

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 4538 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 2603 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 1612 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 2579 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 3082 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 4539 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 4540 of 2019
With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019
In R/SPECIAL CIVIL APPLICATION NO. 4540 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 4585 of 2019
With
MISC. CIVIL APPLICATION (FOR BREACH OF ORDER) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 4585 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 4564 of 2019
With
MISC. CIVIL APPLICATION (FOR BREACH OF ORDER) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 4564 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 4579 of 2019
With
MISC. CIVIL APPLICATION (FOR BREACH OF ORDER) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 4579 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 4554 of 2019
With
MISC. CIVIL APPLICATION (FOR BREACH OF ORDER) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 4554 of 2019

With
R/SPECIAL CIVIL APPLICATION NO. 6206 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6205 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6352 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6360 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6358 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6346 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6350 of 2019
With
MISC. CIVIL APPLICATION (FOR BREACH OF ORDER) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 6350 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 6349 of 2019
With
MISC. CIVIL APPLICATION (FOR BREACH OF ORDER) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 6349 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8032 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8030 of 2019
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R/SPECIAL CIVIL APPLICATION NO. 8870 of 2019
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R/SPECIAL CIVIL APPLICATION NO. 8867 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8868 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8914 of 2019
With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 8914 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8869 of 2019

With
R/SPECIAL CIVIL APPLICATION NO. 8929 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 8931 of 2019
With
R/MISC. CIVIL APPLICATION NO. 694 of 2019
In
SPECIAL CIVIL APPLICATION NO. 6352 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 9731 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 11226 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 13162 of 2019
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R/SPECIAL CIVIL APPLICATION NO. 12998 of 2019
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R/SPECIAL CIVIL APPLICATION NO. 4656 of 2020
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R/SPECIAL CIVIL APPLICATION NO. 9429 of 2020
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With
R/SPECIAL CIVIL APPLICATION NO. 10724 of 2020
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R/SPECIAL CIVIL APPLICATION NO. 10730 of 2020
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R/SPECIAL CIVIL APPLICATION NO. 10781 of 2020
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R/SPECIAL CIVIL APPLICATION NO. 10974 of 2020
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R/SPECIAL CIVIL APPLICATION NO. 12159 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12293 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12353 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 9438 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 12697 of 2020

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE J.B.PARDIWALA**

Sd/-

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	YES

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SELVEL MEDIA SERVICES PRIVATE LIMITED

Versus

THE MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD

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Appearance:

MR.MIHIR JOSHI, SENIOR ADVOCATE WITH MR AMAR N. BHATT(160) for the Petitioner No. 1

MR KUNAL P VAISHNAV(5111) for the Petitioner

MR. KAMAL TRIVEDI, ADVOCATE GENERAL WITH LD. AGPS.

MR.VINAY B. VISHEN, MR. CHINTAN DAVE & MR.SOAHAM, JOSHI (1) for the Respondent-State Nos. 3, 4

MR DEVANG VYAS(2794) for the Respondent No. 5

MR. KAMAL TRIVEDI, ADVOCATE GENERAL WITH MR SATYAM Y CHHAYA(3242) for the Respondent Nos. 1, 2

SERVED BY RPAD (N)(6) for the Respondent No. 6

MR. ANKIT SHAH, ADVOCATE for the Respondent Nos.5, 6

MR. H.S. MUNSHAW for the Respondent-Municipality

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 20/10/2020

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. **Rule** returnable forthwith. The learned advocate Mr. Ankit Shah waives service of notice of rule on behalf of the respondent nos.5 and 6. The learned Assistant Government Pleaders Mr.Chintan Dave, Mr. Soham Joshi and Mr.Vinay Vishen waives service of notice of rule for the respondent nos.3 and 4. The learned advocate Mr. Satyam Chhaya waives service of notice of rule on behalf of the respondent nos.1 and 2 and the learned advocate Mr. H.S. Munshaw waives service of notice of rule on behalf of the respective respondent -Municipality.

2. With the consent of the learned advocates for the respective parties this group of petitions is taken-up for final hearing. As common questions of the law and fact arise in this batch of petitions, all these petitions were heard analogously and are decided and disposed of together by this common judgment and order. For the sake of convenience, the Special Civil Application no.4538 of 2019 is treated as the lead matter.

3. By this petition under the Articles 226 and

227 of the Constitution of India, the petitioner has challenged the Resolution no.928 dated 28th November 2018 and the Resolution dated 24th December 2018 passed by the Standing Committee of the respondent - Ahmedabad Municipal Corporation (for short "the AMC") approving the revised rates of license fees for the advertising hoardings in private properties.

4. The petitioner has also sought declaration that after the introduction of the Goods and Service Tax (for short "the GST") with effect from 1st July 2017 in light of the 101st Amendment of the Constitution, the respondent Corporation cannot collect any tax on advertisement hoardings in the private properties and consequently cannot collect any license fees in garb of tax for the advertisement hoardings in the private properties.

5. The petitioner has also challenged the constitutional validity of the Section 386(2) of the Gujarat Provincial Municipal Corporation Act, 1949 (for short "the GPMC Act") and sought declaration that the said provision is ultra vires to the Article 243X of the Constitution of India.

FACTS :-

6. The controversy arising in this batch of petitions with regard to determination of the license fees on the advertisement hoardings in the private properties of the respective Municipal Corporation has a checkered history:-

(i) Before 1992 the license fee on the advertisement hoardings in private properties was charged at the rate of around Rs.100 per sq. meter per year.

(ii) From 1992 till 1997, the license fee rate was revised to Rs.200 per sq. meter per year.

(iii) On 26th February 1997, the Standing Committee of the AMC passed a resolution increasing the license fee to Rs.350/- per sq. meter per year irrespective of the location of the advertisement hoarding in private property.

(iv) The General Board of the AMC passed a resolution on 29th March 1997 approving the Resolution of the Standing Committee dated 26th February 1997.

(v) The AMC passed a Resolution no.345 dated 29th June 2000 in which it was decided that there would be no separate property taxes levied and the license fees would be inclusive of all kinds of Municipal Taxes charged by the AMC.

(vi) From 1st April 2004, the license fee was increased on adhoc basis to Rs.455/- per sq. meter per year.

(vii) The Standing Committee of the AMC passed a resolution dated 4th December 2004, whereby it was decided to levy the registration charge of Rs.1.5 Lakh for 3 years and to revise the license fee on the basis of the rates offered by the tenderer for the nearby tender sites as under :-

(A) The privately owned sites, which are within the distance of 80 meters from the road junction such sites would carry license fees at the rate of 16% of the amount offered for the tender site.

(B) Whereas, the privately owned sites, which are situated at the distance of more than 80 meters from the road junction, the license fees will be charged at the rate of 8% of the amount offered for tender site.

(viii) The aforementioned two decisions of the AMC were challenged by the Outdoor Advertisement Owners' Association, Ahmedabad by filing Special Civil Application no.12603 of 2005 before this Court on 12th May 2005. On 11th August 2005, learned Single Judge of this Court passed an interim order in the said petition along with other connected matters to the effect that until final disposal of the petitions, the License fee was to be paid at the rates indicated in the chart produced on record ranging from Rs.450/- to Rs.2,000/- for different areas.

(ix) On 19th October 2005, Special Civil Application no.12603 of 2005 along with other connected matters was admitted and interim arrangement as per the order dated 11th August 2005 was continued.

(x) By the final judgment and order dated 2nd February 2006, the learned Single Judge of this Court partly allowed the aforesaid petitions by rejecting the challenge against the revision in the license fees holding that what is sought to be levied by the AMC is not tax in the guise of fee, but the levy of license fee is in the nature

of regulatory fee, but levy of registration charges was quashed. The AMC submitted that the Resolution dated 29th June 2000 passed by it was in operation but was being reconsidered by the State Government and until the Government decides, the AMC would follow the interim arrangement. The learned Single Judge continued the interim arrangement as per the order dated 11th August 2005 for further four weeks.

(xi) Against the aforesaid judgment of the learned Single Judge, the petitioner association preferred Letters Patent Appeal no.331 of 2006.

(xii) During the pendency of the LPA no.331 of 2006, from 2006 to 15th May 2012, the license fee was charged as per the rates mentioned in the interim arrangement as per the order dated 11th August 2005 passed by the learned Single Judge in SCA no.12603 of 2005.

(xiii) On 15th May 2012, during the pendency of the LPA, the petitioner association addressed a letter to the AMC and intimated that without prejudice, the association was agreeable with the rates

suggested by the AMC in the meetings held on 28th July 2011 and 22nd September 2011 for enhancement of 10% after the next five years and as such increased license fee would remain static for five years and thereafter it would be enhanced by 10% every year.

(xiv) In light of the above communication of the association, as well as, the consequent consensus arrived at between the parties, the Standing Committee of AMC passed a Resolution no.431 on 7th June 2012 proposing to revise the license fees as per the schedule of fees prescribing different rates as per the different areas. For example, license fee for East zone and West zone was fixed at the rate of Rs.500/- per sq. meter per year, whereas in Central Zone, it was fixed at the rate of Rs.715/- per sq. meter per year.

(xv) The General Board of the AMC by Resolution no.665 dated 27th June 2012 approved the aforesaid Resolution no.431 dated 7th June 2012 passed by the Standing Committee of the AMC.

(xvi) The Standing Committee of AMC by Resolution no.1881/2012 dated 7th March 2013

recorded that the respondent no.3 State Government by order dated 26th June 2012 passed under Section 451(1) of the GPMC Act suspended the Resolution no.345 dated 29th March 2000 and accordingly the outstanding recovery of the demand of Rs.5.30 Crore could not be made.

(xvii) The Standing Committee of the AMC passed a Resolution dated 24th October 2013 that license fee charged as per the Resolution dated 7th June 2012 and approved on 27th June 2012 by General Board would be collected quarterly instead of being collected in advance.

(xviii) By the order dated 5th March 2014, in view of the consensus arrived at between the parties thereto, the Division Bench of this Court disposed of LPA no.331 of 2006 holding that the Resolution dated 4th December 2004 / 21st December 2004 would be substituted by Resolution dated 7th June 2012 and 27th June 2012 respectively.

(xix) After completion of the agreed period of five years and as the rates of the license fees on advertisement hoardings in privately owned properties was not revised

for five years, the Advertisement Department (Estate) of the AMC made a proposal on 4th October, 2018 before the Municipal Commissioner for increasing the license fee for the advertisement hoardings in private properties along with a justification for revising the license fees considering the average of 10% increase per annum for the period from 2019 to 2023 and the average of increase in the rates of license fees with respect to the tender sites from 2012 to 2018 and the average value of the current tender sites.

(xx) After considering the proposal and justification provided, on 5th November, 2018, the Commissioner of the AMC approved the rates proposed for the increase of the license fee for the advertisement hoardings in privately owned properties. Accordingly a letter dated 17th November 2018 was issued by the Commissioner recommending the revised license fee rates for the advertisement hoardings in privately owned properties.

(xxi) Thereafter, the Standing Committee of the AMC by Resolution no.928 dated 22nd November 2018 sanctioned the revised rates of license fees on the basis of

the letter dated 17th November 2018 of the Commissioner.

(xxii) The General Board of the Corporation by the Resolution no.1075 dated 24th December 2018 confirmed the sanction granted by the Standing Committee for the enhanced rate of the license fees for the advertisement hoardings in privately owned properties.

(xxiii) The Outdoor Advertisement Owners' Association made a representation on 9th January 2019 raising objections.

(xxiv) Being aggrieved by the increase in the license fees, the petitioners along with others approached this Court by way of filing this batch of petitions. The petitioner of SCA no.4583 of 2019, which is treated as the lead matter, has made the following prayers.

“(A) declare that after the introduction of GST with effect from 01.07.2017 in light of the 101st Amendment of the Constitution, the Respondents cannot collect any tax on the hoardings of the Petitioner in the private properties in

Ahmedabad City and consequently any fees for the license for the hoardings in the private properties in Ahmedabad city.

(AA) declare that Section 386(2) of the GPMC Act is ultra vires the Constitution of India particularly Articles 14 and 243X of the Constitution of India.

(AA1) Command the respondent no.1 to refund an amount of Rs.4,58,27,635.- together with interest at the rate of 18% per annum from the date of this Petition till realisation as per the details given in Annexure-F to the Petition.

(AAA) issue an appropriate writ to quash and set aside the Resolution No.928 dated 22.11.2018 at Annexure-A hereto and Resolution No.1075 dated 24.12.2018 at Annexure-AA hereto and restrain the Respondents from effecting any coercive recovery towards the license fees and further restrain the Respondents from or taking any coercive steps with respect to the hoardings of the petitioner in the private properties in Ahmedabad City as per the list in the

Schedule I hereto and command the Respondents to grant/renew the licenses to the Petitioner for the hoardings in the private properties in Ahmedabad City without insisting for payment of any license fees pursuant to the Resolution No.928 dated 22.11.2018 at Annexure-A hereto or any fees and Resolution No.1075 dated 24.12.2018 at Annexure-AA hereto.

(B) During the pendency and final disposal of this petition;

- (i) stay the execution, implementation and operation of the Resolution No.928 dated 22.11.2018 at Annexure-A hereto and Resolution no.1075 dated 24.12.2018 at Annexure-AA hereto.*
- (ii) restrain the Respondents from coercively recovering any amount from the petitioner towards the license fees or any other fees for the hoardings of the petitioner as per the list at Schedule-I hereto.*
- (iii) direct the Respondents to grant/renew the license to the petitioner for the hoardings in the private properties in Ahmedabad City*

without insisting for payment of any license fees and also the license fees pursuant to the Resolution no.928 dated 22.11.2018 at Annexure-A hereto and Resolution No.1075 dated 24.12.2018 at Annexure-AA hereto.

(C) Award cost of this petition.

(D) Pass such other and further orders as may be deemed just and expedient.”

7. This Court passed the following order on 1st March 2019 and issued notice and the ad-interim relief was granted to the petitioners by staying the implementation of the Resolutions passed by the AMC on the condition that the petitioners continue paying the license fees applicable prior to the said Resolutions without prejudice to their rights or contentions:-

“1. The learned advocate for the petitioners has tendered a draft amendment. The amendment is allowed in terms of the draft. The same shall be carried out forthwith.

2. By these petitions, the petitioners have challenged resolution No.928 dated 28.11.2018 passed by the Standing Committee of the respondent Corporation approving the revised rates of license

fees. The petitioners also seek a declaration that after the introduction of GST with effect from 1.7.2017 in the light of the 101st amendment of the Constitution, the respondents cannot collect any tax on hoardings of the petitioners in the private properties in Ahmedabad city and consequently any fees for the license for the advertisements on hoardings in the private properties in Ahmedabad city. The petitioners also seeks a declaration that section 386(2) of the Gujarat Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the GPMC Act") is ultra vires the Constitution and more particularly, Articles 14 and 243X thereof.

3. Mr. Mihir Joshi and Mr. Mihir Thakore, Senior Advocates, learned counsel for the petitioners invited the attention of the court to the judgment and order dated 2.2.2006 passed by a learned Single Judge in Special Civil Application No.12603 of 2005 and allied matters wherein the court had taken the view that the license fee is regulatory in character and, therefore, stricto sensu the element of quid pro quo does not apply in the case. The court observed that the Municipal Corporation regulates the said activity by providing for certain standards. All these activities would require certain regulatory control to be exercised on the part of the Corporation and for this purpose the Corporation would require maintenance of staff for processing of applications, for granting license also, to periodically carry out inspection to ensure that the hoardings do not breach any of the legal provisions or other

requirements laid down by the Corporation. The court held that for this purpose if the Corporation levies license fee, the true character of fee has to be determined as a regulatory license fee and license fee cannot be characterized as compensatory in nature.

4. The attention of the court was invited to the letter dated 17.11.2018 of the Municipal Commissioner addressed to the Municipal Secretary wherein it has inter alia been stated that upon perusal of the details of the tender invited for the advertisement on the roads/streets of the Municipal Corporation properties, much higher rates were obtained earlier. Upon looking at the same, as the license fees for private properties are much less compared to the rates obtained for tender sites, agencies are encouraged not to participate in the tender process and to advertise on the private properties situated near the tender sites. It was submitted that this letter clearly shows that the purpose for increase in license fees is an extraneous purpose. The reason for increasing the license fee is not for any regulatory purpose but because the present rates impact the tender process and make it commercially unviable. It was contended that therefore, the justification given cannot be a basis for arbitrary increase in the license fees.

5. Next it was submitted that sub-section (2) of section 386 of the GPMC Act suffers from two infirmities; firstly, it does not specify any

procedure or limits subject to which such levy or collection can be made; and secondly, it does not provide any guidelines as to which factors should be taken into account for the purpose of determining the rates of license fees.

6. The attention of the court was further invited to the provisions of Article 243X of the Constitution and more particularly, to clause (a) thereof which provides that the 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. It was submitted that in the present case, sub-section (2) of section 386 of the GPMC Act does not specify any limits and, therefore, the same is ultra vires the provisions of Article 243X of the Constitution.

7. Reference was made to Article 243ZF of the Constitution of India which provides that notwithstanding anything in that Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of that Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier, to submit that in this case the period of one year has elapsed since a long time

and hence, the protection under Article 243ZF of the Constitution is no longer available insofar as section 386(2) of the GPMC Act is concerned.

It was submitted that if the license fee partakes the character of tax, the fact that all the taxes are subsumed in the Goods and Services tax will have an implication.

8. Reliance was placed upon the decision of the Supreme Court in the case of **Krishna Mohan (petitioner) Ltd. v. Municipal Corporation of Delhi**, (2003) 7 SCC 151, wherein the question before the Supreme Court was, whether section 116(3) of the Delhi Municipal Corporation Act, 1957 vests arbitrary and uncanalised discretion in the Commissioner and is, therefore, invalid for excessive delegation of legislative powers? The court declared section 116(3) invalid as it delegated unguided and uncanalised legislative powers to the Commissioner to declare any plant or machinery as part of land or building for the purpose of determination of the rateable value thereof. It was submitted that sub-section (2) of section 386 of the GPMC Act which vests uncanalised power in the Commissioner in respect of the license fees that can be charged is, therefore, invalid.

9. Having regard to the submissions advanced by the learned counsel for the petitioners, Issue Notice returnable on 20th March, 2019. Ad-interim relief is granted in terms of paragraph 7.0 (B) (ii) and (iii) of the petitions subject

to the petitioners continue paying the license fees applicable prior the Resolutions at Annexures-A and AA to the petitions without prejudice to their rights and contentions. Direct service is permitted. The petitioners are permitted to serve the respondent No.5 Union of India directly through Registered Speed Post.

Registry to place a copy of this order in each petition.”

8. It would be germane to refer to relevant provision of the constitution of India as well as the GPMC Act to consider the submissions made by both the sides with regard to the constitutional validity of Section 386(2) of the GPMC Act being ultra vires to the Articles 14 and 243X of the Constitution of India as under:-

[A] Articles 243X and 243ZF and relevant entries in List II of the VIIth Schedule of the Constitution of India

“243X : Power to impose taxes by, and Funds of, the MunicipalitiesThe Legislature of a State may, by law,— (a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits; (b) assign to a Municipality such taxes, duties, tolls and

fees levied and collected by the State Government for such purposes and subject to such conditions and limits; (c) provide for making such grants-in-aid to the Municipalities from the Consolidated Fund of the State; and (d) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Municipalities and also for the withdrawal of such moneys therefrom, as may be specified in the law.”

243ZF. Continuance of existing laws and Municipalities.

Notwithstanding anything in this Part, any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy-fourth Amendment) Act, 1992, which is inconsistent with the provisions of this Part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier:

Provided that all the Municipalities existing immediately before such commencement shall continue till the expiration of their duration, unless sooner dissolved by a resolution passed to that effect by the Legislative Assembly of that State or, in the case of a State having a Legislative Council, by each House of the Legislature of that State.

Erstwhile Entry-55 of List II (deleted w.e.f. 16.09.2016) of VII th Schedule

“Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.”

Entry 5 of List II of VII th Schedule

“Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self government or village administration.”

Entry 66 of List II of VII th Schedule

“Fees in respect of any of the matters in this List, but not including fees taken in any court”.

[2] Section 386(2) of the GPMC Act.

386. (1) Whenever it is provided by or under this Act that a license or a

written permission may be given for any purpose, such license or written permission shall specify the period for which, and the restrictions and conditions subject to which, the same is granted and the date by which an application for the renewal of the same shall be made and shall be given under the signature of the Commissioner or of a municipal officer empowered under section 69 to grant the same.

(2) Except as may otherwise be provided by or under this Act, for every such license or written permission a fee may be charged at such rate as shall from time to time be fixed by Commissioner, with the sanction of the Corporation.”

SUBMISSIONS ON BEHALF OF THE PETITIONERS :-

9. The learned Senior Advocate Mr. Mihir Joshi assisted by the learned advocate Mr. Amar Bhatt for the petitioners and other learned advocates for the petitioners submitted that the license fees increased by the AMC and other Municipal Corporations for the advertisement hoardings in the private properties is more than double than the prevailing license fees. The contentions raised on behalf of the petitioners are twofold:

(1) That Section 386(2) of the GPMC Act and levy of the license fee by the

respondent-AMC are violative of the Article 14 and 243X of the Constitution of India and are also unauthorized after enforcement of the GST Regime and

(2) The license fees determined by the AMC and other corporations are exorbitant and therefore, prayer was made for refund of license fees paid so far.

(A) Submissions for the contention that Section 386(2) of the GPMC Act being ultra vires to Article 14 of the Constitution of India.

(i) It was submitted that the Section 386(2) of the GPMC Act provides for charging the license fees at such rates as shall from time to time be fixed by the Commissioner with the sanction of the Corporation and the same provides unguided and uncanalised legislative powers to the Commissioner and therefore, it suffers from excessive delegation and is violative of Article 14 of the Constitution of India.

(ii) In support of the above submission, reliance was placed on the decision of the Apex Court in case of *New Manek Chowk Spinning & Weaving Mills Co. Ltd. Vs.*

Municipal Corporation of the City of Ahmedabad and others, reported in AIR (1967) SC 1801 and more particularly Para no.27 thereof which reads as under :-

“27. It therefore appears to us that Rule 7(2) of the Rules framed under the Bombay Act of 1949 was beyond the legislative competence of the State. The rule also suffers from another defect, namely, that it does not lay down any principle on which machinery is to be specified by public notice by the Commissioner to be deemed to form part of such building for the purpose of fixing the rateable value. To this, Mr. Setalvad argued that if the building was equipped with machinery for the purpose of running a textile mill, whatever machinery was there for the purpose would be valued. According to him, the question would be which of the machinery would help in the enjoyment of the property and thereby add to its rateable value. Unfortunately, the specification of the classes is done from time to time by the Commissioner with the approval of the Corporation irrespective of the question as to where they are to be found. It therefore depends on the arbitrary will of the Commissioner as to what machinery he would specify and what he would not. Moreover, he is the only person who can examine this question. There is no right of appeal from any specification made under sub-rule (3) of Rule 7 except that the Commissioner is to act under the directions of the

Standing Committee. Rule 7(2) shows that all plant and machinery may not be taken into account for the purpose of valuation and any such plant or machinery which is not included in the classification may escape rateability however much they may be prized by the tenant who takes the premises on rent. It seems to us, therefore, that r. 7(2) is beyond the legislative competence of the State Legislature and sub-rule (3) of Rule 7 is also invalid on account of excessive delegation of powers by the Legislature.”

(iii) Thereafter, reliance was placed on the decision of the Apex Court in case of Krishna Mohan (P) Ltd. Vs. Municipal Corporation of Delhi and others, reported in (2003) 7 SCC 151 and referred to Para no. 51 which reads thus:

“51. In the result, we allow the appeals and hold as under:-

(1) Section 116(3) is declared invalid as it delegates unguided and uncanalised legislative powers to the Commissioner to declare any plant or machinery as part of land or building for the purpose of determination of the rateable value thereof;

(2) The cost of plant or machinery, lifts and air conditioners fixed on the land or building of the appellant in

question shall not be liable to be included for the determination of the rateable value of the land or building;

(3) The decisions in Pragati Builders (supra) and that of the Full Bench of the High Court under appeal do not lay down the law correctly. Consequently, they are hereby over ruled.

(4) The appeals are accordingly allowed and impugned judgments of the High Court are set aside. The impugned assessment orders are set aside and remitted to the assessing authority under the DMC Act for passing orders afresh in accordance with law and the observations made in the judgment."

