THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 23.08.2012

+ W.P.(C) 8030/2003

VINOD KRISHNA KAUL ... Petitioner

versus

THE LT. GOVERNOR N.C.T. OF DELHI & OTHERS ...Respondents

AND

+ W.P.(C) 8403/2004

DR R.K. GUPTA ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI ... Respondent

AND

+ W.P.(C) 17454-55/2004

P.N. KUMAR & ANOTHER ... Petitioners

versus

GOVT. OF NCT OF DELHI & ANOTHER ... Respondents

AND

+ W.P.(C) 10617/2005

M/S T.G. LEISURE AND RESORTS PVT LTD... Petitioner

versus

UNION OF INDIA & OTHERS ... Respondents

AND

+ W.P.(C) 7688/2008

MAHARAJ AGARSEN TECHNICAL EDUCATION SOCIETY (REGD.) **...** Petitioner

versus

MCD & ANR **...** Respondents

AND

+ W.P.(C) 7691/2008

DAV COLLEGE TRUST AND MANAGEMENT SOCIETY ... Petitioner

versus

MCD & ANOTHER **...** Respondents

AND

+ W.P.(C) 8723/2008

TAGORE EDUCATION SOCIETY & ANR ... Petitioners

versus

UNION OF INDIA & ORS. **...** Respondents

AND

+ W.P.(C) 9341/2009

RAM KRISHAN & SONS CHARITABLE TRUST & ANOTHER **...** Petitioners

versus

UNION OF INDIA AND OTHERS **...** Respondents

AND

+ W.P.(C) 9750/2009

MOUNT CARMEL SCHOOL SOCIETY & ANR ... Petitioners

versus

UOI & ORS ... Respondents

AND

+ W.P.(C) 9812/2009

GR GOENKA EDUCATION SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI ... Respondent

AND

+ W.P.(C) 9822/2009

MAHAVIRA FOUNDATION ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI ... Respondent

AND

+ W.P.(C) 9827/2009

SRI AUROBINDO EDUCATION SOCIETY (REGD)... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ **W.P.(C) 9838/2009**

MAHARAJA AGARSEN TECHNICAL EDUCATION SOCIETY (REGD) **...** Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR **...** Respondents

AND

+ **W.P.(C) 10272/2009**

SUMERMAL JAIN EDUCATIONAL & WELFARE SOCIETY (REGD) **...** Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ **W.P.(C) 11014/2009**

GR GOENKA EDUCATION SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ **W.P.(C) 11015/2009**

SRI AUROBINDO EDUCATION SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ W.P.(C) 11016/2009

VASUDEVA EDUCATIONAL FOUNDATION SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ W.P.(C) 11017/2009

DAV COLLEGE TRUST & MANAGEMENT SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ W.P.(C) 11018/2009

DAV COLLEGE TRUST & MANAGEMENT SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ W.P.(C) 11019/2009

DAV COLLEGE TRUST & MANAGEMENT SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ W.P.(C) 11020/2009

DAV COLLEGE TRUST & MANAGEMENT SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ W.P.(C) 11021/2009

DAV COLLEGE TRUST & MANAGEMENT SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ W.P.(C) 11290/2009

SANATAN DHARM ADARSH SIKSHA SANSTHAN (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI & ANR ... Respondents

AND

+ W.P.(C) 11294/2009

G.R. GOENKA EDUCATION SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI ... Respondent

AND

+ W.P.(C) 11586/2009

SRI AUROBINDO EDUCATION SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI ... Respondent

AND

+ W.P.(C) 11590/2009

G.R. GOENKA EDUCATION SOCIETY (REGD) ... Petitioner

versus

MUNICIPAL CORPORATION OF DELHI ... Respondent

Advocates who appeared in this case:

For the Petitioner in WP(C) No.8030/2003	: Mr Dipak Bhattacharya
For the Petitioners in WP(C) Nos.10617/2005, 8723/2008	: Mr B.B. Jain with Mr Sushil Jaswal
For the Petitioners in WP(C) Nos.7688/2008, 7691/2008, 9812/2009, 9822/2009, 9827/2009, 9838/2009, 10272/2009, 11014/2009, 11015/2009, 11016/2009, 11017/2009, 11018/2009, 11019/2009, 11020/2009, 11021/2009, 11294/2009, 11290/2009, 11586/2009, 11590/2009	: Mr S.K. Jain
For the Petitioner in WP(C) 9750/2009	: Mr B.S. Maan with Mr Jai Prakkash
For the Petitioner in WP(C) Nos.17454-55/2004	: Mr Mukesh, Ms Bhanita and Ms Neera
For the Petitioner in WP (C) 9341/2009	: Mr Sumer Kumar Sethi
For the Respondent/MCD	: Ms Amita Gupta , Mrs P.L. Gautam and

Ms Anshum Jain for
Ms Suparana Srivastava
Ms Maninder Acharya for MCD
in W.P.(C) 8030/2003

For the Respondent/GTNCTD : Ms Zubeda Begum with Ms Bandana Shukla, Mr Khaleel Khan for Ms Sujata Kashyap, Mr Hem Kumar for Mr Sanjeev Sabharwal and Ms Ruchi Sindhwani

For the Respondent/UOI : Ms Meera Bhatia

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MS JUSTICE VEENA BIRBAL

JUDGMENT

BADAR DURREZ AHMED, J

1. In all these petitions (26 in number), there is a challenge to the unit area method of levying property taxes in Delhi introduced by virtue of the Delhi Municipal Corporation (Amendment) Act, 2003. It is prayed that the Delhi Municipal Corporation (Amendment) Act, 2003 and the Delhi Municipal Corporation (Property Tax) Bye-laws, 2004 be declared as unconstitutional and as being void *ab initio*. The challenge, which is common to all the petitions, is founded on the following pleas: (I) The Legislative Assembly for the National Capital Territory lacked the legislative competence to enact the Delhi Municipal Corporation (Amendment) Act, 2003; (II) The Presidential Assent in the manner stipulated in Article 239AA(3)(c) was not there; (III) the unit area method is not a recognised system of valuation; (IV) There are no guidelines for the exercise of power under the new Section 116A and for classification; and (V) A flat rate of taxation under the unit area method is arbitrary and discriminatory and is, therefore, illegal. Apart from these pleas,

which have been taken by all the petitioners, there are some specific pleas with regard to private unaided schools (22 petitions).

I. Legislative competence

2. It was contended on behalf of the petitioners that the Legislative Assembly for the National Capital Territory, while enacting the Delhi Municipal Corporation (Amendment) Act, 2003 (hereinafter referred to as "the Amendment act of 2003"), lacked the legislative competence to do so. This was a twofold contention. In the first place, it was contended that the property tax regime which had been put in place by virtue of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as "the said Act of 1957") had been done so by Parliament. As such, the property taxes levied under the said Act of 1957 constituted union taxation and therefore the same could not be altered by a legislature created for the Union Territory of Delhi and it could only be altered or varied by a law made by Parliament. For this proposition, the learned counsel for the petitioners placed reliance on the Supreme Court decision in the case of ***New Delhi Municipal Council v. State of Punjab:*** ***(1997) 7 SCC 339***. Secondly, it was contended that by virtue of article 239AA(3)(a) of the Constitution of India, the legislative assembly of the National Capital Territory had power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List insofar as any such matter was applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that list insofar as they relate to the said Entries 1, 2 and 18. It was contended that Entry 18 of the State List pertained to “land” and therefore property

taxes fell under that entry. And, since the legislative assembly of the National Capital Territory did not have the power to make a law in respect of Entry 18 of the State List, it, consequently, lacked legislative competence while enacting the Amendment Act of 2003 by which a new regime of property taxes based on the unit area method had been put in place replacing the old regime of property taxation under the said Act of 1957 which had been enacted by Parliament. It was also contended that Entry 64 of the State List insofar as it related to Entry 18 thereof was also excluded from the legislative powers of the legislative assembly of the National Capital Territory. Entry 64 referred to offences against laws with respect to any of the matters in the said list. It was submitted that the penalties prescribed under the Amendment Act of 2003, since they related to Entry 18 of the State List, were also beyond the legislative competence of the legislative assembly of the National Capital Territory. On the basis of these two contentions, it was submitted that the Amendment Act of 2003, being beyond the legislative competence of the legislature of the National Capital Territory, was unconstitutional and was, therefore, void *ab initio*.

