* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.07.2020
Pronounced on: 22.10.2020

\+ **W.P.(C.) 8118/2012**

DELHI INTERNATIONAL AIRPORT (P) LTD ... Petitioner

Through: Mr. Gopal Jain, Senior Advocate with Ms. Kirat Randhawa, Mr. Prashant Pasupuliti and Ms. Shreya Jad, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION ...Respondent

Through: Mr. Sudhir Nandrajog, Senior Advocate with Ms. Mini Pushkarna, Standing Counsel.
Ms. Swagata Bhushan, Ms. Shina Pandey and Ms. Khushboo Nahar, Advocates.

\+ **W.P.(C.) 678/2013**

M/S DELHI OUTDOOR ADVERTISERS ASSOCIATION (REGD) ... Petitioner

Through: Mr. Anand Mishra and Mr. Hemant Kumar, Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION & ORS. ...Respondents

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr Gaurang Kanth, Ms. Biji Rajesh and Ms. Eshita Baruah, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. Aggrieved with the levy of 'property tax' on structures erected for the affixing of hoardings thereon (which are used for display of advertisements), the Petitioners, by way of the present petitions, impugn the power of the South Delhi Municipal Corporation ('SDMC') to impose the tax, by contending *inter-alia* that Bye-Laws 9(m) and 14 of Delhi Municipal Corporation (Property Taxes) Bye-Laws, 2004 ('2004 Bye-Laws'), whereby the levy has been imposed, are *ultra vires* the Delhi Municipal Corporation Act, 1957 ('DMC Act'). They also seek consequential relief in the nature of writ of mandamus for quashing of notices and the demands raised by the Respondent under the impugned 2004 Bye-Laws. Since the grounds of challenge and nature of reliefs sought in both the petitions are identical, and common questions of law arise therein, we proceeded to hear both the petitions together, and the same are now being decided by way of this common judgment.

Foreword explaining the conundrum & the scope of challenge

2. Petitioner's quandary arose with the Respondent, exercising its power conferred under Section 481 of the DMC Act, framed the 2004 Bye-Laws whereby it has levied building tax on the structures and 'hoardings' used for display of advertisements. The Petitioners attack the levy on several grounds that can be broadly summarized as follows:

(a) Impugned Bye-Laws are in violation of Article 265 of the Constitution of India. It is argued that the parent statute, i.e. the DMC Act nowhere provides for impost of property tax on 'hoardings'.

(b) To buttress this point, Petitioners rely upon the definition of the word 'building' as found in the Act and are quick to point out that the same does not include 'hoardings'. Then, relying upon the principle of *casus omissus*, it is argued that the legislature never intended to include 'hoardings' in the definition of 'building';

(c) Hoardings are moveable structures and cannot be accommodated in the definition of 'building';

(d) Relying upon the principle of *noscitur a sociis*, it is contended that the words 'any other structure', found in the definition of 'building' should be interpreted in accordance with the words surrounding it and would include only those structures which have a roof, or at least constructed with a motive to a lay roof over them in future, and, those which are capable of holding a roof; Section 116E(1) of the Act provides for determination of the annual value of the covered space of a building for levy of building tax. The explanation to the said provision defines 'covered space' in relation to a building, and does not include 'hoardings'. Bye-Law 14 provides that in addition to the covered space specified in the explanation to section 116E(1), the covered space in relation to a building shall include *"hoardings erected on the surface, or top, or any other open space of a building"*. Petitioners argue that on a conjoint reading of the aforesaid provisions, that Respondents have no jurisdiction or authority under law to impose property tax on 'hoardings' as there is no such authority vested in them

under the DMC Act. Property tax in the form of building tax is leviable on the covered area of the building, and that Respondents, by virtue of Bye-Law 14, cannot widen the scope of section 116E(1) to bring 'hoardings' within its ambit by broadening the scope of the explanation to section 116E(1);

(e) The DMC Act provides for a clear, detailed and separate scheme for charging advertisement tax on the advertisements being displayed on or upon land or buildings under Section 142 and onwards, and a separate rate of tax is provided therein, or in the Schedule V amended to the Act. It is thus contended that under the guise of delegated legislation, the Respondents are taxing the same thing twice, and doing what the Legislature never intended to do. Petitioners, thus, urge that the Bye-Laws 9(m) and 14 of 2004 Bye-Laws be declared as *ultra vires* the DMC Act.

(f) The use factor of 10 assigned for hoardings, being 10 times more than the normal rate, is arbitrary and illegal.

The Regulatory and Statutory framework governing the levy of Property Tax [Building Tax]:

3. Before giving our verdict, as a prelude, let us briefly note the statutory provisions under the DMC Act that deal with the controversy in the present petitions. Section 113 of the Act lists out types of taxes that a Corporation shall levy, which includes, amongst others, property tax, and tax on advertisement. The levy, assessment, and collection of taxes is to be done in accordance with the provisions of the Act and the Bye-Laws made thereunder. The said provision reads as under:

> ***"113. Taxes to be imposed by the Corporation under this Act.*** *–*
> *(1) The Corporation shall, for the purposes of this Act, levy the following taxes, namely:—*
> *(a)* ***property taxes;***
> *(b) a tax on vehicles and animals;*
> *(c) a theatre-tax;*
> ***(d) a tax on advertisements other than advertisements published in the newspapers;***
> *(e) a duty on the transfer of property; and*
> *(f) a tax on buildings payable along with the application for sanction of the building plan.*
>
> *X ... X ... X ... X*
>
> *(3)* ***The taxes specified in sub-section (1) and sub-section (2) shall be levied, assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder****."*

4. Section 114, under the heading 'Property Taxes', lists the component of property tax and stipulates that property taxes shall consist of building tax and vacant land tax. The said provision reads as under:

> *"**114. Component of property tax**. – Save as otherwise provided in this Act, the property taxes shall be levied on lands and buildings in Delhi and shall consist of the following, namely:*
> *(a) a building tax, and*
> *(b) a vacant land tax."*

5. The word 'building' is defined under the Act in Section 2(3) as under:

> *"**2. Definitions. –** In this Act, unless the context otherwise requires,—*
> *(3) "building" means a house, out-house, stable, latrine, urinal, shed, hut, wall (other than a boundary wall) or any other structure, whether of masonry, bricks, wood, mud, metal or other material but does not include any portable shelter;"*

6. Section 114A of the DMC Act deals with determination of building tax and the said provision reads as under:

*"**114A. Building tax. –** For any building, the building tax shall be equal to the rate of building tax as may be prescribed by the Corporation under section 114D multiplied by the annual value of the covered space of building determined under sub-section (1) of section 116E or section 116F."*

7. The rate of building tax is provided in Section 114D of the DMC Act. Section 116A of the Act deals with classification of vacant lands and buildings into colonies and groups, and specification of base unit area values therefor. It stipulates that Municipal Valuation Committee shall give recommendations for classification of vacant lands and buildings on the basis of parameters enumerated in the provision. One such parameter is the use-wise categorisation provided in Section 116(1)(f) of the Act which reads as under:

*"**116A. Classification of vacant lands and buildings into colonies and groups and specification of base unit area values therefor**. –*
(1) The Municipal Valuation Committee shall recommend the classification of the vacant lands and buildings in any ward of Delhi, referred to in section 5, into colonies and groups of lands and buildings after taking into account the following parameters:
(a) to (e) X ... X ... X ... X
(f) use-wise category of any building including residential building, business building, mercantile building, building for recreation and sports purposes, industrial building, hazardous building and public purpose building including educational, medical and such other institutional building and farmhouse, as may be specified by a Corporation;"

8. Section 116E of the DMC Act deals with determination of annual value of covered space of a building and of a vacant land. The said provision reads as under:

***"116E. Determination of annual value of covered space of building and of vacant land.** - (1) The annual value of any covered space of building in any ward shall be the amount arrived at by multiplying*

the total area of such covered space of building by the final base unit area value of such covered space and the relevant factors as referred to in clause (b) of sub-section (2) of section 116A.

Explanation.-"covered space", in relation to a building, shall mean the total floor area in all the floor thereof, including the thickness of walls, and shall include the spaces of covered verandah and courtyard, gangway, garage, common service area, staircase, and balcony including any area projected beyond the plot boundary ***and such other space as may be prescribed.***

(2) A Corporation may require the total area of the covered space of building as aforesaid to be certified by an architect registered under the Architects Act, 1972 (20 of 1972), or any licensed architect, subject to such conditions as may be prescribed.

(3) The annual value of any vacant land in any ward shall be the amount arrived at by multiplying the total area of such vacant land by the final base unit area value of such land and the relevant factors as referred to in clause (b) of sub-section (2) of section 116A.

(4) If, in the case of any vacant land or covered space of building, any portion thereof is subject to different final base unit area values or is not self-occupied, the annual value of each such portion shall be computed separately, and the sum of such annual values shall be the annual value for such vacant land or covered space of building, as the case may be." (emphasis supplied)

9. Another relevant provision is Section 481 of the DMC Act which has been invoked by the Respondent while exercising the power to frame the impugned Bye-Laws. The said provision is noted, analysed and discussed later in this judgment.

Relevant provisions for levy on 'hoardings' under the Delhi Municipal Corporation (Property Taxes) Bye-Laws, 2004

10. In exercising of the power conferred under Section 481 of the DMC Act, the Corporation *vide* Notification No. 7(367)(35)/2002/UD/3401 dated 27th February, 2004, published the Delhi Municipal Corporation (Property Taxes)

Bye-Laws, 2004. Bye-Law 9 of the 2004 Bye-Laws sets out the definitions of use-wise categories of buildings for the purposes of clause (f) of sub-section (1) of section 116A. 'Hoarding' finds mention in clause (m) of Bye-Law 9 as under:

> ***"9. Definitions of use-wise categories of buildings*** *– For the purposes of clause (f) of sub-section (1) of section 116-A, the use wise-*
>
> *X ... X ... X ... X*
>
> *(m) "hoardings" shall mean large boards used to display advertisements, erected on poles, on the ground or on a building;"*

11. Bye-Law 14 stipulates other spaces to be included in covered space in relation to a building. The explanation to this Bye-Law provides for the mechanism of calculating covered area of hoarding.