(iv) Relying on the above decisions, it was submitted that the provisions struck down in both the judgments were similar to Section 386(2) of the GPMC Act inasmuch as there is no legislative policy discernible from this or any other provisions for the objects and purposes of the GPMC Act.

(v) It was submitted that there is no provision under the GPMC Act with regard to the functions to be performed by the Corporation in relation to advertisement and there are no provisions in the GPMC Act relating to the budget and accounts which mandate a levy commensurate to the amount and its collection by way of license fees. It

was therefore, submitted that the GPMC Act gives unguided power to the Commissioner to determine the fees and the only requirement is the sanction of the Corporation, which is held as not enough in above referred two judgments.

(vi) It was also submitted that the GPMC Act is of the year 1949 and therefore, after the Constitution coming into effect in the year 1950, the pre-constitution laws must be interpreted in conformity with the Constitution. It was therefore, prayed that Section 386(2) is liable to be struck down as violative of the Article 14 of the Constitution of India and also on the ground of excessive delegation.

(B) Submissions with regard to Section 386(2) of the GPMC Act being ultra vires to Article 243X of the Constitution of India.

(i) It was submitted that Article 243X of the Constitution of India enables the legislature to make law for authorising Municipality to levy, collect and appropriate taxes and “fees”, in accordance with such procedure and subject to such levy as specified in the law. It was submitted that no limits are prescribed in the law viz. GPMC

Act for levy of license fees which is contrary to Article 243X of the Constitution of India. It was also pointed-out that “with the sanction of Corporation”, as provided under Section 386(2) of the GPMC Act cannot be covered under “such procedure” or “such limits” under Article 243X of the Constitution of India.

(ii) It was therefore, submitted that enabling part goes in the State legislature. It was submitted that however, once the legislature makes the law delegating such power to municipality, under the enabling power, such law must specify the limits and procedure for “levy, collection and appropriation of taxes, duties, tolls and fees”.

(iii) It was submitted that specifying limits and procedure in the law itself by the legislature is mandatory as per the language of the Article 243X of the Constitution of India. Reliance was placed on Sections 99, 100, 127, 142-B of the GPMC Act to demonstrate the compliance of the Constitutional mandate vis-a-vis absence of such compliance of the Constitutional mandate in the impugned provision of Section 386(2)

of the GPMC Act.

(iv) In support of the above submissions, reliance was placed on the Full Bench decision in case of Anil Kumar Gulati and others Vs. State of M.P. And others reported in AIR 2004 (M.P.) 182, wherein the Full Bench of the Madhya Pradesh High Court with regard to the Article 243X of the Constitution of India has observed as under:-

“20. It is submitted by the learned counsel for the petitioners that if the aforesaid Article is scanned and scrutinized in proper perspective, it is absolutely vivid that the Legislature of the State has been authorised by the Constitution only to authorise the Municipalities for the purpose of levy, collection and appropriation of certain taxes but there is no other power bestowed on the Legislature. The Legislation has to be in accordance with concept of institution of self-governance but the Legislature by ordaining the procedure has transgressed its limits.

21. On a bare reading of the aforesaid Article, it is perceptible that Article 243-W clearly stipulates that subject to provisions of the Constitution, the Legislature of a State may, by law,

endow the Municipalities with such powers. Thus the source of power rests within the State Legislature. True it is, there is some concept of self-governance but the Constitution has not empowered the Municipalities to impose taxes on its own as if it has the power to impose taxes by itself as that would have defeated and destroyed many a provision of the Constitution. Article 243-X also postulates that the Legislature of a State may, by law, authorise a Municipality to collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. The aforesaid provision is plain as day to indicate that the Legislature has the authority and it may authorise the Municipality to collect such taxes in accordance with such procedure and subject to such limits. The significance of the term 'such' used at three places under Article 243X(a) cannot be allowed to be marginalised. Thus the submission that the Legislature should have left it to the total discretion of the Municipality or Municipal Corporation is absolutely sans substance."

(v) Reliance was also placed on the decision of this Court rendered in case of Adani Gas Limited Vs. Ahmedabad Municipal Corporation & others in Special Civil Application no.11459 of 2012 and other allied

matters, wherein Division Bench of this Court held that limits in procedure prescribed in Section 141AA and 141B of the GPMC Act coupled with Chapter-VIII for taxation rules, which provides for limits and procedure for levy of property tax on buildings would mutatis mutandis apply to property tax on land and therefore, the limits and procedure prescribed in law itself as required under Article 243X of the Constitution of India was accepted. It was submitted that so far as Section 386(2) of the GPMC Act, no limits or procedures are prescribed.

(vi) Reliance was placed on the decision in the case of State of Uttar Pradesh and another Vs. Zila Parishad, Ghaziabad, reported in (2013) 11 SCC 783 to submit that the Apex Court in the said decision has held that it is for the State Legislature to consider conditions and to make laws accordingly and it is also open to the State to eliminate or modify the same.

(vii) It was therefore, submitted that prior to introduction of Chapter-IXA in the Constitution by 74th Amendment, the law was that the delegation by the Legislature cannot be excessive and unguided and without

prescribing limits as held in case of *Manek Chowk Spinning and Waiving (supra)* and in case of *Krishna Mohan (supra)*.

(viii) It was submitted that Article 243X of the Constitution, thus, recognises the principle of delegation by legislature, which cannot be excessive and unguided or not prescribing limits and obliges the legislature to specify the limits and procedure in the law itself if it makes such law and therefore, in absence of any limits and procedure prescribed in Section 386(2) of the GPMC Act, the same would be ultra vires to Article 243X of the Constitution of India. Reliance was placed on Article 243ZF of the Constitution of India which provides for continuance of existing laws and Municipalities in force in a State immediately before the commencement of the Constitution (seventy-fourth Amendment) Act, 1992 which is inconsistent until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier.

(ix) It was therefore, submitted that there cannot be any comparison between levy

of tax and fees and the Corporation cannot levy fees without any powers of legislature. It was submitted that the AMC is recovering tax in the garb of fees which is without authority of law and violative of Article 265 of the Constitution of India. It was submitted that fee is compulsory exaction of money, which can be taken on two grounds, if it is authorised by the statute provided such statute is valid and between two parameters that such fees should not be excessive and such fees should be compensatory fees having quid pro quo to the service rendered for the purpose of levy of such fees and whether any such services are rendered for collection of such fees. It was therefore, submitted that the levy of license fees by the corporation which is regulatory in nature is excessive in the context of compensation for co-relation with the expenses.

(x) It was submitted from the reply of the respondent - AMC to the effect that the license fees collected from the petitioners are used for up-keeping the roads and drainage etc. cannot be justified as having any nexus with the recovery of cost to expense of the administering the regulation in respect of the business which is a sine

qua none in the case of fees which are regulatory in nature to save them from the vice of being excessive which can be the only factor to determine reasonableness of the levy.

(xi) Reference was made on the observations in the judgment of the learned Single Judge in Special Civil Application no.12603 of 2005 wherein it is held that the fees levied by the AMC to be regulatory as under :-

“As noted above, strict fulfillment of quite pro quo is not necessary. A portion of funds collected by way of fee is utilised for the purpose of maintaining regulatory machinery by Corporation. Besides, these funds are also diverted for the purpose of betterment of the roads and for ensuring that the commuting public is provided with proper facilities. Only when the Corporation provides proper roads and lighting, parking facilities wherever necessary and by providing for proper drainage and keeps such roads clean and well maintained with, the property owners on either side of such roads would be able to attract customers to exhibit their advertisements on their properties. One does not need much thinking to appreciate that on roads full of pot holes and dust on dirt

filled streets, on small narrow lanes, on congested bye-lanes there would be no potential for commercial development and there would be no potential for exhibiting attractive advertisers. The companies who put up their advertisements exhibiting their products and services would wish to maximize their profits. Such companies would pay hefty rentals only if they find that their advertisements are likely to be seen by large number of commuters. If this purpose is not fulfilled, advertisers would have no interest in putting up their advertisements".

(xii) It was further submitted that the judgment of the Single Judge does not refer to the Constitution Bench (7 Judges) Judgment of Supreme Court in case of Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, reported in AIR (1954) SC 282, wherein the Apex Court has held as under:-

"45. A neat definition of what "tax" means has been given by Latham C. J. of the High Court of Australia, in Matthews v. Chicory Marketing Board. "A tax", according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered". This definition brings out, in our opinion, the

essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority. Another feature of taxation is; that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.

46. Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the vary abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

47. As regards the distinction between a tax and a fee, it, is argued in the first place on behalf of the respondent that a fee is something voluntary which a person has got to pay if he -wants certain' services from the Government; but there is no obligation on his part to seek such services and if he does not want the services, I he can avoid the obligation. The example given is of a license fee. If a man wants a license that is entirely his own choice and then only he has to pay the fees, but not otherwise. We think that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of imposition though in different degrees and that it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees. It is difficult, we think, to conceive of a tax except it be something like a poll tax, the incidence of which falls on all persons within a State. The house tax has to be paid only by those who own houses, the land tax by those who possess lands, municipal taxes or rates will fall on those who have properties within a municipality. Persons who do not have houses, land or Properties within municipalities, would not have to pay these taxes, but nevertheless these impositions come within the category of taxes and nobody can say that it is a choice of these people to own lands or houses or specified kinds of properties so that there is no compulsion on them to pay taxes at all. Compulsion lies in the fact that payment is enforceable by law against a man in spite of his

unwillingness or want of consent; and this element is present in taxes as well as in fees. Of course, in some cases whether a man would come within the category of a service receiver may be a matter of his choice, but that by itself would not constitute a major test which can be taken as the criterion of this species of imposition. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licenses, is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions but in a fee it is some special benefit which the individual receives. As Seligman says it is the, special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action.

48. If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be co-related to the expenses incurred by Government in rendering the services. As indicated in Article 110 of the Constitution ordinarily there are two classes of cases where Government imposes fees upon persons. In the first class of cases, Government simply grants a permission or privilege to a person to

do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred.; A most common illustration of this type of cases is furnished by the license fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licenses may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant, and if the money paid by license holders goes for the upkeep of roads and other matters of general public utility, the license fee cannot but be regarded as a tax.

49. In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax. There is really no generic difference between the tax and fees and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes.

50. Our Constitution has, for legislative purposes, made a distinction

between a tax and a fee and while there are various entries in the legislative lists with regard to various forms of taxes there is an entry at the end of each one of the three lists as regards fees which could be levied in respect of any of the matters that is included in it. The implication seems to be that fees have special reference to governmental action undertaken in respect to any of these matters.

51. Section 76 of the Madras Act speaks definitely of the contribution being levied in respect rendered by the Government; so far it has the appearance of fees. It is true that religious institutions do not want these services to be rendered to them and it may be that they do not consider the State interference to be a benefit at all. We agree, however, with the learned Attorney-General that, in the present day concept of a State, it cannot be said that services could be rendered by the State only at the request of those who require these services. If in the larger interest of the public, a State considers it desirable that some special service should be done for certain people, the people must accept these services, whether willing or not. It may be noticed, however, that the contribution that has been levied under section 76 of the Act has been made to depend upon the capacity of the payer and not upon the quantum of benefit that is supposed to be conferred on any particular religious institution. Further the institutions, which come under the lower income group and have income less than Rs. 1,000 annually, are excluded from the liability to pay the

additional charges under clause (2) of the section. These are undoubtedly some of the characteristics of a 'tax' and the imposition bears a close analogy to income-tax. But the material fact which negatives the theory of fees in the present case is that the money raised by levy of the contribution is not earmarked or specified for defraying the expenses that the Government has to incur in performing the services. All the collections go to the consolidated fund of the State and all the expenses have to be met not out of these collections but out of the general revenues by a proper method of appropriation as is done in case of other Government expenses. That in itself might not be conclusive, but in this case there is total absences of any co-relation between the expenses incurred by the Government and the amount raised by contribution under the provision of Section 76 and in these circumstances the theory of a return or counter-payment or quid pro quo cannot have any possible application to this case. In our opinion, therefore, the High Court was right in holding that the contribution levied under section 76 is a tax and not a fee and consequently it was beyond the power of the State Legislature to enact this provision."

(xiii) Referring to the above judgment of the Supreme Court, it was submitted that the findings of the learned Single Judge in Special Civil Application no.12603 of 2005 is contrary to the judgment of the Constitution Bench (7 Judges), wherein it is held that if

the money paid by license holders goes for the upkeep of roads and other matters of general public utility, then it would be regulatory in nature. It was submitted that in such circumstances, the license fee can only be regarded as a tax.

(xiv) It was therefore, submitted that the reliance placed by the respondent to justify the levy as fees upon the judgment of the learned Single Judge in Special Civil Application no.12603 of 2005 is without basis as the said judgment is '*per incuriam*' being contrary to the decision of Apex Court in case of Commissioner, Hindu Religious Endowments(supra) and the judgment of learned Single Judge is now substituted by the judgment of Letters Patent Appeal no.331 of 2006 by consensus.

(xv) Reliance was also placed on the decision of the Apex Court in case of Calcutta Municipal Corporation and others Vs. Shrey Mercantile (P) Ltd., and others, reported in (2005) 4 SCC 245 wherein, it is held in relation to the mutation fees charged under the provisions of the Calcutta Municipal Corporation Act, 1959 (as amended by 20th February 1989) as under:-

“14. According to Words & Phrases, Permanent Edition, Vol. 41 Page 230, a charge or fee, if levied for the purpose of raising revenue under the taxing power is a "tax". Similarly, imposition of fees for the primary purpose of "regulation and control" may be classified as fees as it is in the exercise of "police power", but if revenue is the primary purpose and regulation is merely incidental, then the imposition is a "tax". A tax is an enforced contribution expected pursuant to a legislative authority for purpose of raising revenue to be used for public or governmental purposes and not as payment for a special privilege or service rendered by a public officer, in which case it is a "fee". Generally speaking "taxes" are burdens of a pecuniary nature imposed for defraying the cost of governmental functions, whereas charges are "fees" where they are imposed upon a person to defray the cost of particular services rendered to his account.

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18. Applying the above principles to the present case, we find enumeration of obligatory and discretionary functions of the corporation in section 29 and 30 under which civic services are rendered to the rate-payers for which taxes are leviable as mentioned in section 170 of the Act. As stated above, the entire part-IV of the Act deals not only with the levy of taxes, they also deal with assessments, valuation, collection and recovery of taxes. The entire machinery for filing of returns, objections and inspection of records and properties comes under the part which deals with

taxation. The maintenance of assessment books, annual reports, valuation reports etc. all come under the part which deals with taxation. Section-183 which deals with notice of transfer also comes under the same part. It is true that under section 183(5), fees are payable for mutation as may be prescribed under the regulations, still as stated above, the primary object of such a charge is to augment the revenue and the levy of such a charge cannot be treated to be a part of the regulatory measure. Further, under the Regulations, the corporation while prescribing fees has levied fees on ad valorem basis which is one more circumstance to show that the impugned levy is in the nature of tax and not in the nature of a fee. Further, the quantum of levy indicates that it is a tax and not a fee. The analysis of the various provisions of the Act and the impugned regulations show that the impugned levy is in exercise of power of taxation under the said Act to augment the revenues primarily and not as a part of regulatory measure. As stated above, the purpose of mutation is to register the transfer in the records of the corporation which in turn would help the corporation to recover taxes from the existing tax payers. Therefore, no special benefit results to the transferee who is made statutorily liable to inform the corporation of the change, if any, in the name of the person primarily liable to pay the tax.

(xvi) Thereafter, the reliance was placed on the decision of Secunderabad Hyderabad Hotel Owners' Association and others Vs. Hyderabad Municipal Corporation,

Hyderabad and another, reported in (1999) 2 SCC 274 to point-out that the current trend with respect to deciding whether the levy is tax or “fees” and more particularly following Paras of the said judgment which reads thus:

“9. It is, by now, well settled that a license fee may be either regulatory or compensatory. When a fee is charged for rendering specific services a certain element of quid pro quo must be there between the service rendered and the fee charged so that the license fee is commensurate with the cost of rendering the service although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. License fees can also be regulatory when the activities for which a license is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.

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11. In the case of Corporation of Calcutta and Another v. Liberty Cinema ([1965] 2 SCR 477 at page 483), this Court after referring to the constitutional provisions making a distinction between a fee and a tax, also went on to say that in our Constitution fees for license and fees for services rendered are contemplated as different kinds of levy. The former is not intended to be a fee for services

rendered. This is apparent from a consideration of Article 110(2) and Article 199(2) where both the expressions are used indicating thereby that they are not the same. In other words, a distinction was made between fees for services rendered and fees which are regulatory. In *Indian Mica & Micanite Industries Ltd. v. State of Bihar & Ors.* (1971 Supp. SCR 319 at page 324), *Om Parkash Agarwal etc. v. Giri Raj Kishori & Ors. etc.* ([1986] 1 SCR 149) and *The Municipal Council, Madurai v. R. Narayanan etc.* ([1976] 1 SCR 333 at pages 339 to 400) the Court had considered a fee which was charged for services rendered. In all these cases the Court observed that when a fee is charged for services rendered an element of quid pro quo is necessary and there has to be a co-relationship of a general character between the cost of rendering such service and the fee charged. A number of other decisions were also cited in this connection. The position in respect of fees for services rendered is summed up in the case of *Krishi Upaj Mandi Samiti and Ors. v. Orient Paper & Industries Ltd.* ([1995] 1 SCC 655 in paragraph 21).

12. In the present case, however, the fees charged are not just for services rendered but they also have a large element of a regulatory fee levied for the purpose of monitoring the activity of the licensees to ensure that they comply with the terms and conditions of the license. Dealing with such regulatory fees, this Court in *Vam Organic Chemicals Ltd. & Anr. etc. v. State of U.P. & Ors. etc.* ([1997] 2 SCC 715 at page 726) observed that in the case of a regulatory fee no quid pro quo

was necessary but such fee should not be excessive. The same distinction between regulatory and compensatory fees has been made in the case of P. Kannadasan & Ors. v. State of T.N. & Ors. ([1996] 5 SCC 670 in paragraph 36) as well as State of Tripura & Ors. v. Sudhir Ranjan Nath ([1997] 3 SCC 665 at 673)."

(xvii) Reliance was placed on the decision of Supreme Court in case of Jindal Stainless Ltd. & Anr. Vs. State of Haryana & Ors., reported in (2017) 12 SCC 1 to submit that the decision in case of Commissioner, Hindu Religious (supra) reported in AIR (1954) SC 282 is still a good law as the same is referred to and relied upon as *locus classicus*.

(xviii) Reliance was also placed on the decision of the Supreme Court in case of State of Uttarakhand and others Vs. Kumaon Stone Crusher, reported in (2018) 14 SCC 537, wherein also the decision of the Apex Court i.e. Commissioner, Hindu Religious (supra) is quoted extensively and is accepted as *locus classicus* for the concept of fees and tax. Reliance was placed on Para nos.152 to 154 of the said judgment which reads thus:

"152. We now proceed to consider the respective contentions of the parties on

the Fourth and Fifth Amendment Rules. Before we proceed to consider the rival contentions, it is necessary to have broad overview of the concept of fee and tax. Further, the nature of regulatory fee and its essential characteristic also needs to be looked into.

153. The locus classicus on the concept of fee and tax is the judgment of this Court in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, B.K. Mukherjea, J. speaking for 7-Judge Bench has elaborately defined the tax and fee in paragraphs 43 and 44 which are quoted below:

"43. A neat definition of what "tax" means has been given by Latham C.J. of the High Court of Australia in Matthews v. Chicory Marketing Board (60 C.L.R. 263, 276.). "A tax", according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered". This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law (Vide Lower Mainland Dairy v. Orystal Dairy Ltd. 1933 AC 168.).

The second characteristic of tax is

that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected form part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority (See Findlay Shirras on "Science of Public Finance", Vol. p. 203.). Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.

44. Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay (Vide Lutz on "Public Finance" p. 215.). These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases."

154. Further, on distinction between tax

and fee following was stated in paragraphs 45 and 46:

"45... The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licenses, is secondary to the primary motive of regulation in the public interest (Vide Findlay Shirras on "Science of Public Finance" Vol. I, p. 202.). Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. As Seligman says, it is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action (Vide Seligman's Essays on Taxation, p. 408.).

46. If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services. As indicated in article 110 of the Constitution, ordinarily there are two classes of cases where Government imposes 'fees' upon persons. In the first class of cases, Government simply grants a

permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred.

A most common illustration of this type of cases is furnished by the license fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licenses may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant (Vide Seligman's Essays on Taxation, p. 409.), and if the money paid by license holders goes for the upkeep of roads and other matters of general public utility, the license fee cannot but be regarded as a tax."

(xix) Thereafter, reliance was placed upon the decision of the Supreme Court in case of Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawala and others reported in AIR (1992) SC 2038 in support of the submission with regard to Entry no.66 of List-II of VIIth Schedule of the Constitution of India which deals with fees in respect of any of the

matter in the said list, but not including any fees taken in any Court, vis-a-vis entry no.5 of List-II of that schedule which refers to the Constitution of India and power of trust and other local authorities for the purpose of local self Government at village administration. The Supreme Court has held as under:-

“3. The High Court of Gujarat has held that Entry 66 of List 11 of VIIth Schedule to the Constitution deals with fees in respect of any of the matters in the said List but not including any fee taken in any Court. Entry 5 of List 11 of that Schedule refers to Constitution and powers of improvement trust and other local authorities for the purpose of local self-government or village administration. The High Court has held that under entry 66, the State Legislature has legislative competence to make provisions for fees to be imposed by the Development Authority constituted under Section 31 of the said Act. The High Court has, however, held that simply because there is legislative competence for the State Government to charge fees for the Urban Development Authority, it cannot be held that demands for the development fee and/ or imposition of the same by the Development Authority under the impugned regulations is legal and valid. The High Court has indicated that it is to be seen whether under the Town Planning Act, a specific power has been given to the Development Authority to impose such development fee. After scrutinising the provisions of the Town Planning Act, the

High Court has come to the finding that the Development Authority or as a matter of fact any other authority under the Act has not been vested with the power to charge betterment or the development fee.

4. The High Court has referred to the decisions of this Court in *Hingir Rampur Coal Co. Ltd. V/s. State of Orissa*, AIR 1961 SC 459 and *Sri Jagannath Ramanuj Das V/s. State of Orissa*, AIR 1954 SC 400. This Court has held that between a tax and a fee there is no generic difference because in a sense both are compulsory executions of money by public authority but in a tax imposed for public purpose, no service need be rendered in return of such tax. A fee is however levied essentially for services rendered and as such there is an element of *quid pro quo* between the person paying the fee and the public authority imposing the same. It has been further indicated that whenever there is any compulsory exaction of any money from a citizen, there must be a specific provision for imposition of such tax and/ or fee. There is no room for any intendment for imposition of compulsory payment. Whenever there is any compulsory exaction of money from a citizen, nothing is to be read and nothing is to be implied. One should look fairly at the language used. The High Court has also referred to another decision of this Court in the case of *Delhi Municipal Corpn. V/s. Mohd. Yasin*, AIR 1983 SC 617, wherein the compulsory nature of exaction by way of tax and fee partaking the character of tax has been reiterated and it has been held that there is no generic difference between tax and fee though broadly a tax is

compulsory exaction as part of a common burden without promise of any special advantages to classes of tax payers whereas a fee is a payment for services rendered or benefit provided or privilege conferred. The High Court has held that since there is no express provision for imposition of fee and the State Government has not delegated any such power to the Development Authority to impose fees for development, the regulations framed for such imposition of fees and the demands made therefor are wholly unauthorised and illegal.

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7. After giving our anxious consideration to the contentions raised by Mr. Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such 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 or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of fiscal power. The facts and circumstances in the case of District Council of Jowai, (AIR 1986 SC 1930) are entirely different. The exercise of powers by the Autonomous Jantia Hills Districts are controlled by the constitutional provisions and in the special facts of the case, this Court has indicated that the realisation of just fee for a specific purpose by the

autonomous District was justified and such power was implied. The said decision cannot be made applicable to the facts of this case or the same should not be held to have laid down any legal proposition that in matters of imposition of tax or fees, the question of necessary intendment may be looked into when there is no express provision for imposition of fee or tax. The other decision in Khargram Panchayat Samiti's case, (1987 (3) SCC 82) also deals with the exercise of incidental and consequential power in the field of administrative law and the same does not deal with the power of imposing tax and fee.