3. On the other hand, it was submitted on behalf of the respondents that the decision of the Supreme Court in the case of ***NDMC v. State of Punjab*** (*supra*) was with reference to article 289 (1) of the Constitution of India and it is in that context that the expression "union taxation" was considered. That expression, is only pertinent insofar as article 289 of the Constitution is concerned. According to the respondents, there is nothing in the said decision of the Supreme Court which would enable us to detract from the legislative competence of the

legislature of the National Capital Territory in enacting the said Amendment Act of 2003. With regard to the contention of the petitioners based on article 239AA(3)(a) of the Constitution, it was submitted on behalf of the respondents that the taxing power insofar as property taxes are concerned were derived from and are traceable to Entry 49. The said Entry 49 deals directly with "taxes on lands and buildings". That entry is an independent entry and is unconnected with Entry 18 of the State List. It was also submitted that taxing powers are independent of other powers and, in support of this contention, reliance was placed on the Supreme Court decision in the case of ***State of West Bengal v. Kesoram Industries Ltd:*** ***(2004) 10 SCC 201*** as also on ***All India Federation of Tax Practitioners v. Union of India:*** ***(2007) 7 SCC 527***.

(a) The 'Union Taxation' argument:

4. Let us examine the contention in respect of the "Union Taxation" argument. We note that Article 289(1) of the Constitution of India declares that the "property and income of a State shall be exempt from Union taxation". In ***NDMC v. State of Punjab*** (*supra*), the question which arose for consideration was whether the properties of the States situated in the Union Territory of Delhi were exempt from property taxes levied under the municipal enactments in force in the Union Territory of Delhi. It is in this backdrop that the question of whether the property taxes under the two Municipal Acts extant in Delhi constituted Union taxation or not – arose for consideration. While doing so, the Supreme Court observed that the States put together do not exhaust the territory of India and that there are certain territories which do not form part of any State and yet are territories of the Union. The Supreme Court noted that

the States and Union Territories are different entities as was evident from clause (2) of article 1 and, indeed, from the entire scheme of the Constitution. It was further observed by the Supreme Court that article 245 (1) prescribed that while Parliament may make laws for the whole or any part of the territory of India, the legislature of a State may make laws for the whole or any part of the State. Article 1 (2) read with Article 245 (1) would show that so far as the union territories are concerned, the only lawmaking body is Parliament. It was also observed that the legislature of a State cannot make any law for a Union Territory inasmuch as a State legislature can make laws only for that State. The division of legislative powers between Parliament and the State legislatures is clearly indicated in Article 246 of the Constitution. The Supreme Court, importantly, noted that the division is only between Parliament and the State legislatures, that is, between the Union and the States and that there is no division of legislative powers between the Union and the Union Territories as much as there is no division of powers between States and the Union Territory. The Supreme Court held that insofar as the Union Territories are concerned, it is clause (4) of Article 246 that is relevant and that says that Parliament has the power to make laws with respect to any matter or for any part of the territory of India not included in a State notwithstanding that such matter is enumerated in the State list. The Supreme Court categorically held that as the Union Territory is not included in the territory of any State, it was Parliament alone that was the lawmaking body available for such Union Territories.

5. The Supreme Court also noted that in the year 1991, the Constitution provided for the establishment of a legislature for the Union

Territory of Delhi (National capital Territory of Delhi) by the 69th (Amendment) act but, the legislature so created was not a full-fledged legislature nor did it have the effect of transforming the status of Delhi from a Union Territory to that of a State within the meaning of chapter I of part XI of the Constitution. The Supreme Court held:–

> "All this necessarily means that so far as the union territories are concerned, there is no such thing as list I, list II or list III. The only legislative body is Parliament --or a legislative body created by it. Parliament can make any law in respect of the said territories --subject, of course, to constitutional limitations other than those specified in chapter I of part XI of the Constitution. Above all, the union territories are not "states" as contemplated by chapter I of part XI; they are the territories of the union falling outside the territories of the states. Once the union territory is a part of the union and not part of any state, it follows that any tax levied by legislative body is union taxation. Admittedly, it cannot be called "State taxation"-- and under the constitutional scheme, there is no third kind of taxation. Either it is union taxation or State taxation."

6. A reference was made to the majority opinion in ***Re Sea Customs Act:AIR 1963 SC 1760*** to the following effect:-

> "It is true that list I contains no tax directly on property like list II, but it does not follow from that that union has no power to impose a tax directly on property under any circumstances. Article 246 (4) gives power to Parliament to make laws with respect to any matter for any part of the territory of India not included in a state notwithstanding that such matter is a matter enumerated in the State list. This means that so far as union territories are concerned Parliament has power to legislate not only with respect to items in list I but also with respect to items in list II. Therefore, so far as the

> union territories are concerned, Parliament has power to impose a tax directly on property as such. It cannot therefore be said that the exemption of states' property from union taxation directly on property under article 289 (1) would be meaningless Parliament has no power to impose any tax directly on property. If a state has any property in any union Territory property would be exempt from union Station on property under article 289 (1). The argument therefore that article 289 (1) cannot be confined to tax directly on property because there is no such tax provided in list I cannot be accepted."

7. With regard to Delhi, the Supreme Court in ***NDMC v.State of Punjab*** (*supra*) observed as under:-

> "The third category is Delhi. It had no legislature with effect from 1-11-1956 until one has been created under and by virtue of the Constitution Sixty-ninth (Amendment) Act, 1991 which introduced Article 239-AA. We have already dealt with the special features of Article 239-AA and need not repeat it. Indeed, a reference to Article 239-B read with clause (8) of Article 239-AA shows that the union territory of Delhi is in a class by itself but is certainly not a state within the meaning of article 246 or part VI of the Constitution. In sum, it is also a territory governed by clause (4) of Article 246. As pointed out by the learned attorney general, various Union Territories are in different stages of evolution. Some have already acquired statehood and some may be on the way to it. The fact, however, remains that those surviving as Union Territories are governed by Article 246 (4) notwithstanding the differences in their respective set-ups – and Delhi, now called the "National Capital Territory of Delhi", is yet a Union Territory."

In the said decision, the Supreme Court further observed that "***a tax levied under the law made by a legislature of a union Territory cannot be called "State taxation" for the simple reason that Union Territory is not a "State" within the meaning of Article 246 (or for that matter, chapter I of part XI) or part VI or Articles 285 to 289***". Referring to the said Act of 1957 as also the New Delhi Municipal Council Act, 1994, the Supreme Court observed that "***tax levied under these enactments cannot but be union taxation – Union taxation in a Union Territory***".

8. It is clear that as long as NCT of Delhi is not a State within the meaning of Article 246 of the Constitution, any tax levied under a law (such as the said Act of 1957 as amended by the said Amendment Act of 2003) made by the legislative assembly of NCT of Delhi cannot be termed as "State taxation". Therefore, by elimination, such a tax would be classified as Union Taxation as there are only two kinds of taxation – State taxation and Union taxation. Even the tax regime introduced under the said Amendment Act of 2003 would constitute Union taxation.

9. But, this has no relevance to the argument of legislative competence sought to be raised on the part of the petitioners. All that it means is that taxes under the said Act of 1957 as amended by the Amendment Act of 2003 would be regarded as Union taxation for the purposes of Article 289, whenever that question arises. In these writ petitions there is no issue with regard to the application of Article 289 of the Constitution.

10. What has to be examined is what is the source of power behind the Amendment Act of 2003? Did the Legislative Assembly of

NCT of Delhi have the power to legislate on the field of property taxation or not? This can only be seen from constitutional provisions. There is no dispute that the NCT of Delhi is not a State; it continues to be a Union Territory. Thus, Parliament has the full array of powers to legislate in respect of NCT of Delhi. As pointed out by the Supreme Court in ***NDMC v. State of Punjab*** *(supra),* insofar as NCT of Delhi is concerned, it being a Union Territory, "*there is no such thing as List I, List II or List III*". And, the only legislative body is Parliament -- or a legislative body created by it, that is, the legislative assembly for the NCT of Delhi. By virtue of Article 239AA (Special provisions with respect to Delhi), the Union Territory of Delhi has been named as the National Capital Territory of Delhi. Clause (2)(a) of the said Article specifies that there shall be a Legislative Assembly for the National Capital Territory. Clauses (3)(a) and(3)(b) of Article 239AA, which are of prime importance for this set of writ petitions, read as under:-

> "(3)(*a*) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List insofar as any such matter is applicable to the Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List insofar as they relate to the said Entries 1, 2 and 18."
>
> (*b*) Nothing in sub-clause (*a*) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof."