> ***"14. Other spaces to be included in covered space in relation to building****. – In addition to the covered spaces specified in the Explanation to sub-section (1) of section 116E, the covered space in relation to a building shall also include basements, mezzanine floors, barsatis and stilts meant for parking and TV/Telecom towers* ***and hoardings erected on the surface or top or any other open space of a building****.*
>
> *Explanation. – In case of buildings with common areas/services shared by more than one owner/occupant, it shall be divided proportionately according to the covered area enjoyed by the owner/occupier. A fire escape (staircase) added subsequently to a building, loft floor, refuse areas in multi-storeyed buildings, shall not be counted towards covered area calculation. In the case of TV /Telecom and other such towers, the covered area shall include the area covered by the extremities of foundation multiplied by the total height, while* ***in the case of hoarding, covered area shall mean the square of extremities of the poles on which hoardings are erected plus the area of the hoarding."*** (emphasis supplied)

<u>Legislative scheme of taxation</u>

12. Having set out the relevant provisions, let us briefly state the scheme of taxation. Within the territory of Delhi (National Capital Territory), municipal services are provided by Municipal Corporations established under the Act, which includes the Respondent. Chapter III of the Act sets out the obligatory and discretionary functions of a Corporation. In order to achieve the purposes of the Act, and to discharge its obligations, corporations are entitled to impose taxes as defined in Chapter VIII of the Act. In this chapter, under the heading 'Levy of Taxes', Section 113 enumerates various taxes that the Corporations can levy. Property tax is one of the imposts listed therein. This tax is one of the principal sources of revenue for a Corporation. Property tax is levied on both lands and 'buildings' as defined, and consist of a building tax and vacant land tax. After the amendment of the Act by virtue of Delhi Act 6 of 2003, Corporations use the 'Unit Area System' for property tax calculation. For this purpose, Delhi is also divided into eight categories, from A to H, based on the values of properties in the colonies belonging to each category. The rate of property tax and the Unit Area Value i.e. the assigned value of the property, differ for all the eight categories. Section 116A of the Act deals with the manner of calculation of property tax by classifying the vacant lands and buildings into colonies and groups after taking into consideration the parameters mentioned therein. Section 116E(1) provides the methodology for determination of annual value of the covered space of the building. Under sub-section (1) of Section 481, a Corporation is empowered to make Bye-Laws to provide for the matters listed in the said provision which includes matters relating to the levy, assessment, collection, refund or remission of taxes under the Act. Exercising power under the afore-noted provision, the Corporations formulated the Delhi Municipal Corporation (Property Taxes) Bye-Laws,

2004. Bye-Law 9 of the 2004 Bye-Laws defines use-wise categories of various buildings for the purpose of clause (f) of Sub-section (1) of Section 116A of the Act. Bye-Law 9(m) deals with use-wise category of 'hoardings', and are defined to mean large boards used to display advertisements erected on poles, on the ground, or on a building. Further, Bye-Law 14 stipulates that in addition to covered spaces specified in relation to a building in the explanation to sub-section (1) of section 116E, it shall also include, amongst other things, hoardings erected on the surface, or top, or any other open space of a building. Thus, in this manner hoardings - used for display of advertisements, have now been brought in the tax net.

Brief Facts of (W.P.(C.) 8118/2012)

13. Since the factual narrative in W.P.(C) 8118/2012 is specific in comparison to W.P.(C) 678/2013 which has been filed by a society on behalf of all its members, generally impugning the provisions on legal grounds, in order to delineate the controversy, we are detailing the facts from W.P.(C) 8118/2012.

14. The Petitioner- Delhi International Airport Pvt. Ltd. ('DIAL'), is a joint venture company with Airports Authority of India ('AAI'). Under the Operation, Maintenance and Development Agreement ('OMDA') dated 4. 04.2006, executed with AAI, the Petitioner has been granted exclusive right and authority for performing the functions of operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing and managing of Indira Gandhi International Airport, Delhi. On 23.08.2012, the Respondent issued a demand for property tax, premised on the fact that Petitioner, as the owner or occupier, is liable to file property tax return and pay tax on the 'hoarding' in terms of the definition of the said word as

provided under the DMC (Property Taxes) Bye-Laws, 2004. The said demand reads as under:

> *"No. DY. A &C/Tax/HQ/20L2/D-459 Dated: 23.8.20L2*
> *The Chairman/ MD*
> *Delhi International Airport (P) Ltd.,*
> *New Udaan Bhawan, Terminal 3,*
> *Opposite ATC Complex,*
> *International Terminal*
> *Indira Gandhi International Airport,*
> *New Delhi, -110 037*
>
> *E-mail : Sanil.kalra@gmrgroup.in*
> *Sub: Payment of Property Tax in respect of 'hoardings' as per provisions of the Delhi Municipal Corporation Act, 1957 Sir,*
>
> *Your kind attention is invited towards provisions of Delhi Municipal Corporation Act, 1957 (hereinafter referred to as "the DMC Act"), whereby owner/ occupier of each property within the area of South Delhi Municipal Corporation is liable to file the property tax return and pay the tax annually as per the rate defined by the Corporation. The rate of property tax for the 'hoardings' is 10 times of the normal rate. As per the definition of the word 'hoarding' provided under the Delhi Municipal Corporation (Property Taxes) Bye-laws, 2004, 'hoardings' shall mean large board used to display advertisements, erected on poles, of the ground or on a building". Clause 14 of the Bye-laws further provides that "xxxx In the case of hoarding covered area shall mean the square of extremities of the poles on which hoardings are erected plus the area of the hoarding'.*
> *You have been displaying/ allowing display of advertisement on your land/structures in different areas located within the jurisdiction of this Corporation, details of which are being collected by this Department. However, no property tax for these advertisements, as due and payable under the provisions of DMC Act and the bye- laws, is being paid to the Corporation*
> *In view of the above, you are requested to furnish complete details of the advertisements being up to by you within the jurisdiction of SDMC, such as number, size, location, period of display, etc. together with attested copies of allotment letter/ NOC, if any issued for the purpose, to this office and deposit complete amount of*

property tax due and payable for the same, as per the provisions of DMC Act and Bye-laws well before 15.9.2012. Please note that as per the provisions of DMC Act and the Bye-laws, the property tax dues are recoverable together with penalty and interest at the rates provided thereunder, advertisement on your land/ structures in different area located within the jurisdiction of this Corporation, details of besides taking penal action, as detailed in the enclosed sheet.

Your cooperation is solicited to ensure property tax due and payable in respect of your as per provisions of DMC Act and Bye-laws, is with the Corporation. For any query on the issue contact the concerned property tax offices at the addresses or Phone numbers: Meeting Hours: Between 2.30 to 4.30 pm working Monday and Thursday.

Headquarters:

X ... X ... X ... X

S D/-
B.N. Singh
Assessor & Collector, SDMC

Encl: As above
Copy for information to:
1. Commissioner, SDMC
2. Addl. Commissioner-I"

15. On 15. 09.2012, the Petitioner questioned the impugned demand on the ground that it was vague and ambiguous, and requested that the same be recalled/ withdrawn. Additionally, Petitioner called upon the Respondents to furnish the copies of the notifications which vested jurisdiction with the Respondents to claim property tax on hoardings. Respondent responded *vide* letter dated 27.09.2012, clarifying that the Bye-Laws notified *vide* notification dated 27.02.2004, contained the relevant provision, i.e, Bye-Law 14. Further, the definition of the word 'building' as defined in Section 2(3), would cover 'any other structure' which would include a hoarding. *Vide* letter dated

8. 10.2012, Petitioner objected to the manner in which the words 'any other structure' forming part of the definition of 'building' was being read and

interpreted. The Respondent, however, did not agree to any of the contentions and continued to impress upon the Petitioner to file the property tax return, and clear dues from 2004 onwards along with interest at the rate of one percent per month in terms of Section 152(2) of the DMC Act, and in consonance with Section 116E of the Act, read with Bye-Law 14 of the 2004 Bye-Laws, failing which, an assessment would be made under Section 113D of the Act, and further action would be taken as provided under Section 152A of Act for wilful default in payment of property tax. On similar lines, in subsequent communications, the demand was reiterated. Petitioner responded through its counsel and reiterated that there is no liability on its part to pay property tax on hoardings owned by it and that letters and demands issued by the Respondent were without authority of law. Aggrieved with the Respondent's stand, the Petitioner has filed the present petition impugning the demands on several grounds.

Brief Facts of (W.P.(C.) 678/2013

16. In W.P.(C.) 678/2013, the petitioner is Delhi Outdoor Advertisers Association, a body registered under the Societies Registration Act, 1860 consisting of 36 members from the industry of outdoor advertising in Delhi who are registered advertisers with the Respondent Corporation. The society asserts that its members are engaged in the business of outdoor publicity, *inter alia*, to display advertisements within the territory of India, through hoardings, *dhalaos*/garbage stations, sub-ways, unipoles etc., on private/government lands, and display of advertisements at railway stations, and at kiosks, at electricity poles etc. The Petitioner raises challenge to the constitutional validity of the 2004 Bye-Laws to the extent it imposes property taxes on

hoardings and the demand notices issued thereunder to all the registered advertisers.

Brief Contentions of the Parties:

17. The grounds of challenge have been encapsulated under separate headings set out in the succeeding paras. At this juncture, we are noting the broad framework of submissions laid out by the Parties, which will be followed by in-depth analysis and our views. The gist of the submissions advanced by Mr. Gopal Jain, learned senior counsel appearing for the Petitioner in W.P.(C.) 8118/2012 is as follows:

17.1. In terms of section 114 of the Act, Respondent can impose property tax i.e. either a 'building tax' or a 'vacant land tax'. A hoarding is not 'building' as defined under Section 2(3) of the DMC Act, and hence not amenable to tax.

17.2. Hoarding is a movable property and, hence, cannot be termed as a 'building', despite the same being embedded in the earth or fastened to a building. On this proposition, he has relied on ***Union of India v. v. Krishnamurthy,*** 1994 2 LW 452 and ***M/s. Delta Communications v. The State of Kerala,*** 2015 SCC OnLine Ker 22936.

17.3. 'Hoarding' cannot also be termed as a 'wall' under Section 2(3) of the Act. Purposive construction of the definition of a building as provided in Section 2(3) must be applied in order to arrive at a true and contextual meaning of the term 'wall' within the definition of 'building'. In support of this proposition he relied upon ***Shailesh Dhairyawan v. Mohan Balkrishna Lulla,*** (2016) 3 SCC 619 and ***Grid***

Corporations of Orissa Ltd. & Ors. v. Eastern Metals & Ferro Alloys & ***Ors.,*** (2011) 11 SCC 334.

17.4. Respondent has misdirected itself by assuming that hoardings would be covered under the expression 'any other structure' found in the definition. In accordance with principle of *noscitur a sociis*, the words 'any other structure' appearing in Section 2(3) of the Act should be interpreted in consonance with the associated words preceding the expression. On this proposition, Mr. Gopal Jain has relied upon the judgment in ***B. Premanand v. Mohan Koikal and Ors.,*** (2011) 4 SCC 266 and ***State of Uttar Pradesh v. Dr. Vijay Anand Maharaj,*** (1963) 1 SCR 1. Further, Section 2(3) does not accommodate 'hoardings' even if one would apply the principle of *ejusdem generis* for interpreting the expression used in the said provision.

17.5. Reference was placed upon Section 331(f) and Section 116D (1) of the Act to state that buildings should have covered space for the purpose of levying property tax.

17.6. It is impossible for hoardings to be a part of *'*covered space of a building*'*. Since DMC Act does not allow for levy of property tax on hoardings, Respondent cannot introduce the levy under Bye-Law 14 by expanding the concept of 'covered spaces' as provided in explanation to Section 116E(1) of the Act. This would bring Bye-Law 14 in conflict with the Act and is, thus, *ultra vires* the explanation to Section 116E(1) of the Act.

17.7. The 'covered space' in respect of hoardings: *"the square of extremities of the poles on which hoardings are erected plus the area of the*

hoarding", is contrary to the Explanation to Section 116E(1) which provides that 'covered area' in respect of a building means *"the total area in all the floor thereof".* Thus, since *'covered area'* in respect of hoardings under Bye-Law 14 is evidently not based on *'floor area'* but, instead, the surface area of the boarding, it deserves to be set aside.

17.8. Without prejudice, even if it is presumed that the said Bye-Laws hold good, it would provide for imposition of property tax only on *'hoarding erected on the surface or top or any other open space of a building'* and not on stand-alone hoarding.

17.9. All Bye-Laws, including taxation Bye-Laws are subordinate to the provisions of the parent Act. Section 481 empowers Respondent to make Bye-Laws on matters enumerated therein. '*Hoarding'* does not feature in the said list and, consequently, Respondent has exceeded its power conferred under Section 481 of the Act and the impugned Bye-Laws are *ultra vires* the Act.