8. The High Court has referred to the decisions of this Court in Hingir's case, (AIR 1961 SC 459) and Jagannath Ramanuj's case, (AIR 1954 SC 400) and Delhi Municipal Corporation's case (AIR 1983 SC 617) (supra). It has been consistently held by this Court that whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment. Nothing is to be read and nothing is to be implied and one should look fairly to the language used. We are, therefore, unable to accept the contention of Mr. Goswami. Accordingly, there is no occasion to interfere with the impugned decision of the High Court. The appeal, therefore, fails and is dismissed with no order as to costs."

(xx) After relying upon the above decisions, it was summarised by the learned Senior Advocate Mr. Joshi for the petitioners

that levying tax in the garb of fees is arbitrary and irrational and therefore, violative of the Article 14 and 243X of the Constitution of India as under :-

(a) AMC has fixed zone-wise separate different fees, which, if it is regulatory, should be uniform.

(b) The ground for the increase given is that AMC gets higher rates for tender sites and that the advertisers find it cheaper to advertise the hoardings in private properties since the rates of license fees are much less and that therefore, they are not participating in the tenders. This reason is ex-facie arbitrary absolutely irrelevant and extraneous and is an example of colourable exercise of power. AMC, when it gives tender sites, it lets out/licenses out its own properties. AMC cannot disincentives advertisement hoardings in private properties by increasing the license fees on such hoardings. The two are not comparable at all since the Petitioners would in any case be paying license/lease amounts to the owners.

(c) That apart, even for arriving at the license fees as per Resolutions at Annexur-A and Annexure-AA, there is absolutely no logic principle or method. Column 6 of the table of letter dated 4th October, 2018, addressed to the Commissioner indicates 10% of the average of maximum and minimum rates for tenders and column 7 is for the rates of license proposed for private sites. If these columns are compared, it would be clear that there is no rational in determining the license fees of private properties. Thus, it is absolutely arbitrary and irrational and without legal principle and therefore, violative of Article 14 of the Constitution of India. Reliance was placed upon paragraph 21 of the judgment reported in Calcutta Municipal Corporation and others Vs. Shrey Mercantile (P) Ltd., and others, reported in (2005) 4 SCC 245 which is as under:-

“21. Now coming to the question of challenge to the levy as arbitrary and discriminatory and violative of Article 14, we find that the functions of the Corporation with regard to mutation remain the same, whether the applicant is a transferee under a conveyance or a

lessee or a beneficiary under a Will or an heir in the case of intestate succession. Once an application or mutation is made, the same is examined by the department and after hearing the objections, if any, the record is ordered to be changed. Ultimately, the exercise is for fiscal purpose. Similarly, the property valuation may be below Rs.50,000 or above Rs.2 lakhs, the function of the Corporation in making the mutation entry remains the same. Similarly, whatever may be the cause of mutation, whether it is a case of transfer or devolution, the activity of mutation remains constant in all the cases. The expenses incurred in all the cases also cannot vary, whatever be the value of the property or the cause of mutation. In the circumstances, there is no reason given for charging different rates depending on the value of the property and the cause of transfer. By doing so, the incidence of the levy falls differently on persons similarly situated resulting in violation of Article 14 of the Constitution of India. Moreover, the quantum of fees is disproportionate to the so-called "services" which is one more circumstance showing arbitrariness in the levy of such imposition. So far as Article 14 is concerned, the Courts in India have always examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of legislation. (See *Om Kumar Vs. Union of India*)."

(C) Submissions for the contention that the Levy of licsnse fees is highly excessive.

(i) It was submitted that on perusal of the letter of the Commissioner dated 17th November 2018, which is produced at page no.21 of the petition for comparison of the proposed increase is more than double and in some cases it is about 300%. It was therefore, submitted that such increase is highly excessive.

(ii) In support of the above submission, reliance is placed upon the decision of Apex Court in case of Bidhannagar (Salt Lake) Welfare Assn. Vs. Central Valuation Board & Ors. reported in (2007) 7 SCC 668, wherein the Apex Court has held as under:

“18. The result of such an unscientific study may produce a disastrous result and in fact from the pattern of increase in demands by the Bidhanagar Municipality it appears that the increase in the valuation ranges from 3954%, i.e., 39.5 times to 137%, i.e., 1.4 times. Such exorbitant increase in the tax on the public is, in our opinion, itself indicative of arbitrariness, and hence, violative of Article 14 of the Constitution. In a democracy, the people are supreme, and all authorities must function for the

public welfare. Excessive increase in the tax burden on the public is surely not for the public welfare. Also, in the aforementioned context, in our opinion, the very method applied by the Municipality and the Central Valuation Board must be held to be arbitrary in nature and hence violative of the Constitution. In Maneka Gandhi v. Union of India [AIR 1978 SC 597], it was held that arbitrariness may be violative of Article 14 of the Constitution.”

(D) Submissions that after introduction of GST Regime, the respondents cannot collect any tax on the hoardings and consequently any fees.

(i) It was submitted that by 101st Amendment to the Constitution of India, Entry-55 of List-II of the VIIth Schedule of the Constitution was deleted with effect from 16th September 2016. The Entry-55 prior to its deletion reads as under :-

“55. Taxes on advertisement, other than advertisement published in the newspaper, advertisement and broadcast by radio or television.”

(ii) Reliance was placed on on Entry-66 of List-II of VIIth Schedule of the Constitution which provides for fees in

respect of any of the matter in this list but does not include fees taken in any Court. It was therefore, submitted that once Entry-55 being deleted the respondents cannot make any law with regard to the fees in respect of the matters covered under Entry-55 and therefore, respondents cannot recover the license fee for advertisement hoardings in private properties as same would be without authority of law and therefore, violative of Article-265 of the Constitution of India.

(iii) Without prejudice to the above submissions, it was submitted that after commencement of the GST Regime with effect from 1st July 2017, the taxes on advertisement by respondent nos.1 and 3 for annual license fees for billboards and hoarding in a private properties have been subsumed in the GST levy and the power of the respondent no.1 to levy such fee under the GPMC Act is impliedly repealed.

(iv) Reliance was placed on the decision of Division Bench of this Court in case of Bharat Corporation Ltd. Oil Installation Vs. State of Gujarat rendered on 9th June 2017 in SCA no.16304 of 2013 and other allied matters to submit that levy of fees is required to be

considered as to whether while imposing the levy the test of it being quid pro quo is successfully passed or not. It was submitted that in the facts of the case, there is no element of being quid pro quo and the levy of the fees is irrational and highly excessive. It was therefore, submitted that increase in levy of fees for the advertisement hoardings in private properties is irrational, arbitrary and highly excessive and Section 386(2) of the GPMC Act, being violative of Articles 14 and 243X of the Constitution of India and more particularly when after the GST regime came into force with effect from 1st July 2017, the respondents cannot impose any levy of fees on advertisement hoarding in private properties.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS :-

10. The learned Advocate General Mr. Kamal B. Trivedi assisted by the learned advocate Mr. Satyam Chhaya and others, the learned Assistant Government Pleaders Mr. Chintan Dave, Mr. Soham Joshi and Mr. Vinay Vishen submitted that the contentions raised on behalf of the petitioners with regard to the constitutional validity of Section 386(2) of the GPMC Act and contention that license fees in question is a tax

in garb of fees and such fee is excessive are without any basis.

(A) Submissions with regard to presumption as to Constitutionality of Section 386(2) of the GPMC Act.

1. It was submitted that it is well established position of law that the writ courts while pronouncing upon the constitutionality of any statutory provision start with the presumption in favour of constitutionality and prefer a construction, which keeps the statutory provision within the competence of the Legislature. As per the rule of construction, if on one construction, a given statutory provision will become ultra vires, whereas on another construction, which may be open, the statutory provision in question remains effective and operative, the writ courts will prefer the later on the ground that the Legislature is presumed not to have intended an excess of its jurisdiction. In support of this submission, reliance was placed upon the judgment of the Apex Court in case of M. Rathinaswami Vs. State of Tamil Nadu, reported in (2009) 5 SCC 625, wherein it is held as under:-

“28. It is well settled that to save a statutory provision from the vice of unconstitutionality sometimes a restricted

or extended interpretation of the statute has to be given. This is because it is a well-settled principle of interpretation that the Court should make every effort to save a statute from becoming unconstitutional. If on giving one interpretation the statute becomes unconstitutional and on another interpretation it will be constitutional, then the Court should prefer the latter on the ground that the Legislature is presumed not to have intended to have exceeded its jurisdiction.

29. Sometimes to uphold the constitutional validity the statutory provision has to be read down. Thus, In re, Hindu Women's Right to Property Act, [AIR 1945 FC 28], the Federal Court was considering the validity of the Hindu Women's Right to Property Act, 1937. In order to uphold the constitutional validity of the Act, the Federal Court held the Act intra vires by construing the word 'Property' as meaning property other than agricultural land'. This restricted interpretation of the word 'Property' had to be given otherwise the Act would have become unconstitutional. Similarly, in Kedernath V/s. State of Bihar [AIR 1962 SC 955], this Court had to construe Section 124-A of the Indian Penal Code which relates to the offence of sedition which makes a person punishable who by words, either spoken or written or by sign or visible representations, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law'. This Court gave a restricted interpretation to the aforesaid words so that they apply only to acts involving intention or

tendency to create disorder or disturbance of law and order or incitement to violence. This was done to avoid the provisions becoming violative of Articles 19(1)(a) of the Constitution which provides for freedom of speech and expression.

30. Several other decisions on the point have been given in Justice G.P. Singh's Principles of Statutory Interpretation (7th Edn 1999 pp 414-417).

31. For the reason given above these appeals are partly allowed and the impugned judgment is partly set aside, and it is held that the impugned rule so far as it places directly recruited Assistants above the promotees for promotion as Deputy Tehsildar shall only apply to those promotees who are non graduates, but it is inapplicable to those promotees who are graduates.”

2. It was therefore, submitted that Section 386(2) of the GPMC Act has been holding the field since 1949 and has stood the test of time. Therefore, challenge to the constitutional validity of Section 386(2) of the GPMC Act in the year 2019-2020, if succeeds, would invite serious upheaval against larger public interest since the amount of license fee in question collected by the Corporation along with other amounts by way of tax or otherwise are always being

utilized for the benefit of people at large. Therefore, as held by the Apex Court in case of PGFG Ltd. Vs. Union of India, reported in (2015) 13 SCC 50 while examining the vires of any statutory provision, the writ court is to examine whether such challenge is raised at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time-gap exists as between the date of the enactment and the date when the challenge is made and that even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration whether it calls for prevention of the operation of the provision in the larger interest of the public or not.

(B) Submissions with regard to the contention that Section 386(2) of the GPMC Act is ultra vires Article 243X of the Constitution of India :-

1. It was submitted that Article 243X of the Constitution of India merely provides for an enabling provision which means that there is no obligation on the part of the State legislature to provide for a statute/legislative provision as contemplated in

Article 243X of the Constitution. Therefore, it is entirely upon the discretion of the State legislature to consider the procedure and the limits and make the law accordingly and pertinently while undertaking the said exercise, it would also be upon to the State to eliminate or modify the levy. In other words, Article 243X of the Constitution merely provides an outline of the scheme for levy and imposition of taxes, fees, etc. to enable the local bodies, like the Municipal Corporation to levy and collect the same and that the said Article neither provides as to which procedure has to be laid down or what limits are to be specified nor does it prescribe any maximum limit.

2. In support of the aforesaid propositions, reliance was placed on the judgment of the Apex court in case of Shanti G. Patel Vs. State of Maharashtra, reported in (2006) 2 SCC 505 wherein the Apex Court, while dealing with similar provision contained under Article 243-W of the Constitution of India, has observed as under:-

“9. Article 243-W whereupon great emphasis has been laid by the petitioners herein provides for an enabling clause

so as to enable the State to endow by law the municipality with such powers and authority, as may be necessary, to enable the State to make, by law, by endowing the municipalities to function as institutions of self-government which may contain provisions for the devolution of powers and responsibilities subject to the conditions which may be specified in the Twelfth Schedule. The Twelfth Schedule of the Constitution referable to Article 243-W, inter alia, provides for urban planning including town planning, regulation of land-use and construction of buildings. Thus, Article 243-W contains merely an enabling provision, and it does not mean that the State is obligated to provide for such a statute. The Constitution (Seventy-fourth Amendment) Act, in any event, does not envisage that the existing laws would become non-operative or a vacuum would be created in the matter of enforcement of existing laws relating to urban planning and/or regulation of land-use and construction of buildings, etc.

10. The existing provisions of the statutes which govern the field, in our opinion, unless a statute is enacted by the State Legislature in terms of Article 243-W of the Constitution would continue to operate in the field. In view of the fact that the validity and/or interpretation of the MRTP Act and/or the regulations framed by the State are otherwise pending consideration before this Court, entertaining this special leave petition at this stage, in our opinion, would not serve any fruitful purpose.

11. We have noticed hereinbefore that the petitioners had not laid any foundation on facts in the writ petition so as to comprehensively question the vires of the existing statutes in terms of the Constitution (Seventy-fourth Amendment) Act and on the said ground alone, the High Court, in our opinion, has rightly refused to enter thereinto.

12. Even if we agree with the contention of the petitioners herein that the writ petition should have been entertained, the High Court or for that matter this Court could only issue a direction upon the State to pass an appropriate legislation in terms of the provisions of Article 243-W and the Twelfth Schedule of the Constitution within a time-frame. By no stretch of imagination the existing laws could have been struck down only on that premise.”

In the case of Shanti G. Patel (supra) quoted above, the question before the Supreme Court was whether section 37(1-AA) of the Maharashtra Regional and the Town Planning Act, 1966 was violative of Article 243-W of the Constitution by alleging that in view of Article 243-W and items 1 and 2 of the Twelfth Schedule of the Constitution, the Municipal Corporation alone has the competence to make subordinate legislation as regards town planning. The Supreme Court turned down such contention holding that the existing provisions of the statutes governing the field relating to urban planning and/or regulation of land use and construction of building etc., would continue to operate in that field unless

a statute is enacted by the State legislature in terms of Article 243-W. The Supreme Court further held that Article 243-W is merely an enabling provision and the State is not obliged to provide for such a statute. In such circumstances, according to the Supreme Court, the High Courts or the Supreme Court could only issue a direction to the State to pass an appropriate legislation in terms of Article 243-W and 12th schedule, and existing laws cannot be struck down only on that premises.

3. It was submitted that while interpreting one more similar Article, i.e. Article 243-G of the Constitution of India, the Apex Court in case of U.P. Gram Panchayat Adhikari Sangh Vs. Daya Ram Saroj, reported in (2007) 2 SCC 138 inter alia observed as under :-

1.The Constitution (Seventy-third Amendment) Act, 1992 came into force on 24-4-1993. The said amendment was brought into force to give effect to one of the directive principles of State policy, Article 40 of the Constitution of India, which directs the State to organise Village Panchayats as units of self-government. Article 40 reads as under:

“40. *Organisation of Village Panchayats.*—The State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

2. Part IV of the Constitution deals with “directive principles of State policy”. Article 37 provides that the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

3. By the 73rd Constitutional Amendment Article 243-G was introduced in the Constitution of India. Article 243-G reads as under:

“243-G. *Powers, authority and responsibilities of Panchayats.*—Subject to the provisions of the Constitution, the legislature of a State may, by law, endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

4. Article 243-G, thus, endows the Panchayats with such power and authority as may be necessary to enable them to func-

tion as institutions of self-government. Such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to conditions as may be specified, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule of the Constitution.

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37. This contention, in our view, is not tenable in law. We have already said that the 73rd Amendment was brought into force on 24-4-1993 to give effect to one of the directive principles of State policy, namely, Article 40 of the Constitution. Therefore, it cannot be said that the 73rd Amendment of the Constitution is the basic feature of the Constitution. Article 40 cannot be said to qualify as the basic feature of the Constitution. The 73rd Amendment came to the Constitution by way of amendment under Article 368 and, therefore, it cannot be said to be a basic feature of the Constitution. It is an enabling provision and the State is empowered either to eliminate, modify or cancel by exercising power under the enabling provision. Article 243-G is an enabling provision. Article 243-G enables the Panchayats to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to such conditions as may be specified therein, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those in re-

lation to the matters listed in the Eleventh Schedule. The enabling provisions are further subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider legal conditions and make the law accordingly. The devolution of exercise (*sic*) would also be open to the State to eliminate or modify. See Constitution Bench judgment in *M. Nagaraj v. Union of India*⁸. Also see *Akhil Bharat Goseva Sangh (3) v. State of A.P.* and *Kuldip Nayar v. Union of India* where a Constitution Bench of this Court considered the basic structure theory in para 107 of the judgment and held as under: (*Kuldip Nayar* reported in 2006(7) SCC 1 at p. 67)

“107. The basic structure theory imposes limitation on the power of Parliament to amend the Constitution. An amendment to the Constitution under Article 368 could be challenged on the ground of violation of the basic structure of the Constitution. An ordinary legislation cannot be so challenged. The challenge to a law made, within its legislative competence, by Parliament on the ground of violation of the basic structure of the Constitution is thus not available to the petitioners.”

4. It was submitted that while dealing with similar challenge against the validity of the taxing provision i.e. Section 141B of the GPMC Act, the aforesaid view has been followed by the Division Bench of this Court in the case of *Adani Gas Ltd. Vs. Ahmedabad*

Municipal Corporation, vide judgment dated 24.10.2013 rendered in SCA no.11459 of 2012 inter alia observing as under :-

“9.1 It is submitted by ... that Section 141B of the Gujarat Provincial Municipal Corporations Act, 1949 (GPMC Act) is ultra vires Article 243X of the Constitution of India. ... It is submitted that Article 243X provides that the legislature of a State may, by law, authorise the municipality collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits as per the specified in law. It is submitted that in the case at hand, Section 141B does not provide for such limit; nor does it provide for the rate of tax insofar as the land is concerned....”

16.5... However, on fair reading of Article 243-X of the Constitution of India, it appears that the said Article provides that the legislature of a State may by law authorise the 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 law. Thus, it is an enabling provision to empower the Municipality to provide funds through taxes, tolls etc., it does not provide as to which procedure has to be laid down and what limits are required to be

specified. It also does not prescribe any maximum limits. The Constitution only provides only an outline of the Scheme for levy and imposition of tax, fees.”

5. It was submitted that similar view has been taken by this Court in one another case of Vodafone Mobile Services Ltd. Vs. Ahmedabad Municipal Corporation, reported in 2017 SCC Online Guj. 231

6. It was submitted without prejudice to other submissions that even whilst assuming without admitting that Article 243-X of the Constitution mandates the State legislature to provide necessary procedure and limits, then in that case also, the same have been provided/ in-built in Section 386(2) of the GPMC Act inasmuch as a license fee may be charged by the Commissioner only after taking sanction of the Corporation and not otherwise. Thus, this is nothing but the provision providing for procedure, limits in form of checks and balances to control the discretion of the Commissioner in the matter of proposing fixation/ revision in the rates of license fee. The said aspect of taking sanction of the Corporation for levying a fee, also takes care that the Commissioner

does not have unbridled and unfettered powers with respect to the fixation of the rates of license fee or levy and collection thereof and that the same is always levied only with the approval / sanction of the Corporation. It was submitted that whatever the Commissioner proposes, the same does not become a rule of the Corporation, unless and until the same is approved by the Standing Committee, which is, in turn, required to be approved/ sanctioned by the Corporation under Section 386(2) of the GPMC Act.

7. It was submitted that reliance placed by the Petitioners in this behalf on the judgment of the Hon'ble M. P. High Court in case of Anil Kumar Gulati vs. State of M. P., reported in AIR 2004 MP 182, is totally misconceived. In the said case, validity of the taxing provisions relating to property tax was challenged, inter alia, on the strength of Article 243-X of the Constitution by contending that the language of the said Article suggests that the Legislature has the authority to make law and to authorize the Municipality to collect taxes on its own in accordance with such procedure and subject to such limits, as may be laid down therein, but without being constrained or governed by the

Rules framed by the State Government under the said law and that, therefore, it was held that the Legislature cannot delegate the powers to the executive to frame Rules and compel the Local Authorities to impose tax in accordance with the Rules framed by it and by such an Act, the Legislature has abdicated its essential legislative functions. However, ultimately, the M. P. High Court did not accept the said challenge and upheld the validity of the taxing provisions under challenge. On the basis of the said judgment of the M. P. High Court, the petitioners, inter alia, contended that the Corporation merely wears the hat of the Government and it is the Government which may allow the corporation to levy the license fee in question. In response to this, it was submitted that there cannot be any quarrel with the said contention, but the aforesaid judgment of the M.P. High Court is not at all relevant to the facts of the present case.

8. In view of the above submissions, it was submitted that Section 386(2) of the GPMC Act is not ultra vires Article 243X of the Constitution as sought to be canvassed on behalf of the petitioners.

(C) Submissions with regard to the contention that Section 386(2) of the GPMC Act has been rendered unconstitutional after deletion of Schedule-VII Entry-55 of List II with effect from 16.09.2016.

1. It was submitted that the erstwhile Entry 55 of List II was dealing with 'taxes' on advertisements, etc., which was otherwise not applicable in the instant case, which deals with 'fee' and not 'tax'. Under the circumstances, the deletion of Entry 55 of list II does not make any difference to the present levy and collection of license fee in question.

2. It was submitted that in fact, the State legislature has competence to enact Section 386(2) of the GPMC Act for the purpose of levy and collection of license fee in question in view Entry 66 of List II which deals with fee in respect of any of the matters in the said List, i.e. the matter prescribed in Entry 5 of List II. It was also submitted that it is well settled position of law that the Constitutional Entries are required to be interpreted in the widest possible in fashion.

3. In this behalf, reliance was placed on the judgment of the Apex Court in case of

State of W.B. Vs. Kesoram Industries Ltd., reported in (2004) 10 SCC 201 while dealing with cess being levied on coal-bearing land, held that the same is justified as a fee within the protective constitutional coverage of Entry 5 read with Entry 66 of List II, whereas the power to levy tax would be covered by Entry 5 read with Entries 49 and 50 of List II.

4. It was submitted that In view of above contentions, the provision contained in Section 386(2) of the GPMC Act is constitutionally valid in view of Entry 5 and Entry 66 of List II, which aspect of the matter has not been affected at all by deletion of Entry 55 of List II, which was otherwise not applicable in the instant case.

(D) Submissions with regard to the effect of Article 243ZF of the Constitution of the India of to the provision contained in Section 386(2) of the GPMC Act.

1. It was submitted that the Article 243ZF of the Constitution of India provides that in case any provision of any law relating to Municipalities in force in a State is inconsistent with the provision of Part-IX of the Constitution of India, then in that eventuality, such inconsistent provisions

would continue to be in force only until the expiry of one year from the commencement of operation of Part-IX, i.e. from 01.06.1993.

2. It was therefore submitted that only those provisions which are inconsistent with any of the provisions of Part-IX of the Constitution of India, including Article 243X, would get lapsed. However, the provision contained in Section 386(2) of the GPMC Act is in no way inconsistent with the provision of Part-IX of the Constitution of India. Under the circumstances, there is no question of invocation of Article 243ZF of the Constitution of India in the present matter.

3. In view of the above, it was submitted that Section 386(2) of the GPMC Act is neither ultra vires Constitution nor would the provision of Article 243ZF of the Constitution be invoked in the instant case and therefore, there raises no question of the applicability of Article 243-ZF in the present case.

(E) Submissions with regard to contention that Section 386(2) of the GPMC Act suffers from vice of excessive delegation and provide for unguided and uncanalised powers:-

1. It was submitted that the contention of the Petitioners to the effect that for imposition of fees, there must be guidelines is devoid of any substance and is contrary to the settled legal position of law inasmuch as the guidelines are required to be prescribed by the legislature in case where there is a levy of tax and not in case where there is a mere imposition of fees. This proposition of law is very well established by virtue of the judgment of the Apex Court in case of Delhi Race Club Ltd. Vs. Union of India, reported in (2012) 8 SCC 680 wherein it has been specifically observed as under :-

“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 of safeguard is specified in the Act. This principle, as we have distinguished above, applies only to the cases of delegation of the function of taxation of rate of tax and not a fee. As we have held that levy involved in the present case is a fee and not a tax, the ratio of the above mentioned 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 instant of excessive delegation.”