11. By virtue of the said Article 239AA(3)(a) of the Constitution, the Legislative Assembly of NCT of Delhi derives power to make laws for the NCT of Delhi with respect to any matters enumerated in the State List or in the Concurrent List, insofar as any such matter is applicable to the Union territories, except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List insofar as they relate to the said Entries 1, 2 and 18. This is the specific legislative power given to the Legislative Assembly of NCT of Delhi. In other words the constitution has made special provisions to empower the Legislative Assembly of NCT of Delhi to make laws on the specified subjects. Had these special provisions not been there in Article 239AA, there would have been no Legislative Assembly of NCT of Delhi and it would have been only Parliament which would have had the power and competence to make laws for the Union Territory of Delhi. Therefore, the fountainhead or source of the power and competence of the Legislative Assembly of NCT of Delhi is to be found in Article 239AA and it is that provision which has to be examined to determine as to whether the Amendment Act of 2003 was within the competence of the said Legislative Assembly. The whole issue of Union taxation and State taxation is neither germane nor relevant while determining the competency of the Legislative Assembly of NCT of Delhi in enacting the Amendment Act of 2003. If the said Legislative Assembly had the competence in the backdrop of the provisions of Article 239AA, the fact that the property tax levied was Union taxation is of no consequence. Thus, the submission of the petitioners that, because the property tax regime under the said Act of 1957 was part of Union taxation, the Legislative Assembly did not have the power or competence to introduce

a different tax regime by virtue of the Amendment Act of 2003, is untenable.

(b) **<u>The 'Entry 18 List-II' argument</u>**:

12. This takes us to the discussion of competence within the precincts of Article 239AA(3)(a) of the Constitution. According to the petitioners, the Legislative Assembly of NCT of Delhi does not have the competence to legislate in respect of property taxes because Entry 18 of the State List has been excluded from its domain by virtue of Article 239AA(3)(a). It has been contended that property taxes would fall within the said Entry 18 of the State List. Entry 18 of the State List reads as under :-

> "18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienataion of agricultural land; land improvement and agricultural loans; colonization."

13. We do not see how property taxes fall under this entry. In fact, the learned counsel for the respondents is right in submitting that the property taxes fall directly within Entry 49 of the State List which is as under:-

> "49. Taxes on lands and buildings."

Entry 49 of the State List is an independent entry, unconnected with Entry 18 of the said list. In ***<u>M.P.V. Sundararamier& Co v. State of A.P.:</u> AIR 1958 SC 468***, a Constitution Bench of the Supreme Court, inter alia, held that [para 51]:-

> "Turning to List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another group, and they deal with taxes. Entry 18, for example, is "Land" and Entry 45 is "Land revenue". Entry 23 is "Regulation of mines" and Entry 50 is "Taxes on mineral rights". The above analysis — and it is not exhaustive of the Entries in the Lists — leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence."

14. This is reiterated in ***Kesoram Industries*** *(supra)* and in ***All India federation of Tax Practitioners*** *(supra)*. Clearly, Entry 18 of the State list (List II) falls within the group of general Entries 1 to 44. But, Entry 49 (Taxes on lands and buildings) falls within the group which deals with taxes. Thus, property taxes, which are nothing but taxes on lands and buildings, cannot fall within Entry 18 which is not a taxing entry at all. The petitioners' contention that property taxes fall within the ambit of Entry 18 of the State List is clearly untenable.

15. This being the position, the power to legislate on property taxes is traceable to Entry 49 of the State List, which, has not been excluded from the domain of the Legislative Assembly of NCT of Delhi by Article 239AA(3)(a) of the Constitution. Therefore, the said Legislative Assembly had the power and competence to legislate with regard to "taxes on lands and buildings" And, therefore, it cannot be said that the Amendment Act of 2003, was void or ultra vires the Constitution. As a consequence, the submission of the petitioners that the penalties prescribed under the Amendment Act of 2003 were beyond the

legislative competence of the said Legislative Assembly, is also to be rejected.

II. Presidential assent

16. The petitioners have also challenged the Amendment Act of 2003 by submitting that it was repugnant to the said Act of 1957 and that, therefore, by virtue of sub-clause (c) of clause (3) of Article 239AA of the Constitution, the Amendment Act of 2003 was void. The argument is that the said Act of 1957 was sought to be amended by the said Amendment Act of 2003 and, therefore, the latter Act was repugnant to the former to the extent of the amendments sought to be introduced. Furthermore, since the amending act was passed by the Legislative Assembly of NCT of Delhi and the Act sought to be amended had been enacted by Parliament, according to the petitioners, the same (ie., the Amendment Act of 2003) was void in view of the provisions of Article 239AA(3)(c) of the Constitution. It was further contended on behalf of the petitioners, that the first proviso to the said Article 239AA(3)(c) ought not to be interpreted in such a way so as to nullify the provision to which it is a proviso. It was also contended that in any event the court should examine whether the ingredients and conditions precedent for invoking the said proviso had been satisfied in this case. The learned counsel for the petitioners placed primary reliance on ***Kaiser-i-Hind Pvt. Ltd v. National Textile Corporation Ltd:(2002) 8 SCC 182***.

17. On the other hand, the learned counsel for the respondents submitted that the Amendment Act of 2003, which had been passed by the Legislative Assembly of NCT of Delhi, had been reserved for the

consideration of the President and that the assent of the President had been received on 01.06.2003. That being the case, it was argued, the first proviso to Article 239AA(3)(c) came into play and, because of this, the amendments introduced by the Amendment Act of 2003 would prevail in NCT of Delhi. It was contended that the decision of the Supreme Court in the case of ***Kaiser-i-Hind*** *(supra)* does not in any way help the petitioners or run counter to the submissions of the respondents.

18. Article 239AA(3)(c) reads as follows:-

> "(*c*) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:
>
> ***Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory***:
>
> Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly."
>
> (emphasis supplied)

19. This special provision regarding repugnancy between a provision of law enacted by the Legislative Assembly of NCT of Delhi and a provision of law made by Parliament is similar to the general provisions contained in Article 254 in respect of repugnancy between a State law and a law made by Parliament in respect of matters enumerated in the Concurrent List (List III) specified in the seventh schedule to the Constitution. Generally speaking, in the context of Article 254, a law made by Parliament shall prevail over a law made by a State in respect of matters specified in the Concurrent List. There is an exception and that is provided in clause (2) of Article 254. The said clause (2) stipulates that a provision of law enacted by the State legislature may yet prevail in the State, even if it is repugnant to an earlier law made by Parliament, if it has been reserved for the consideration of the President and has received the President's assent. A look at Article 254 would demonstrate that Article 239AA(3)(c) is quite similar to it. Article 254 reads as under:-

> **"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States**.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
>
> (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in

> the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, ***then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:***
>
> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.
>
> (emphasis supplied)

20. There is one distinction, however, which we must not forget. While State legislatures have exclusivity over entries in the State List (List II), there is no exclusivity insofar as the Legislative Assembly of NCT of Delhi is concerned. In fact, had it not been for the special provision of Article 239AA(3)(a), the Legislative Assembly would not have had any power to legislate at all. Since, NCT of Delhi is not a State and is yet a Union Territory, it would have been Parliament and Parliament alone which could have made laws in respect of Delhi. This is so because of clause (4) of Article 246 which states that Parliament has power to make laws with respect to any matter for "***any part of the territory of India not included in a State***" notwithstanding that such matter is a matter enumerated in the State List. Thus, in a sense, the entire domain of legislation granted to the Legislative Assembly of NCT of Delhi by virtue of Article 239AA(3)(a) is a sort of concurrent list in respect of which both Parliament and the Legislative Assembly of NCT of Delhi can legislate. But, this is not in derogation of the powers of

Parliament under the Constitution to make laws with respect to any matter for a Union territory (which includes the NCT of Delhi) or any part thereof. Since, both Parliament and the Legislative Assembly of NCT of Delhi can legislate on certain subjects there is every possibility of there being some repugnancy between the two laws. Consequently, it has been clarified by virtue of Article 239AA(3)(c) that the law made by Parliament shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void. But, as in the case of repugnancy between State law and law made by Parliament, an exception has been carved out in the shape of the first proviso to Article 239AA(3)(c).

21. Keeping this similarity between the first proviso to Article 239AA(3)(c) and Article 254(2) in mind, let us examine the Supreme Court decision in ***Kaiser-i-Hind*** *(supra)*, which, inter alia, dealt with Article 254(2). The question before the Supreme Court was —

> "Whether the "assent" given by the President under Article 254(2) of the Constitution of India with regard to the repugnancy of the State legislation and the earlier law made by Parliament or the existing law could only be qua the "assent" sought by the State with regard to repugnancy of the laws mentioned in the submission made to the President for his consideration before grant of assent? Or would it prevail qua other laws for which no assent was sought?"

22. The contention before the Supreme Court was, once the President grants the "assent" to the State legislation, the State law would prevail on the said subject and such "assent" would be deemed to be an

assent qua all earlier enactments made by Parliament on the subject. This contention was, however, negatived. It was held that the "consideration" by the President and his "assent" under Article 254(2) is limited to the proposal made by the State Government; the State legislation would prevail only qua the laws for which repugnancy was pointed out and the "assent" of the President was sought for and that a proposal by the State was the *sine qua non* for "consideration" and "assent".