17.10. Section 116A(1) provides all detailed parameters based on which the Municipal Valuation Committee ('MVC') is required to recommend the classification of land and building for imposition of property tax. Section 116A(1)(f) provides the use wise categorization of building. Bye-Law 9 defines various use-wise categories as set out in Section 116A(1)(f). While other sub clauses of Bye-Law 9 pertain to residential, commercial, educational building, and the like, Bye-Laws 9(m) defines 'hoarding'. Since hoarding finds no mention in the source provision i.e. Section 116A(1)(f), its inclusion in Bye-Law 9(m) is completely unrelated to the parameters set out therein.

17.11. Tax can be imposed only by a statute made by the competent legislature, and not by a delegated legislation. In matters of exercise of this power, it is a well-recognised rule of construction that if the subject of taxation is not covered within the four corners of taxing statute, no tax can be imposed by inference, analogy, or by trying to probe into the intention of legislature. To support his contentions he relied upon ***Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited***, (2015) 9 SCC 209; ***Corporation of the City of Bangalore v. Kesoram Industries and Cotton Mills Ltd***, 1989 Supp (2) SCC 753; ***Agricultural Market Committee v. Shalimar Chemical Works Ltd***, (1997) 5 SCC 516; ***Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar,*** (1992) 3 SCC 285; ***Bimal Chandra Banerjee v. State of Madhya Pradesh and others***, (1970) 2 SCC 467; ***Bihta Cooperative Development Cane Marketing Union Ltd and Another v. Bank of Bihar and Others***, (1967) 1 SCR 848; ***Corporation of Calcutta v. Liberty Cinema***, (1965) 2 SCR 477; ***Delhi Race Club v. Union of India***, (2012) 8 SCC 680; ***Municipal Corporation of Delhi v. Birla Cotton Spinning and Weaving Mills and Anr.***, (1968) 3 SCR 251; ***K.C. Vasanth Kumar v. State of Karnataka*** (1985) Supp SCC 714; ***Aashirwad Films v. Union of India and Others***, (2007) 6 SCC 624; ***New Delhi Municipal Council v. Association of Concerned Citizens of New Delhi***, 2019 SCC Online SC 60.It is also contended that under the definition of Bye-Law 9(m), property tax can be levied only on hoardings with advertisements.

17.12. The use factor of 10 assigned for hoardings is 10 times more than the normal rate. There is no basis for use factor 10 being imposed by the Respondent. Even if it is presumed that levy of property tax on hoarding is permissible, imposition at 10 times the normal rate in respect of 'hoarding' in Bye-Laws 9(m), is *ultra vires* Section 116A(1)(f). The stipulation of such a high use factor is arbitrary, devoid of application of mind, and violative of Article 14 of the Constitution, especially since SDMC collects exorbitant sums from the Petitioner as percentage of advertisement revenue generated from the hoarding towards Advertisement tax. The imposition of such a high use factor is contrary to the doctrine of proportionality.

18. Mr. Anand Mishra, the learned counsel for the Petitioner in W.P.(C.) 678/2013 while adopting the submissions advanced by Mr. Jain, supplemented the same by arguing as under:

18.1. Respondents have contravened the DMC Act by enlarging the definition of 'building', by passing the impugned Bye-Laws which is not permissible.

18.2. The statutory scheme laid down in Chapter XVI of the Act deals with the erection of any building, permission granted by the Respondent to do so. Section 331 of the Act defines what it means to 'erect a building'. It does not include any structure that is temporary and is without roof and it is for that reason that Section 2(3) does not include 'boundary wall' and 'portable shelter'. The former is never intended to have a roof and the latter one is never permanent. The Respondents have never required compliance of Section 332 of the Act with regard

to hoardings, therefore, making it clear that hoardings have never been considered as a 'building' by it and it is only after 2004 that the Respondents have mischievously included hoarding in the definition of building with the sole purpose of levying the impugned impost.

18.3. Hoardings being movable structures, cannot be included in the definition of either land, or building, as required by Section 114 read with Section 113 of the Act.

19. Per contra, Mr. Sudhir Nandrajog, learned senior counsel appearing on behalf of the Respondent Municipal Corporation defended the impugned provisions. His submissions can be summarized as follows:

19.1. The Bye-Laws published on 27th February, 2004 have been notified after having been laid down before the legislature, and it is not an executive / administrative order.

19.2. The definition of the expression 'building' is of very wide import and encompasses 'any other structure', excluding only portable structure. Hoardings fall within the category of 'any other structure'. Thus, the definition of building, includes within its ambit, structures, such as, 'hoardings'. In support of this submission, reliance is placed on ***Cellular Operators Association of India & Ors. Etc. etc. v. Municipal Corporation of Delhi etc.***., (2011) 179 DLT 381; ***Anant Mills Co. Ltd v. State of Gujarat,*** (1975) 2 SCC 175; ***Municipal Corporation of Greater Bombay & Ors. v. Indian Oil Corporation Ltd***. 1991 Supp. (2) SCC 18; ***Municipal Corporation of Delhi v. Pradeep Oil Mills P. Ltd,*** AIR 2010 Del 119. Bye-Law 9 provides the definition of use-wise

categories of various kinds of buildings. The use wise categories for hoarding is provided in Bye-Law 9(m).

19.3. As per Section 114 of the Act, the Respondent can levy property tax on building. Section 116E provides for methodology for determination of annual value of the covered space of a building. As per Bye-Law 9(m) of the 2004 Bye-Laws, 2004 one of the use wise category of building is hoarding. The conjoint reading of all the provisions makes it amply clear that it was the specific intention of the legislature to include hoarding within the meaning of covered area of the building and, hence, the Respondent can levy property tax on the same.

19.4. The DMC Act as well as the 2004 Bye-Laws, provide a clear mechanism for computing property tax on hoarding. Section 116D deals with the determination of annual value of any covered space of building. Explanation to Bye-Law 14 categorically provides the mechanism of computation of covered space/ area in relation to building, which includes hoarding. It provides that covered area in respect of hoarding shall mean the square of extremities of the poles on which hoardings are erected plus the area of hoarding. Thus, under Bye-Law 14, the covered space in respect of hoarding has been given for the purpose of calculation of property tax.

19.5. No interpretation of a statute, which negates the statute can be accepted. The restrictive meaning and interpretation sought to be given by the Petitioner to the statutory definition of the expression 'building' is totally erroneous. The Court ought to interpret a provision which gives meaning to the words used, by applying the doctrine of reasonable construction, rather than adopting an interpretation which

renders the words used otiose. In this regard, he has relied on ***Forest Range Officer &Ors. v. P. Mohammed Ali & Ors,*** 1993 Supp. (3) SCC 627; ***Ahmedabad Municipal Corporation v. GTL Infrastructure Ltd. & Ors***., (2017) 3 SCC 545; ***Grasim Industries Ltd. v. Collector of Customs, Bombay,*** (2002) 4 SCC 297; ***SP Jain v. Krishna Mohan Gupta,*** (1987) 1 SCC 191; ***New India Assurance Co. Ltd. v. Nusli Neville Wadia,*** (2008) 3 SCC 279; ***Badshah v. Sou. Urmila Badshah Godse & Anr.***, (2014) 1 SCC 188; ***National Insurance Co. Ltd. v. Laxmi Narain Dhut,*** (2007) 3 SCC 700.

19.6. Advertisement tax, and property tax operate in completely different fields, and are not overlapping in any manner. The incidence of levy of advertisement tax is the display of an advertisement, whereas property tax is on the erection of any structure which falls within the definition of 'building'.

19.7. The imposition of property tax on 'hoarding' is in consonance with Article 265 of the Constitution of India. The authority to levy property tax flows form the DMC Act, and not from the 2004 Bye-Laws. The 2004 Bye-Laws only provide the administrative machinery for calculation of property tax. The Bye-Laws have not been made in respect of any particular use of the building but are applicable to different types of land and building which are amenable to property tax. The Bye-Laws have been made under statutory power and have force of law.

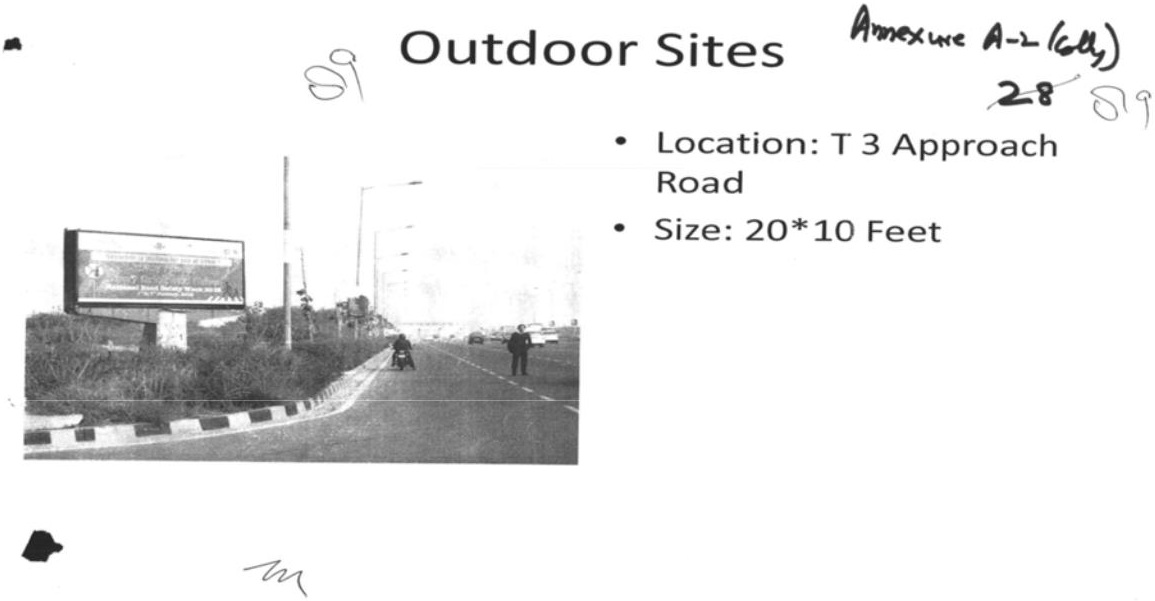
19.8. The challenge by the Petitioner to the use factor is completely erroneous. The issue regarding the authority of MVC, and legality of the classification of buildings in colonies, done by the Committee, has

been dealt with, and upheld by this Court in case reported in ***Vinod Krishna Kaul v. The Lt. Governor GNCTD,*** (2012) 192 DLT 241 (DB). MVC is a statutory body and its recommendations are binding upon Municipal Corporation in terms of Section 116 B (2) of the DMC Act.

Analysis and Findings:

[I] IS 'HOARDING' A 'BUILDING' AS DEFINED UNDER SECTION 2(3) OF THE DMC ACT?

20. It is said that a picture speaks thousand words. Thus, before anything else, let us first take note of the visual appearance of the structures that have been brought to tax, and for complete clarity we are reproducing the same hereinbelow.