2. It was therefore, submitted that the provision relating to levy of tax and collection of fees cannot be compared with, inasmuch as for imposition of tax, there must be necessary safeguard/ guidelines. However, for levying fee, such safeguards/ guidelines are not required. Therefore, the judgments relied upon on behalf of the petitioners in cases of (i) New Manek Chowk Spg. & WVG Mills Co. Ltd. Vs. Ahmedabad Municipal Corporation, reported in AIR 1967 SC 1801; (ii) Krishna Mohan Pvt. Ltd., Vs. Municipal Corporation of Delhi, reported in (2003) 11 SCC 151; and (iii) Bhavnagar (Salt Lake) Welfare Association vs. Central Valuation Board, reported in (2007) 5 SCC 668 which are with reference to the taxing provisions, would not be applicable to the facts of the present case.

3. It was submitted without prejudice to other submissions that there are sufficient guidelines, checks and balances, flowing from the title of the GPMC Act along with its various provisions to support the levy and collection of the license fee in question under Section 386(2) of the GPMC Act. In

this behalf, reliance is placed on the judgment of the Apex Court in case of Consumer Action Group vs. State of T.N. reported in (2000) 7 SCC 425 wherein, while dealing with similar challenge against the validity of Section 113 of the T.N. Town and Country Planning Act, 1971, providing for exemption provision, the Apex Court, inter alia, observed as under:

“5. ... It cannot be doubted, mere reading literally its language, the first impression is that power conferred upon the Government displays one to be of the widest amplitude with no in-built check revealed from this Section. The petitioner's case is, such wide powers have led to its exercise unscrupulously without consideration of its effect on the public at large. On the other hand, learned counsel for the State denying this submits, the power is bridled and controlled through the Preamble, Objections and Reasons and various provisions of the Act and Rules.”

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“21. Not only “Preamble” and “Objects and Reasons” of the Act clearly indicate its policy but it is also revealed through various provisions of the enactment. Sub-section (13) of Section 2 defines “development” for carrying out any of the works contemplated in the regional and master plan etc. Section 9-C defines functions and powers of

Metropolitan Development Authority, Section 12 refers to functions and powers of the appropriate planning authorities, Section 15 refers to regional planning. Section 16 is for preparation of land and building map, Section 17 refers to the master plan, Section 18 refers to new town development plan, Section 19 refers to the declaration of intention to make or adopt a detailed development plan, Section 20 refers to the contents of detailed development plan, Section 47 refers to use and development of land to be in conformity with the development plan, Section 48 refers to the restrictions on building and lands in the area of the planning authority. Each of them contributes for subserving the policy of the Act, and clearly declares the purpose of the Act. Hence, Section 113 cannot be held to be unbridled, as the Government has to exercise its power within this guideline. Hence, we hold Section 113 to be valid.”

4. It was submitted that the title of the GPMC Act as well as its other provisions as contained in Chapter II relating to Municipal Authorities, i.e. Commissioner, Standing Committee, Councilor and Corporation; Chapter IV relating to Municipal Fund; Chapter XII relating to Drains and Drainages; Chapter XIII relating to Water Supply; Chapter XIV

relating to Streets, Sky-Sign and Advertisement; Chapter XXII (Sections 372 to 386) relating to License Fees and Permits, provide sufficient policy, guidelines, checks and balances for providing levy and collection of a license fee in question under Section 386(2) of the GPMC Act.

5. It was submitted that apart from above, even Section 386(2) of the GPMC Act itself provides for sufficient guidelines, checks and balance inasmuch as a fee may be charged by the Commissioner only after taking sanction of the AMC consisting of 119 elected Municipal Councilors, representing the entire population within the limits of the Corporation. Thus, Section 386(2) of the GPMC Act itself provides guideline to control the discretion of the Commissioner in the matter of proposing fixation/ revision in the rates of license fee. The said aspect of taking sanction of the Corporation for levying a fee also takes care that the Commissioner does not have unbridled and unfettered power with respect to levy and collection of fee and the same is always levied only with the approval of the Corporation as whatever the Commissioner proposes, the same does not become a rule of the Corporation unless and until the same is

approved by the Standing Committee, which is, in turn, required to be approved by the Corporation under Section 386(2) of the GPMC Act.

(F) Submissions with regard to contention that license fees in question is tax in garb of fees.

1. It was submitted that it has been contended on behalf of the petitioners that the license fee in the present case is neither compensatory nor regulatory, but the same is in form of 'tax' and according to the petitioners, in compensatory fee, there must be a broad quid pro quo between the fee charged and services rendered against the same, whereas, in regulatory fee, quid pro quo is not required, but the same should be used for regulating the activity for which fee is charged and that the same should not be excessive. In the present case, it has been further contended that license fee sought to be recovered is not for the purpose of regulating the activity in question, but is for augmenting revenue and hence, the same is in nature of 'tax' and not 'fee'. It has also been contended that if the fee is charged only with the purpose of augmenting revenue, then the same would have to be considered as 'tax', inasmuch as, fee cannot

be charged for augmenting revenue.

2. In the above connection, it was also submitted by the petitioners that the views of this Hon'ble Court in case of - Outdoor Advertising Owners' Association of Ahmedabad Vs. State of Gujarat, vide judgment dated 02.02.2006 rendered in SCA no.12603 of 2005 are *per incuriam*. In support of this, a strong reliance is placed on behalf of the petitioners on the judgment of the Apex Court in case of Commissioner, Hindu Religious Endowments (supra).

3. In response to above contentions , at the outset, it was submitted that the proposition of law laid down by the Apex Court with respect to the characteristics of fees, in case of Commissioner, Hindu Religious Endowment, Madras (supra), has been totally watered down, by a continuous shift in the judicial thinking through the subsequent judgments of the Apex Court, which, in fact, have been echoing the same philosophy as has been laid down by this Court in its above referred judgment dated 02.02.2006 rendered in SCA no.12603 of 2005 in case of Outdoor Advertising Owners Association of Ahmedabad (supra). Thus, the

question as to whether the license fee in question is a fee or a tax, is no longer res integra inasmuch as, the above referred aspects have already been considered and decided by this Court in the said judgment dated 02.02.2006 and upheld by the Division Bench in appeal. In the said judgments, after considering all the aspects of the very license fee in question i.e. license fee for advertisement hoarding in private properties, it has been categorically held by this Court that the same is not a tax, but is a regulatory fee.

4. It was submitted that the levy of license fee in question is a 'fee' and not a 'tax' and it is a regulatory-cum-compensatory fee. It is not even the case of the petitioners that the corporation is not providing any services and that no allegations of such nature have been made in the captioned writ petitions. Hence, once it is established/admitted position of fact that the AMC is providing services to the payer and the same is primary intention for charging such fee then in that eventuality, it maintains the characteristics of 'fee'. It is more particularly in view of the fact that the said license fee in question is

being levied since last more than three decades continuously for the services provided by the Corporation to the payer.

5. It was submitted that before the Apex Court in case of Commissioner, Hindu Religious Endowments (supra) the main issues of controversy raised and decided therein were as under :-

(i) Whether the Mathadhipati of a Math has a right to property under Article 19(1)(f) of the Constitution in the legal sense, in the religious institution and its endowments, which would enable him to claim the protection of the said Article?

(ii) Whether Article 25 of the Constitution, which is intended to protect the religious freedom of individuals, can be invoked in favour of an institution or organization?

(iii) Whether a Mutt can be covered within the description of a religious denomination as provided under Article 26 of the Constitution and even if it does, what cannot be interfered with is its right to manage its own affairs in the matter of religion only and nothing else?

(iv) Having regard to the fundamental rights guaranteed under the Constitution

in matters of religious institutions belonging to particular religious denominations, whether the law regulating the framing of scheme interfering with the management of the Math and its affairs by the Mathadhipati, would conflict with Articles 19(1)(f) and 26 of the Constitution and would be consequently void under Article 13?

6. It was submitted that while dealing with the aforesaid main issues of controversy in the case before it, the Apex Court also dealt with an incidental issue relating to the constitutional validity of Section 76 of the Madras Act, i.e. Madras Hindu Religion and Charitable Endowments Act, 1951, which directed every religious institution to pay the government annually such contribution not exceeding 5% of its income, on the ground that the payment of the said contribution was in nature of a tax and not a fee. It was submitted that the proposition of law is propounded by the Apex Court in the above referred case on the said issue only which has undergone a sea change over the passage of time. It was therefore canvassed that the law laid down by the Apex Court in the said case on the main issues of controversy referred to above holds good even today, but

the proposition of law laid down therein with respect to a lone issue of controversy as regards true characteristics of fee in contradistinction with those of tax as relied upon by the petitioners on Para nos. 41 to 51 of the judgment, has undergone a change, and therefore, various subsequent judgments of the Apex Court rendered were relied upon to demonstrate the gradual shift in the judicial thinking, to submit that today's legal position is very much in accordance with the legal position as propounded by this Court in its judgment dated 02.02.2006 received in SCA no.12603 of 2005 in case of Outdoor Advertising Owners' Association of Ahmedabad (supra) and confirmed by the learned Division Bench of this Hon'ble Court in appeal to that case.

6.1 It was submitted that the Apex Court in the case of Commissioner, Hindu Religious Endowments (supra) while dealing with the provisions of Section 76 of the Madras Hindu Religion and Charitable Endowments Act, 1951 which directed every religious Institution to pay the Government annually such contribution not exceeding 5% of its income, held to the following effect:

(i) In Para 45 of the said judgment, characteristics of 'Tax' is enumerated i.e. it is a compulsory exaction of money under statutory power, it is without any reference to any special benefit to be conferred on the payer of the tax and the levy thereof is for the purposes of general revenue.

(ii) In Para 46, characteristics of 'Fees' is enumerated i.e. it is generally to be charged for a special service rendered for individuals by some government agency and that the amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service.

(iii) In Para 47, it is held that element of compulsion or coerciveness is present in all kinds of imposition and that the same cannot be made the sole or even a material criterion for distinguishing a tax from fees. The distinction between Tax and Fee is that Tax is levied as a part of a common burden, while Fee is a payment for a special benefit or privilege.

(iv) In Para 48, it is held that it is absolutely necessary that the levy of fees should be correlated to the

expenses incurred by the Government in rendering the services. The fees charged for granting a permission or privilege to a person to do something, either heavy or moderate, not on the basis of the costs incurred by the Government, but upon the benefit that the individual receives, cannot but be regarded as a Tax.

(v) In Para 49, it is held that if the Government takes the money as the return for some positive work done for the benefit of persons and the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged with in the public revenue, then the same is to be construed as Fees and not a Tax.

(vi) Thus, while considering the aforesaid aspects, in Para 51, it has been held that the contribution referred in Section 76 of the Madras Act is a Tax, mainly on the grounds that (a) the contribution received is not earmarked or specified for defraying the expenses that the Government had to incur in performing services; (b) all the collections would go to the consolidated fund of the State and all the expenses

are incurred therefrom; and (c) there is total absence of any co-relation between the expenses incurred by the Government for rendering the specific services and the amounts raised by the Government under Section 76 of the Madras Act.

6.2 It was submitted that after the aforesaid decision, by amending Section 76 of the Madras Act and constitution of Fund under Section 81 of the Madras Act, the aforesaid grounds/ defects, referred in Para 51 of the aforesaid judgment, were made good by the Legislature. However, the said amendment came up for consideration before the Apex Court in case of Sadhindra Thirtha Swamiar Vs. The Commissioner for Hindu Religious and Charitable Endowments, reported in AIR (1963) SC 966, wherein the Apex Court, while upholding the amendment, observed in Para 18 to the following effect:

- (i) A levy in the nature of fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it;
- (ii) It is not a postulate of a fee that it must have direct relation to the

actual services rendered by the authority to each individual who obtains the benefit of the service.

(iii) If with a view to provide a specific service, levy is imposed by law and expenses maintaining the service are met out of the amounts collected, there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax.

It was submitted that, thus, shift in the earlier view had thus commenced.

6.3 Thereafter, in the case of Southern Pharmaceuticals and Chemicals, Trichur Vs. State of Kerala, reported in (1981) 4 SCC 391, while considering whether the supervisory charges collected under Section 14(e) of the Kerala Abkari Act, 1967 be regarded as fee or not, the Apex Court, in Para nos. 25 and 29 of the judgment, held as follows, suggesting further shift in the judicial thinking in regard to the concept of a fee.

(i) Merely because the collections for the services rendered or grant of

privilege or license are taken to the consolidated fund and not separately appropriately towards the expenditure for rendering the service is not by itself decisive.

(ii) The element of quid pro quo is not always a sine qua non of a fee and that the traditional concept of quid pro quo is undergoing a transformation.

(iii) Though the supervisory charges are in the nature of a compulsory exaction from a licensee and the collections are not credited to a separate fund, but are taken to Consolidated Fund, the same, by itself is not decisive, by reason of Article 266 of the Constitution of India.

6.4 Thereafter, in the case of Municipal Corporation of Delhi Vs. Mohd. Yasin, reported in (1983)3 SCC 229, while considering the validity of a Notification issued by the Delhi Municipal Corporation enhancing the fee for slaughtering animals in the slaughterhouses from Re.0.25 to Re.2 (i.e. 300%) for each animal in case of sheep, goats and pigs and from Re.1 to Rs.8 (i.e. 700%) for each animal, in case of buffaloes, in Para nos. 9 & 10, the Apex Court held as

follows:

(i) Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough.

(ii) That others besides those paying the fees are also benefited does not detract from the character of a fee. In fact, the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest.

(iii) That the expenditure need not be incurred directly nor even primarily in connection with the special benefit or advantage conferred.

6.5 Thereafter, in the case of Sreenivasa General Traders Vs. State of Andhra Pradesh, reported in (1983) 4 SCC 353, while considering the validity of increase in the rate of market fee levied by market committees in the State of Andhra Pradesh under Section 12(1) of the Andhra Pradesh (Agriculture Produce and Livestock) Markets act, 1966, from Re.0.50 to Re.1 (i.e. 100%), in Para nos. 31 to 39, it was held as

follows:

(i) The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions.

(ii) In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class and that, it may be of no consequence that the State may ultimately and indirectly be benefited by it.

(iii) Co-relationship between the levy and services rendered is one of general character and not of mathematical exactitude. All that is necessary is that there should be "reasonable relationship" between the levy of the fees and the services rendered.

(iv) Once the petitioners therein concede that they do not challenge the levy of market fee at 50 paise per hundred in the year 1972, there can be no basis for challenging the increase in the rate of market fee from Re.0.50 to Rs.1 in the year 1978.

6.6 Thereafter, in the case of I.T.C. Ltd. Vs. State of Karnataka, reported in 1985 (Supp.) SCC 476 while upholding the validity of increase in the rate of market fee levied by market committees in the State of Andhra Pradesh under Section 12(1) of the Andhra Pradesh (Agriculture Produce and Livestock) Markets Act, 1966, from Re.0.50 to Re.1 (i.e. 100%), after considering all the afore-referred judgments in Para nos. 169 to 188, the Apex Court observed to the following effect:

(i) There should be reasonable relationship between service and fee and the same cannot be established by mathematical exactitude in the sense that both sides must be equally balanced.

(ii) In the course of rendering such services to the payers of the fee, if some other benefits accrue or arise to others, quid pro quo is not destroyed.

(iii) The primary object and the essential purpose of the imposition must be looked into.

(iv) To be a fee it is not necessary that all the services must be to the payers of the fees nor correlation between

payment of fee and services rendered, be established with mathematical exactitude.

(v) It is permissible in the modern set-up to take into account projections into future and not only the present services can be utilized for justifying the imposition of fee. All planning, projects into the future for its existence and survival.

(vi) If the primary object and essential purpose of the imposition be service of some special kind to the users of the market or payers of fee, other consequences or other benefits to others do not in the least affect the position. The concept of benefit to the users of market must be looked at from a broad commonsense point of view, taking an integrated view. In today's world you cannot build a good market if the accesses through which the produce comes to the market are not maintained. However, at what point the roads will begin and at what point the roads will end to be able to justify the roads necessary to maintain solely the market appears to be highly theoretical and unreal question in the modern concept of

integrated development.

6.7 Thereafter, in the case of Secunderabad Hyderabad Hotel Owners Association Vs. Hyderabad Municipal Corporation, Hyderabad, reported in (1999) 2 SCC 274, while upholding the validity of increase in the licence fee for a trade licence for running a lodging house, hotel, etc. under Section 622 of the Hyderabad Municipal Act, 1955, from Rs.50/- and Rs.1000/- to Rs.2,000/- where rent was above Rs.1,500/- but not more than Rs.2,000/, in Para 1 to 9 and 12 to 18, the Apex Court observed as follows:

(i) The license fee which is charged for regulation of an activity would be validly classifiable as a fee and not a tax although no service is rendered.

(ii) The Corporation has chosen the quantum of rent paid as the criterion for deciding the quantum of fee to be charged, which does have a nexus with the area in occupation of the lodging house or eating house.

(iii) Although the amount collected from the license fee is credited in the common fund and the same is spent not just for the services rendered, but also

to various other people and members of the public who stand benefited, such license fee is not a tax but, a regulatory-cum-compensatory fee.

6.8 Thereafter, in the case of B.S.E. Brokers' Forum, Bombay Vs. Securities and Exchange Board of India, reported in (2001) 3 SCC 482, while upholding the validity of regulatory fee and registration fee under Section 11(2)(k) and 12 of the Securities and Exchange Board of India Act, 1992, after considering the above-referred judgments, including judgment referred in AIR 1954 SC 282, in Para 1, 20 to 24 and 39 to 50, the Apex Court observed to the following effect:

(i) A lot of ice has melted in the Himalayas after rendering the judgment in the above referred cases so also there has been a sea change in the judicial thinking as to the difference between a tax and a fee since then.

(ii) So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive.

(iii) It is not necessary that the services to be rendered by the collecting authority should be confirmed to the contributories alone.

(iv) While examining the reasonableness of the quantum of levy, the same will not be done with a view to find out whether there is a co-relatable quid pro quo to the quantum of levy, because the quid pro quo is not a condition precedent for the levy of a regulatory fee. Such examination will have to be made in the context of the levy being either excessive or unreasonable for the requirement of the authority for fulfilling its statutory obligations.

6.9 Thereafter, in the case of State of H. P. Vs. Shivalik Agro Poly Products, reported in (2004) 8 SCC 556, while considering the validity of Notification dated 14.04.1969 prescribing the registration fee on a graduated form on the basis of value of the subject matter of the instrument, in Para 3, 4 & 13 to 20, the Apex Court observed as follows:

(i) The statement of law made in *Shirur Mutt* case (AIR 1954 SC 282) regarding

the attributes of fee has undergone a sea change.

(ii) The broad and general co-relationship between the totality of the fee on the one hand and the totality of the expenses of the services on the other will be sufficient to justify the levy.

(iii) A levy will not fail only on the ground that the measure of its distribution on the persons or incidence is disproportionate to the actual services rendered by them.

6.10 Thereafter, in the case of Sona Chandioal Committee vs. State of Maharashtra, reported in (2005) 2 SCC 345, while considering the validity of Section-A of the Bombay Money Lenders Act, 1946, levying inspection fee on money lenders, after considering the afore-referred judgments, in Para 10 & 16 to 30, the Apex Court observed as follows:

(i) So far as regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided so charged is not excessive.

(ii) It is not necessary that service to be rendered by the collecting authority should be confined to the contributories alone.

(iii) It is not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered, but only genera benefit, for which the fee was being paid.

6.11 Thereafter, in the case of Vijayalakshmi Rice Mill Vs. Commercial Tax Officers, Palakol, reported in (2006) 6 SCC 763, while considering the validity of levy of Cess under the Andhra Pradesh Rural Development Act, 1996, which levies cess in addition ot the purchase or sales tax being paid, in Para 18, 21, 27 & 28, the Apex Court observed s follows:

(i) There has been a sea change in the concept of fee and now it is no longer regarded necessary that (a) some specific service must be rendered to the particular individuals from whom fee is being realized and (b) there need not be any exact or mathematical correlation between the amount realized as a fee and

the value of services rendered.

(ii) What has to be seen is whether there is a broad and general co-relationship between the totality of the fee on the one hand, and the totality of expenses of the services on the other.

(iii) The writ petition drafted in the light of the old concept of fee, which has undergone a sea change, and not on the new concept which has been developed in subsequent decisions, is liable to fail on this mere ground.

(iv) The cess in question is in substance a fee as it is being levied for rendering to the rural public the service of rural development for the purposes stated in the act. Clearly roads, bridges and storage facilities have to be built in rural areas for progress, and naturally this will require generating funds. Thus, even if no specific service is rendered to any particular individual from whom the fee has been realized, the cess in question is nevertheless a fee, for the reasons already mentioned above.

6.12 It was submitted that in view of the above refereed subsequent decisions of the

Apex Court it is discernible that the view expressed by the Apex Court in 1954 Judgment, with respect to characteristic of fee, has undergone a sea change and that the consistent view expressed in the subsequent decisions has to be taken into account for considering the characteristic of fee. It was therefore, submitted that considering the fact that admittedly it is not even the case of the petitioners that no services are rendered by the Corporation to them, which shows a broad and reasonable relationship between the payer and the services rendered and therefore, the levy of license fee in question is to be determined as a fee and not as tax.

6.13 It was further submitted that in an attempt to suggest that there is no shift/change in the concept of fee since the rendition of the above referred judgment of the Apex Court in the year 1954, the petitioners have relied upon the judgment of the Apex Court in case of State of Uttarakhand Vs. Kumao Stone Crusher, reported in (2018) 14 SCC 537 to suggest that even in the year 2018, the Apex Court still relies upon its 1954 judgment and hence, there is no change in the judicial thinking, as suggested

on behalf of the respondent herein, however, what is lost sight of by the petitioners is an important fact that the Apex Court in its said 2018 judgment, only refers to those paragraphs viz. 43 to 46 of its 1954 judgment, in respect whereof, there has been no change in the judicial thinking. This was sought to be done by the Apex Court to come to the conclusion in its 2018 judgment that 'the transit fee' in question in the said case was a regulatory fee wherein the State was not to prove quid pro quo for levy of the said fee. It was submitted that 'sea-change in the judicial thinking' as referred to by the Apex Court in its subsequent decisions was, in fact, in respect of the observations of the Apex Court in Para nos. 48 to 51 of its 1954 judgment. Under the circumstances, the petitioners' reliance on the above referred 2018 judgment of the Apex Court is totally misconceived and erroneous.

7. It was submitted that the observations of this Court in its judgment dated 02.02.2006, rendered in SCA no.12603 of 2005 in case of Outdoor Advertising Owners' Association of Ahmedabad Vs. State of Gujarat to suggest that the proposition of law laid down therein still holds good and the same is

not per incuriam which reads thus:-

“19. Bearing in mind the above judicial pronouncements and applying to the present case, it would appear that private property owners in City of Ahmedabad are receiving periodical rentals by permitting companies to exhibit their advertisements on the properties owned by them by putting hoardings. Depending upon situation of the property rents would vary. The Municipal Corporation regulates the said activity by providing for certain standards. The Corporation has to ensure that the hoardings conform to such standards. The duty of the corporation is also to ensure that such hoardings do not endanger safety of general public and citizens residing in the near vicinity. The advertisements to be exhibited have also to be conform to certain standards. The standards of legality and morality have to be maintained. While applying for permission to exhibit the advertisements the applicants have to declare that the advertisement will not be such as would create perverse impression on the minds of general public or one which would offend the sense of morality. The applicants also have to make certain declaration and give undertaking to the Corporation on the basis of which permission for exhibiting advertisement is granted. All these activities would require certain regulatory control to be

exercised on part of the Corporation. It is not in dispute that this would require maintenance of staff for processing of applications, for granting license as also, to periodically carry out inspection to ensure that the hoardings do not breach any of the legal provisions or other requirements laid down by the Corporation.