23. While arriving at these conclusions the Supreme Court analysed the provisions of Article 254(2) and observed as follows:-

> **"12.** For the purpose of the present case, clause (2) requires interpretation, which on the analysis provides that where a law:
>
> (*a*) made by the legislature of a State;
> (*b*) with respect to one of the matters enumerated in the Concurrent List;
> (*c*) contains any provision repugnant to the provisions of an earlier law made by Parliament or existing law with respect to that matter;
>
> then, the law so made by the legislature of the State shall—
>
> (*1*) if it has been "reserved for consideration of the President"; and
> (*2*) has received "his assent";
>
> would(*sic*) prevail in that State."
>
> **13.** Hence, it can be stated that for the State law to prevail, the following requirements must be satisfied:

(*1*) law made by the legislature of a State should be with respect to one of the matters enumerated in the Concurrent List;

(*2*) it contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter;

(*3*) the law so made by the legislature of the State has been reserved for the consideration of the President; and

(*4*) it has received "his assent".

14. In view of the aforesaid requirements, before obtaining the assent of the President, the State Government has to point out that the law made by the State Legislature is in respect of one of the matters enumerated in the Concurrent List by mentioning entry/entries of the Concurrent List and that it contains provision or provisions repugnant to the law made by Parliament or existing law. Further, the words "reserved for consideration" would definitely indicate that there should be active application of mind by the President to the repugnancy pointed out between the proposed State law and the earlier law made by Parliament and the necessity of having such a law, in the facts and circumstances of the matter, which is repugnant to a law enacted by Parliament prevailing in a State. The word "consideration" would manifest that after careful thinking over and due application of mind regarding the necessity of having State law which is repugnant to the law made by Parliament, the President may grant assent. This aspect is further reaffirmed by use of the word "assent" in clause (2), which implies knowledge of the President to the repugnancy between the State law and the earlier law made by Parliament on the same subject-matter and the reasons for grant of such assent. The word "assent" would mean in the context as an expressed agreement of mind to what is proposed by the State."

xxxx xxxx xxxx xxxx xxxx

16. Applying the aforesaid meaning of the word "assent" and from the phraseology used in clause (2), the object of Article 254(2) appears that even though the law made by Parliament would have supremacy, after considering the situation prevailing in the State and after considering the repugnancy between the State legislation and the earlier law made by Parliament, the President may give his assent to the law made by the State Legislature. This would require application of mind to both the laws and the repugnancy as well as the peculiar requirement of the State to have such a law, which is repugnant to the law made by Parliament. The word "assent" is used purposefully indicating affirmative action of the proposal made by the State for having law repugnant to the earlier law made by Parliament. It would amount to accepting or conceding and concurring to the demand made by the State for such law. This cannot be done without consideration of the relevant material. **Hence, the phrase used is "reserved for consideration", which under the Constitution cannot be an idle formality but would require serious consideration on the material placed before the President. The "consideration" could only be to the proposal made by the State.**

xxxx xxxx xxxx xxxx xxxx

25. In our view, for finding out whether the assent was given qua the repugnancy between the State legislation and the earlier law made by Parliament, there is no question of deciding validity of such assent nor the assent is subjected to any judicial review. That is to say, merely looking at the record, for which assent was sought, would not mean that the Court is deciding whether the assent is rightly, wrongly or erroneously granted. The consideration by the Court is limited to the

extent that whether the State has sought assent qua particular earlier law or laws made by Parliament prevailing in the State or it has sought general assent. In such case, the Court is not required to decide the validity of the "assent" granted by the President. In the present case, the assent was given after considering the extent and nature of repugnancy between the Bombay Rent Act and the Transfer of Property Act as well as the Presidency Small Cause Courts Act. Therefore, it would be totally unjustified to hold that once the assent is granted by the President, the State law would prevail qua earlier other law enacted by Parliament for which no assent was sought for nor which was reserved for the consideration of the President.

xxxx xxxx xxxx xxxx xxxx

27. In this case, we have made it clear that we are not considering the question that the assent of the President was rightly or wrongly given. We are also not considering the question that — whether "assent" given without considering the extent and the nature of the repugnancy should be taken as no assent at all. Further, in the aforesaid case, before the Madras High Court also the relevant proposal made by the State was produced. The Court had specifically arrived at a conclusion that Ext. P-12 shows that Section 10 of the Act has been referred to as the provision which can be said to be repugnant to the provisions of the Code of Civil Procedure and the Transfer of Property Act, which are existing laws on the concurrent subject. After observing that, the Court has raised the presumption. We do not think that it was necessary to do so. **In any case as discussed above, the essential ingredients of Article 254(2) are: (*1*) mentioning of the entry/entries with respect to one of the matters enumerated in the Concurrent List; (*2*) stating repugnancy to the provisions of an earlier law made by Parliament and the State law and reasons**

for having such law; (*3*) thereafter it is required to be reserved for consideration of the President; and (*4*) receipt of the assent of the President.

xxxx xxxx xxxx xxxx xxxx

29. We further make it clear that granting of assent under Article 254(2) is not exercise of legislative power of the President such as contemplated under Article 123 but is part of the legislative procedure. Whether procedure prescribed by the Constitution before enacting the law is followed or not can always be looked into by the Court.

30. Finally, we would observe that the challenge of this nature could be avoided if at the commencement of the Act, it is stated that the Act has received the assent with regard to the repugnancy between the State law and specified Central law or laws."

24. The conclusions arrived at by the Supreme Court in ***Kaiser-i-Hind*** (*supra*) are summarised in paragraph 65 of the said judgment:-

"65. The result of the foregoing discussion is:

1. It cannot be held that summary speedier procedure prescribed under the PP Eviction Act for evicting the tenants, sub-tenants or unauthorised occupants, if it is reasonable and in conformity with the principles of natural justice, would abridge the rights conferred under the Constitution.

2.(*a*) Article 254(2) contemplates "reservation for consideration of the President" and also "assent". Reservation for consideration is not an empty formality. Pointed attention of the President is required to be drawn to the repugnancy between the earlier law made by Parliament and the

contemplated State legislation and the reasons for having such law despite the enactment by Parliament.

(*b*) The word "assent" used in clause (2) of Article 254 would in context mean express agreement of mind to what is proposed by the State.

(*c*) In case where it is not indicated that "assent" is qua a particular law made by Parliament, then it is open to the Court to call for the proposals made by the State for the consideration of the President before obtaining assent.

3. Extending the duration of a temporary enactment does not amount to enactment of a new law. However such extension may require assent of the President in case of repugnancy."

(emphasis supplied)

25. What applies to Article 254(2) would also apply, mutatis mutandis, to the first proviso to Article 239AA(3)(c). Consequently, what needs to be seen is whether the "pointed attention" of the President was drawn to the "repugnancy" between the earlier law made by Parliament (ie., the said Act of 1957) and the "contemplated" legislation (ie., the Amendment Act of 2003) of the Legislative Assembly of NCT of Delhi and the reasons for having such law despite the enactment by Parliament. This is the meaning given to the expression "*reserved for the consideration of the President*"**.** The phrase – "*has received his assent*", has been ascribed the meaning of an express agreement of mind on the part of the President to what was proposed by the government of NCT of Delhi. In cases where it is not indicated that "assent" is qua a particular law made by Parliament, then it is open to the Court to call for the

proposals made by the government of NCT of Delhi for the consideration of the President before obtaining his assent. If these requirements of the first proviso to Article 239AA(3)(c) are fulfilled then, then the provisions of law passed by the Legislative Assembly of NCT of Delhi would, despite repugnancy with the provisions of an earlier law made by Parliament, "*prevail in the National Capital Territory*".

26. The preamble of the Amendment Act of 2003 itself recites that it is "*an Act to further amend the Delhi Municipal Corporation Act, 1957*". Thus, in the present case there is a clear and direct statement in the Amendment Act of 2003, which is an enactment of the Legislative Assembly of NCT of Delhi, that it seeks to further amend the Delhi Municipal Corporation Act, 1957 (ie., the said Act of 1957), which was enacted by Parliament much prior to the introduction of Article 239AA in the Constitution. So, the "pointed attention" of the President was clearly drawn to the fact that the Legislative Assembly of NCT of Delhi sought to amend a law made by Parliament. It is obvious that when the President assented to the said law, he assented to the fact that the Legislative Assembly of NCT of Delhi was amending the provisions of an enactment which had been earlier passed by Parliament. And, since the Amendment Act of 2003 was clearly with reference to a law made by Parliament (ie., the said Act of 1957), the "assent" of the President had to be regarded in that context, that is, *qua* a particular law made by Parliament. That being the case, it is not open to the Court to call for the proposals made by the government of NCT of Delhi for the consideration of the President before obtaining his assent. All the ingredients of the first proviso to section 239AA(3)(c) stand satisfied. As a result, the Amendment Act of

2003 would prevail and the amendments introduced by it in the said Act of 1957 would hold good.

27. Clearly, the Supreme Court decision in ***Kaiser-i-Hind*** *(supra)* does not support the case of the petitioners. The submissions of the petitioners on this score also are not tenable.