Outdoor Sites

29

- Location: T 3 Approach Road
- Size: 60*15 Feet

Outdoor Sites

30

- Location: T 3 Approach Road
- Size: 20*10 Feet

21. Now keeping these vivid images in our view, let us proceed to interpret the definition of 'building' as provided under section 2(3) of the Act to see if these structures can be subsumed or embraced in the said definition. The levy in question is building tax, a component of 'property tax'. Thus, the foremost question would be - What is it that is being taxed? Is that a structure falling within the definition of the expression 'building'? This issue cannot be examined in a vacuum or in relation to hypothetical facts. Petitioner has focused on the word 'hoardings' and portrayed that they are moveable large boards used to display advertisements, and cannot be considered as a 'building' and, hence, the impost is unlawful. This argument, on first blush, appears to be attractive, as the word 'hoarding' evokes an image of a portable frame on which advertising material is fixed, also known as a 'billboard' in some countries. However, we must not get lost in the semantics of the expression 'hoardings'. The levy is, in fact, on the structure, which consists of: (a) The base - which is affixed to the earth, or something permanently attached to the earth (such as a masonry building); (b) The frame - made of any material, such as, wood, steel, masonry on which the hoarding is affixed, or would be affixed, and includes the steel structure/unipole/double pole which is attached/fixed/fastened/embedded to the base, and; (c) The hoarding – i.e. a board/panel made of plastic/cloth/paper/wood/vinyl etc. on which the advertisement is printed/displayed – which is fastened to the frame structure. As aforesaid, structures made of brick, masonry, wood or metal are embedded or attached or fixed to the earth. They are permanent, until dismantled or brought down. The 'hoardings' are attached or mounted on these fixed structures and become part thereof. Hoardings are also fixed on walls of the buildings, or on poles on the roof.

22. We are conscious of the fact that the taxing statutes have to be construed literally and strictly. Before taxing any person, it must be shown that the subject falls within the ambit of the charging section by clear words used in the section. At the same time, while interpreting tax laws, we have to be guided by the gist of the legislation and the object and scheme of the tax law. The most essential purpose of construction of a statute is to ascertain and comprehend the intention of the legislature and to safeguard it against irrationality or absurdity. For commencing an inquiry into its meaning, the starting point should be the analysis of the language and construct of the statute. The primacy should be given to the text of the statute. We would, therefore, commence our endeavour by examining the ordinary, or reasonable meaning of text by doing a plain reading. If the words of the statute are clear and unambiguous, we need not make any further inquiry. Now, when we do a plain reading of Section 2(3) of the Act, we notice that the word 'hoarding(s)' does not find mention therein. This does not inevitably mean that structures raised by the Respondents are beyond the purview of the said section. When we take a closer look at the words and expression used in the definition, we notice that in unequivocal and clear terms, it is stipulated that 'building' means a "*house, ..., out-house, stable, latrine, shed, hut, wall (other than boundary wall), or any other structure whether of masonry, bricks, wood, mud, metal or other material but does not include any portable structure*". There are two striking features of this definition. Firstly, a standalone 'wall' is also considered to be a building. Pertinently, while including a 'wall' in the definition, a particular class i.e. 'boundary wall' is specifically excluded. It is a basic rule of interpretation that words in a statute cannot be rendered redundant or superfluous. The inclusions and the exclusions emphasize the

legislative intent, to include structures in the definition that are not ordinarily understood or termed as 'building'. A 'wall' cannot be termed as a 'building' in conventional wisdom, but, nevertheless it has still been termed as a building for the purposes of the Act. It is not unknown that verbalization or written text of a statute can be at variance with interpretation in common parlance. This is within the domain of legislative competence. Secondly, and significantly, the expression 'any other structure' appearing in the definition has its own sanctity. It widens the definition of 'building' and makes it inclusive. The expression used in a statute has to necessarily be given a meaning that is reasonable and as ordinarily understood. If the structures that are being taxed have the requisite elements for qualifying to be a 'building' as defined, then irrespective of the shape, strength or appearance or such features, they would fall in the category. To understand the meaning and intent of the phrase '*any other structure'*, it is necessary to delve into the principles of statutory interpretation that are necessary and applicable in the present scenario.

(A) PRINCIPLES OF STATUTORY INTERPRETATION

a. *Whether the Definition is Inclusive or Exhaustive? Applicability of Rule of noscitur a sociis***.**

23. Now, let us also examine the rules of interpretation of statues that are being pressed into service by the petitioners to restrict the scope of the definition, such as to take these structures, which are popularly called hoardings, out of the purview of the levy of building tax. Petitioners have primarily relied upon doctrine of *noscitur a sociis* to interpret the expression *'any other structure'*. *Noscitur a sociis* means that the meaning of an unclear or ambiguous word in a statute should be construed by considering the

surrounding words with which it is associated. It has been contended that the words *'any other structure'* which are used to explain the definition of the word 'building', would take their meaning from the surrounding words, and 'hoarding' cannot be considered as falling within the definition of 'building'. To bolster this proposition, Mr. Gopal Jain relied upon the judgment in ***B. Premanand v. Mohan Koikal and Ors*** *(supra)* and ***K.C Vasanth Kumar v. State of Kerala*** *(supra)*.

24. Further, Mr. Jain also relied upon ***B. N. Magon v. South Delhi Municipal Corporation***, (2015) 217 DLT 55, wherein this Court held that if the definition uses various words, some of which are general, then the meaning of the general can be restricted to a sense analogous to a less general, by applying the rule of *noscitur a sociis*. The relevant portion of the judgment reads as under:

> ***"54****. It is settled law that vagueness of a definition may sometimes defeat the very purpose for which the statute is enacted. After all the principle of interpretation of a provision of a statute is that where words of very wide amplitude are used in a definition, caution has to be exercised to see whether even within the definition itself there is an indication which limits the amplitude or wide range which would otherwise be given to the bare words.*
>
> ***55****. In similar circumstances, in Lalit Bhasin (supra), a Coordinate Bench of this Court has held that in construing the language of the definition of 'commercial establishment' the rule of noscitur a sociis has to be adopted. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general."*

25. Mr. Gopal Jain also argued that the definition clause given in the statute uses the expression *'means'* instead of *'include'*. Thus, the legislature did not give an expansive meaning to the word "building". What follows the words 'building means' is intended to speak exhaustively. It is a *hard-and-fast* definition and no meaning other than that is put in the definition can be assigned to the same. In support, he drew strength from ***Punjab Land Development and Reclamation Corp. Ltd. v. Presiding officer, Labour Court,*** (1990) 3 SCC 682 and ***Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union,*** (2007) 4 SCC 685.

26. The rule of construction and the principles of interpretation of statute that have been relied upon by the Petitioner are well known. At this juncture, we would like to add that - to our understanding, the principle of construction that, perhaps, the Petitioner wants to assert, is *ejusdum generis*. This principle, as per Section 23.2 of Bennion on Statutory Interpretation, seventh edition, is explained in the following words: *'The ejusdem generis principle is a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character'.* Be that as it may, in any event, neither of the rules is applicable in the present situation. In the cases cited by the Petitioner, the Courts have also discussed other rules of interpretation which, to our mind, need to be emphasised. The fundamental and primary rule of interpretation of a statute is the *Literal Rule of Interpretation*, which is that the construction of the words and phrases used by the legislature shall be given their ordinary meaning, and shall be construed according to the rules of grammar. If the language, as framed, is unambiguous and admits of only one meaning, no

question of construction of the statute arises, for the Act speaks for itself. In fact, this aspect is noted in ***B. Premanand***'s case *(supra)*, in the following words:

> ***"9****. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. SEBI [(2004) 11 SCC 641: AIR 2004 SC 4219]****"***

27. We also draw strength from the views expressed by the Supreme Court in ***State of Uttar Pradesh v. Vijay Anand Maharaj*** *(supra)*, the relevant portion whereof reads as under:

> ***"8.*** *... The fundamental and elementary rule of construction is that the words and phrases used by the legislature shall be given their ordinary meaning and shall be construed according to the rules of grammar. When a language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well-recognized rule of construction that the meaning must be collected from the expressed intention of the legislature. (...)"*

28. The Supreme Court in ***Jugalkishore Saraf v. Raw Cotton Co. Ltd.,*** (1955) 1 SCR 1369, has held that the *"cardinal rule of construction of statute is to read statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning".* The other rules of interpretation such as '*ejusdum generis'* or *'noscitur a sociis'* should be resorted to only when the words of the statute are ambiguous or lead to no intelligible results, or if read literally, would nullify the very object of the statute.

29. As a court, to arrive at the true sense of a statute, we must give the words their natural and ordinary meaning. We must also endeavour to decipher the meaning of the word keeping in mind the legislative intent. In this light, let us again examine the definition of the expression 'building' contained in Section 2(3) of the Act. The definition lists various kinds of buildings/structures as generally understood on the basis of their uses. It thus lists house, out-house, stable, latrine, shed and hut. Up to this point, the definition takes within its sweep structures/buildings which - even in common parlance - would be understood as buildings. Then, the legislature consciously includes within the sweep of the definition, a 'wall', which, in common parlance can never be understood as a building. The legislature was, however, quick to exclude a boundary wall from the meaning of building. Meaning thereby, that all other walls would be covered within the meaning of 'building'. Then the legislature further expands the meaning of building by enlisting *'any other structure'*. It goes on to state, that *'any other structure'* could be made of *'masonry, bricks, wood, mud, metal or other material'*. Thus, 'other material' implies that all other structures, which are not made of materials that buildings are generally understood to be made of - i.e. to say, not necessarily made of masonry, bricks, wood, mud or metal - such structures too are covered within the sweep of the definition of 'building'. The legislature then again carves out an exclusion by stating *'but does not include any portable structure'*. Thus, the legislature has intentionally given wider connotation to 'building' by using the expression *'any other structure'*. The definition of 'building' is clear, having a definitive meaning and would include such other structures which may not be a building in the conventional sense, and common parlance. We perceive no ambiguity in the definition that is required to be resolved. We also do not comprehend

that the plain reading of the statute manifests absurdity, or a consequence that could not have been intended. Thus, there is no foundational requirement or room to apply the rule of *noscitur a sociis* to interpret the words *'any other structure'* by referring to the surrounding or associate words. Doing so would narrow down the meaning of the expression 'building' which would be in clear conflict with the legislative intention behind the statute, and would be a hazardous approach. Moreover, there is a fundamental fallacy in Mr. Jain's contention. While applying the rule of *noscitur a sociis*, Mr. Jain conveniently wants us to overlook the word 'wall'. This surely cannot be the case. The use of the word 'wall' by the legislature is not an empty formality. Its use is of significance. It destroys the hypothesis that buildings mean only structures that conventionally mean buildings. The list of specific items in the definition, preceding the general word 'any other structure', do not create a class. As noticed, the specifically listed items include a 'wall', which has no correlation or commonality with other items appearing in the list such as house, out-house, stable, latrine etc. Thus, the ambit of the definition of 'building' is not restricted to structures having a roof, or capable of being roofed. It must also be remembered that the expression is not *'any other such structure'*, but *'any other structure'* making it much wider in its import.

