे यथास्थिति नगरपालिका निगम, नगरपालिका परिषद, अधिसूचित क्षेत्र, ग्राम पंचायत या विशेष क्षेत्र विकास प्राधिकारी की सीमाओं में सम्मिलित है।]

धारा **10.** प्रथम मंडी समिति का गठन होने तक भारसाधक अधिकारी या भारसाधक समिति की नियुक्ति -

[46][धारा 10. प्रथम मंडी समिति का गठन होने तक भारसाधक अधिकारी या भारसाधक समिति

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[44] मध्यप्रदेश अधिनियम संख्यांक 15 सन् 2003 द्वारा (दिनांक 28-04-2003 से) प्रतिस्थापित।

[45] मध्यप्रदेश अधिनियम संख्यांक 24 सन् 1986 द्वारा (दिनांक 21-07-1986 से) उपधारा (3) प्रतिस्थापित। प्रतिस्थापन के पूर्व उपधारा (3) निम्न प्रकार थी - "मध्यप्रदेश लैण्ड रेवेन्यू कोड, 1959 (क्रमांक 20 सन् 1959) की धारा 59 तथा 172 की कोई भी बात उस भूमि को लागू नहीं होगी, जो उपधारा (1) के अधीन मंडी समिति के लिए अर्जित की गई हो या अंतरण द्वारा, क्रय द्वारा, दान द्वारा अन्यथा अर्जित की गई हो और मंडी प्रांगण की स्थापना के प्रयोजन के लिए उपयोग में लाई गई हो।"

[46] मध्यप्रदेश अधिनियम संख्यांक 8 सन् 1994 द्वारा (दिनांक 16-01-1994 से) धारा 10 प्रतिस्थापित।

REPORTABL

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1921 OF 2006

Nagar Palika Nigam ..Appellant

versus

Krishi Upaj Mandi Samiti and Ors. ..Respondents

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. A Bench of two learned Judges being of the view that one of the questions which
interlinked with the interpretation of Section 9(3) of Madhya Pradesh Krishi Upaj Man
Adhiniyam, 1972 (in short the 'Adhiniyam') would be whether having regard to th
provisions contained in Part IXA of the Constitution of India, 1950 (in short th
'Constitution') the Legislature of the State of M.P. had the requisite legislativ
competence therefor. Respondent No.1 filed a writ petition before the Madhya Prades
High Court under Article 226 of the Constitution with basically two prayers. They are a
under:

"(1) The respondent No.1-Municipal Corporation, Ratlam has no jurisdiction or right to claim the property tax from the petitioner for the building and the superstructure constructed in the Market Yard within the area of Municipal Corporation, Ratlam.

(2) That the amount of Rs.70,000/- which has been deposited by the petitioner with respondent No.1 pursuant to the notice and auction proceedings initiated against the petitioner should be directed to be refunded to the petitioner. Interest on the said amount is also being claimed."

2. With reference to Section 9(3) of the Adhiniyam it was submitted that exemption had been provided on the property on which no property tax could be levied even if the same falls within the area of Municipal Corporation, Municipal Council, Notified Area, Gram Panchayat or a Special Area Development Authority. Learned Single Judge accepted the first prayer, but permitted the respondent-writ petitioner to avail such remedy as is available by filing a civil suit in respect of second prayer.

3. Review petition was filed by the present appellant which was dismissed. A Letters Patent Appeal was also filed, which was dismissed on the ground that the same was not maintainable against an order passed in the review petition. The appeal was also without merit.

4. The basic stand in the appeal was whether the Corporation had jurisdiction and authority to assess and recover the property tax from respondent No.1 for the buildings, superstructure constructed in the market yard within the area of Municipal Corporation, Ratlam.

5. During the course of hearing of the appeal, learned counsel for the appellant fairly accepted that there was no challenge to the proviso appended to sub-section (3) of Section 9 of the Adhiniyam. It is also fairly accepted that the proviso casts out an exception.

6. Learned counsel for the respondents on the other hand submitted that in the absence of a challenge to the legality of the proviso, there is no question of adjudicating the issue which the reference Bench has considered to be of importance.