28. The learned counsel for the petitioners next contended that a proviso cannot nullify the provision to which it is a proviso. They, *inter alia*, placed reliance on the Supreme Court decision in the case of ***Dwarka Prasad v. Dwarka Das Saraf:*** ***(1976) 1 SCC 128*** wherein it was observed as under:-

> **"18.** We may mention in fairness to Counsel that the following, among other decisions, were cited at the Bar bearing on the uses of provisos in statutes: *CIT* v. *Indo-Mercantile Bank Ltd*,[AIR 1959 SC 713 : 1959 Supp 2 SCR 256, 266 : (1959) 36 ITR 1] ; *Ram Narain Sons Ltd.* v. *Asstt. CST* [AIR 1955 SC 765 : (1955) 2 SCR 483, 493 : (1955) 6 STC 627] ; *Thompson* v. *Dibdin* [(1912) AC 533, 541 : 81 LJKB 918 : 28 TLR 490] ; *Rex* v. *Dibdin* [1910 Pro Div 57, 119, 125] and *Tahsildar Singh* v. *State of U.P.* [AIR 1959 SC 1012 : (1959) Supp 2 SCR 875, 893 : (1959) Cri LJ 1231]. The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context" (1912 AC 544). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter

> of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction.
>
> "The proper course is to apply the broad general Rule of construction which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.
>
> The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail. (*Maxwell on Interpretation of Statutes*, 10th Edn., p. 162)""

29. We fail to see how this decision comes to the aid of the petitioners. In fact, this decision makes it clear that the golden rule with regard to interpreting a proviso is to read the whole section, inclusive of the proviso, in such a manner that they mutually throw light on each other, resulting in a harmonious construction. Read in this manner it cannot be said that the first proviso obliterates the provisions of Article 239AA(3)(c). On the contrary, when read a whole, the harmonised construction of Article 239AA(3)(c) leads to the understanding that a law made by the Legislative Assembly of NCT of Delhi if repugnant to a provision of law earlier made by Parliament would be void to the extent of the repugnancy unless it can be shown that the law made by the

Legislative Assembly of NCT of Delhi had been reserved for the consideration of the President and had received the assent of the President in the manner indicated above. We have seen that, as a matter of fact, the Amendment Act of 2003 had received the assent of the President and that the ingredients necessary for triggering the first proviso into action had been satisfied. The obvious conclusion is that a combined reading of the first proviso and Article 239AA(3)(c) leads to the end-result that the Amendment Act of 2003 and the amendments introduced by it would prevail in the NCT of Delhi.

III. <u>No recognized method of valuation</u>

30. It was contended on behalf of the petitioners that the amendments introduced by the Amendment Act of 2003 do not adopt any "recognized method of valuation" and are, therefore, arbitrary and violative of Article 14 of the Constitution. In support of this contention, reliance was placed on the Supreme Court decision in ***<u>Lokmanya Mills Barsi Ltd v. Barsi Municipality:</u> AIR 1961 SC 1358***.

31. As pointed out in the Property Tax Guide (Year 2004-05) issued by the MCD, prior to the amendments introduced in the Act of 1957 by virtue of the Amendment Act of 2003, properties were taxed on the basis of the annual rent at which such lands or buildings was reasonably expected to be let out from year to year. Under the "unit area" based system which was introduced by the Amendment Act of 2003, tax for a particular property is based on the annual value of the property arrived at by multiplying the unit area value assigned to the

colonies / localities by the covered area of the property and the multiplicative factors for occupancy, age, structure and use.

32. Under section 113 of the said Act of 1957, the MCD is required to levy, inter alia, property taxes for the purposes of the said Act. Sub-section (3) of the said section 113 stipulates that, inter alia, the property taxes are to be levied, assessed and collected in accordance with the provisions of the act and the bye-laws made thereunder. Under the un-amended section 114, the property taxes were levied on the lands and buildings in Delhi and were calculated as a percentage of "the rateable value" of the lands and buildings. The determination of "rateable value" of lands and buildings assessable to property taxes was provided in the old section 116. It prescribed that the rateable value of any land or building assessable to property taxes shall be the annual rent at which such land or building might reasonably be expected to let from year to year.

33. However, the Amendment Act of 2003 introduced various amendments consequent upon a change in the method of computing the property taxes to the unit area basis. By virtue of section 2 of the Amendment Act of 2003, the words "annual value" were substituted for the words "rateable value" wherever they occurred in the Act of 1957. New section 2(1A) was introduced which defined "annual value" to mean the annual value of any vacant land or covered space of any building as determined under section 116E. New section 114A stipulated that for any building, the building tax shall be equal to the rate of building tax as may be prescribed by the MCD under section 114D multiplied by the

"annual value" of the covered space of the building determined under section 116A(1) or section 116F. By virtue of newly inserted section 116E(1), the "annual value" of any covered space of a building in any ward is the amount arrived at by multiplying the total area of such covered space of the building by the final base unit area value (UAV) of such covered space and the relevant factors as referred to in section 116A(2)(b). Essentially, the "annual value" of a covered space in a building, under the new regime, is to be calculated by employing the following formula:-

Annual Value (AV) = CA x UAV x AF x OF x UF x SF

Where,
CA = Covered Area
UAV = Unit Area Value
AF = Age factor
OF = Occupancy factor
UF = Use factor
SF = Structure factor

Thus, the method of valuation has changed from being based on rateable value to annual value or, in other words, from being based on the annual rent the land or building was reasonably expected to be let out from year to year, to one based on the unit area value (UAV) multiplied by the covered area and other multiplicative factors mentioned above.

34. With this background, let us examine the contention of the petitioners that the unit area method is not a recognised system of

valuation and is therefore arbitrary. As mentioned above, this argument is based entirely on the decision of the Supreme Court in ***Lokmanya Mills*** *(supra)* and, particularly on the observations in paragraphs 5 and 7 thereof, which read as under:-

> **"**5. By Section 78, sub-section (1), clause (*d*) and Explanation to Section 75, the rate to be levied on lands and buildings may be assessed on the valuation of the lands and buildings based on capital or the annual letting value. By the rules in operation prior to 1-4-1947, house-tax and water-tax were levied as rates in respect of all lands, buildings and non-agricultural lands on the annual letting value (except Government buildings). Even under the new rules, house-tax and water-tax continued to be levied in respect of all buildings and non-agricultural lands as rates: but the rate in respect of buildings falling within Rule 2-C was assessed on a valuation computed on the floor area of the structures, and not on the capital value nor on the annual rent for which, the buildings may reasonably be expected to let. This was clearly not a tax based on the annual letting value, for Annual letting value "postulates rent which a hypothetical tenant may reasonably be expected to pay for the building if let. A rate may be levied under the Act on valuation made on capital or on the annual letting value. If the rate is to be levied on the basis of capital value, the building to be taxed must be valued according to some recognised method of valuation: if the rate is to be levied on the basis of the annual letting value, the building must be valued at the annual rental which a hypothetical tenant may pay in respect of the building. The Municipality ignored both the methods of valuation and adopted a method not sanctioned by the Act. By prescribing valuation computed on the area of the factory building, the Municipality not *only* fixed arbitrarily the annual letting value which bore no relation to the rental

> which a tenant may reasonably pay, but rendered the statutory right of the tax-payer to challenge the valuation illusory. An assessment list prepared under Section 78, before it is authenticated and finalised, must be published and the tax-payers must be given an opportunity to object to the valuation. By the assessment list in which the valuation is not based upon the capital value of the building or the rental which the building may fetch, but on the floor area, the objection which the tax-payers may raise is in substance restricted to the area and not to the valuation."
>
> "7. If the Municipality of Barsi had adopted any of the recognised methods of valuation for assessing the annual letting value, the tax would not be open to challenge, but the method adopted was not a recognised method of levying the rate."
>
> (underlining added)

35. In ***Lokmanya Mills*** *(supra)*, the tax to be levied on lands and buildings was to be assessed on the valuation of the lands and buildings based on capital value or the annual letting value. Thus, the method of valuation had to bear relation to the capital value or the annual letting value. But, under the new rules, the rate in respect of buildings falling within the relevant rule (Rule 2-C therein) was assessed on a "valuation computed on the floor area of the structures", and not on the capital value nor on the annual rent for which, the buildings may reasonably be expected to let. Thus, while section 78(1)(d) and the Explanation to section 75 of the Bombay Municipal Boroughs Act, 1925 stipulated that the rate to be levied on lands and buildings may be assessed on the valuation of the lands and buildings based on capital or the annual letting

value, the new rules prescribed a different method of assessment based on a "valuation computed on the floor area of the structures". Such a method of valuation was *de hors* the Bombay Municipal Boroughs Act, 1925 and was not a method of valuation 'recognised' under the act. The only two methods 'recognised' under the act were to be either based on the capital value of lands and buildings or on the annual letting value of the lands and buildings. This is clear from the following words used by the Supreme Court -- *"The Municipality ignored both the methods of valuation and adopted a method not sanctioned by the Act."* It is in this context that the Supreme Court observed that the valuation computed on the floor area of the structures was not a recognised method of valuation. It was not a recognised method under the Bombay Municipal Boroughs Act, 1925. But, the Supreme Court decision cannot be construed to mean that floor area or covered area can never be regarded as a "recognised" method of valuation. The word "recognised" has been used in the context of the provisions of the Bombay Municipal Boroughs Act, 1925 and not in a general sense. In any event, insofar as the Act of 1957 (post – amendment) is concerned, the method of valuation of annual value is specifically relatable to, inter alia, the covered area and unit area value. Therefore, in the context of the act in question it cannot be said that such a method is not a "recognised" method of valuation.