30. If a standalone wall qualifies to be a building, and building tax can be levied thereon, the fundamental basis of the Petitioner's submission that a building should necessarily have a roof, is demolished. We, therefore, should not depart from the literal rule and ignore the legislative intention. The likely hardship or the inconvenience that may result from adopting the meaning of the language employed by the legislature, would not dissuade us to interpret

the expression 'building' to include within its meaning any other structures, which may not appear to be so to a layman. Somewhat similar situation arose in the case of ***Ahmedabad Municipal Corporation v. GTL Infrastructure Ltd.*** & ***Ors*** *(supra)*. In the said case, a question arose relating to levy of property tax on mobile towers. The issue before the Court was whether, for the purpose of levy of property tax, mobile towers are akin to 'lands and buildings' as per Entry 49 of List 2 of Schedule VII of the Constitution. While dealing with the expression building in Schedule VII List 2 entry 49, the Court observed that in view of the settled principle that would be applicable to find out the true and correct meaning of the said expression, it would be difficult to confine the meaning of the expression 'building' to a residential building as commonly understood, or the structure raised for the purpose of habitation. The definition of 'building' in Entry 49 cannot be confined just to a 'residential building', but needs to be extended to all ancillary and subsidiary matters. In common parlance, a mobile tower will certainly not be a 'building', but in terms of Entry 49 it will be included within the meaning of 'building' and, therefore, the state government can levy building tax on them.

31. In ***Municipal Corporation of Delhi v. Pradeep Oil Mills Ltd*** *(supra)*, a question arose before the full bench of this Court relating to definition of building and the phrase *'any other structure'*. The controversy arose whether the erection of petroleum storage tank on the land in question amounted to erection of a building which is taxable under the DMC Act. The assessee contended that the storage tank would not come within the purview of the definition of 'building' as provided in Section 2(3) of the Act and, thus, no tax could be levied as provided under Section 114 of the Act. After analysing the definition of the expression building, this Court held that the said definition is

of very wide import, and encompasses 'any other structure'. The Court held that the definition is to be widely construed. A structure would be a building, if it has been erected by the use of whatever material, which may or may not be used for human habitation since it includes even stables as buildings. The word 'structure' is used as a generic term. The relevant portion of the said judgment reads as under:

> *"**14**. **The definition of the expression "building" in Section 2(3) of the Act shows that it is of very wide import and encompasses "any other structure" excluding only portable structure.** The question is whether the petroleum storage tanks in question are 'structure' within the meaning of Section 2(3) of the Act.*
>
> *X ... X ... X ... X*
>
> ***20**. (...) **Though the definition of building is not an inclusive definition, the use of the words "any other structure" makes the definition inclusive by bringing within its ambit amongst others 'any other structure'.** The storage tanks in question cannot be termed as portable shelters because these storage tanks are not temporary or portable so as to be able to be shifted or removed from one place to another. These tanks have been permanently erected without being shifted from place to place. Considering the fact that the storage tanks have been permanently erected without being shifted from place to place and are permanently stationed at the present place since last several decades, in our opinion they are building within the meaning of the Act. Accordingly, our answer to the first question is that the erection of storage tanks in question amounts to erection of building which is taxable under the Delhi Municipal Corporation Act."*
>
> (emphasis supplied)

32. In ***Municipal Corporation, Greater Bombay v. Indian Oil Corporation Ltd.*** *(supra)*, an identical question arose in respect of oil tanks for storage of petrol and petroleum products. There, under the Bombay Municipal Corporation Act, 1988, 'building' was defined in somewhat similar words, as noted in the judgment. The court taking note of the same, expressed its views as under:

*"**4.** Section 3(s) defines 'building' thus:*

"3(s) . 'building' is defined to include 'a house, outhouse, stable, shed, hut and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever'."

X ... X ... X ... X

15. The definition of the word 'building' is an inclusive definition bringing within its ambit house, outhouse, stable, shed, hut and every other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever. The word 'building' was defined as an inclusive definition. *Shri Salve, learned counsel for the respondent, contended that when the definition of the 'building' talks of a structure, it would be a structure analogous to a house, outhouse, stable, shed or hut. The tank does not answer any of the descriptive particulars. The house or building, etc. must be constructed in accordance with the Master Plan and the Building Regulations conformable to the statutory requirements like drainage/sewage regulations. The construction of the tank is not required to be within the parameters of these regulations. Thereby tank cannot be construed to be a structure. Undoubtedly there is no independent definition of the word 'structure' in the Act. It is true that building, house or any outhouse etc. is required to be constructed in conformity with the building regulations and drainage and sewage requirements, etc. But every construction made need not necessarily be in conformity therewith. Take for instance a hut. A hutman cannot conform his construction to the statutory requirements. Equally many a time buildings are constructed by deliberate deviation of the statutory requirements. It is not uncommon that illegal constructions are compounded by collecting the compounding fee and regularising the illegal constructions. Therefore, the test of construction in conformity with the statutory requirement is not conclusive test though is a relevant one. Yet we have to consider whether the tank is a structure in its legal perspective. We have to consider the meaning of the word 'structure' in the light of the legislative purpose to fix the rateable value under the Act. The burden of tax is on the building or land and not on the tenant as under the British statutes**. ***Undoubtedly if the statutes have been understood by reference to the words, building and its analogous accompaniments including a hut, it would be referable to a house within the four corners of wall or a hut within the four corners of a shed for habitation of human being or animals or***

storage purpose. But the definition being an inclusive definition which intends to enlarge the scope of the definition, the meaning of the word 'structure' must be understood in that setting*."*

(emphasis supplied)

33. In our view, the aforesaid judgments are relevant and applicable to the issue in hand. Although, Mr. Jain has attempted to distinguish the judgment in ***Municipal Corporation of Greater Bombay*** *(supra)* by arguing that the definition of 'building' in Section 3(s) of the Bombay Municipal Corporation Act, 1988 is an inclusive definition, unlike the provision under the DMC Act, we do not agree with his reasoning. Ordinarily the expression/word 'means' implies that it was the intention of the legislature to make the definition exhaustive, but in the present context, the use of expression 'means' cannot be the sole guiding factor in itself. The provision has to be read as a whole to determine whether the intention of legislature was to make the definition inclusive, or exhaustive. The expression *'or any other structure'* makes the definition to be inclusive. Therefore, it appears to us that it was not the intention of legislature to make the definition exhaustive, and they envisaged inclusion of some other structures in the definition of 'building', and we cannot apply the hard-and-fast rule and limit the meaning of the word 'building', when the definition itself uses general words viz. *'or any other structure'*. Furthermore, the argument put forward by Mr. Jain was also raised and considered in the case of ***Municipal Corporation of Delhi v. Pradeep Oil Mills Ltd*** *(supra),* but was ultimately rejected**.**

b. <u>Purposive Interpretation</u>

34**.** When confronted with the standalone 'wall' finding a mention in section 2(3), of the DMC Act, Mr. Jain argued that purposive construction must be

applied to the meaning of 'wall' in order to arrive at a true and contextual meaning of the said term within the definition of building. In support of his argument he has relied upon ***Shailesh Dhairyawan***'s case (*supra*), wherein the Court observed:

> ***"31****. (…) The principle of "purposive interpretation" or "purposive construction" is based on the understanding that the court is supposed to attach that meaning to the provisions which serve the "purpose" behind such a provision. The basic approach is to ascertain what is it designed to accomplish? To put it otherwise, by interpretative process the court is supposed to realise the goal that the legal text is designed to realise. As Aharon Barak puts it:*
>
> > *"Purposive interpretation is based on three components: language, purpose, and discretion. Language shapes the range of semantic possibilities within which the interpreter acts as a linguist. Once the interpreter defines the range, he or she chooses the legal meaning of the text from among the (express or implied) semantic possibilities. The semantic component thus sets the limits of interpretation by restricting the interpreter to a legal meaning that the text can bear in its (public or private) language." [Aharon Barak, Purposive Interpretation in Law (Princeton University Press, 2005).]*
>
> ***32****. Of the aforesaid three components, namely, language, purpose and discretion "of the court", insofar as purposive component is concerned, this is the ratio juris, the purpose at the core of the text. This purpose is the values, goals, interests, policies and aims that the text is designed to actualise. It is the function that the text is designed to fulfil.*
>
> ***33****. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced. Not only legal process thinkers such as Hart and Sacks rejected intentionalism as a grand strategy for statutory interpretation, and in its place they offered*

*purposivism, this principle is now widely applied by the courts not only in this country but in many other legal systems as well.***"**

35. To further the said argument, Mr. Jain has also relied upon ***Grid Corporations***'s case (*supra*), and the relevant portion of the same reads as under:

"25*. This takes us to the correct interpretation of Clause 9.1. The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction. (...)***"**

36. Firstly, this rule need not be resorted to, if the first rule of construction, i.e. Literal Interpretation, when adopted, does not lead to absurd or unacceptable results. Thus, we need not depart from the well-recognised rule of construction that the meaning must be collected form the expressed intention of the legislature. The Supreme Court has time and again emphasised that the as a fundamental rule, literal construction should be adopted before anything else, to ascertain the legislative intent. The wordings of the statute should be used as a guide for interpreting the same. The statute as worded is expansive and inclusive and, therefore, a restrictive meaning which is sought

to be given by the Petitioner is against the literal interpretation, as well as the intention and mandate of the legislature. This intention can be gathered from the words used in the statue. These words do not have to be construed in isolation, and have to be read in the context they are used. Further, even if we apply the rule of purposive construction, it would not yield any different outcome. The purpose of the expression 'any other structure', as we interpret it, was to give flexibility to the term and enlarge the meaning of the words, occurring in the body of the definition of 'building', so as to enable taxation of items that may not have been included specifically. Restrictive interpretation would negate the purpose of the statute which has been intentionally couched in broad and wide terms. This would then restrict taxability and will be an impractical view that would not fulfil the object of the Act.

37. In fact, in ***Shailesh Dhairyawan***'s case *(supra)*, the opinion expressed in the paragraphs succeeding Para 31, reproduced above, makes an interesting reading. In the said case, the Supreme Court has emphasised that interpretation of a provision is never static, but is always dynamic. The Court has said that the doctrine of purposive interpretation is predominant, particularly in those cases, where literal interpretation may not serve the purpose or may lead to absurdity. As discussed above, this is not the situation before us. However, even if we adopt a dynamic approach, we would find that since the definition of the word 'building' is inclusive, it ought to be interpreted in such a manner which advances the purpose of the legislation – which includes levy of building tax on such structures that qualify to be a 'building' as defined under the Act. It is well settled that a taxing statute enjoys wide latitude. The legislature has the liberty and autonomy in matters

of classification of objects, persons, and things for the purpose of taxation. It may introduce tax on a class of objects and not do so on another class. The object sought to be achieved by the statute in question is to earn revenue from the buildings constructed in the city. To have functional expediency, the legislature exercising its discretion has kept the classification broad and wide. Thus, purposive interpretation also leads us to the same conclusion.

(B) CAN WE SUPPLY* CASUS OMISSUS*?