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29. It is not in doubt that the Corporation spends certain amount towards providing regulatory machinery to regulate activities in question. It is also not in dispute that the amount of license fee which is recovered from the petitioners and other similarly situated persons concerned, forms part of collection of the Corporation, portion of which is utilised for the said regulatory machinery. It is equally not in dispute that substantial portion of the earning is utilised for the purposes other than for specific regulatory controls. In fact the corporation in the affidavit-in-reply has stated that part of the fund so collected is being utilized for providing better amenities, and facilities for the commuting public. It is contended that only when such facilities are provided that the petitioners are able to erect sites for exhibiting advertisements. (Emphasis supplied)

30. As noted above, strict fulfillment of quit pro quo is not necessary. A

portion of funds collected by way of fee is utilised for the purpose of maintaining regulatory machinery by the Corporation. Besides, these funds are also diverted for the purpose of betterment of the roads and for ensuring that the commuting public is provided with proper facilities. Only when the Corporation provides proper roads with lighting, parking facilities wherever necessary and by providing for proper drainage and keeps such roads clean and well maintained that, the property owners on either side of such roads would be able to attract customers to exhibit their advertisements on their properties. One does not need much thinking to appreciate that on roads full of pot holes and dust on dirt filled streets, on small narrow lanes, on congested bye-lanes there would be no potential for commercial development and there would be no potential for exhibiting attractive advertisers. The companies who put up their advertisements exhibiting their products and services would wish to maximise their profits. Such companies would pay hefty rentals only if they find that their advertisements are likely to be seen by large number of commuters. If this purpose is not fulfilled, advertisers would have no interest in putting up their advertisements.

31. It is only on good roads that commercial activity would flourish. It is only on such roads that the property

owners would be in a position to get maximum possible price by way of rentals from the companies to put their advertisements. Good clean and wide roads with proper facilities is thus absolutely necessary for such activity to flourish. It can hardly be disputed that two of the prime roads of the city viz. Ashram Road and c. G. Road have flourished mainly on account of good and well maintained roads. On such roads maximum commercial activities would flourish. On these roads, one would find shops, shopping malls, plazas, eating joints, fancy stylish restaurants, corporate offices and multinational banks. All these activities in turn would augment the earning potential of the sites of the property owners on either side of such roads. Without these roads being well designed, well maintained and well looked after, there would be no commercial potential for such property owners. These roads provide for growth catalyst for commercial activities to flourish. It is only when such roads are developed that maximum number of persons would be visiting such sites either for shopping or for visiting different offices, banks or restaurants. It is only then that the private owners would be in a position to extract maximum possible revenue out of renting their sites for the purpose of exhibiting advertisements. Existence of good roads which are well maintained and well looked after cannot be separated from the potential of the property

owners to earn maximum revenue from the proposed sites for advertisements. One does not need much thinking to appreciate that on roads such as Ashram Road and C. G. Road, all advertisers would be paying highest rentals prevailing in the city. Whereas in remote suburban areas where such development has not yet reached, the prevailing rates for advertisements would be substantially lower. Why should Ashram Road and C. G. Road receive such preferential attention by the Corporation is the question this Court cannot go into. Fact remains that these roads house some of the prime properties in the city and it is only on account of such commercial development, that existing property owners can claim highest rent by permitting companies to exhibit their advertisements. Therefore, money spent by the Corporation for building these roads, for maintaining these roads in the prime condition and for maintaining other facilities such as proper parking and drainage on these roads, ultimately benefits owners of the properties and in turn the petitioners as agents and other similarly situated persons. It is therefore, not possible to accept the contention that by spending such money on maintenance of the roads and other incidental facilities around the area, the petitioners receive no direct or indirect benefit from the Corporation. As discussed earlier, if the roads were to become full of pot holes and have no

cleanliness, if debris or dirt is allowed to collect around these roads, if heaps of filth give constant stench, automatically, the glitter of the roads would vanish. The property owners would no longer enjoy same potential, would not enjoy the same earning from getting maximum rental out of their properties. It is therefore, not possible for such property owners and the present petitioners to argue that from the collection of license fees funds cannot be spent on improvement and maintenance of the road. ..." (Emphasis supplied)

32. One more aspect of the matter which cannot be lost sight of is that the rates of license fee had remained stagnant since 1997. Nearly nine years have passed since then. Commercial activities in and around Ahmedabad have gone up. The city has been expanding, Population is increasing. Money has also devaluated. Business have gone up and earnings have increased. Property prices have shot up over past few years. The rates which were prevailing in the year 1997 cannot be hold good in the year 2006. Therefore, rate revision was imminent. What should have been the revised rate is the only question. This Court would not interfere with exercise of discretionary power of the Corporation when the powers are exercised in a reasonable manner. Unless it is pointed out that rates so revised are highly excessive, this Court would not interfere with the policy decision

of the authority. This court has no power to dissect the decision of the corporation which is primarily in the nature of policy matter. Corporation enjoys certain discretion in this regard, I do not see any reason to interfere with the rate revision.

33. As noted above, different areas of city of Ahmedabad carry different potential. Property owners of properties would obviously get different rents for advertisements exhibited in their properties. For the purpose of deciding rate of the license fee, the Corporation has adopted the structure of the potential value of the rent of the advertisement on the property in question, I do not find any illegality in the same. This concept was accepted by the Hon'ble Supreme Court in the case of *b. S. E. Brokers' Forum, Bombay and others v. Securities and Exchange Board of India (supra)*. To ascertain the true potential, the Corporation adopted the basis of rate offered by the tenderer for the Corporation sites in the near vicinity. One must remember that tenderer offered certain rate to the Corporation which he would be in a position to afford. On such rate, tenderer would have to add his own administrative expenses and also add his own reasonable profit. It is the sum total of these figures, which would be the true market rate for advertisements on such sites. It is at that rate that potential advertiser would have to pay

to the tenderer to exhibit his advertisement. The Corporation therefore, committed no error in adopting the rate offered by the tenderer to the corporation for tender sites as a base figure upon which the license fee is calculated. 16% of the said rate for those properties which are within 80 meters and 8% for those properties which are outside 80 meters of a road junction, cannot be termed as excessive. No facts and figures are placed before this Court to examine the true impact of such increase on the earning potential of the petitioners. Even otherwise, as noted above, it is the base rate which the tenderer offered to pay to the corporation, which has been accepted as yard stick. The tenderer has to keep sufficient margin for administrative expenses, interest loss on advance payments as also his net profit. It is only after these additions are made, that market value of site in question would be determined. On this count also I do not see that increase in the rate is excessive. It may be that in certain areas on account of higher commercial development, the rates have undergone greater increase than in certain other areas with lesser development. This however, would not change the nature of levy and I see no illegality committed by the Corporation.

34. One aspect of the matter still remains outstanding. At the fag end of the arguments, it was contended on

behalf of the petitioners that in certain areas of the city there are certain properties which are far away from any tender site. To compare such properties with tender sites situated at faraway places would be unreasonable. For want of material on record in this regard, I refrain from making any conclusive observations. It would however appear that if the petitioners are correct in their factual averments, I see a valid point being made out. If the private property is situated far away from the tender site, with which it is compared for the charging of licence fees, the same would not stand the test of reasonableness. With these observations, I permit the petitioners to approach the Corporation in such individual cases to redress their grievances and to take corrective measure. The Commissioner shall examine such cases and take steps as may be found necessary bearing in mind the observations made hereinabove.

35. In the result, the petitions are allowed to the extent of quashing the collection of registration fees from the petitioners. Any amount received by the corporation under this head shall be refunded within six weeks from the date of receipt of a copy of this order. In case of any further delay, the amount shall carry interest at the rate of 8% per annum. In so far as the challenge to revision of license fee is concerned, the same is rejected. The petitions are

disposed of accordingly.

36. At this stage, learned advocate for the petitioners requested that the order regarding license fee may be stayed for a period of four weeks. The request of the learned advocate for the petitioners is accepted. By earlier interim order dated 11st August, 2005 and 19th October, 2005, the petitioners have been paying ad hoc license fee to the respondents. Such arrangements shall continue till then.”

Referring to above observations of the learned Single Judge, it was submitted that such observations are in consonance with the subsequent judgments of the Supreme Court and as such the same are not per incuriam.

(G) Submissions that fixation of license fee is not arbitrary or excessive :-

1. It was submitted that the petitioners lastly contended that the rates of the license fee in question are arbitrary and excessive, as there is no justification for the increase in the license fee and that the so called calculation made by the Corporation is not based on the discernible principle and that the factors considered by the Corporation are irrational and Petitioners relied upon the judgments in case of (i) Ahmedabad Urban Development Authority vs.

Sharadkumar Jayantkumar Pasawalla -
MANU/SC/0400/1992 and (ii) Judgment dated
09.06.2017 of this Hon'ble Court in Bharat
Petroleum Corporation Limited vs. State of
Gujarat being SCA no.16304 of 2013

2. In this regard, it was submitted that the rates of license fee in question are neither arbitrary nor excessive, as alleged or otherwise and on the contrary, on perusal of the documents produced by the Corporation, it is obvious that the rate of license fee proposed by the Corporation is based on various relevant factors and it is not the case, where the rates are proposed without any basis. Thus, it is incorrect on the part of the petitioners to contend that the rates of license fee as proposed by the respondent authority are without any justification.

3. In addition to the above, reliance was placed upon the 'Brief Note (PART-I and PART-II) submitted by the respondent authority during the course of hearing indicating the justification for increase in rates of license fee to demonstrate that the present increase impugned in the captioned petition is justified as well as reasonable.

4. The 'Brief Note' submitted was explained during the course of hearing of the captioned writ petition to point out that vide Resolution No.928 dated 22.11.2018 of the Standing Committee and Resolution no.1075 dated 24.12.2018 of the Corporation, there is only increase of 10% in rates of license fee in question for private sites as against what was in vogue right from 2004 vide Resolution No.992 dated 03.12.2004 till the passing of the impugned resolutions in the year 2018. The said increase was effected after about 13 years, cannot, by any stretch of imagination, be considered to be exceptionally excessive, much less excessive in any manner.

5. In furtherance of the above, reliance upon the following decisions was made to submit that the Apex Court has upheld manifold increase in regulatory fees and also held that the various types of factors can be decided by the imposing authority.

(i) A. P. Paper Mills Ltd. Vs. Government of A.P. reported in (2000) 8 SCC 167

(ii) Delhi Race Club Ltd. Vs. Union of India reported in (2012) 8 SCC 680 and

(iii) Lalaram Vs. Union of India reported in (2015) 5 SCC 813

6. It was submitted that applying the law laid down in the aforesaid judgments to the facts of the present case, the proposed increase in the rates of license fee is justified and deserves to be upheld.

7. It was further submitted that as far as the judgments relied upon by the petitioners are concerned, the same are not applicable to the facts of the present case, inasmuch as, either the same are with respect to levy of tax or where there was no express provision under the Act which imposed fees and hence the reliance placed on such judgments is misplaced.

8. It was submitted that Letters Patent Appeal filed against the judgment of the learned single Judge in case of Outdoor Advertising Owners' Association of Ahmedabad (supra) was disposed of by the Division Bench vide an order dated 05.03.2014 passed in LPA No.331 of 2006 in SCA no.12603 of 2005 without disturbing any of the observations and propositions of law of the learned Single Judge and thus, the said judgment of the learned Single Judge of this Court has reached the finality.

9. It was therefore, submitted that in view of above and more particularly in view of the aforesaid judgment dated 02.02.2006 rendered by this Court in earlier round of litigation, the captioned petitions deserve to be dismissed. It was pointed out that identical question was also raised before the Bombay High Court in the case of Yog Advertising & Marketing Services vs. Municipal Corporaiton, reported in 2016 SCC online Bom 62 wherein after considering the law laid down by the Apex Court in above referred judgments, all the contentions raised by the petitioners therein were rejected upholding the levy of license fees imposed under the Mumbai Municipal Corporation Act.

Lastly, it was submitted that the validity of Section 386(2) of the GPMC Act be upheld with a declaration that the Resolutions of the Standing Committee and the Corporation under challenge, are absolutely legal and valid and that, therefore, the same may be allowed to be pressed in service immediately by the Corporation.

REJOINDER OF THE PETITIONERS

11. Learned Senior Advocate Mr. Mihir Joshi in

rejoinder submitted as under:-

(A) With regard to the contention of the respondents that Section 386(2) of the GPMC Act is not ultra vires Article 243X of the Constitution of India as there is no constitutional mandate for providing limits and procedure in the said Article and it is an enabling provision giving discretion to the local authority, it was submitted that Article 243X is enabling qua the legislature that once the legislature make the law under enabling provision, it must specify the procedure and limits in that law.

It was submitted that the judgment cited on behalf of the respondents mainly interprets Article 243X and 243W of the Constitution of India and support the interpretation canvassed by the petitioners more particularly the decision in case of Shanti G. Patel (Supra) reported in (2006) 2 SCC 505 and decision in case of U.P. Garm Panchayat (Supra) reported in (2007) 2 SCC 138 and it was submitted that the Apex Court has held that enabling provisions are further subject to condition as may be specified. Therefore, it is for the State legislature to consider legal condition and make the law

accordingly. It was also pointed-out that in the judgment of this Court in SCA no.11459 of 2012 it is impliedly accepted that the limits and procedures have to be specified in the law itself.

(B) With regard to the contention that there is no excessive delegation under Section 386(2) of the GPMC Act as the sanction of the Corporation provides for sufficient check and it is legislative policy and if the legislative policy is discernable from Act itself there is no arbitrariness and there is no excessive delegation, it was submitted that similar provisions under the BPMC Act and Delhi Municipal Corporation Act were struck down by the Apex Court in cases reported in AIR (1967) SC 1801 and (2003) 7 SCC 151 and therefore, the judgment cited by the respondent in case of Consumer Action Group Vs. State of T.N. reported in (2007) 7 SCC 425 is not applicable as the legislative policy as laid down under the GPMC Act for Section 386(2), guidelines for exercise of powers under Section 386(2) also are not discernable on reading of the preamble and object of reasons for provision of the GPMC Act and the Rules because it is a pre-constitution provision of the BPMC Act,

1949 without there being any guidance or check in the Act. It was therefore, submitted that the fees which is collected is nothing but tax in guise of fees and therefore, for levy of fees and tax, guidance has to be there in the statute.

(C) With regard to the contention that fees charged is regulatory-cum-compensatory and the guidance in the statute is necessary for tax and not for fees and that the decision of the Apex Court in case of Commissioner, Hindu Religious Endowments (Supra) reported in AIR (1954) SC 282 is diluted and there is a paradigm shift, it was submitted that the contention of the respondents that the fees charged is regulatory-cum-compensatory is not borne-out from the affidavit-in-reply, which clearly states that the fees are regulatory. It was reiterated that for fees and tax both guidance has to be there in the Act itself, but Section 386(2) of the GPMC Act gives unbridled power to the Commissioner to charge fees at such rate as shall from time to time be fixed by him without any guidance at all. It was therefore, submitted that if contention that for tax limits and procedure are provided under Section 141AA and 144B of

the GPMC Act but for levy of fees if no procedure is necessary is accepted, levy of fees would be without any limits thereof.

(D) With regard to the contention that decision of Apex Court in case of Commissioner, Hindu Religious Endowments (Supra) reported in AIR (1954) SCC 282 is diluted is not correct as it is a 7 Judge Constitution Bench Judgment and the *locus classicus* on tax and fees. It was submitted that being a Constitutional Bench judgment, it is binding till it is overruled by a Larger Bench. Therefore, it still holds the field. The judgments cited by the respondents are either supporting the petitioners' case or not applicable or are to be treated as mere '*obiter*' AIR 1954 SC 282 regarding taxes and fees is not overruled and there is no paradigm shift in the judicial thinking subsequent to that judgment as the said judgment is relied in (2017) 12 SCC 1 which is a decision of a bench of 9 Judges and on pages 172, 297 and 603, AIR 1954 SC 282 is referred and relied upon as *locus classicus* and also in (2018) 14 SCC 537 in Para nos. 152 to 186, the decision of AIR 1954 282 is accepted as *locus classicus* for '*Fees*' and '*Tax*'. In Para 153, AIR 1954 SC 282 is quoted extensively and particularly

in Para 154, the celebrated paragraph 48 of AIR 1954 SC 282 is reproduced and approved.

Learned senior advocate Mr. Joshi therefore, distinguished the judgments cited by the respondents in support of their contentions that judgment reported in AIR 1954 SC 282 is diluted and there is a shift in judicial thinking and therefore it is not required to be followed as under:-

(i) AIR 1963 SC 966- Para nos. 17 and 18 support the contention of the Petitioners.

(ii) (1981) 4 SCC 391 - This is on principle of 'res extra commercium' - doctrine holding that certain things may not be the object of private rights and are insusceptible to of being traded for example - trading in Alcohol. This case also pertains to fees on 'Spirits'. Amount collected by the State is going to Consolidated Fund under Article 266 which is applicable to the State and Union and not to local authorities like AMC.

(iii) (1983) 3 SCC 229 wherein it is observed regarding "causal relation" between the fees and services rendered and no exact quid pro quo being required which is exactly what was contended by the petitioners. However, the AMC has not even remotely

established relationship between fees and regulatory purpose.

(iv) (1983) 4 SCC 353 - Issue involved was regarding market fees. Issue is totally different.

(v) (1985) Supp SCC 476 - Again question is of market fees and hence not applicable.

(vi) (1999) 2 SCC 274 - The petitioners have relied upon for their submissions.

(vii) (2001) 8 SCC 556 - This judgment was cited and harped upon by the respondents to contend that AIR 1954 SC 282 is diluted. The note of the editor on page 558 showing AIR 1954 SC 282 to be 'Overruled' was shown. However, it was submitted that from the following it will be clear that AIR 1954 SC 2892 still holds the field.

i) It is a 7 Judge Bench decision and therefore it is binding and cannot be overruled by the Bench of lesser number of Judges.

ii) Reliance was placed on Para 75, 77 and 92 in case of (2008) 10 SCC 1 .

“75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in State of Karnataka Vs. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is binding on all the courts including this Court till the same is overruled by a larger Bench.

However, in U.P. SEB vs. Pooran Chandra Pandey [(2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736] on which reliance has been placed by Shri Gupta, a two-Judge Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judge Bench in Maneka Gandhi Vs. Union of India [(1978) 1 SCC 248].

77. We have carefully analysed the judgment of the two-Judge Bench (in Pooran Chandra Pandey case [(2007) 11 SCC 92: (2008) 1 SCC (L&S) 736]) and are of the considered view that the above reproduced observations were not called for.

92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judge Bench in U.P. SEB vs. Pooran Chandra Pandey [(2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736] should be read as obiter and the same should

neither be treated as binding by the High Courts, tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.”

iii) However, in this judgment in Para 9.1, only the following lines from AIR 1954 SC 282 are quoted by observing the same to be not very accurate :-

“if the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax”.

The above quoted lines are not relevant for the present case. At any rate again if Para 19 of this Judgment is referred, it is clear that in light of Article 266 (which was not required to be considered in AIR 1954 SC 282), above lines in para 9.1 are observed to be inaccurate and that 3 Judgments referred to in para 19 - AIR 1964 Punjab 492, AIR 1971 All 390 and (1978) 2 SCC 367 - which were based on the above quoted lines in para 9.1 have been overruled. AIR 1954 SC 282 is NOT overruled.

Thus, for the purposes of these petitions there is no question of any 'Sea Change' or 'Paradigm Shift' or 'Melting of snow' since the decision in AIR 1954 SC 282 as is sought to be contended by the respondents.

(viii) (2005) 2 SCC 345 No such justification as is required and given in this judgment has been given by AMC for levy/ increase of license fees.

(ix) (2006) 6 SCC 763 wherein it is accepted that there has to be co-relation between the fees generated by Cess and value of service. That is what petitioners are contending and the respondents have failed to established.

(x) (2008) 8 SCC 167 In this case the license fee was regulatory in character. The License fees under challenge are quashed as too high. para 32, 33 and 35 ;-

"32. From the conspectus of the views taken in the decided cases noted above it is clear that the impugned license fee is regulatory in character. Therefore, strictosensu the element of quid pro quo does not apply in the case. The question to be considered is if there is a reasonable correlation between the levy of the license fee and

the purpose for which the provisions of the Act and the Rules have been enacted/framed. ...

33. The question that remains to be considered is whether the enhanced licence fee under challenge is grossly high and excessive, and therefore, arbitrary. On a first look it appeared to us that the enhancement from Rs.10,000 to Rs.18,00,000 (maximum), was too high. We also did not find any material on record to show that there was justification for the enhancement of the fee to the extent prescribed. There was also no material on record to show existence of correlation between the expenditure incurred by the Government for enforcement of the Act and the Rules and the enhanced levy. ...

35. On the discussions made and the reasons set out in the foregoing paragraphs, the appeals are allowed, the judgment under challenge is set aside and the revision of license fee introduced by GOMs No.154, E and F Department, dated 26-07-1994, is quashed. ...”

(xi) (2012) 8 SCC 680 - Referring to Paras. 30 to 35 and particularly the Para 32 which reads as under, it was submitted that it is not required to be reiterated that all throughout, the case of the AMC is that the fees are regulatory. The affidavit of the AMC fails to mention, much less explain any co-relation, much less reasonable co-relation

between the levy of the license fees and the purpose for which the fees are sought to be levied under Section 386(2) of the GPMC Act. No details whatsoever are given regarding how the fees collected would be used:

“32. A Constitution Bench of this Court in *Hingir - Rampur Coal Co. Ltd. vs. State of Orissa* [AIR 1961 SC 459 : (1961) 2 SCR 537] was faced with the challenge of deciding upon the constitutional validity of the Orissa Mining Areas Development Fund Act, 1952 levying cess on the colliery of the petitioner therein. The Bench explained different features of a “tax”, a “fee” and “cess” in the following passage : (AIR p. 464, para 9)

“9. ... The neat and terse definition of tax which has been given by Latham, C.J., in *Matthews v. Chicory Mktg. Board (Vic.)* [(1938) 60 CLR 263 (Aust)] CLR, p.276, is often cited as a classic on this subject. ‘A tax’, said Latham, C.J., ‘is a compulsory exaction of money by public authority for public purposes enforceable by law, and is not payment for services rendered’. In bringing out the essential features of a tax this definition also assists in distinguishing a tax from a fee. It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is

imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee.”

(xii) (2015) 5 SCC 813 -The issue in this case is totally different. It is pertaining to increase in the license fees for “Railway Property”. It is with respect to distribution of the State largesse. Here the license fees for hoardings in Private properties are questioned.

(D) With regard to the reliance placed by the respondents on the decision of Yog Advertising & Marketing Services Vs. Municipal Corporation reported in 2016 SCC Online Bombay 62, it was submitted by learned

Senior advocate Mr. Joshi that the case of the Corporation in the said judgment was that for regulating the activity, it was required in the facts of this case by way of fees is to be used for maintaining and repairing road and drainage etc., and the affidavit of the AMC is silent about reasons for the increase of fees required for regulatory purpose. The decision in case of Mumbai Municipal Corporation, the facts were different and the same was distinguished as the expenses in the said case were with regard to the activity of license department.

(E) With regard to the reliance placed on the decision of State of W.B. Vs. Kesoram Industries Ltd., reported in (2004) 10 SCC 201, for submission that though the Entry-55 is deleted by GST regime, the respondents are entitled to collect fees under Entry-5 read with Entry-66, it was submitted that Entry-5 is general entry and it is settled position of law that for taxes, there has to be a specific entry. Reliance was placed on Para 74.3, 75, 31(3) and 100 of the said judgment, wherein it is held that in the scheme of the lists in the 7th Schedule, there exists a clear distinction, between the general subject for legislation and heads of taxation

and they are separately enumerated. It was therefore, submitted that taxes on advertisement were falling under Entry-55, which is deleted and therefore, the intention is that all taxes and fees would be subsumed in GST and Entry-5 cannot be relied upon.

(F) With regard to the brief note submitted by the respondent indicating the justification for increase rates of license fees, it was submitted as under:-

(i) At the outset, no such contentions or averments as are there in the note are found in the affidavit of AMC. For the first time without any factual averments in the affidavit, new case is sought to be introduced by way of a Note which cannot be countenanced and the Hon'ble Court may not be pleased to consider the same particularly paras 7, 8 and 13 thereof. It is categorically denied that the rates of fees considered by the Single Judge while passing the interim order date 11.08.2005 in SCA no.12603 of 2005 had taken into account the average amount fetched for tender site. The said contention/averment is not correct and mischievously introduced

subsequently.