36. Clearly, the arguments on behalf of the petitioners on this aspect of the matter are without any substance and cannot be accepted.

IV. There are no guidelines for the exercise of power under section 116A and classification.

37. It has been argued on behalf of the petitioners that, by virtue of section 116A, the Municipal Valuation Committee (MVC) has been given uncanalised and uncontrolled power in recommending the classification of the vacant lands and buildings in any ward of Delhi into colonies and groups of lands and buildings. It has been submitted that, in particular, section 116A(1)(j) enables the MVC to take into account omnibus parameters, which are not even spelt out in the Act or were not even in the contemplation of the legislature, while making its recommendation regarding classification of vacant lands and buildings into colonies and groups of lands and buildings. On the other hand, it was submitted on behalf of the respondents that section 116A does not suffer from any arbitrariness or the vice of excessive delegation. It was specifically submitted that the MVC has to function within the parameters laid down in the Act itself.

38. First of all, let us examine the scheme with regard to the MVC. Sections 116, 116A, 116B, 116C and 116D of the Act of 1957 (as amended by the Amendment Act of 2003) are relevant for this purpose and they read as under:-

> **"116. Constitution of Municipal Valuation Committee.–** (1) The Government shall as soon as may be after the commencement of the Delhi Municipal Corporation (Amendment) Act, 2003, and thereafter at the expiration of every third year, constitute by notification in the Official Gazette, a Municipal Valuation Committee.
>
> (2) The Municipal Valuation Committee shall consist of–
>
> (a) Chairperson, and

(b) such other members, being not less than two and not more than six, as the Government may determine.

(3) The Chairperson and the other members of the Municipal Valuation Committee shall be appointed by the Government and the qualifications and experience requisite for their appointment, the manner of selection, and other terms and conditions of service including salaries and allowances, tenure of office shall be such as the Government may by rules determine.

(4) The salaries and allowances of the Chairperson and the other members of the Municipal Valuation Committee shall be paid from the Municipal Fund.

(5) The functions of the Municipal Valuation Committee shall be–

(a) to make recommendations to the Corporation on matters relating to classification of vacant lands and buildings in any ward of Delhi into colonies and groups of lands and buildings and fixation of base value per unit area of vacant land or per unit area of covered space of building and factors for increase or decrease, or for no increase or decrease, thereof;

(b) to consider objections under section 116C, and to make recommendation thereon; and

(c) to perform such other functions as the Government may require.

Section 116A. Classification of vacant lands and buildings into colonies and groups and specification of base unit area values therefor.–(1) The Municipal Valuation Committee shall recommend the classification of the vacant lands and buildings in any ward of Delhi, referred to in section 5, into colonies

and groups of lands and buildings after taking into account the following parameters:–

(a) settlement pattern such as plotted housing, group housing, colony with flats only, urban village, unauthorized colony, resettlement colony, rural village and non-residential areas;

(b) availability of civic and social infrastructure;

(c) access to roads;

(d) access to district centres, local shopping centres, convenience shopping centres, and other markets;

(e) land prices as may, from time to time, be notified by the Central Government or the Delhi Development Authority;

(f) use-wise category of any building including residential building, business building, mercantile building, building for recreation and sports purposes, industrial building, hazardous building and public purpose building including educational, medical and such other institutional building and farmhouse, as may be specified by the Corporation;

(g) in the case of buildings used for business, mercantile, recreation and sports, industrial, hazardous, storage or farmhouse purposes, the location of such buildings adjacent to such categories of streets, as may, subject to the provisions of sub-section (2), be specified by the Corporation;

(h) the types of buildings which may be classified as pucca, semi-pucca or katcha, as may be specified by the Corporation;

(i) the age-wise grouping of buildings as may be specified by the Corporation; and

(j) such other parameters as may be considered relevant by the Municipal Valuation Committee.

(2) The Municipal Valuation Committee shall recommend, groupwise,–

(a) the base unit area value of any owner-occupied vacant land, or any wholly owner-occupied building of pucca structure, constructed in the year 2000 or thereafter, and put to exclusive residential use, and

(b) the factor for increasing or decreasing, or for not increasing or decreasing, the base unit area values specified in clause (a), separately in respect of each of the parameters of type of colony, use, age, type of structure and occupancy status of the vacant land or building, as the case may be, subject to a lower limit of zero point five and upper limit of ten point zero.

Section 116B. Notification of classification of vacant lands and buildings into colonies and groups and specification of base unit area values therefor and factors for increase or decrease.– (1) The Corporation shall, having regard to the recommendations of the Municipal Valuation Committee, declare its intention to classify vacant lands and buildings in each ward into such colonies and groups of lands and buildings as the Corporation may, by public notice, specify, and shall also specify in such public notice the base value it proposes to specify per unit area of vacant land and per unit area of covered

space of building within each such group and also the factors for increasing or decreasing, or for not increasing or decreasing, the base unit area values of vacant lands and buildings referred to in clause (b) of sub-section (2) of section 116A.

(2) The Corporation shall, on receipt of any representation from any group in any colony affected by such classification of lands or buildings into any group or specification of the base unit area values of vacant lands or covered space of buildings within such groups, and the factors for increasing or decreasing, or for not increasing or decreasing, such unit area values of vacant lands or covered space of buildings, refer such representation to the Municipal Valuation Committee for reconsideration, and the decision of the Municipal Valuation Committee thereon shall, subject to the provisions of section 116K, be binding on the Corporation.

Section 116C. Objection to classification of vacant lands and buildings into colonies and groups and fixation of base unit area values and factors for increasing or decreasing such base unit area values.—(1) If any owner or occupier of any vacant land or building in any ward in respect of which a public notice has been issued under section 116B, has any objection to the manner of classification of any group or groups, or the base value per unit area of vacant land or the base value per unit area of covered space of building in any group, or the factors as specified in clause (b) of sub-section (2) of section 116A, he may submit to such officer of the Corporation as may be authorized by the Corporation in this behalf his objection in such form, and containing such particulars, as may be prescribed, within thirty days from the date of publication of such public notice, and such objection shall be considered by the Municipal Valuation Committee, after giving the person submitting the objection an opportunity of being heard.

(2) The procedure for hearing and disposal of objections shall be such as may be prescribed.

(3) On the expiry of thirty days from the date of publication of the public notice under section 116B and after considering the recommendation of the Municipal Valuation Committee on the objections, if any, in accordance with the provisions of this section, the Corporation shall, by public notice, specify groupwise the base unit area value of vacant land and the base unit area value of covered space of building and the factors referred to in clause (b) of sub-section (2) of section 116A:

Provided that the Corporation shall not alter the unit area values recommended by the Municipal Valuation Committee without the approval of the Government.

Section 116D. Final base unit area values of vacant land and of covered space of building. – (1) Subject to the provisions of section 169, the base unit area value of vacant land and the base unit area value of covered space of building in any group, as may be specified under sub-section (3) of section 116C, shall be final.

(2) The Corporation shall publish the final base unit area value of vacant land and the final base unit area value of covered space of building as aforesaid and the factors used for increasing or decreasing, or for not increasing or decreasing, the final base unit area values as aforesaid and shall make them available for inspection by any person free of charge. Copies thereof shall also be made available to any person on payment of cost."

39. These provisions make it clear that under section 116 the Government was required to, soon after the commencement of the said Amendment Act of 2003, (which it did) and thereafter at the expiration of every third year, constitute by notification in the Official Gazette, a

Municipal Valuation Committee (MVC). As indicated in section 116(5), the functions of the MVC are, inter alia, to make recommendations to the MCD on matters relating to classification of vacant lands and buildings in any ward of Delhi into colonies and groups of lands and buildings and fixation of base value per unit area of vacant land or per unit area of covered space of a building and factors for increase or decrease, or for no increase or decrease, thereof. The MVC is also required to consider objections under section 116C and to make recommendations thereon.