38. We also do not agree with the petitioner that anything that does not find specific mention, has to be construed to be consciously excluded or omitted with legislative intent. On the contrary, unless there is statutory interdict, we cannot exclude the structures that are raised by the petitioners, and which are covered by the definition of 'building' upon adoption of literal interpretation. Section 2(3) was enacted to achieve a specific purpose. The legislature clearly intended to subject all permanent structures to property tax, but could not foresee or enlist exhaustively all kinds of permanent structures that may be built or erected. Therefore, after enumerating structures which could be covered by the generally understood meaning of the word building, the legislature included a 'wall' within the said definition- which, otherwise in common parlance, could not be understood as a building, and then went on to expand the meaning generally by using the words 'any other structure'. The legislative intent was to broaden the definition of 'building' so as to include such structures, which may not be understood as such in common parlance, and give such meaning that differs from its common usage. This is also because the Act does not just deal with the construction of buildings. It also includes provisions of levy of taxation on buildings in the form of 'property

tax'. Thus, the narrow construction of the definition put forth by the petitioner would be contrary to the intent of the legislature. Pertinently, the expression 'any other structure' broadens the definition and makes it an inclusive definition. We are conscious of the fact that the statute does not commence with the words 'includes', as is normally the case in inclusive definitions. It begins with the word 'means'. However, the expression 'any other structure' renders the definition inclusive, which means that even those structures which are not mentioned by name or description, shall stand included. We see no reason to interpret the word 'building' to exclude the permanent structures raised for the display of advertisements. Therefore, it would be improper to interpret the expression to limit its application only to a class of structures which have a roof, or are capable being roofed. This hypothesis of the Petitioner does not hold well in relation to a wall, which is specifically included in the definition of 'building'. Imposing this qualitative condition for inclusion would amount to supplanting words in the definition. If the legislature did not impose this condition, we cannot do the same. Such a restricted interpretation would defeat the principal object and purpose of the statute and that would be out of sync with the objective of the legislation. Including structures on which 'hoardings' are affixed, within the purview of building tax, was within the legislative competence of the Legislature. Full effect to the words appearing in the statute should be given. We, therefore, cannot take aid of the principle of *casus omissus,* and exclude structures on which 'hoardings' are affixed, from the definition of building, while judicially interpreting the definition.

(C) ARE STRUCTURES IN DISPUTE MOVEABLE?

39. Mr. Jain next argued that a hoarding is a moveable property and, hence, cannot be termed as a building. In support thereof, he has to relied upon the decision of Madras High Court in ***Union of India v. V. Krishnamurthy,*** (1994) 2 MLJ 630. In this case, the narrow fact that merits our attention is that the Appellant removed the Respondent's hoarding from a land which it claimed to own, without notice. It was contended, *inter alia*, that under Section 5-A(3) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, if a movable structure or fixture is erected on the land, it can be removed without notice. Per contra, the Respondent argued that the hoarding was a permanent structure and was governed by Section 5A(2) instead, which merits prior notice. While deciding upon the permanence of structure of a hoarding, the Court looked at the definition of movable and immovable in the General Clauses Act. The relevant portion of the same, is reproduced below:

> ***"15****. With the above background, if we look at the provisions of the Act, which does not contain any definition of 'immovable property', we find that the expressions used are 'any movable' or 'immovable'. While the former is dealt with in sub -section (3), the latter is dealt with in sub-section (2). In the context in which these expressions are used, there can be no doubt that sub-section (3) deals with all movable structures or fixtures, which have been erected in the land. Once the expression 'erected' is used, it means automatically that the movable structure or fixture is imbedded in earth to some extent at least. Therefore, the mere fact that a hoarding is imbedded in the earth, will not make it an immovable property. The test, as observed by Holloway, J., which has already been quoted by us in this judgment, is to see whether the structure or fixture can be removed without injury to the quality in any manner. The first respondent has produced before us some photographs of the hoarding erected by him. The photographs themselves show that the hoardings are put up on iron pillars embedded in the earth. Those pillars can be removed at any time without their quality being in any manner affected or any damage being caused either to the pillars or the earth. Hence, the hoarding, which is erected on the land in question will undoubtedly fall under sub-section (3) of Section 5A of the Act as it is a movable*

structure or fixture. Hence we are of opinion that sub-section (3) will alone apply in this case and the procedure prescribed under sub-section (2) need not be followed for removing the hoardings. Under sub-section (3), there is no necessity for giving any notice or any other opportunity to the person, who has erected the structure or fixture unauthorisedly."

(emphasis supplied)

40. Reliance was further placed on ***Delta Communications***' case (*supra*) to substantiate the claim that hoarding is not an immovable structure. In the abovesaid case, reliance was placed on paragraph 3 of ***Perumal Naicker v. T. Ramaswami Kone and Anr.,*** AIR 1969 Mad 346, which is extracted as under:

"*For a chattel to become part of immovable property and to be regarded as such property, we should think, it must become attached to the immovable property as permanently as a building or a tree is attached to the earth. If, in the nature of things, the property is a movable property and for its beneficial use or enjoyment, it is necessary to imbed it or fix it on earth, though permanently, that is when it is in use, it should not be regarded as immovable property for that reason. That, as we understand, is the ratio of 1955-2 Mad LJ 215: (AIR 1955 Mad 620 (FB)).*
Subramanian Firm v. Chidambaram Servai, AIR 1940 Mad 527 *resembles the principles of 1955-2 Mad LJ 215: (AIR 1955 Mad 620 (FB)).* [In Subramanian Firm's case,] *Certain tenants installed an oil engine as part of a cinema in a certain leasehold land, with the object of utilising the machinery for their profit. Wadsworth, J., held that a security bond pledging the oil engine could not be deemed to be a transaction relating to immovable property. The learned Judge approached the question in the following manner:*

> *"If a thing is imbedded in the earth or attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached, then it is part of the immovable property. If the attachment is merely for the beneficial enjoyment of the chattel itself, then it remains a chattel, even though fixed for the time being so that it may be enjoyed."*

We find ourselves in agreement with the second part of these observations, which is apposite to the instant case. In the case

before us, the attachment of the oil engine to earth, though it is undoubtedly a fixture, is for the beneficial enjoyment of the engine itself and in order to use the engine, it has to be attached to the earth and the attachment lasts only so long as the engine is used. When it is not used, it can be detached and shifted to some other place. The attachment in such a case, does not make the engine part of the land and as immovable property. Mohammed Ibrahim v. N.C.F. Trading Company, Cocanada, AIR 1944 Mad 492 was decided by a Division Bench of this Court under the provisions of the Registration Act, that was a case of machinery of a mill fixed to a cement platform and attached to iron pillars fixed in the ground. It was held that the movable property so attached should be regarded as immovable property. It seems to us that this case turned on the special facts and the nature of the fixture, including the intention derived from the physical features of the fixture, that the mill was to be a permanent attachment to the earth. A Petter oil engine, as in this case, stands on a different footing and from the very nature of this type of machinery."

41. To give our findings on this issue, we would have to once again shift the lens onto the immovability of the structure on which hoarding is affixed. So far as the permanent immovable structure is concerned, we have no doubt in our mind that the same would be covered by the definition of building, as long as such structures remain standing on the earth, irrespective of the fact whether a hoarding is affixed on the structure or not. Where the structure is not permanently affixed to the ground - for example, where the structure is fixed/fitted onto a moving vehicle, obviously, it would not qualify as an immovable property.

42. The question to be further examined is whether a hoarding, which is affixed on the permanent structure, would also be liable to be treated as a part of the permanent structure? This requires consideration, as the definition of building excludes any portable shelter which means that moveable properties are outside the purview of the definition of building.

43. Let us delve deeper on this issue. According to Section 3 of the Transfer of Property Act, 1882, 'immoveable property' does not include standing timber, growing crops or grass. It is pertinent to note here that the Transfer of Property Act, 1882, only gives a negative definition of immovable property and does not lay down what constitutes immovable property. The term 'attached to the earth' as defined in Section 3 of the Transfer of Property Act, 1882 means:

(a) Rooted in the earth, as in the case of trees and shrubs;
(b) Embedded in the earth, as in the case of walls or buildings;
(c) Attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

44. A more elaborate definition of immovable property is found in the General Clauses Act, 1897. According to Section 3(26) of the General Clauses Act, 1897, immovable property includes "*land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth*". Section 3(36) of the General Clauses Act, on the other hand, defines movable property as "*property of every description, except immovable property*". In the case of ***Commissioner of Central Excise, Ahmedabad v. Solid and Correct Engineering Works & Ors.***, (2010) 5 SCC 122, the Supreme Court has, after referring to the definitions extracted above, observed that the test for determination as to whether a property would be moveable or immoveable property, would depend upon whether the same is immovable property. That is because anything that is not immovable property as per the definition extracted above, is "moveable" in nature. The Court further went on say that the question whether a chattel which is attached to what is embedded in the earth would become immovable property is to be decided on the principles of annexation to the land. The twin-tests are: the degree/mode of annexation, and the object of annexation. It was observed that if a machine is

simply attached to a foundation embedded in earth, with the help of nuts and bolts, in order to provide wobble-free operation to the machine, it cannot be said to be immovable property, because the attachment is not permanent, and what is attached can be easily detached from the foundation. But if a chattel which is fixed to a foundation embedded in earth, is so attached, that it cannot be removed without causing considerable damage to the land, then it leads to a strong assumption that it must be intended to be attached for perpetuity. Thus, ***Solid and Correct Engineering***'s case (*supra*) emphasizes that if functionality depends upon the embedding and assimilation, leading to extinction of movable character, the property is immovable. In the case of ***T.T.G. Industries Ltd. v. Collector of Central Excise***, (2004) 4 SCC 751, it was held that the test of whether a machine falls within the meaning of immovable property is whether the machine, which is erected on a concrete platform, can be shifted without dismantling the entire structure. If it cannot be shifted without dismantling it first, it must be held that it is attached to the earth. The concept of 'object of annexation', i.e. to say, whether it is for *permanent beneficial enjoyment of the land or building*, is explained in ***Solid and Correct Engineering***'s case (*supra*) as follows:

> "*The courts in this country have applied the test whether the annexation is with the object of permanent beneficial enjoyment of the land or building. Machinery for metal-shaping and electro-plating which was attached by bolts to special concrete bases and could not be easily removed, was not treated to be a part of structure or the soil beneath it, as the attachment was not for more beneficial enjoyment of either the soil or concrete.* ***Attachment in order to qualify the expression attached to the earth, must be for the beneficial attachment of that to which it is attached. Doors, windows and shutters of a house are attached to the house, which is imbedded in the earth. They are attached to the house which is imbedded in the earth for the beneficial enjoyment of the house. They have no separate existence from the house. Articles attached***

that do not form part of the house such as window blinds, and sashes, and ornamental articles such as glasses and tapestry fixed by tenant, are not affixtures.*"* (emphasis supplied)

45. On the basis of the above-noted hypotheses, it emerges that both – the degree/mode of annexation and the object of annexation – are essential factors to be weighed for determination of the character of the property. Accordingly, we can conclude that only those hoardings would become immoveable property, which have no mobility. Only if they are fixed on a civil structure – either on the ground or on the top or any part of the building – and the attachment is such, that except by the process of destroying the structure itself, it cannot be removed or shifted from one place to another, it would become immoveable. Such an attachment would signify a manifest intention to make the same permanent. Only if both the tests i.e. degree/mode of annexation, and the object of annexation are satisfied, then the hoardings can be said to be permanently fastened to the structures which are attached to the earth.

46. That said, for determining whether an article is permanently fastened to anything attached to the earth, both the intention as well as the factum of fastening has to be ascertained from the facts and circumstances of each case (ref: ***Triveni Engineering and Industries Ltd. v. Collector of Central Excise***, (2000) 7 SCC 29). For instance, in cases, where the vinyl sheet is affixed on a hoarding which, in turn, is placed on the steel structure/ unipole for display and fastened with the help of nuts and bolts, or such other means for the purpose of stability, it cannot be said that hoardings are immoveable so as to be covered in the definition of 'building'. Such hoardings or signage boards are attached and fastened to the steel structure/ unipoles, but such attachment lasts only as long as the hoardings and signage boards are used and, when not

used, it can be detached and shifted. Such attachment does not make the hoardings, and signage boards, part of the permanent structure and hence they are movable property and would have to be excluded from the purview of Building Tax. The degree, manner, extent and strength of the attachment would also have to be taken into consideration, apart from the intention and purpose. For instance, if the hoarding site is let out to any other agency/advertiser who, in turn, affixes hoardings for a specified duration for a charge, the intention could be said to be not to affix the hoarding permanently, and only for the duration of the contract. Therefore, the determination of this question requires the ascertainment of both – the intention as well as the factum of fastening, to discern the object of attachment. This has to be established from the facts and circumstances of each case. Respondents would have to inspect and survey the sites and afford an opportunity to the Petitioners to establish whether the hoardings in question are permanently fastened to anything attached to the earth so as to fall within the ambit of the definition of building.