(ii) In Part II of the note, the calculations is given. As an illustration in Para 5 of Part II, East and North zones are taken where the rates are very low. The increase proposed is 100%. Considering the case of AMC in the Note that the average increase is 33%, then in case of the existing rates are Rs.500/-, 33% would come to Rs.665/- whereas the rates proposed is Rs.1000/-. The respondents have deliberately not given the calculation of other zones, where even when the 10% of average of maximum and minimum rates of tenders remain the same in several zones, the new rates proposed are different zones.

For example in West Zone on CG Road 10% of average of maximum and minimum of tender rates is Rs.3397.5 and the proposed rate for license fees is Rs.4,000/-. For West Zone on Ashram Road 10% of average for tender rates is same i.e. Rs.3397.5 whereas the proposed rates is Rs.2,500/-.

(G) Lastly it was submitted that no

rational is given for the proposed increase for the license fees by the respondents and the so-called justification given by the respondents cannot be considered because the bare comparison of existing rates with the proposed rates would show that increase is irrational, arbitrary and highly excessive. It was therefore, submitted that the petitions are required to be allowed as prayed for and appropriate orders for refund in each petition may be passed.

ANALYSIS :-

12. Considering the chronology of events of this case, it is pertinent to note that the petitioners have consistently paid the license fees on the advertisement hoardings in a private property as per the provision of Section 386(2) of the GPMC Act prior to 1992 onwards and at no point of time the petitioners have challenged the power to levy the license fees under the provisions of Section 386(2) of the GPMC Act. It is also pertinent to note that in the year 2012, the petitioners agreed for levy of the license fees by enhancing the rate by 10% every year after initial embargo of 5 years. Thus, the petitioners can be said to have waived the right to challenge the power to levy of fees for the

license for outdoor advertising hoardings in private properties. However, we may consider the submissions made by the petitioners for challenging the constitutional validity of Section 386(2) of the GPMC Act being violative of Articles 14 and 243X of the Constitution of India on merits and not shunt off the petitioners only on this ground only.

13. Having considered the submissions made by both the sides and having gone through the materials on record, the petitioners have challenged the impugned resolutions passed by the AMC for increase of license fees for advertisement hoardings in private properties on the following main grounds:-

(I) The petitioners have questioned the constitutional validity of Section 386(2) of the GPMC Act on the following four grounds:-

(i) Section 386(2) of the GPMC Act is ultra vires Article 243X of the Constitution of India, which inter alia requires the legislative provision of a State authorizing the Corporation to levy and collect fee, to provide for procedure and limits, subject to which such levy or collection can be made,

whereas, Section 386(2) of the GPMC Act does not provide for either;

(ii) Section 386(2) of the GPMC Act is unconstitutional since after 16.09.2016, i.e. after deletion of Entry 55 of List II of the VIIth Schedule to the Constitution, the State legislature has no competence to enact a law authorizing the Corporation to levy and collect fee;

(iii) Section 386(2) of the GPMC Act is without authority of law, since in terms of Article 243ZF of the Constitution of India, after the expiry of one year from 01.06.1993, the provision of Section 386(2) of the GPMC Act cannot be said to be in force and hence, the levy of license fee under the purported exercise of powers under Section 386(2) of the GPMC Act is without authority in law;

(iv) Section 386(2) of the GPMC Act is bad in law for excessive delegation, since it does not provide for any guidelines, checks or control etc.

(II) The petitioners have questioned levy of

the license fees in garb of levy of the tax on following two grounds.

(i) There is no broad quid pro quo between the quantum of the license fee in question and the specific services being provided, since the quantum of fee is higher than the expenses required for rendering specific services, and;

(ii) The License fee in question is deposited in the same account where the collection of tax is deposited and all the expenditure is being incurred from the very account, which is not permissible as per the judgment of the Apex Court in case of Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmi Thirtha Swamiar of Shri Mutt, reported in Air 1954 SC 282."

(III) The petitioners have also prayed that the levy of fees is arbitrary, irrational and highly excessive in absence of any rational bases for increase of license fees.

14. On perusal of the provisions of the Constitution more particularly Article 243X

thereof which provides that the legislature of State may by law authorise Municipality to levy, collect and appropriate such taxes i.e. tolls and fees in accordance with such procedure and limits as may be specified in law which means that there is no obligation on the part of the State legislature to provide for a statute/legislative provision as contemplated in Article 243X as it is an enabling provision. The Apex Court in case of Shantiji Patel Vs. State of Maharashtra (supra) while dealing with Article 243W of the Constitution of India has held as under:-

“9. Article 243W whereupon great emphasis has been laid by the petitioners herein provides for an enabling clause so as to enable the State to endow by law the Municipality with such powers and authority, as may be necessary, to enable the State to make by law by endowing the Municipalities to function as institutions of self-government which may contain provisions of the devolution of powers and responsibilities subject to the conditions which may be specified in the Twelfth Schedule. The Twelfth Schedule of the Constitution referable to Article 243W, inter alia, provides

for Urban planning including town planning, regulation of land- use and construction of buildings. Thus, Article 243W contains merely an enabling provision, and it does not mean that the State is obligated to provide for such a statute. The Constitution (Seventy-fourth Amendment) Act, in any event, does not envisage that the existing laws would become non-operative or a vacuum would be created in the matter of enforcement of existing laws relating to urban planning and/or regulation of land use and construction of buildings etc.

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12. Even if we agree with the contention of the petitioners herein that the writ petition should have been entertained, the High Court or for that matter this Court could only issue a direction upon the State to pass an appropriate legislation in terms of the provisions of Article 243W and the Twelfth Schedule of the Constitution of India within a time frame. By no stretch of imagination the existing laws could have been struck down only on that premise.”

15. From the ratio of the above decision, it is

clear that when an Article of Constitution is an enabling provision, it does not mean that the State is obligated to provide for such a statute and on that ground existing laws could be stuck down only on that premise.

16. Section 386(2) of the GPMC Act is in operation since 1949 and the challenge thereto being ultra vires to the Articles of the Constitution would result in detriment to the public interest since the amount of license fee being collected by the Municipal Corporation along with the other amount collected by way of tax or otherwise are always being utilized for the benefit of people at large. As held by the Apex Court in case of PGF Ltd. Vs. Union of India (supra) that while examining the vires in preliminary statutory provision writ Court is to examine whether the challenge is raised at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book for any long time-gap on the date of enactment and the date when the challenge is made. The Apex Court held as under:-

“37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when

the statute came to be introduced or any provision was brought into the statute book or any long time-gap exists as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-à-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the abovestated reasons it is also imperative that when

such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time-bound basis, so that the legal position is settled one way or the other.”

The afore-quoted decision of Supreme Court is a guiding factor for squaring off akin litigations that have and/or may pop up. It underlines observance of certain precautions whenever vires of provision of law is raised before the Court by way of a writ petition. On many occasions, a challenge to a provision of law, as to its constitutionality is raised aiming at to thwarting the applicability and rigour of those provisions as an escape route from applicability of those provisions of law and thereby creating an impediment for the authorities and institutions concerned. Such challenges always result in prolongation of litigation enabling such unscrupulous elements to take advantage of the pendency of such litigation preferred by them and thereby gain unlawful advantage, to the detrimental disadvantageous position of the others. In effect, such attempts made by invoking the extraordinary jurisdiction of the writ courts of many such challenges, mostly result in rejection of such challenges. However, concurrently, while taking advantage of the long time-gap involved in the pending proceedings, such unscrupulous litigants even while suffering the rejection of their stand at the end as to the vires of the provisions, always try to wriggle out of their liabilities. It is, therefore, imperative and worthwhile to examine at the threshold

as to whether such challenges made are bona fide and do require a consideration at all by the writ courts by applying the principle of “lifting the veil” and as to whether there is any hidden agenda in perpetrating such litigation. With that view, some of the criteria should be kept in mind whenever a challenge to a provision of law is made before the court. The Court should, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of provisions raised in writ petition. The Court should also note whether such challenge is made at the earliest point of time when the Statute came to be introduced or any provision was brought into the statute book or any long time-gap exists as between the date of enactment and the date when the challenge is thrown thereto. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provisions operate the field as against the prevention of such operation. Even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provisions in the larger interests of the public. An attempt has been made only to set out some of the

basic consideration to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds for consideration while considering a challenge on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining it and when such writ petitions are entertained, those petitions should be disposed of as expeditiously as possible and on a time-bound basis, so that the legal position is settled one way or the other.

17. The Apex Court in case of M. Rathinaswami Vs. State of Tamilnadu reported in (2009) 5 SCC 625 has held as under :-

“28. It is well settled that to save a statutory provision from the vice of unconstitutionality sometimes a restricted or extended interpretation of the statute has to be given. This is because it is a well-settled principle of interpretation that the Court should make every effort to save a statute from becoming unconstitutional. If on giving one interpretation the statute becomes unconstitutional and on another interpretation it will be constitutional, then the Court should prefer the latter on the ground that the Legislature is presumed not to have intended to have exceeded its jurisdiction.

29. Sometimes to uphold the constitutional validity the statutory provision has to be read down. Thus, In re, Hindu Women's Right to Property Act,

AIR 1945 FC 28, the Federal Court was considering the validity of the Hindu Women's Right to Property Act, 1937. In order to uphold the constitutional validity of the Act, the Federal Court held the Act intra vires by construing the word 'Property' as meaning 'property other than agricultural land'. This restricted interpretation of the word 'Property' had to be given otherwise the Act would have become unconstitutional. Similarly, in *Kedernath vs. State of Bihar* AIR 1962 SC 955, this Court had to construe Section 124-A of the Indian Penal Code which relates to the offence of sedition which makes a person punishable who 'by words, either spoken or written or by sign or visible representations, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law'. This Court gave a restricted interpretation to the aforesaid words so that they apply only to acts involving intention or tendency to create disorder or disturbance of law and order or incitement to violence. This was done to avoid the provisions becoming violative of Articles 19(1)(a) of the Constitution which provides for freedom of speech and expression.

30. Several other decisions on the point have been given in Justice G.P. Singh's *Principles of Statutory Interpretation* (7th Edn 1999 pp 414-417).

31. For the reason given above these appeals are partly allowed and the impugned judgment is partly set aside, and it is held that the impugned rule so far as it places directly recruited

Assistants above the promotees for promotion as Deputy Tehsildar shall only apply to those promotees who are non graduates, but it is inapplicable to those promotees who are graduates.”

18. The Apex Court in case of *U.P. Grampanchayat Vs. Dayaram Saroj*, reported in (2007) 2 SCC 138 while interpreting Article 243G of the Constitution of India has held as under :-

“1. The Constitution (Seventy-third Amendment) Act, 1992 came into force on 24-4-1993. The said amendment was brought into force to give effect to one of the directive principles of State policy, Article 40 of the Constitution of India, which directs the State to organize Village Panchayats as units of self-government. Article-40 reads as under :

“40. Organisation of Village Panchayats.—The State shall take steps to organize Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

2. PART IV of the Constitution deals with 'Directive Principles of State Policy'. Article 37 provides that the provisions contained in this Part shall not be enforceable by any court, but the

principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

3. By 73rd Constitutional Amendment Article 243G was introduced in the Constitution of India. Article 243G reads as under:-

"243G. Powers, authority and responsibility of Panchayat. Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule."

4. Article 243-G, thus, endows the Panchayats with such power and authority as may be necessary to enable them to function as institutions of self-

government. Such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to conditions as may be specified, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule of the Constitution.

37. This contention, in our view, is not tenable in law. We have already said that the 73rd Amendment was brought into force on 24.4.93 to give effect to one of the Directive Principles of State Policy, namely, Article 40 of the Constitution. Therefore, it cannot be said that the 73rd Amendment of the Constitution is the basic feature of the Constitution. Article 40 cannot be said to qualify as the basic feature of the Constitution. The 73rd Amendment came to the Constitution by way of amendment under Article 368 and, therefore, it cannot be said to be a basic feature of the Constitution. It is an enabling provision and the State is empowered either to eliminate, modify or cancel by exercising power under the enabling provision. Article 243G is an enabling provision. Article 243G enables the Panchayats to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to such conditions as may be specified therein, with

respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. The enabling provisions are further subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider legal conditions and make the law accordingly. The devolution of exercise would also be open to the State to eliminate or modify. See Constitution Bench Judgment in *M. Nagaraj & Ors. v. Union of India & Ors.* (2006) 8 SCC 212. Also see *Akhil Bharat Goseva Sangh (3) v. State of A.P. & Ors.* (2006) 4 SCC 162 and *Kuldip Nayar and Ors. v. Union of India & Ors.* (2006) 7 SCC 1. where a Constitution Bench of this Court considered the basic structure theory in paragraph 107 of the Judgment and held as under:

"107. The basic structure theory imposes limitation on the power of Parliament to amend the Constitution. An amendment to the Constitution under Article 368 could be challenged on the ground of violation of basic structure of the Constitution. An ordinary legislation cannot be so challenged. The challenge to a law made, within its legislative competence, by Parliament on the ground of violation of the basic structure of the Constitution is thus not available to the petitioners."

19. In case of **Vadodara Shaheri Jilla Khedut Mandal vs. Vadodara Municipal Corporation and Ors. (13.12.2013 - GUJHC) : MANU/GJ/0823/2013, this court has held as under:**

“48. There is one more reason why we are not impressed by the submission of Mr. Bhatt in this regard. The challenge to the validity of the Vadodara Urban Development Authority is after a lapse of almost 35 years. Mr. Trivedi, the learned Advocate General appearing for the State Government is right in submitting that the main purpose of VUDA is for the proper development or re-development of urban area according to the provisions of Section 22 of the Act. The powers and functions of the Urban Development Authority are conferred under Section 23 of the Act. Such powers are issued upon the Urban Development Authority for an effective planned development and control, keeping in view the interest of the public at large. Mr. Trivedi is justified in submitting that the challenge should fail also on the ground of delay because at such a belated stage if such a challenge is accepted then it would hamper the entire development process affecting the public at large. It would also affect and have a far-reaching repercussions upon the actions which have been taken so far by the development authorities over a period of 35 years including the implementation and execution of several town planning schemes which are in existence.

20. In case of J. Gala Builders and Ors. vs. Mumbai Building Repairs and Reconstruction Board and Ors. (07.05.2015-BOMHC):MANU/MH/0826/2015, the Bombay High Court has held as under:

“32. Having heard learned counsel for the parties on the question of the amount to be paid to the petitioners for surrendering part of the surplus area which, as indicated above, works out to surplus area of only 5% or 7% of the total built up area, we find considerable substance in the submission of Ms. Anklesaria, learned counsel for the respondent Board that the petitioners having voluntarily agreed to the condition of surrendering part of the surplus built up area by obtaining NOC from the respondent Board under DCR 33(7) before a number of years, it is not open to the petitioners to challenge such condition after such a long period.... ..

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21. In the decision of **State of M.P. v/s. Rakesh Kohli and others reported in AIR 2012 SC 2351**, it is held as under :

13. In our opinion, the High Court was clearly in error in declaring Clause (d), Article 45 of Schedule 1-A of the 1899 Act which as brought in by the M.P. 2002 Act as violative of Article 14 of the Constitution of India. It is very difficult to ap-

prove the reasoning of the High Court that the provision may pass the test of classification but it would not pass the requirement of the second limb of Article 14 of the Constitution which ostracises arbitrariness, unreasonable and irrationality. The High Court failed to keep in mind the well defined limitations in consideration of the constitutional validity of a statute enacted by Parliament or a State Legislature. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

14. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds, namely (i), that the appropriate Legislature does not have competency to make the law and (ii), that it does not take away or abridge any of the fundamental rights enumerated in Part - III of the Constitution or any other constitutional provisions.

15. In *Mcdowell and Co.*² while dealing with the challenge to an enactment based on Article 14, this Court stated in paragraph 43 (at pg. 737) of the Report as follows :

".....A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground.....

..... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an

Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom....."(Emphasis supplied)

Then dealing with the decision of this Court in State of T.N. and others V/s. Ananthi Ammal and others, (1995) 1 SCC 519 a three-Judge Bench in McDowell and Co.2 observed in paragraphs 43 and 44 [at pg. 739) of the Report as under :

".....Now, coming to the decision in Ananthi Ammal, we are of the opinion that it does not lay down a different proposition. It was an appeal from the decision of the Madras High Court striking down the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 as violative of Articles 14, 19 and 300-A of the Constitution. On a review of the provisions of the Act, this Court found that it provided a procedure which was substantially unfair to the owners of the land as compared

to the procedure prescribed by the Land Acquisition Act, 1894, insofar as Section 11 of the Act provided for payment of compensation in instalments if it exceeded rupees two thousand. After noticing the several features of the Act including the one mentioned above, this Court observed: (SCC p. 526, para 7)

"7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis."

44. It is this paragraph which is strongly relied upon by Shri Nariman. We are, however, of the opinion that the observations in the said paragraph must be understood in the totality of the decision. The use of the word 'arbitrary' in para 7 was used in the sense of being discriminatory, as the reading of

the very paragraph in its entirety discloses. The provisions of the Tamil Nadu Act were contrasted with the provisions of the Land Acquisition Act and ultimately it was found that Section 11 insofar as it provided for payment of compensation in instalments was invalid. The ground of invalidation is clearly one of discrimination. It must be remembered that an Act which is discriminatory is liable to be labelled as arbitrary. It is in this sense that the expression 'arbitrary' was used in para 7."

24. In Hamdard Dawakhana and another V/s. The Union of India and others, AIR 1960 SC 554, inter alia, while referring to the earlier two decisions, namely, Bengal Immunity Company Ltd. and Mahant Moti Das , it was observed in paragraph 8 (at pg. 559) of the Report as follows:

"8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i.e. its subject-matter, the area in which it is intended to operate, its purport and intent have to be determined. In order to do so it is legitimate to take into

consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy."

25. In Hamdard Dawakhana, the Court also followed the statement of law in Mahant Moti Das and the two earlier decisions, namely, Charanjit Lal Chowdhury V/s. Union of India and others, AIR 1951 SC 41 and The State of Bombay and another V/s. F.N. Balsara, AIR 1951 SC 318 and reiterated the principle that presumption was always in favour of constitutionality of an enactment.

27. A well-known principle that in the field of taxation, the Legislature enjoys a greater latitude for classification, has been noted by this Court in long line of cases. Some of these decisions are : M/s. Steelworth Limited V/s. State of Assam, 1962 Supp (2) SCR 589; Gopal Narain V/s. State of Uttar Pradesh and another, AIR 1964 SC 370; Ganga Sugar Corporation Limited V/s. State of Uttar Pradesh and others, (1980) 1 SCC 223; R.K. Garg V/s. Union of India and others, (1981) 4 SCC 675

and State of W.B. and another V/s. E.I.T.A. India Limited and others, (2003) 5 SCC 239.

28. In R.K. Garg, the Constitution Bench of this Court stated that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc.

29. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles: (i), there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature (ii), no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found (iii), the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as the Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence (iv), hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or

economic law and (v), in the field of taxation, the Legislature enjoys greater latitude for classification.”

22. In the case of Motor General Traders and Ors. vs. State of Andhra Pradesh and Ors. (26.10.1983 - SC) : MANU/SC/0293/1983, the Andhra Pradesh High Court has held as under:

“24. It is argued that since the impugned provision has been in existence for over twenty three years and its validity has once been upheld by the High Court, this Court should not pronounce upon its validity at this late stage. There are two answers to this proposition. First, the very fact that nearly twenty three years are over from the date of the enactment of the impugned provision and the discrimination is allowed to be continued unjustifiably for such a long time is a ground of attack in these cases. As already observed, the landlords of the buildings constructed subsequent to August 26, 1957 are given undue preference over the landlords of buildings constructed prior to that date in that the former are free from the shackles of the Act while the latter are subjected to the restrictions imposed by it. What should have been just an incentive has become a permanent bonanza in favour of those who constructed buildings subsequent to August 26, 1957. There being no justification for the continuance of the benefit to a class of persons without any rational

basis whatsoever, the evil effects flowing from the impugned exemption have caused more harm to the society than one could anticipate. What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century. The second answer to the above contention is that mere lapse of time does not lend constitutionality to a provision which is otherwise bad. "Time does not run in favour of legislation. If it is ultra vires, it cannot again legal strength from long failure on the part of lawyers to perceive and set up its invalidity. Albeit, lateness in an attack upon the constitutionality of a statute is but a reason for exercising special caution in examining the arguments by which the attack is supported." (See W.A. Wynes: 'Legislative Executive and Judicial Powers in Australia' Fifth Edition p. 33).

23. In the case of Kapila Hingorani vs. State of Bihar (09.05.2003 - SC) : MANU/SC/0403/2003, the Apex Court has held as under:

"61. It is also well-settled that interpretation of the Constitution of India or statutes would change from time to time. Being a living organ, it is ongoing and with the passage of time, law must change. New rights may have to be found out within the constitutional scheme. Horizons of constitutional law are expanding."

24. In the case of John Vallamattom and Ors. vs. Union of India (UOI) (21.07.2003 - SC) : MANU/SC/0480/2003, the Supreme Court has held as under:

"33. It is trite that having regard to Article 13(1) of the Constitution, the constitutionality of the impugned legislation is required to be considered on the basis of laws existing on 26th January 1950, but while doing so the court is not precluded from taking into consideration the subsequent events which have taken place thereafter. It is further trite that the law although may be constitutional when enacted but with passage of time the same may be held to be unconstitutional in view of the changed situation.

34. Justice Cardoza said: "The law has its epochs of ebb and flow, the flood tides are on us. The old order may change yielding place to new; but the transition is never an easy process".

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56. The impugned provision was enacted to prevent persons from making ill-considered death bequest under religious influence. The object behind the said legislation was, therefore, to protect a section of illiterate or semi-literate persons who used to blindly follow the preachers of the religion. Such a purpose has lost all significance with the passage of time and, therefore, has to be declared ultra vires Article 14 of

the Constitution of India.

25. The Division Bench of this Court while considering the challenge against the validity of existing provision of Section 141B of the GPMC Act, in case of Adani Gas Vs. AMC (supra) has held as under :-

“16.8. Now, considering the scheme of the property tax under the GPMC Act, Section 127(3) provides that "Municipal Tax shall be assessed and levied in accordance with the provision of this Act and Rules". Pursuant to Section 127(3), the Municipal Corporation has framed the Rules in exercise of powers under Section 454 of the Act and are approved by the State Government. The rules provide procedure for assessment and collection of the levy. As observed by the Hon'ble Supreme Court in the case of M/s. Goodyear India Limited (supra) and even otherwise there are three stages in the imposition of tax. There is declaration of liability i.e. part of the Statue which determines what percent in respect of what property are liable. Section 127 provides for property tax to be imposed under the Act. Section 141 AA provides as to the component of the property tax and the rate at which it is leviable. Section 141 B provides for rate for general tax on the building and land. Section 99 provides for fixation of rates of tax every year by the

municipal Corporation. Thus imposition of levy of tax and rate of taxation is provided by the Statute and the rules provides machinery for assessment and calculation and the rates are to be framed by the Municipal Corporation every year having regard to its need. It is required to be noted at this stage that even under Section 141 B of the Act there is a limit prescribed to levy the tax on the residential building and other than residential. Thus, considering the entire scheme of the property tax under the GPMC Act and Rules it cannot be said that there is violation of Article 243 X of the Constitution of India as alleged. On harmonious construction and considering all the provisions of the taxation under the Act and the Rules and for the reasons stated hereinafter, we are of the opinion that even there is provision for limits of the general taxes even with respect to the land also (which shall be dealt with hereinafter).

16.9. Under the circumstances and for the reasons stated above, we are of the opinion that as such Section 141 B of the Act is not ultra vires to Article 243 X of the Constitution of India on the ground that in the Act with respect to tax on land no limits of tax is provided. We are of the view that in the present case and while enacting Section 141 B of the Act i.e. levy and assessment of general taxes on the land, provisions of Article 243 X are complied with as State legislature has enacted law i.e. Act for levy of tax on the

building and the land and the said law provide for framing the rules for machinery and calculation of tax and accordingly Taxation Rules (Amendment) 2001 are framed.”