40. Now, by virtue of section 116A, the MVC has to recommend the requisite classification into colonies and groups of lands and buildings after taking into account several parameters. All these parameters are spelt out clearly in clauses (a) to (j) of section 116A(1). All these parameters are germane to the issue of classification of vacant lands and buildings so as to ensure that unequals are not treated equally. It can hardly be said that considerations such as -- settlement patterns, availability of civic and social infrastructure, access to roads, access to district centres, local shopping centres, convenience-shopping centres and other markets, land prices, use-wise categories of buildings such as residential use, business use and other uses, types of buildings (pucca, semi-pucca or katcha), age-wise grouping of buildings – are arbitrary or irrelevant. These parameters themselves are clear-cut guidelines given by the legislature to the MVC while making its recommendation with regard to classification. These parameters constitute the intelligible differentia for classification which has a nexus with the object of fairness in incidence of taxation by not treating unequals as equal. At this point, it would be instructive to note the observations of the Supreme Court in the

case of ***Anant Mills Co. Ltd. v. State of Gujarat and Others:*** **(1975) 2 SCC 175**:-

> "25. It is well-established that article 14 forbids class legislation but does not forbid classification. Permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the statute in question. In permissible classification mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine. But, in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the said doctrine. The power of the legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways."
>
> (Underlining added)

41. These parameters fall within the scope of permissible classification. In taxation matters, a narrow approach to classification should not be adopted as in the words of the Supreme Court 'the power of the legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways'.

42. A point had been raised that clause (j) of section 116A(1) [“such other parameters as may be considered relevant by the Municipal Valuation Committee”] is open-ended and leaves unguided and un-canalised discretion with the MVC. We do not agree with this submission for the simple reason that the said clause (j) is not to be read in isolation but in conjunction with the other clauses from which it will take colour.

43. Sub-section (2) of section 116A requires the MVC to recommend, groupwise, (a) the base unit area value of any owner occupied vacant land, or any wholly owner-occupied building of pucca structure, constructed in the year 2000 or thereafter, and put to exclusive residential use, and (b) the factor for increasing or decreasing or for not increasing or decreasing, the base unit area values in respect of each of the parameters of type of colony, use, age, type of structure and occupancy status of the vacant land or building as the case may be, subject to a lower limit of zero point five and upper limit of ten point zero.

44. Once the MVC makes its recommendations, the MCD, by virtue of section 116B, is required to declare its intention to classify vacant lands and buildings in each ward into such colonies and groups of lands and buildings as the MCD may, by public notice, specify. The MCD is also required to specify, in such public notice, the base value it proposes to specify per unit area of vacant land and per unit area of covered space of buildings within each such group and also the factors for increasing or decreasing, or for not increasing or decreasing, the base

unit area values of vacant lands and buildings. In terms of section 116B(2), if any representation is received by MCD, pursuant to the public notice, from any group in any colony, the MCD is required to refer the representation to the MVC for reconsideration. The decision of the MVC thereon, subject to the provisions of section 116K, is binding on the MCD.

45. Section 116C also enables any owner or occupier of any vacant land or building to submit his objection regarding -- the manner of classification of any group or groups, the base value per unit area of vacant land or the base value per unit area of covered space of buildings in any group and/or the multiplicative factors specified in Section 116A(2)(b) – to the MCD within 30 days from the publication of the public notice. Any such objection has to be considered by the MVC and that, too, after giving the objector an opportunity of being heard as per the prescribed procedure. Once all this is done and 30 days have expired from the date of publication of the public notice under section 116B and the recommendations of the MVC on the objections are considered, the MCD is required by section 116C(3) to issue a public notice specifying, groupwise, the base unit area value of vacant land and the base unit area value of covered space of buildings and the factors referred to in section 116A(2)(b). The proviso to section 116C(3) stipulates that the MCD shall not alter the unit area values recommended by the MVC without approval of the Government.

46. Ultimately, section 116D(1) stipulates that, subject to the provisions of section 169, the base unit area value of vacant land and

base unit area of covered space of buildings in any group, as specified under section 116C(3), shall be final. And, section 116D(2) requires that the MCD shall publish the final base unit area values and the multiplicative factors.

47. It is in this manner that the UAV (unit area value) and the multiplicative factors -- AF (Age Factor), OF (Occupancy Factor), UF (Use Factor) and SF (Structure Factor) – are determined and notified to the public at large. As indicated in the counter affidavit filed on behalf of the MCD in WP(C) No. 8030 of 2003, all these steps were followed. It is also stated therein that the MVC constituted under section 116 had considered the objections received pursuant to the public notice dated 03.01.2004 issued by the MCD and had even recommended changes after giving the objectors opportunity of hearing. It is also stated that the classification of colonies/areas/localities is based on the parameters prescribed under the Act.

48. It is pertinent to note that the classification exercise conducted by the MVC has resulted in eight (8) categories (A to H) in which colonies/ areas/ localities in Delhi have been placed. Each of these categories has been prescribed a UAV, ranging from 630 per sq.m for Category A to 100 per sq.m for Category H. The Age Factor (AF) ranges from 0.5, for covered spaces constructed prior to 1960, to 1, for covered spaces constructed in 2000 and thereafter. As regards the Occupancy Factor (OF), it is 1 if self-occupied and 2 if tenanted. The Use Factor (UF) varies from 1 for Residential and Public Purpose to 10 for Star Hotels (3 star & above), Hoardings and Towers. The Use Factor for

Industry, Entertainment, Recreation & Clubs has been specified as 3 and that of Utilities and Business as 2 and 4, respectively. Finally, the Structure Factor (SF) for *pucca* and *semi-pucca* buildings is 1, while it is 0.5 for *kutcha* buildings.

49. From the above discussion, it is apparent that clear guidelines have been prescribed under the new regime for, first of all, classifying colonies/ areas/ localities in Delhi into different categories depending upon the parameters as specified in clauses (a) to (j) of section 116A(1) and, secondly, for arriving at the base unit area values and the multiplicative factors. Thus, the provisions of section 116A and other related provisions cannot be regarded as being arbitrary or contrary to article 14 of the Constitution.

V. A flat rate of taxation under the unit area method is arbitrary and discriminatory and therefore illegal

50. It was contended that a flat rate of taxation would be invalid as it disregards the dissimilarities in the lands and buildings. In support of this contention, the learned counsel for the petitioners sought to place reliance on the Supreme Court decision in ***New ManekChowkSpg. &Wvg. Mills v. Ahmedabad Municipality:AIR 1967 SC 1801.*** We may straight away say that the said decision does not support the contention of the petitioners in the backdrop of the factual matrix of the present case. This contention of a flat-rate is not tenable because Section 114D of the Amended Act of 1957 itself makes provision for different rates of tax for different colonies or for different groups of buildings in such colonies. Even when we examine the argument within a particular rate of tax, we

find that it is untenable. This is evident from the fact that though the petitioners are complaining about the flat rate of tax but, they forget that the flat rate is applied to the annual value which, in turn, is a function of several variables – Covered Area (CA), Unit Area Value (UAV), Age Factor (AF), Occupancy Factor (OF), Use Factor (UF) and Structure Factor (SF). Therefore, just because there is a flat rate of tax, it does not mean that all lands and buildings are treated identically. The dissimilarities are brought out in the UAVs and the multiplicative factors – AF, OF, UF and SF.

51. In ***New ManekChowk*** *(supra)* the Supreme Court observed as under:-

> **"11.** Our attention was also drawn to other well known books on Rating like *Ryde on Rating*, *Bean* and *Lockwood on Ratingand Graham Eyre on Rating*. Incidentally, we may refer to *Witton Booth on Valuations for Rating* (4th Edn.) at p. 125 wherein the learned author states:
>
> > "Reductions of floor areas to units, as already described, are necessary to effect reliable comparisons, but it is merely a mechanical process used in preparing material for the valuation, the actual valuation being the decision and application of the appropriate rate or rental value per unit of area. This may be exactly to a standard, and, indeed, it probably will be to the majority of properties where these are so nearly alike in character as to be regarded for rating purposes as identical. Where, however, rates or rental values per unit of area are applied indiscriminately, without discernment — on the wholesale, as it were

> — inequalities are certain to arise, and these give rise to the whole method being caustically referred to as 'valuations by the foot Rule'."

12. The above comment is sufficient to show that this method can only be applied where the majority of properties are so nearly alike in character as to be regarded identical for rating purposes. There is no such statement in the affidavit.