(D) HOARDING AS PART OF 'COVERED SPACE' OF A BUILDING

47. Section 116D(1) provides the methodology for determination of annual value of the covered space of building. Section 116E(1) provides for determination of annual value of covered space of a building for levy of building tax. The explanation to Section 116E(1) provides the definition of 'covered space' in relation to a building to mean *'**the total floor area** in all the floor thereof, including the thickness of wall, and shall include the space of covered veranda and courtyard, gangway, garage, common service areas, staircase, and balcony including any area projected beyond the plot boundary*

and such other space as may be prescribed' (emphasis supplied). The legislature has consciously has used the expression 'floor area' in the opening part, and 'space'- and not area, in the later part. Whereas 'area' connotes the meaning of floor area (and that is why this definition talks of 'the total floor area in all the floors'), the word 'space' is markedly different, and it does not necessarily mean floor area. It is more generalised in its meaning. It would include all spaces- vertical, inclined and horizontal. The use of the expression *'as may be prescribed'* also shows that the legislature left it to its delegate to prescribe which other spaces are to be included within the meaning of 'covered space'. Section 481 confers the power to make Bye-Laws upon the corporations, subject to provisions of the Act, inter alia, to provide for *'any other matter relating to levy, assessment, collection, refund or remission of taxes under this Act.'* In pursuance of the said delegation, the corporation has framed the 2004 Bye-Laws. Bye-Law 14 provides that in addition to the covered spaces specified in the explanation to Section 116E(1), the covered space in relation to a building shall include hoarding erected on the surface or top or any other space of the building. Thus, on a conjoint reading of the above-noted provisions, as well as Sections 114, 116A(1)(f), of the Act and Bye-Law 9(m) taken note of earlier, it becomes evident that the covered space in respect of a hoarding has to be taken into account for the purpose of calculation of property tax, provided the hoarding qualifies as an immovable property by application of the tests discussed hereinabove. There is no basis to conclude that such of the hoardings – which constitute immovable property – would not be an extension of the building for the purpose of the levy of building tax. The wording of Section 116A (1) (f) of the Act itself indicates that it includes residential building, business building, mercantile building etc.

as use-wise category of any building, as may be specified by a Corporation. It is also to be borne in mind that Section 116A(1)(f) of the DMC Act gives an inclusive definition of use-wise categories of building, and is not an exhaustive definition. Therefore, it cannot be held that the hoardings per se are excluded from the ambit of Section 116A(1)(f) of the Act. The use-wise categories of building specified in Section 116A(1)(f) cannot be construed to mean that any other use-wise category of the building, that are subject to tax, being a building under the Act, stand excluded. Narrow and restrictive interpretation as advanced by the Petitioner, is not permissible.

48. In this regard, we would refer to the judgment of the ***Forest Range Officer & Ors. v. P. Mohd Ali & Anr.*** *(supra),* where the Supreme Court held that it is settled law that the word 'include' is generally known as a word of extension and it seeks to enlarge the meaning of the word and phrases occurring in the body of the statute. The explanation to Section 116E(1) is an inclusive definition of 'covered space' and not an exhaustive one, as is evident from the expression *"such other space as may be prescribed'* appearing towards the end of the definition. The explanation vests power with the Corporation to prescribe what would be included in 'covered space'. This indicates that the Corporation, for the purpose of calculating the covered space, can prescribe the area that would get included. This has been done by way of Bye-Law 14. The manner for arriving at the 'covered area' is given in the explanation to Bye-Law 14. Therefore, the Corporation is competent to include 'hoarding' in the 'covered space', and it is in accordance with the power conferred by the statute. The only caveat is that the hoarding should qualify as an immovable property as discussed hereinabove. It is Section 116A(1)(f) which provides for the classification of the hoardings on the basis of use-wise category. Bye-

Law 9(m) merely defines a hoarding and does not, by itself, include hoardings in the use-wise classification. The submission of the petitioner that under the definition of Bye-Law 9(m), property tax can be levied only on hoardings with advertisements, is without any merit. A reading of Bye-Law 9(m) makes it amply clear that the expression 'large board used to display advertisement' is only used to clarify as to what is a hoarding and it nowhere specifies that property tax shall be levied on hoardings with advertisements only. Hence, all the hoardings - whether containing an advertisement or not - are liable for property tax under the Act if they fall within the definition of immovable property. As aforesaid, the incidence of levy of building tax is the erection of the building. The same cannot be confused with advertisement tax, the incidence of levy of which is the putting up of advertisement. There is, therefore, no merit in this ground of challenge.

[II] TAX CAN BE IMPOSED ONLY BY STATUTE AND NOT BY DELEGATED LEGISLATION

49. Mr. Gopal Jain urged that tax can only be imposed by way of an express provision in the statute, and not by way of inference or by means of delegated legislation. He submits that the Respondent has sought to levy property tax on hoardings through a Bye-Law which is a delegated legislation, when the parent Act did not provide for it. In other words, the DMC Act does not provide for impost of property tax on 'hoarding', and that the levy cannot be introduced by way of a delegated legislation i.e. The Delhi Municipal Corporation (Property Taxes) Bye-Laws, 2004. According to him, a conjoint reading of section 2(3), 481 and 483 of the Act shows that the rule making authority has transgressed the power conferred by the statute. The legislature

never intended to bring hoardings within the definition of 'building' as given in the DMC Act which, under Section 142 and onwards, provides for a clear, detailed and separate scheme of charging advertisements tax on the advertisement being displayed on or upon any land or building. Therefore, Bye-Laws 9(m) and 14 of the 2004 Bye-Laws are in contravention of, and *ultra vires* the DMC Act. In support of this contention, several judgments as noted in para 17.7 have been relied upon.

50. The proposition of law advanced by the Petitioners qua the competence and scope of authority of the delegate to frame subordinate legislation is well settled. The fundamental rule is that statutory power conferred by the statute cannot be transgressed by the rule making authority. If the rule making authority has not been conferred with the power to levy tax, no tax could be imposed by way of Bye-Law or rule and regulation. Unless the parent statute, under which the subordinate legislation is made, specifically authorises the imposition of tax on the subject of taxation, the same cannot be achieved by way of delegated legislation. Supreme Court in ***Agricultural Market Committee v. Shalimar Chemical Works Ltd.*** *(supra)* has held that power to make subsidiary legislation may be entrusted by the legislature to another body of its choice, but the legislature should, before delegating, enunciate either expressly, or by implication, the policy and the principles for the guidance of the delegate. Thus, the delegate that has been authorised to make subsidiary rules and regulations, has to work within the scope of its authority, and cannot widen or constrict the scope of the Act or the policy laid down thereunder. Supreme Court has also held that in fiscal matters, power of imposition of tax and/or fee by delegated authority must be very specific, and there is no scope of implied authority for imposition of such tax.

51. These well-established principles of delegated legislation would be attracted, only if we agree with the Petitioner that hoardings per se are not structures covered by the definition of 'building'. We are of the opinion that such hoardings which fall within the definition of immovable property, would constitute structures covered by the definition of building. Since such hoardings which qualify as immovable property are structures within the definition of 'building', the competence of the Corporation to frame the 2004 Bye-Laws – to deal with matters relating to levy, assessment, collection, of such building tax – cannot be held to be violative of the DMC Act.

52. Let us elaborate on this aspect. Under Article 265 of the Constitution of India, no taxes shall be levied or collected except by authority of law. Article 243 X (a) of the Constitution of India provides that legislature of a State may, by law, authorise a municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits, as may be specified in the law. Chapter VIII of the DMC Act stipulates provisions relating to taxation. Section 113 empowers a corporation to levy, for the purposes of the Act, inter alia, property taxes. Section 114 enlists the components of property tax. It consists of a building tax and a vacant land tax. Section 114A states that *"for any building, the building tax shall be equal to the rate of building tax as may be prescribed by the Corporation under section 114D multiplied by the annual value of the covered space of building determined under sub-section (1) of section 116E or section 116F."* The 2004 Bye-Laws, 2004 were made by the Municipal Corporation of Delhi under sub-section (1) of Section 481 read with Section 483 of the DMC Act, 1957 as amended by the DMC Amendment Act, 2003. Let us first take a look at the relevant provisions of the DMC Act which specifically empower the

municipal corporation to enact the Bye-Laws. Section 481 and 483 of the DMC Act read as follows:

> ***"481. Power to make bye-laws****. —(1) Subject to the provisions of this Act the Corporation may, in addition to any bye-laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters, namely:—*
>
> *A. Bye-laws relating to taxation*
>
> *(1) the maintenance of tax books and registers by the Commissioner and the particulars which such books and registers should contain;*
>
> *(2) the inspection of and the obtaining of copies and extracts from such books and registers and fees, if any, to be charged for the same;*
>
> *(3) the publication of rates of taxes as determined by the Corporation from time to time;*
>
> *(4) the requisition by the Commissioner of information and returns from persons liable to pay taxes;*
>
> *(5) the notice to be given to the Commissioner by any person who becomes the owner or possessor of a vehicle or animal in respect of which any tax is payable under this Act;*
>
> *(6) the wearing of badge by the driver of any such vehicle and the display of number plate on such vehicle;*
>
> *(7) the submission of returns by persons liable to pay any tax under this Act;*
>
> *(8) the collection by the registrar or sub-registrar of Delhi appointed under the Indian Registration Act, 1908 (16 of 1908), of the additional stamp duty payable to the Corporation under this Act, the periodical payment of such duty to the Corporation and the maintenance, by such registrar or subregistrar of separate accounts in relation thereto;*
>
> *(9) any other matter relating to the levy, assessment, collection, refund or remission of taxes under this Act;*
>
> *X ... X ... X ... X"*

> *"**483. Supplemental provisions respecting bye-laws.—**(1) Any power to make bye-laws conferred by this Act is conferred subject to the conditions of the bye-laws being made after previous publication and in the case of such bye-laws being made by the Corporation of*

their not taking effect until they have been approved by the Government and published in the Official Gazette.
(2) The Government in approving a bye-law may make any change therein which appears to it to be necessary.
(3) The Government may, after previous publication of its intention cancel any bye-law which it has approved, and thereupon the bye-law shall cease to have effect."

53. Section 481 stipulates that the corporation may make Bye-Laws to provide for any of the matters which are listed out as Item No.1 to 9 under the heading *'A. Bye-laws relating to taxation'.* The matters which are listed in Serial No. 9 relate to *'any other matter relating to the levy, assessment, collection, refund or omission of taxes under the Act'*. Therefore, the corporation is empowered to make Bye-Laws for matters relating to levy, assessment, collection, refund or omission of taxes under this Act. The impugned Bye-Laws 9(m) and 14, relate to levy and assessment of the property tax. By framing the Bye-Laws which lay down the manner in which the property tax is to be levied and assessed, the delegated authority has acted within the parameters of the authority delegated to it under the Act. Since such of the 'hoardings' which are immovable property are structures covered within the definition of 'building', the same squarely fall within Section 114 of the Act which is the charging section, and enables the respondent corporation to levy property tax on buildings. We therefore, do not find any merit in the contention of the Petitioner on this ground, and the same is rejected.