26. In case of Property Owners Association and Ors. vs. State of Maharashtra and Ors. reported in MANU/MH/0735/2019, the Bombay high Court has held as under:

“ 181. To conclude, the BMC Act has been already amended in terms of Article 243-ZF. Perusal of various provisions of Part-IXA of the Constitution of India shows that the constitutional provisions itself provide for the State Legislature enacting law providing for constitution of committees and conferring them with powers and authority. We have already referred to the various provisions including clause (b) of Article 243-W. Therefore, the provision of section 4 of the BMC Act is consistent with the provision of Part-IXA. Clauses (a) and (b) of Article 243-X cannot be read in isolation and merely because Legislature authorizes the Standing Committee to fix the rates of property taxes and to approve rules framed by the Commissioner in accordance with sub-section (1B) of section 154, the relevant provisions of the BMC Act cannot be said to be ultra vires Article 243-X. The powers under the charging sections in Chapter VIII are conferred on the Corporation itself including the power to exercise option

of taking recourse to capital value regime for the levy of property taxes. Moreover, we have pointed out that certain provisions of Chapter-VIII are machinery provisions. As required by law, the decision adopting Capital Value System has been taken by the Corporation consisting of 227 elected and nominated councillors. This power cannot be said to be unguided power only because sub-section (1) of section 140A does not expressly lay down any specific conditions for exercise of the option. The provisions which confer power on the Standing Committee to fix the rates of taxes contain sufficient guidelines. Even the provision of sub-section (1A) of section 154 which confer power on the Commissioner to determine capital value contains more than sufficient guidelines. We see no violation of Article 243-X or any other provisions of Part-IX-A. प्रमव जयत

182. If we accept the submissions canvassed across the bar by the petitioners, not only the decision to adopt capital value system but the job of fixing rates in case of all categories of property taxes, determination of capital value of all properties liable to taxes, process of serving notices under section 162, giving hearing on complaints and deciding the complaints will have to be done by the Corporation consisting of elected councillors and nominated councillors and by no one else. Such

interpretation put to clauses (a) and (b) of Article 243-X will lead to absurdity and the provisions will become unworkable. Such interpretation will defeat the object of 74th Amendment to the Constitution and, therefore, the challenge on the ground of violation of Article 243-X must fail.

27. In case of Municipal Labour Union vs. The State of Maharashtra reported in MANU/MH/1784/2014, the Bombay High Court has held as under:

“37. Upon a bare perusal of the same it is evident that subject to the provisions of the Constitution, it is the Legislature of a State and which may by law endow the Municipalities with such powers and authority as may be necessary to enable them to function as Institutions of self Government. That law may contain provisions for the devolution of powers and responsibilities upon the Municipalities and that is how various aspects of planning, economic development, social justice and functions and duties in relation thereto have to be performed by the Municipalities. They have been entrusted to them. There is force in the contentions of Ms. Karnik that the provisions of every law and by which the powers, authorities and responsibilities have been endowed on the Municipalities must be construed in such a way so as to make existence of the Municipalities meaningful and purposeful. That it is an institution of self Government is,

therefore, abundantly clear. That such Institution must have certain freedom, autonomy and independence is also apparent. However, her arguments overlook the fact that it is the State which has to make the necessary law. Even in terms of this Constitutional Scheme the law making power of the State is untouched. The power to impose tax by, and funds of, the Municipalities, is granted vide Article 243X.

38. Therefore, what we have held above gets further reinforced and supported by Article 243X of the Constitution of India. It is the Legislature of the State and which makes the law by which Municipalities are authorized to levy, assess, collect and appropriate such taxes, dues, tolls and fees in accordance with such procedure and subject to such limits. There could be assignment of duties to the Municipalities. The State Government may assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits. Therefore, when the Legislature of the State has to endow the Municipalities and by law with powers and authority so as to enable them to function as institutions of self Government effectively, then, that position is in no way affected merely because the law authorizes the State to impose the taxes. Merely because the State has such powers in terms of the

law of Legislature does not mean that by itself such law or any provision therein would fall foul of the constitutional mandate. By enactment of Section 127 of the said Act alone the independence of the Municipalities is in no way affected. Chapter-XI of the said Act deals with "Municipal Taxation". The law itself states that the Corporation shall impose the tax, namely, property tax, tax on vehicles, boats and animals. Pertinently, sub-section (1) of Section 127 of the said Act is not in any way challenged and on the ground that the provisions therein encroach on any power of the Municipality of taxation. Eventually, the Municipality derives its power and authority to impose the tax from the law made by the Legislature.

28. The aforesaid view was reiterated in case of Vodafone Mobile Service Limited Vs. State of Gujarat (supra) by the Division Bench of this Court while considering the levy of general property tax on the Mobile Towers under Section 141B of the GPMC Act has held as under:

“23. Now, so far as the submission on behalf of the petitioner that determination of Tax on the Mobile Towers of the petitioner is contrary to the ceiling limit prescribed under Section 141B(3) of the GPMC Act and therefore, the same is *ultra vires* the Article 243X of the Constitution of India is concerned, the aforesaid has no

substance. It is the case on behalf of the petitioner that section 141B(3) of the GPMC Act provides that rate of Tax determined under sub-section (1) read with sub-section (2) which can be less than and/or more than the amount mentioned in the said sub-section i.e. same cannot be less than Rs. 20 per sq. meter of carpet area and more than Rs. 80 per sq. meter of the carpet area in case of buildings, other than residential are concerned, and in the case of Mobile Tower of the petitioner same would be Rs. 302 per sq. meter after applying the factors mentioned in the Taxation Rules, and therefore, as the same shall be more than maximum limit prescribed under Section 141B(3) of the GPMC Act and therefore, the same shall be bad in law, illegal and/or *ultra vires* to Article 243X of the Constitution of India. The aforesaid submission seems to be directive but has no substance. Section 141B of the GPMC Act is required to be read as a whole and the same cannot be read in piecemeal. Sub-section (3) of section 141B of the GPMC Act is required to be read along with sub-section (4) of section 141B. Sub-section (4) of section 141B specifically authorizes and/or permits the Corporation to increase or decrease or neither increase nor decrease the rate of Tax determined under section (1) read with subsections (2) and (3), however subject to the Rules which may be framed for that. As observed hereinabove, what are the

factors to be taken into consideration while increasing or decreasing the rate of Tax determined under sub-section (1) read with sub-sections (2) and (3) of the GPMC Act are provided under Section 141B(4)(a) of the GPMC Act. Therefore, the words which are used under sub-section (4) of section 141B of the GPMC Act are that “the Corporation may increase or decrease, rate of Tax determined under sub-section (1) read with sub-sections (2) and (3) of the GPMC Act. Therefore, under the Statute itself it authorizes the Corporation to increase or decrease the rate of Tax determined under sub-section (1) read with sub-sections (2) and (3) of Section 141B of the GPMC Act. Therefore, rate of Tax which are determined under subsection (3) of Section 141B of the GPMC Act also can be increased or decreased by the Corporation, however subject to the Rules. In the present case the Taxation Rules are framed by the Corporation in exercise of powers under Section 454 of the GPMC Act. Under the circumstances, when the Statute itself permits the Corporation to increase or decrease the rate of Tax determined under sub-section (1) read with sub-sections (2) and (3), the determination of the Tax in the present case cannot be said to be either illegal and/or contrary to the provisions of the Statute and/or the same cannot be said to be *ultra vires* to Article 243X of the Constitution of India. If the submission on behalf of the petitioners

is accepted, in that case the powers conferred under sub-section (4) of Section 141 of the GPMC Act would become nugatory and/or otiose. As per the cardinal principle of law of interpretation of Statute while considering a particular provision of Statute, the Court is required to see that another provision of the Statute may not become nugatory and/or otiose. Under the circumstances it cannot be said that the determination of the property Tax on IBS/Booster sites of the petitioner is in anyway illegal and/or bad in law and *ultra vires* to Article 243X of the Constitution of India.

24. Now, so far as the challenge to the *vires* of Section 141B of the GPMC Act and the submission on behalf of the petitioner that levy of General Property Tax as per the Rules as provided under Section 141B(4) of the GPMC Act and the submission that the same is *ultra vires* to Article 243X of the Constitution of India is concerned, the aforesaid issue is also now not *res integra* in view of the decision of the Division Bench of this Court in the case of *Adani Gas Limited* (Supra). While considering the constitutional validity of section 141B of the GPMC Act insofar as provides for General Taxes as per the Taxation Rules, while holding that section 141B of the GPMC Act to levy General Property Tax as per the Taxation Rules is constitutionally valid and/or the same cannot be said to be *ultra*

vires to Article 243X of the Constitution of India, the Division Bench of this Court in paras 16.1 to 16.9 has observed "....."

25. Under the circumstances and for the reasons stated above, it cannot be said that section 141B(4) of the GPMC Act which permits/authorizes the Corporation to increase or decrease the property Tax as per the Taxation Rules cannot be said to be *ultra vires* to Article 243X of the Constitution of India. As observed hereinabove, section 141B(4) of the GPMC Act is part of the Statute which permits and/or authorizes the Corporation to increase or decrease the property Tax as per the Rules. Section 454 of the GPMC Act permits and/or authorizes to frame the Rules and in exercise of powers under Section 454 of the GPMC Act, Taxation Rules are framed."

29. In case of Selvel Advertising Pvt. Ltd. v. State of Orissa, reported in 2012 SCC OnLine Ori 105, the Orissa High Court has held as under:

"20. Article 243X of the Constitution provides that the Legislature of a State may, by law authorize the 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 law. The Regulations, 2010 in question provides to levy tax on

advertisements in the Municipality. Such Regulations have been made by Rourkela Municipality in exercise of the powers conferred by Section 388(30) of the Act, 1950. Section 388 empowers the Municipal Council to make Regulation or Bye-laws not inconsistent with this Act or the Rules made thereunder or with any other law. Section 388(30) of the Act, 1950 also provides for prohibition and regulation of advertisements in public roads or parks. Therefore, Section 388(30) permits the Municipality to make Regulations to regulate advertisements in public roads or parks and does not authorize the Municipality to levy taxes. Thus, Section 388(30) does not pertain to power to levy tax. Municipality's power to tax is traceable to Article 243X of the Constitution which clearly states that the State Legislature may by law authorize the Municipality to levy, collect and appropriate taxes.

21. Petitioners' further case is that there is no provision in the Act, 1950 which empowers the Municipality to levy tax on advertisement and in absence of such provision, the present Regulations, 2010 are ultra vires Article 243X of the Constitution. According to Mr. Mohapatra, learned counsel for opposite party nos. 2 and 3 in exercise of power conferred under Article 243X of the Constitution, the State Government has framed the Act, 1950 and Section 131 of the said Act confers power on the

Municipality to impose tax. Clauses (g) and (k) of Sub-Section (1) of Section 131 of the Act, 1950 are relevant for adjudication of the present lis. Section 131 of the Act, 1950 empowers the Municipality to impose taxes. It also states that the Municipality may, from time to time, at a meeting convened expressly for the purpose of which due notice shall have to be given subject to the provisions of the Act, 1950 impose, within the limits of the Municipal area, the taxes and fees or any of them enumerated in the said Section. According to Mr. Mohapatra, the power of Municipality to levy tax on advertisements is traceable to Section 131(1)(g) and (k). Section 131(g) speaks of a tax on profession, art and callings as may be prescribed. Levy of tax on advertisements is certainly not covered under Section 131(g). Section 131(k) empowers the Municipality to impose any other tax which the Municipality is empowered to impose under any law for the time being in force. There is no other law as required under Section 131(k) of the Act, 1950 by which the Municipality is empowered to levy tax on advertisements.

22. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. Thus, Article 265 requires that (i) there must be a law, (ii) the law must authorize the tax; and (iii) the tax must be levied and collected according

to the law. In the instant case, ingredients of Article 265 are not satisfied.

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37. In the result, the writ petition is allowed and the Rourkela Municipality Regulations of tax on advertisement, 2010 (Annexure-1) is quashed.”

30. In case of Meghalaya Commercial Truck Owner and Operators Association v. State of Meghalaya, 2010 SCC OnLine Gau 412 : (2011) 4 Gau LR 398 at page 433, the Meghalaya High Court has held as under:

“84. The proposition enunciated in *New Delhi Municipal Council* (supra), with reference to the power of the Municipalities to impose taxes under article 243X was held to be dependant upon their parent legislations for the bestowal thereof. Their lordships held that in case of Municipalities within the State, they would have to be specifically delegated the power to tax by the State Legislature concerned and that the Municipalities do not have any independent power to levy tax. That a subordinate legislation to be valid has to be within the scope of the rule making power provided in the statute has been sought to be iterated by citing the decision of the Apex Court in *Kerela State Electricity Board* (supra).”

31. In the case of Dinesh Pouches Ltd. v. State of Rajasthan, 2007 SCC OnLine Raj 465 : (2007) 4 RLW 2808 : (2008) 16 VST 387 : (2007) 4 WLC 719, the Rajasthan High Court has held as under:

“34. For the purpose of discharging their functions as bodies of self governance, provisions have also been made for funds for Panchayat under Article 243H & for Municipalities under Article 243X respectively. Relevant provisions of the same read as under:-

“Article 243H. Powers to impose taxes by, and Funds of, the Panchayats.- The Legislature of a State may, by law,-

(a) authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(c)

(d)

“Article 243X. Power to impose taxes by, and Funds, of, the Municipalities.- The Legislature of a State may, by law-

(a) authorise a Municipality to levy, collect and appropriate such taxes, duties, tolls and fees in

accordance with such procedure and subject to such limits;

(b) assign to a Municipality such taxes, duties, tolls and fees levied and collected by the State-Government for such purposes and subject to such conditions and limits;

(c)

(d)”

35. From the aforesaid, it is apparent that the State Legislature may either authorise the Panchayat or Municipality, as the case may, itself to levy, collect and appropriate such taxes for its purposes, or the State Government by itself may levy and collect such taxes, duties, tolls and fees as referred to in respective clause (1) of each Articles for the purpose of Panchayat or Municipalities, as the case may be and assign the same to them for the purpose for which levy has been made and collected. It is significant to notice that tax authorised under Entry 52 of List II of Seventh Schedule is limited to specified activity on entry of goods into the local area i.e. for use, consumption or sale therein, which is clearly indicative of the fact that wherever the movement of goods from outside the limit of local area terminates within the local area for the purpose of utilisation of such goods within that local area by way of use, consumption or sale therein, there is direct nexus with the activity of movement of goods and levy of tax on the

entry of goods which moves into the local limits of the defined local area. Apparently, this nexus is related to levy of tax for providing fund for the institution of self governance to discharge functions which have been assigned to the Municipalities or Panchayats or any other authority designed as an Institution of self governance. That object is clear from these provisions of the constitution that the levy and collection of tax on the activity of entry of goods within the local area for use, consumption or sale therein is either to be levied and collected by the authority of local area concerned or to be levied and collected by the State Government itself and assign the same to the institution of self governance of such local area.”

32. The provisions of Section 386(2) of the GPMC Act begins with the words “General provisions regarding grant, suspension or revocation of licenses the written permission and levy of fees etc.” Sub-section-1 of Section 386 provides that license or written permission be given for any purpose and such license or written permission shall specify the period for which the restrictions and conditions subject to which the same is granted and the date by which an application for renewal of the same shall be made and shall be given under the signature of Commissioner or of Municipal Officer empowered

under Section 69 to grant the same. Sub-section-2 of Section-386 is therefore required to be read in conjunction with sub-section-1. Sub-section-2 of Section 386 provides that except as may otherwise be provided by or under this Act, for every such license written permission and fees may be charged at such rate as shall from time to time fixed by the Commissioner with the sanction of the Corporation. Thus, on bare perusal of Sub-section-2 of Section-386 of the GPMC Act, it cannot be said that the Commissioner has excessive delegation because license fees which may be charged by the Commissioner shall come into effect only after the sanction of the Corporation and not otherwise. Thus, in effect sub-section-2 provides for procedure and limits in form of checks and balances to control the power conferred upon the Commissioner to levy the fees for the licenses to be issued as per Sub-section-1 of Section 386.

33. It is also pertinent to note that Sub-section-2 starts with the words "except as may otherwise be provided by and under this Act", which means that it is an exception carved out from other provisions of the Act providing for any fees of license which may be issued under Sub-section-1 of Section 386. The Commissioner of the Municipal Corporation is therefore,

empowered to levy fee at such rate from time to time which may be fixed but such power is subject to the sanction of the Corporation. Therefore, in other words, the fees to be charged as per the provisions of Sub-section-2 of Section 386 cannot be said to be having unbridled or unfettered power. It is also evident from the materials on record that the levy of fees to be charged for advertisement hoardings in private properties does not become effective immediately when the Commissioner proposes unless and until the same is approved by the Standing Committee which in turn is required to be approved and sanction by the Corporation as provided under Sub-section-2 of Section-386 of the GPMC Act.

34. In view of above analysis and conspectus of law, reliance placed by the petitioners on the ratio in case of Anilkumar Gulati Vs. State of MP reported in AIR (2004) SC 182 cannot be made applicable to the facts of the case because in the said case validity of taxing provision relating to property tax was challenged being violative of Article 243X of the Constitution and without any rules framed by the State Government, the legislature could not have delegated the powers to the Executive to frame rules and compel the local authority to impose tax in absence of any power by the State legislature ,no fee or tax

could have been charged by the local body. However, in the facts of the case Sub-section-2 of Section 386 clearly empowers the Commissioner with the sanction of the Corporation to charge fees.

35. Therefore, in view of the above referred case law and discussion, it cannot be said that Section-386(2) of the GPMC Act is ultra vires to the Article 243X of the Constitution. Accordingly, the challenge to the constitutional validity of Section-386(2) of the GPMC Act fails.

36. The contention raised on behalf of the petitioners that no levy of fees can be made under Section-386(2) of the GPMC Act in view of the deletion of Entry-55 of list-II of the VIIth Schedule of the Constitution with effect from 16th September 2016 is concerned, we may refer to the Entry-55 of list-II which provides for taxes on advertisement other than advertisement published in newspaper and advertisement broadcast by radio or television. Thus, Entry-55 of list-II referred to "tax" and not the fees which is sought to be levied for issuing license for advertisement hoardings in private properties under Section-386(1) and (2) of the GPMC Act. Entry-66 of list-II of the VIIth Schedule read with Entry-5 of list-II clearly empowers the

State legislature to levy fee in respect of any of the matter in the said list i.e. the matter prescribed in Entry-5 of list-II. The Apex Court in case of State of West Bengal Vs. Kesoram Industries reported in (2004) 10 SCC 201 while dealing with the cess being levied on coal bearing land held that the same is justified as key within the protective constitution coverage of Entry-5 read with Entry-66 of list-2 and has held as under :-

“1. In this batch of matters, some appeals by special leave under Article 136 of the Constitution and some writ petitions filed in this Court, raise a few questions of constitutional significance centring around Entries 52, 54 and 97 in List I and Entries 23, 49, 50 and 66 in List II of the Seventh Schedule to the Constitution of India as also the extent and purport of the residuary power of legislation vested in the Union of India. Cesses on coal-bearing land levied in exercise of the power conferred by State legislation have been struck down by a Division Bench of the Calcutta High Court. In exercise of the same power conferred by State legislation whereunder cesses were levied on coal-bearing land, cesses have also been levied on tea plantation land which are the subject-matter of writ petitions filed in this Court. The Bengal Brickfield Owners' Association has also come up to this Court by filing a writ petition under Article 32 of the Constitution, laying challenge to the same cesses levied on the removal of brick earth. These three sets of matters arise from West

Bengal. The High Court of Allahabad has upheld the constitutional validity of cess levied in the State of U.P. on minor minerals which decisions are the subject-matter of civil appeals filed under Article 136 of the Constitution. For the sake of convenience, we would call these matters, respectively as (A) "Coal matters", (B) "Tea matters", (C) "Brick earth matters", and (D) "Minor mineral matters". Inasmuch as the basic constitutional questions arising for decision in all these matters are the same, all the matters have been heard analogously.

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31. Article 245 of the Constitution is the fountain source of legislative power. It provides – subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State. The legislative field between Parliament and the legislature of any State is divided by Article 246 of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule, called the "Union List". Subject to the said power of Parliament, the legislature of any State has power to make laws with respect to any of the matters enumerated in List III, called the "Concurrent List". Subject to the abovesaid two, the legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II, called the "State List". Under Article 248 the exclusive power of Parliament to make laws extends to any matter not enumerated in the Concurrent

List or State List. The power of making any law imposing a tax not mentioned in the Concurrent List or State List vests in Parliament. This is what is called the residuary power vesting in Parliament. The principles have been succinctly summarised and restated by a Bench of three learned Judges of this Court on a review of the available decision in *Hoechst Pharmaceuticals Ltd. v. State of Bihar*⁸. They are:

(1) The various entries in the three lists are not “powers” of legislation but “fields” of legislation. The Constitution effects a complete separation of the taxing power of the Union and of the States under Article 246. *There is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the Union and the States.*

(2) In spite of the fields of legislation having been demarcated, the question of repugnancy between law made by Parliament and a law made by the State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the State law will be ultra vires and shall have to give way to the Union law.

(3) *Taxation is considered to be a distinct matter for purposes of legislative competence.* There is a distinction made between general subjects of legislation and taxation. The general subjects of legislation are dealt with in one group of entries and power of taxation in a separate group. *The power to tax cannot*

be deduced from a general legislative entry as an ancillary power.

(4) The entries in the lists being merely topics or fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The words and expressions employed in drafting the entries must be given the widest-possible interpretation. This is because, to quote V. Ramaswami, J., the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere *simplex enumeratio* of broad categories. A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary matters.

(5) Where the legislative competence of the legislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in List I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other legislature is of no consequence. The court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining

the true character of legislation. The name given by the legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

(6) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance is to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the legislature which enacted it, an incidental encroaching in the field assigned to another legislature is to be ignored. While reading the three lists, List I has priority over Lists III and II and List III has priority over List II. However, still, *the predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II though it may incidentally affect any item in List I.*

(emphasis supplied)

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140. The MMRD Act enables control over the regulation of mines and the development of minerals being exercised by the Central Government through legislation. The High Court has upheld the validity of the SADA Act by relating it to Entry 5 in List II which is "Local government". Any Local Government exercising the power of governance over a local area shall have to administer, manage and develop the area lying within its territory which cannot be done without raising funds. It is usual for

every piece of legislation giving birth to an institution of Local Government to feed it by incorporating provisions conferring power of generating funds for meeting the expenses of governance. The SADA Act intends to achieve a level of local governance which the usual models of Local Government such as boards and municipalities are not considered capable of achieving and that is why there is a special development area and a Special Area Development Authority. The fund established under the Act meets expenses of administration needed to be incurred by the authority. The funds cannot be utilised for any purpose other than the administration of the Act. There are pieces of land which though containing a mine yet fall within the territory of special development area. It was pointed out by the respondents before the High Court that in spite of the Act having been enacted in the year 1986, the successive State Governments, which had preceded it, did not take care of the legislation and it was only the then Government which became conscious of its obligations under the SADA Act and commenced identifying special areas requiring development such as Sonbhadra. The imposition of cess envisaged through the SADA Act and the Rules was a step towards developing the special area. It is a matter of common knowledge, and does not need any evidence to demonstrate, that mining activity carried on the land within the special area involves extraction, removal, loading-unloading and transportation of the minerals accompanied by its natural consequences entailed on the environment and the infrastructure such as roads, water and power supply etc. within the special area. The impugned cess can,

therefore, be justified as a fee for rendering such services as would improve the infrastructure and general development of the area, the benefits whereof would be availed even by the stonecrushers. Entry 66 in List II is available to provide protective constitutional coverage to the impugned levy as fee.

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143. As a tax the impugned levy of cess is clearly covered by Entry 5 of List II (as the High Court has held, and we add) read with Entries 49 and 50 of List II. There is no challenge to the declaration of the area as a special development area and the constitution of Special Area Development Authority for the administration thereof. In other words, the constitutional validity of the enactment as a whole and the rules framed thereunder is not put in issue. What is under challenge is only the levy of cess. There is nothing wrong in the State legislation levying cess by way of tax so as to generate its funds. Although it is termed as a “cess on mineral right”, the impact thereof falls on the land delivering the minerals. Thus, the levy of cess also falls within the scope of Entry 49 of List II. Inasmuch as the levy on mineral rights does not contravene any of the limitations imposed by Parliament by law relating to mineral development, it is also covered by Entry 50 of List II. The power to levy any tax or fee lying within the legislative competence of the State Legislature can be delegated to any institution of Local Government constituted by law within the meaning of Entry 5 in List II. Entries 5, 23, 49, 50 and 66 of List II provide adequate constitutional

coverage to the impugned levy of cess. True it is that the method of quantifying the cess is by reference to the quantum of mineral produced. This would not alter the character of the levy. There are myriad methods of calculating the value of the land for the purpose of quantifying the tax, reference whereto has already been made by us in the other part of this judgment. Validity of cess upon the land quantified by reference to the quantity of its produce was held to be a levy on the land and hence constitutional in *Ralla Ram*¹³, *Moopil Nair*¹⁸ and *Ajoy Kumar Mukherjee*¹⁹. It does not become excise duty on manufacture and production of goods merely on account of having relation with the quantity of product yielded of the land. Rather it is a safe, sound and scientific method of determining the value of the land to which the product relates. The levy of cess considered as a tax is constitutionally valid.