7. Section 9(3) of the Adhiniyam so far as relevant reads as under:

> "(3) Nothing contained in the Madhya Pradesh Land Revenue Code, 1959 (No.20 of 1959), and rules made thereunder in so far as they relate to diversion of land, revision of land revenue consequent on the change in the use of land from agriculture to any other purpose and other matters incidental thereto shall apply to land acquired by the market committee under sub-section (1) or acquired by transfer, purchase gift or otherwise and use for the purpose of establishment of a market yard or a sub-market yard:
>
> Provided that the premises used for market yard, sub-market yard or for the purpose of the Board shall not be deemed to be included in the limits of the Municipal Corporation, Municipal Council, Notified Area, Gram Panchayat or a Special Area Development Authority, as the case may be."

8. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Survey [1880 (5) QBD 170], (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha (AIR 1961 SC 1596) and Calcutta Tramways Co. Ltd. v. Corporation of Calcutta (AIR 1965 SC 1728); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have

included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in West Derby Union v. Metropolitan Life Assurance Co. (1897 AC 647) (HL). Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See A.N. Sehgal and Ors. v. Raje Ram Sheoram and Ors. (AIR 1991 SC 1406), Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors. (AIR 1991 SC 1538) and Kerala State Housing Board and Ors. v. Ramapriya Hotels (P)Ltd. and Ors. (1994 (5) SCC 672).

9. "This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant" (Coke upon Littleton 18th Edition, 146)

10. "If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails....But if the later clause does not destroy bu

only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in Forbes v. Git [1922] 1 A.C. 256).

11. A statutory proviso "is something engrafted on a preceding enactment" (R. v. Taunton, St James, 9 B. & C. 836).

12. "The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in Re Barker, 25 Q.B.D. 285).

13. A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (See Jennings v. Kelly [1940] A.C. 206).

14. The above position was noted in Ali M.K. & Ors. v. State of Kerala and Ors. (2003 (4) SCALE 197).

15. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.

16. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it.

(See Institute of Chartered Accountants of India v. M/s Price Waterhouse and Anr. (AIR 1998 SC 74)) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner (1846 (6) Moore PC 1), Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Patel and Anr. (JT 1998 (2) SC 253)). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (1978 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL), quoted in Jamma Masjid, Mercara v. Kodimaniandra Deviah and Ors.(AIR 1962 SC 847).

17. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).

(AIR 1977 SC 842), it was observed that Courts must avoid the danger of a prior determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

19. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain (2000 (5) SCC 515). The legislative casus omissus cannot be supplied by judicial interpretative process.

20. Two principles of construction – one relating to casus omissus and the other in regard to reading the statute as a whole – appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in Artemiou v.

Procopiou (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

21. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But," on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See Fenton v. Hampton 11 Moore, P.C. 345). A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute - Casus omissus et oblivioni datus dispositioni communis juris relinquitur; "a casus omissus," observed Buller, J. in Jones v. Smart (1 T.R. 52), "can in no case be supplied by a court of law, for that would be to make laws."

22. The golden rule for construing wills, statutes, and, in fact, all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See Grey v. Pearson 6 H.L. Cas. 61). The latter part of this "golden rule" must, however, be applied with much caution. "if," remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See Abley v. Dale 11, C.B. 378).

23. At this juncture, it would be necessary to take note of a maxim "Ad ea quae frequentius accidunt jura adaptantur" (The laws are adapted to those cases which more frequently occur).

The above position was highlighted in Maulavi Hussein Haji Abraham Umarji v. State of Gujarat (2004 (6) SCC 672).

24. Since there was no challenge at any point of time by the appellant to the proviso to sub-section (3) of Section 9 on the alleged ground of lack of legislative competence,

obviously the High Court could not have dealt with that issue. Till now also, no such challenge has been made by the appellant. That being so, we find no scope for interference with the order passed by the High Court. In the circumstances indicated above, there is no need to answer the reference made. If and when challenge is made to the legislative competence to enact proviso to sub-Section (3) of Section 9, it goes without saying, the same shall be considered in its proper perspective and in accordance with law.

25. The appeal is disposed of without any order as to costs.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(P. SATHASIVAM)

.....J.
(AFTAB ALAM)

New Delhi
October 14, 2008