[III] USE FACTOR, MCV, RECOMMENDATION AND BYE-LAW (9)m

54. Petitioners have also challenged the use factor of 10 that has been assigned to hoarding. It is their case that no basis for prescribing the said use factor has

been given when tax has been levied at 10 times the normal rate. Without prejudice, it is argued that even if it is presumed that levy of property tax on hoarding is permissible, its imposition at 10 times the normal rate, by including hoardings in Bye-Law 9(m), is *ultra vires* Section 116A(1)(f). It is contended that the use factor of 10 is arbitrary, without application of mind and is violative of Article 14 of the Constitution, especially since the SDMC collects exorbitant sums from the Petitioners in the form of advertisement revenue generated from the hoardings. The taxation provision must pass the test of Article 14 of the Constitution. Reliance is placed on ***Aashirwad Films v. Union of India and Others*** *(supra)*, the relevant portion of which is extracted hereinbelow:

> *"**14**. It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down in a large number of decisions of this Court that a taxation statute for the reasons of functional expediency and even otherwise, can pick and choose to tax some. Importantly, there is a rider operating on this wide power to tax and even discriminate in taxation that the classification thus chosen must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the statute. Thus, the classification must bear a nexus with the object sought to be achieved…*
>
> *X ... X ... X ... X*
>
> ***16.** In that behalf, it is important to read the object of a taxation statute on the touchstone of social values as mentioned in the Constitution. An adverse conclusion can be drawn if a particular statute goes against such values. It is one thing to say that the taxation statute does not further social good, but quite another when it disturbs the social fabric. The court may take adverse note in respect to statutes falling in the latter category. (…)"*

55. It is also argued that the doctrine of proportionality is breached by imposition of such high tax on hoardings, and the powers of the authority to impose conditions and variable factors must be construed having regard to the

purpose and object it seeks to achieve. On this proposition, reliance was placed upon ***Delhi Race Club v. Union of India*** *(supra)***,** the relevant portion whereof is extracted hereinbelow:

> *"**30**. From the conspectus of the views on the question of nature and extent of delegation of legislative functions by the legislature, two broad principles emerge viz.*
>
> *(i) that delegation of non-essential legislative function of fixation of rate of imposts is a necessity to meet the multifarious demands of a welfare State, but while delegating such a function laying down of a clear legislative policy is prerequisite, and*
>
> *(ii) while delegating the power of fixation of rate of tax, there must be in existence, inter alia, some guidance, control, safeguards and checks in the Act concerned.*
>
> *It is manifest that the question of application of the second principle will not arise unless the impost is a tax. Therefore, as long as the legislative policy is defined in clear terms, which provides guidance to the delegate, such delegation of a non-essential legislative function is permissible. Hence, besides the general principle that while delegating a legislative function, there should be a clear legislative policy, these judgments, which were vociferously relied upon before us, will have no bearing unless the levy involved is tax.*
>
> *X ... X ... X ... X*
>
> ***48.** As noted above, challenge to the constitutionality of Section 11(2) of the Act was based on the premise that no guidance, check, control or safeguard is specified in the Act. This principle, as we have distinguished above, applies only to the cases of delegation of the function of fixation of rate of tax and not a fee. As we have held that the levy involved in the present case is a fee and not tax, the ratio of the abovementioned cases, relied upon by the learned Senior Counsel, will have no application in determining the question before us. The scheme of the Act clearly spells out the object, policy and the intention with which it has been enacted and therefore, the Act does not warrant any interference as being an instance of excessive delegation."*

56. In our view, there is actually no serious challenge raised by the Petitioners qua the use factor stipulated for hoardings. Except for raising the submission

that the use factor allocated is exorbitant, the petitioners have not demonstrated how the employment of the said use factor makes the levy unreasonable and exorbitant. Nevertheless, we shall also deal with this contention. It is well settled in law that courts ordinarily are not concerned with the rate of tax, unless it is shown to be wholly arbitrary or confiscatory. The issue regarding the authority of Municipal Valuation Committee (MVC) and the legality of the classification of various buildings and colonies done by the MVC has been dealt with, and upheld by this Court in the case reported as ***Vinod Krishna Kaul***'s case (*supra*). The MVC is a statutory body which is constituted by the Government after every three years under Section 116 of the DMC Act. The MVC gives various recommendations for classifying various colonies, groups of lands and buildings for the purpose of imposition of property tax. As per recommendations of the MVC, various properties/ buildings/ lands are given a use factor for the purposes of calculating the property tax under the Unit Area Method. Hoardings have been allotted use factor of 10. Section 116A clearly gives authority to the MCV to recommend classification of lands and buildings on the basis of parameters as detailed therein. Sub clause (f) of Section 116A(1) provides use-wise categories of any building to be taken as one of the parameters for classification of buildings. Thus, use factor is recommended by the MVC on the basis of different uses to which buildings may be put. In the instant case, the MVC has recommended the use factor of 10 on hoarding. As per the scheme of the statute, recommendations of the MVC for allotment of use factor is an exercise carried out within its power and as per the parameters laid down in Section 116A of the Act. Giving recommendations is within the competence of the MVC. The MVC has prescribed various factors for purposes of computation of property

tax under the unit area method, which has been upheld by this Court in the case ***Vinod Krishna Kaul***'s case (*supra*). The parameters for giving recommendations by the MVC for classification of the colonies and groups of lands and buildings are clearly spelt out in Section 116A of the DMC Act. These parameters are in the nature of guidelines to be followed by the MVC while making its recommendations with regard to the classification.

57. There are no cogent grounds for impugning the recommendations of the MVC. It has not been suggested by the counsels for the petitioners that the requirements of the aforesaid sections have not been fulfilled either by the MVC in making recommendations, or by the respondents before making the recommendations final. The only contention raised is that the use factor of 10 provided for hoardings is arbitrary and unreasonable which is violative of Article 14. It is settled law that persons or things can be treated differentially as long as there is intelligible differentia for the classification. An examination of different kinds of buildings to which use-factor have been applied, would go on to show that the buildings with a commercial use have been subjected to a higher use-factor as compared to the buildings used as hospitals, schools etc. Hoardings are a source of income as they are generally used for displaying advertisements for consideration, and are, therefore, not similarly situated as the buildings which are used either as residence, or to provide public services to the general public. The rate is variable and is applied as per recommendation of the MVC keeping in view several parameters, including use or nature of the building. We are dealing with a taxation provision, where the legislature is permitted wide discretion. Keeping this in mind, in the absence of any material to show discrimination, arbitrariness, or

unreasonableness for allotting the use factor, the plea is devoid of merit and cannot be entertained.

[IV] REVENUE SHARING ARRANGEMENT WITH SDMC VIZ. PETITIONER'S HOARDINGS - ADVERTISEMENT TAX AND BUILDING TAX

58. Petitioner has also laid a challenge to the imposition of property tax on the structure which is a hoarding on the ground that the Respondents are already levying Advertisement Tax. It is argued that there is already a revenue sharing arrangement with SDMC for the financial year 2017-18, and SDMC has received Rs.18 Crores from the advertisement revenue generated from Petitioner's hoardings as per the revenue sharing arrangement. It is contended that the DMC Act provides for a detailed, clear and separate scheme for charging advertisement tax on the advertisement being displayed on or upon any land or building under Section 142 and onwards of the DMC Act and, therefore, the legislature never intended to tax the same thing twice which the Respondents are trying to do under the guise of delegated legislation.

59. The afore-noted challenge is misconceived, as advertisement tax and property tax are separate levies. They are two separate incidences of tax i.e. advertisement tax and property tax. The property tax is levied under Section 113 of the DMC Act, which details the different kinds of taxes that can be imposed by the corporation under the DMC Act. Property tax has been listed as one of the taxes leviable under Section 113 of the Act. Section 114 provides for components of property tax, which are building and land. Advertisement tax is levied under Section 142 of the DMC Act, which categorically provides for advertisement tax to be paid at such rate not exceeding those specified in the V Schedule. The advertisement tax under the V Schedule provides that no

tax shall be levied on any other advertisement in terms of the details given therein. This clearly shows that the two taxes i.e. property tax and advertisement tax operate in completely different fields and are levied on different incidences. There is no overlapping of the two taxes. Whereas the incidence of levy of building tax is the erection of a permanent immovable structure which qualifies as a building, the incidence of levy of advertisement tax is the display of an advertisement. Therefore, we do not find any merit in the contention of the Petitioner that the Respondent cannot levy property tax, merely because the advertisement is being subjected to advertisement tax. Thus, the contention that hoardings, per se, are only susceptible to advertisement tax is devoid of any merit. The challenge to the vires of the provision impugned in the present petition on this ground is totally devoid of merit and is rejected.

Conclusion

60. The upshot of the above analysis is that under section 2(3) of the DMC Act, all immovable structures (except boundary wall) are covered by the definition of 'building' and are liable to be subjected to property tax. Thus, the immovable structures erected to hold and support 'hoardings' would also qualify as 'building' and would be liable to be subjected to property tax. However, only such of the hoardings (as defined in Bye Law 9(m) of the 2004 Bye Laws) would be liable to be subjected to property tax, which qualify as immovable structures (and are, thus, 'building's). Hoardings which are permanently fastened on the immovable structures which are embedded in earth, or something that is embedded in earth, and meet the test of permanence are liable to be considered as immovable structures. However, if the twin tests

of degree/mode of annexation or object of annexation fail, hoardings would be excluded from the definition of building, and would not be liable to be subject to property tax. The challenge of the petitioner to the validity of Bye-Laws 9(m) and 14 of the 2004 Bye-Laws as being violative of Article 14 and Article 265 of the Constitution, is without any merit and is rejected. Corporation is competent to include such of the hoardings – which constitute immovable property in 'covered space', and this is in accordance with power conferred by statute. Corporation is also within its power to provide the manner in which property tax on building is to be levied by way of Bye-Laws and, therefore, the argument that tax can be imposed by statute and not by delegated legislation is irrelevant because such of the hoardings which constitute immovable structure are covered by building, and the Act itself provides for property tax on buildings. No basis has been shown to hold that the use factor of 10 assigned to hoardings is excessive. MVC is well within its power to give these recommendations. Property tax can be levied in addition to Advertisement tax as both the levies are separate.

Relief

61. In light of our findings given hereinabove, we are of the opinion, that factual determination of relevant factors regarding immovability of the hoardings being brought to tax is necessary, as a condition precedent, for the purpose of levying building tax. Accordingly, we consider it appropriate and therefore set-aside the demands and notices issued by the Respondent that are subject matter of W.P.(C.) 8118/2012 and also the notice Ref. No. Jr. A&C/Tax/HQ/2012/D-1070 dated 26.11.2012 impugned in W.P.(C.) 678/2013 on the ground that the question as to whether the hoardings in the

instant cases qualify as permanent immovable structures, capable of being included in the definition of 'building' under Section 2(3) of the Act, has not been examined. The Respondent shall however be at liberty to issue fresh show-cause notice(s) to the Petitioners and all such other assessees, having regard to the views expressed in this judgment. In such an event, Respondent shall, after affording an opportunity of hearing, pass orders of assessment/demand, in accordance with law. The writ petitions are disposed of in the above terms.

SANJEEV NARULA, J

VIPIN SANGHI, J

OCTOBER 22, 2020
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