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146. As stated earlier also, the impugned cess can be justified as fee as well. The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect

benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged. The levy of the impugned cess can equally be upheld by reference to Entry 66 read with Entry 5 of List II.”

37. In view of the above dictum of law, provisions of Sub-section-2 of Section 386 of the GPMC Act is constitutionally valid as per Entry-5 read with Entry-66 of list-II of the VIIth Schedule and deletion of Entry-55 of list-2 cannot be said to have any effect on the power to levy fees as provided by Section 386(2) of the GPMC Act.

38. Similarly, Article 243ZF of the Constitution of India provides that anything in this part any provision of any law relating to Municipalities in force and State immediately before the commencement of the Constitutional 74th Amendment Act, 1992 which is inconsistent with the provision of this part shall continue to be in force until amended repealed by competent legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier i.e. from 1st June 1993. Therefore, provisions which are inconsistent with any of the provision of part-IX of the Constitution of India including Article 243X

would be required to be amended but the provision contained in Section 386(2) of the GPMC Act cannot be said to be inconsistent with any of the provision of part-IX of Constitution of India and therefore, Article 243ZF would not come into play in the facts of the case.

39. The submissions of the petitioner that provision of Sub-section-2 of Section 386 suffers from excessive delegation and provided for unguided and uncanalised power to the Commissioner as there is no procedure for limits for imposition of fees in absence of any guideline is concerned, it is settled position of law that the guidelines are required to be prescribed by legislature in case where there is levy of tax and not in case where there is imposition of fees. The Apex Court in case of Delhi Race Club Ltd., Vs. Union of India reported in (2012) 8 SCC 680 has held as under :-

“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.”

40. It is now well settled that the provision relating to levy of tax and collection of fees cannot be compared with as held by the judgment relied upon on behalf of the petitioner in case of New Manek Chowk Spinning & Weaving Mills (Supra), Krishna Mohan (Supra) and Bidhannagar (Salt Lake) (Supra) with reference to taxing provisions and the same would not be applicable to the facts of the present case pertaining to levy of fees. The Apex Court in case of Consumer Action Group Vs. State of Tamilnadu reported in (2000) 7 SCC 425 while dealing with similar challenge against the validity of Section 113 of Tamilnadu Town and Country Planning Act, 1971 has held as under:-

“13. For the State reliance is placed in the State of Bombay and Anr. V. F.N. Balsara, 1951 SCR 682 (Constitution Bench). With reference to the validity of Section 139(c) of the Bombay Prohibition Act (XXV of 1949) the submission was that power given to the Government to exempt any person or institution or any class of persons or institutions from observing whole or any of the provisions of the Act, rule or regulation or order is too wide and

unbridled. This section is similar in the width of discretion to the section we are considering. This Court while setting aside the High Court decision upheld the provisions and held:-

“This Court had to consider quite recently the question as to how far delegated legislation is permissible, and a reference to its final conclusion will show that delegation of the character which these sections involve cannot on any view be held to be invalid. (See Special Reference No.1 of 1951: In re The Delhi Laws Act, 1912, etc.). A legislature while legislating cannot foresee and provide for all future contingencies, and section 52 does no more than enable the duly authorized officer to meet contingencies and deal with various situations as they arise. The same considerations will apply to section 53 and 139(c). The matter however need not be pursued further, as it has already been dealt with elaborately in the case referred to.”

14. In *Harishankar Bagla and Anr. V. The State of Madhya Pradesh* 1995 SCR 380 (Constitution Bench) this Court held:-

“The next contention of Mr. Umrigar that section 3 of the Essential Supplies (Temporary Powers) Act, 1946, amounts to delegation of Legislative power outside the permissible limits is again without any merit. It was settled by the majority judgment in the Delhi Laws Act case that essential powers of legislature cannot be delegated. In other words, the legislature cannot delegate its function of laying down

legislative policy in respect of a measure and its formulation as a rule of conduct. The Legislature must declare the policy of the law and the legal principles which are to control any given cases and must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy into a binding rule of conduct. In the present case the legislature has laid down such a principle and that principle is the maintenance or increase in supply of essential commodities and of securing equitable distribution and availability at fair prices. As already pointed out, the preamble and the body of the sections sufficiently formulate the legislative policy and the ambit and character of the Act is such that the details of that policy can only be worked out by delegating them to a subordinate authority within the framework of that policy.

15. In *Sardar Inder Singh V. The State of Rajasthan* 1957 SCR (Constitution Bench), this Court was considering Section 15 of the Rajasthan (Protection and Tenants) Ordinance, 1949 which, with similar provision authorised the Government to exempt any person from the operation of the Act. This Court held:

“A more substantial contention is the one based on s. 15, which authorises the Government to exempt any person or class of persons from the operation of the Act. It is argued that that section does not lay down the principles on which

exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and is therefore repugnant to Art. 14. It is true that that section does not itself indicate the grounds on which exemption could be granted, but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs s. 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided. Vide *Harishanker Bagla v. The State of Madhya Pradesh*.

16. *P.J. Irani V. The State of Madras* 1962 (2) SCR 169 (Constitution Bench). In this case Section 13 of *Madras Buildings (Lease and Rent Control) Act, 1949* is similar to the provisions we are considering conferred power of exemption. This Court held:

“It was not possible for the statute itself to contemplate every such contingency and make specific provision therefor in the enactment. It was for this reason that a power of exemption in general terms was conferred on the State Government which, however, could be used not for the purpose of discriminating between tenant and tenant, but in order to further the policy and purpose of the Act which was, in the context of the present case, to prevent unreasonable eviction of tenants.”

17. In *Registrar of Co-operative Societies, Trivandrum and Anr. V. K. Kunhambu and Ors.* 1980 (2) SCR 260, this Court was considering Section 60 of the

Madras Cooperative Societies Act 1932, which empowered the State Government to exempt existing society from any of the provisions of the Act or to direct that such provisions shall apply to such society with specified modifications. This Court held: (SCC p. 343 & 346, paras 3 & 12)

“The Legislature may guide the delegate by speaking through the express provision empowering delegation or the other provisions of the statute, the preamble, the scheme or even the very subject matter of the statute. If guidance there is, wherever it may be found, the delegation is valid Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications. The power given to the Government under s. 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear.”

18. The catena of decisions referred to above concludes unwaveringly in spite of very wide power being conferred on delegatee that such a section would still not be ultra vires, if guideline could be gathered from the Preamble, Object and Reasons and other provisions of the Acts and Rules. In testing validity of such provision, the courts have to discover, whether there is any legislative policy purpose of the statute or indication of any clear will through its various provisions, if there

be any, then this by itself would be a guiding factor to be exercised by the delegatee. In other words, then it cannot be held that such a power is unbridled or uncanalised. The exercise of power of such delegatee is controlled through such policy. In the fast changing scenario of economic, social order with scientific development spawns innumerable situations which Legislature possibly could not foresee, so delegatee is entrusted with power to meet such exigencies within the in built check or guidance and in the present case to be within the declared policy. So delegatee has to exercise its powers within this controlled path to subserve the policy and to achieve the objectives of the Act. A situation may arise, in some cases where strict adherence to any provision of the statute or rules may result in great hardship, in a given situation, where exercise of such power of exemption is to remove this hardship without materially effecting the policy of the Act, viz., development in the present case then such exercise of power would be covered under it. All situation cannot be culled out which has to be judiciously judged and exercised, to meet any such great hardship of any individual or institution or conversely in the interest of society at large. Such power is meant rarely to be used. So far decisions relied by the petitioner, where the provisions were held to be ultra vires, they are not cases in which court found that there was any policy laid down under the Act. In *A.N. Parasuraman & Ors. (supra)* Court held [Section 22](#) to be ultra vires as the Act did not lay down any principle or policy. Similarly, in *Kunnathat Thathunni Moopil Nair (supra)* [Section](#)

7 was held to be ultra vires as there was no principle or policy laid down.

19. In this background we find the preamble of the Act laid down:-

“An Act to provide for planning the development and use of rural and urban land in the State of Tamil Nadu and for purposes connected therewith.”

20. The preamble clearly spells out policy which is for planning and development of the use of the rural and urban land in the State. The Statement of Objects and Reasons also indicates towards the same. The relevant portion of which is quoted hereunder:

“The Tamil Nadu Town Planning Act, 1920 (Tamil Nadu Act VII of 1920) which is based on the British Town and Country Planning and Housing Act, 1909, has been in force in the State for nearly five decades. The said Act provides for matters relating to the development of towns to secure to their present and future inhabitants, sanitary conditions, amenity and convenience. It was felt necessary to make comprehensive amendments to the Act as the Act had several shortcomings and defects.

21. Not only preamble and Objects and reasons of the Act clearly indicate its policy but it is also revealed through various provisions of the enactment. Sub-section (13) of Section 2 defines development for carrying out any of the works contemplated in the regional and master plan etc., Section 9-C defines functions and powers of the Metropolitan

Development Authority, Section 12 refers to functions and powers of the Appropriate Planning Authorities, Section 15 refers to regional planning. Section 16 is for preparation of land and building map, Section 17 refers to the Master plans, Section 18 refers to new town development plan, Section 19 refers to the declaration of intention to make or adopt a detailed development plan, Section 20 refers to the contents of detailed development plan, Section 47 refers to use and development of land to be in conformity with development plan, Section 48 refers to the restrictions on building and lands in the area of the planning authority. Each of them contributes for subserving the policy of the Act, and clearly declares the purpose of the Act. Hence Section 113 cannot be held to be unbridled, as Government has to exercise its power within this guideline. Hence we hold Section 113 to be valid.”

41. Considering the scheme of the GPMC Act and the provisions contained therein, we observe that Chapter-II thereof pertains to Municipal Authorities having charge with the execution of the Act like Commissioner, Standing Committee, Councilor etc., whereas Chapter-IX provides for Municipal fund and other funds, whereas Chapter-XI provides for Municipal taxation including property tax, Chapter-XII provides for drains and drainages, Chapter-XIII provides for water supply and Chapter-XIV provides for streets. Section-244 prescribed regulations as to Sky-signs and

advertisements and Section-245 provides for regulation and control of advertisement and Chapter-XXII provides for licenses and permits from Sections 372 to 386. Sections 372 to 375 provides for licensing of surveyors, architects, engineer, structure designers, clerks of work and plumber. Section-376 to 376A provides for trade license and other licenses for keeping animals and certain articles, Section 377 prescribed licenses for sale in Municipal market, Section-378 to 380 provides for licenses for private markets, Section-381 provides for license for sale of articles of food outside the market, Section-382 provides for licenses for butchers and persons who sell flesh of animals etc., Section-383 provides for license for dairy products, Sections-384 and 385 provides for licenses for hawking etc. Section-386 as stated hereinabove provides general provisions regarding grant, suspension, revocation of licenses, written permission for levy or fees etc. Thus, Chapter-22 of the GPMC Act provides sufficient policy guidelines checks and balances for providing levy and collection of license fees under Section-386(2) thereof. As the power of the Commissioner is subject to sanction of the Corporation, it cannot be said that the same is in nature of excessive delegation of unbridled and uncanalised power. At this juncture, it is

also pertinent to note that Chapter-XXVIII of the GPMC Act provides for control of the State Government. Section 448 provides for power of State Government to require performance of duties and default of any Municipality and Section 451 prescribed power of the State Government to suspend action under the GPMC Act. Section-451 reads as under :-

“451. (1) If the 1 [State] Government is of opinion that the execution of any resolution or order of the Corporation or of any other municipal authority or officer subordinate thereto or the doing of any act which is about to be done or is being done by or on behalf of the Corporation is in contravention of or in excess of the powers conferred by this Act or of any other law for the time being in force or is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons, the 1 [State] Government may, by order in writing, suspend the execution of such resolution or order, or prohibit the doing of any such act. (2) A copy of such order shall forthwith be sent to the Corporation by the 1 [State] Government. (3) The 1[State] Government may at any time, on representation by the Corporation or otherwise, revise, modify or revoke an order passed under sub-section (1).”

42. From the above provision of Section 451 of the GPMC Act, it is clear that if the State Government is of the opinion that execution of

any resolution or order of the Corporation for any of other Municipal Authority or officer subordinate thereto for doing of any act, which is about to be done or has been done for and on behalf of the Corporation is in contravention of excess of powers conferred by the GPMC Act or any other law for the time being in force or such action is likely to lead breach of the peace etc., then the State Government may by order in writing suspend the execution of order or prohibit doing of any such act. Therefore, even the sanction of the Corporation as provided under Sub-section-2 of Section 386 is subject to the control of the State Government as provided under Section 451 of the GPMC Act. In view of the above, it cannot be said that there is excessive delegation by legislature upon the Commissioner for determination of the levy of the fees under Sub-section-2 of Section 386 of the GPMC Act.

43. The submissions of the petitioners that license fees in question is tax in garb of fees is concerned, the issue is no more *res integra* in view of the judgment of the learned Single Judge in the case of the petitioner being SCA no.12603 of 2005, which is now merged with the order passed in LPA no.331 of 2006 and the said judgment cannot be said to be *per incuram* as canvassed on behalf of the petitioners relying

upon the decision of the Apex Court in case of Commissioner, Hindu Religious Endowment (supra). At the same time, the judgment of the Apex Court in the said case of Commissioner, Hindu Religious Endowment (supra) cannot be said to be diluted or whittle down as canvassed by the respondents as the principles laid down by the said judgment still holds the field but such principle is required to be applied in a pragmatic and practical manner. The Apex Court in the said judgment has held as under:-

“45. A neat definition of what “tax” means has been given by Latham, C.J. of the High Court of Australia in *Matthews v. Chicory Marketing Board*¹². “A tax”, according to the learned Chief Justice, “is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered”. This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer’s consent and the payment is enforced by law¹³. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to

confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority¹⁴. Another feature of the taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.

46. Coming now to fees, a “fee” is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay¹⁵. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

47. As regards the distinction between a tax and a fee, it is argued in the first place on behalf of the respondent that a fee is something voluntary which a person has got to pay if he wants certain services from the Government; but there is no obligation on his part to seek such services and if he does not want the services, he can avoid the obligation. The example given is of a licence fee. If a man wants a licence that is entirely his own choice and then only he has to pay the fees, but not otherwise. We think that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and that it is not totally absent in

fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees. It is difficult, we think, to conceive of a tax except, it be something like a poll tax, the incidence of which falls on all persons within a State. The house tax has to be paid only by those who own houses, the land tax by those who possess lands, municipal taxes or rates will fall on those who have properties within a municipality. Persons, who do not have houses, lands or properties within municipalities, would not have to pay these taxes, but nevertheless these impositions come within the category of taxes and nobody can say that it is the choice of these people to own lands or houses or specified kinds of properties, so that there is no compulsion on them to pay taxes at all. Compulsion lies in the fact that payment is enforceable by law against a man in spite of his unwillingness or want of consent; and this element is present in taxes as well as in fees. Of course, in some cases whether a man would come within the category of a service receiver may be a matter of his choice, but that by itself would not constitute a major test which can be taken as the criterion of this species of imposition. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest¹⁶. Public interest seems to be at the basis of all impositions,

but in a fee it is some special benefit which the individual receives. As Seligman says, it is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action¹⁷.

48. If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be co-related to the expenses incurred by the Government in rendering the services. As indicated in Article 110 of the Constitution, ordinarily there are two classes of cases where the Government imposes "fees" upon persons. In the first class of cases, the Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred. A most common illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant¹⁸, and if the money paid by licence holders goes for the upkeep of roads and other matters of general pub-

lic utility, the licence fee cannot but be regarded as a tax.

49. In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax. There is really no generic difference between the tax and fees and as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes¹⁹.

50. Our Constitution has, for legislative purposes, made a distinction between a tax and a fee and while there are various entries in the legislative lists with regard to various forms of taxes, there is an entry at the end of each one of the three lists as regards fees which could be levied in respect of any of the matters that is included in it. The implication seems to be that fees have special reference to governmental action undertaken in respect to any of these matters.

51. Section 76 of the Madras Act speaks definitely of the contribution being levied in respect to the services rendered by the Government; so far it has the appearance of fees. It is true that religious institutions do not want these services to be rendered to them and it may be that they do not consider the State interference to be a benefit at all. We agree, however, with the learned Attorney-General that in the present day concept of a State, it can-

not be said that services could be rendered by the State only at the request of those who require these services. If in the larger interest of the public, a State considers it desirable that some special service should be done for certain people, the people must accept these services, whether willing or not²⁰. It may be noticed, however, that the contribution that has been levied under Section 76 of the Act has been made to depend upon the capacity of the payer and not upon the quantum of benefit that is supposed to be conferred on any particular religious institution. Further the institutions which come under the lower income group and have income less than Rs 1000 annually, are excluded from the liability to pay the additional charges under clause (2) of the section. These are undoubtedly some of the characteristics of a "tax" and the imposition bears a close analogy to income tax. But the material fact which negatives the theory of fees in the present case is that the money raised by levy of the contribution is not earmarked or specified for defraying the expenses that the Government has to incur in performing the services. All the collections go to the consolidated fund of the State and all the expenses have to be met not out of these collections but out of the general revenues by a proper method of appropriation as is done in case of other Government expenses. That in itself might not be conclusive, but in this case there is total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution under the provision of Section 76 and in these circumstances the theory of a return or

counter-payment or quid pro quo cannot have any possible application to this case. In our opinion, therefore, the High Court was right in holding that the contribution levied under Section 76 is a tax and not a fee and consequently it was beyond the power of the State Legislature to enact this provision.

The above principles laid down by the 7 Judges Bench of the Supreme Court are in the context of the facts of the said case, wherein the Apex Court was called upon to decide the constitutional validity of the Madras Hindu Religious & Charitable Endowment Act, 1951 being ultra vires to Articles 19(1), 25, 26 and 27 of the Constitution of India. In this context, the Apex Court after analyzing the object of the State legislation examined the Constitutional validity of the provisions thereof. The Apex Court also considered the Constitutional validity of Section-76 of the said Act which provides for payment of annual contribution for the services rendered by the Government and their offices. In view of the provisions of Section 76 of the said Act, it was held that Section 76 of the Madras Act speaks definitely of the contribution being levied in respect to the services rendered by the Government; so far it has the appearance of fees. But when religious institutions do not

want these services to be rendered to them and it may be that they do not consider the State interference to be a benefit at all. The Apex Court further held that in the present day concept of a State, it cannot be said that services could be rendered by the State only at the request of those who require these services and if in the larger interest of the public, a State considers it desirable that some special service should be done for certain people, the people must accept these services, whether willing or not. Thereafter considering that the contribution that has been levied under Section 76 of the Act has been made to depend upon the capacity of the payer and not upon the quantum of benefit that is supposed to be conferred on any particular religious institution and further the institutions which come under the lower income group and have income less than Rs. 1000 annually, are excluded from the liability to pay the additional charges under clause (2) of the section, it was held that these are undoubtedly some of the characteristics of a "tax" and the imposition bears a close analogy to income tax. But the material fact which negatives the theory of fees in the case before the Apex Court was that the money

raised by levy of the fees was not earmarked or specified for defraying the expenses that the Government has to incur in performing the services and all the collections were to go to the consolidated fund of the State and all the expenses were to be met not out of these collections but out of the general revenues by a proper method of appropriation as was done in case of other Government expenses. In Such facts, the Apex Court held that, there was total absence of any co-relation between the expenses incurred by the Government and the amount raised by contribution under the provision of Section 76 and in these circumstances the theory of a return or counter-payment or quid pro quo cannot have any possible application to this case and it was held to be a tax but not a fee which can be regarded as sort of return for consideration of services rendered. It is categorically held by the Apex Court that when the Government grants permission or privilege to a person to do something which otherwise that person would not be competent to do, it extracts fees either heavy or moderate on that person in return for the privilege conferred but if the amount of imposition i.e. levy is based clearly not upon the cost incurred by the Government but

upon the benefit that individual receives and if the license fees collected, the same cannot be but regarded as tax. The Apex Court therefore, has rendered the above decision as per the language of Section-76 of the Madras Act which was having some of the characteristic of the tax and imposition bears an analogy to income tax. Whereas in the facts of the present case, section 386(2) of the GPMC Act provides for levy of license fees for license to place advertising hoardings in private properties for license to be issued as per provisions of the GPMC Act and hence the same can never be considered as tax because the person who is granted license will have privilege to place advertising hoarding in private property and for granting such privilege fees is levied.

44. With regard to reliance placed by the respondent on the subsequent decisions of the Apex Court, it appears that the Supreme Court has only reiterated what has been stated by the Apex Court in the decision of Commissioner, Hindu Religious Endowments(Supra) and it cannot be said that the view expressed therein has undergone a sea change as canvassed by the respondents. The subsequent decisions have been decided on the basis of the facts of those cases wherein the

provision under challenge is not in nature of tax or any characteristic of tax as held by the Apex Court in the year 1954. Therefore, there is a consistent view of the Apex Court right from 1954 till 2018 with regard to the concept of imposition of tax and levy of fees. We are of the view upon careful consideration of all the decisions relied upon by the respondents that it is not correct to submit that there has been a sea change in the approach of the Apex Court. The dictum of law as laid in the case of Commissioner, Hindu Religious Endowments (Supra) is not at all diluted but on the contrary the same is reiterated and each case has been decided on the basis of its own facts.

45. As we are of the opinion that the license fee levied for granting license for placing advertising hoardings in private property is "fee" and not "tax" as the facts of the case of the petitioner are different than that of the facts before the Apex Court, the decision of the learned Single Judge of this Court dated 2nd February 2006 in SCA no.12603 of 2005 rendered in the facts of case of the petitioner itself cannot be said to be *per incuram* only on the ground that the judgment of the Apex Court in case of Commissioner, Hindu Religious Endowments (Supra) is not considered.

46. With regard to the submissions made by both the sides in relation to the fixation of the license fees being arbitrary and excessive, it is pertinent to note that the rival claims made by both the sides cannot be looked into while exercising writ jurisdiction under Article 226 of the Constitution of India. The sufficiency of levy of fees falls within the powers prescribed under Sub-section-2 of Section 386 of the GPMC Act subject to control of the State Government as provided under Section 451 of the GPMC Act. We therefore, refrain from considering the submissions with regard to the alleged arbitrary and excessive license fees fixed by the respondents-Corporation. The petitioner if aggrieved by such fixation of license fees may take appropriate recourse in accordance with law by challenging the same before the State Government under the provisions of the GPMC Act.

47. In view of the foregoing reasons, these writ applications fail and are accordingly rejected subject to the right of the petitioners to challenge the quantum of license fees before the State Government as per the provisions of the GPMC Act in accordance with law. The respondent State Government is therefore, directed to consider such challenge if made by the petitioners without being influenced in any

manner by what has been stated hereinabove and decide such challenge as expeditiously as possible. **Rule** is therefore, discharged in each of the petitions with no order as to costs. Civil Applications, if any, all stand disposed of.

(J. B. PARDIWALA, J.)

(BHARGAV D. KARIA, J.)

FURTHER ORDER

After the judgment is pronounced learned Senior Advocate Mr. Mihir Joshi for the petitioners makes a request to stay the implementation, execution and operation of the judgment and to continue the interim relief granted earlier.

Having regard to what has been stated in the judgment and more particularly having taken the view that the provision of Section 386(2) of the Gujarat Provincial Municipal Corporation Act, 1949 is not ultra vires to Article 243X of the Constitution of India and considering the fact that the petitioners are paying the licence fees for the advertisement hoardings in privately owned properties since last more than 20 years

and further when the determination with regard to quantum of the licence fees is left to the State Government, request made by the learned Senior Advocate for the continuation of the interim relief granted earlier is rejected.

Sd/-

(J. B. PARDIWALA, J.)

Sd/-

(BHARGAV D. KARIA, J.)

AMAR RATHOD..