13. We are therefore not satisfied that conditions prerequisite for determination of annual value of textile factories in Ahmedabad on the basis of rental value per foot super of floor area existed at the relevant time nor has it been shown to us that the so-called contractor's basis was adopted by the municipal authorities of Ahmedabad. The method is not also one which is generally recognised by authorities on rating. Applied indiscriminately —as it appears to have been done in this case — it is sure to give rise to inequalities, as there has been no classification of the factories on any rational basis. Further, there does not seem to be any basis for dividing the factories and the buildings thereof under two general classes as buildings used for processing and buildings for non-processing purposes. What was said by this Court in *Lokmanya Mills case* [(1962) SCR 306] applies with equal force to what has been done here and we must hold that the municipality did not observe the law and failed in its duty to determine the rateable value of each building and land comprised in each of the textile factories in terms of Rule 9(*b*) of the Rules under the Bombay Provincial Municipal Corporations Act, 1949 so far as the assessment book for the year 1966-67 is concerned."

(underlining added)

52. It is obvious that in the abovementioned case the Supreme Court found that the flat rate was applied to dissimilar properties indiscriminately, that is, without making adjustments for the dissimilarities. But, here, the case is entirely different. Adjustments have been made for the dissimilarities by employing different UAVs for different categories of localities/colonies. We have already pointed out that Delhi has been categorised into eight categories: A to H. The UAV for Category A colonies is 630 per sq.mt. whereas colonies or areas at the other end of the spectrum which fall within category H are assigned the UAV of 100 per sq.mt. Similar colonies and areas have been placed within the same category. In the same way buildings of different vintage are treated differently by assigning different Age Factors (AFs). Different uses have also been assigned different Use Factors (UFs) and so on. All these operate as weights for differences in areas and types of lands and buildings. In order to compensate for the dissimilarities, these "weights" are applied to the covered area to arrive at the annual value, to which the flat rate of tax is applied. So, by the time the flat rate comes to be applied, the differences are 'ironed out' by employing different UAVs and multiplicative factors. Once the annual values are computed, all lands and buildings are placed on more or less an even keel. The flat rate of tax is applied to these annual values to arrive at the property tax in respect of each property. And, there is nothing wrong with this as the supreme court observed that a flat rate can be applied where the majority of properties are so nearly alike in character as to be regarded identical for rating purposes. The process by which annual values are computed makes the properties alike.

53. Therefore, there is nothing arbitrary or discriminatory in the flat rate of tax imposed in the context of the unit area regime of property taxation employed under the amended act of 1957.

54. In any event, as pointed out above, the argument of flat rate is not tenable inasmuch as Section 114D of the Amended Act of 1957 itself makes provision for different rates for different colonies or for different groups of buildings in such colonies. There is also provision for graduated rates of tax within the minimum and the maximum rates of tax on the basis of a straight line system. This is evident from Section 114D and 114E which read as under:-

> "**114D. Rate of building tax.** – Save as otherwise provided in this Act, the base rate of property tax on buildings in Delhi shall be between a minimum of six per cent and a maximum of twenty per cent. of the annual values of such buildings as may be specified by the Corporation from time to time:
>
> Provided that the Corporation may, at any time, prescribe fixed rates between the minimum and the maximum rates of tax as aforesaid for different colonies or for different groups of buildings in such colonies:
>
> Provided further that the Corporation may also introduce graduated rates of tax within the minimum and the maximum rates of tax as aforesaid on the basis of straight line system or any other system as may be specified by the Corporation.
>
> *Explanation.-* "Straight line system" shall mean the system in which the rate of tax is equivalent to the annual value of a property (X) divided by the minimum annual value (XI) and Y being added to the

quotient so arrived, Y being the difference between the maximum rate of tax and the quotient of maximum (X2) and minimum X1) annual values.]

114E. Rate of vacant land tax. – Save as otherwise provided in this Act, the rate of tax on vacant lands in Delhi shall be between a minimum of six per cent. and a maximum of twenty per cent. of the annual value of such lands as may be specified by the Corporation from time to time:

Provided that the Corporation may, at any time, specify fixed rates between the minimum and the maximum rates of tax as aforesaid for different colonies or for different groups of vacant lands in such colonies:

Provided further that the Corporation may also introduce graduated rates of tax within the minimum and the maximum rates of tax as aforesaid on the basis of straight line system or any other system as may be specified by the Corporation.

Explanation. – 'Straight line system' shall have the same meaning as in the Explanation to the second proviso to section 114D.]"

Hence, this contention of the petitioners is also not tenable.

Schools and Education Societies

55. In twenty-two (22) petitions[1] of this batch, the petitioners are either schools or education societies or trusts which run schools in Delhi. Apart from the issues of legislative competence etc., which we have already dealt with, these 22 petitions raise the following common issues:-

[1] *WP(C) Nos.8723/2008, 9341/2009, 9750/2009, 11018/2009, 11019/2009, 11017/2009, 11020/2009, 11021/2009, 7691/2008, 11014/2009, 9812/2009, 11294/2009, 11590/2009, 11015/2009, 11586/2009, 9827/2009, 9838/2009, 7668/2008, 11290/2009, 10272/2009, 11016/2009, 9822/2009.*

(a) The use factor (UF) for all schools should be 1 (as applicable for public purpose);

(b) The UAV should be the same for all schools and must be independent of the areas in which they are located;

(c) There should be no vacant land tax in respect of playgrounds of schools.

56. Insofar as the issue of Use Factor (UF) is concerned, it must be pointed out that different UF's have been prescribed for different types of schools. They are as under:-

Sl. No.	Type of School	Use Factor (UF)
1.	Government / Government Aided	1
2.	Private Unaided – Fees upto ₹ 600/- per month	1
3.	Private Unaided – Fees ₹ 601/- to ₹ 1200/- per month	2
4.	Private Unaided – Fees above ₹ 1200/- per month	3

From the above table, it is clear that government and government aided schools have been prescribed a Use Factor of 1 whereas private unaided schools have been prescribed the Use Factors of 1, 2 or 3 depending on the fee structure. Those schools (private unaided) which charge fees upto ₹ 600/- per month would have a Use Factor of 1, whereas those which charge fees from ₹ 601/- to ₹ 1200/- per month would have a Use Factor of 2 and those charging more than ₹ 1200/- per month would have a Use Factor of 3. Such a classification, according to the petitioners, falls outside the domain of permissible classification.

57. It is argued on behalf of the petitioners that private unaided schools also fulfill the public purpose of education. It was submitted that the education societies and trusts which run these schools without the aid and assistance of the government need to charge fees for sustaining the institutions. Just because they charge fees, they should not be subjected to higher property taxes by employing the aforementioned graded Use Factors. It was also submitted that the schools are run on a non-profit basis. It was also contended that if the quantum of aid given to the aided schools is taken into consideration, the cost to society at large would not be less than the fee charged by the petitioners in their schools. Reliance was also placed on a Division Bench decision of the Karnataka High Court in ***Baldwin Girls High School, Bangalore v. Corporation of the City of Bangalore:*** **AIR 1984 Karnataka 162**, where a differentiation on the basis of aided and unaided schools for the purposes of exemptions from property tax was struck down. It was submitted that the lower Use Factors work in the same way as exemptions and, therefore, by the same logic the differentiation based on fees charged ought to be struck down.

58. On the other hand, it was contended on behalf of the respondents that there exists an intelligible differentia, first of all, between aided / government schools and private unaided schools and secondly, within the latter category depending on the fee structure. It was argued that unaided private schools which charge fees upto ₹ 600/- per month have been equated with government / aided schools inasmuch as they have been ascribed the same Use Factor of 1. Only those schools that charge higher fees are required to pay property taxes based on the

Use Factors of 2 and 3. This is so because charging of higher fees entails profiteering and, therefore, schools charging higher fees cannot be regarded as serving a public purpose.

59. While we have no difficulty in agreeing with the respondents that there exists an intelligible differentia between government / government-aided schools on the one hand and private un-aided schools on the other, the question that needs examination is whether this differentia has a nexus with the object of such classification. The apparent and ostensible object is that schools which are not running as profit earning businesses ought to be treated at par with government / government-aided schools. That is apparent from the fact that government / government aided schools have a use factor of 1 and so do private unaided schools, which charge fees upto ₹ 600/- per month. The foundation on which the Use Factors of 2 and 3 are assigned to schools charging fees between ₹ 601/- and ₹ 1200/- per month and those charging fees in excess of ₹ 1200/- per month, respectively, appears to be the reasoning or, shall we say, assumption that these schools are profit making enterprises. But, what if that were not true? What if the schools charging higher fees were imparting a better quality of education with a better infrastructure without any individual or group of individuals profiteering from the enterprise? In such a situation, the nexus between the intelligible differentia and the object would disappear rendering the classification to be violative of article 14 of the Constitution. Therefore, a classification based merely on the fee structure would not be a satisfactory means of achieving the object. Perhaps, one Use Factor could be assigned to all schools which are not profit making bodies /

entities, irrespective of the fee structure. And, a higher Use Factor could be assigned to schools which are being run on a profit-making basis. We have no means to ascertain as to whether the petitioners before us fall into one or the other category. While we agree with the petitioners that the fee structure cannot be the sole determinative factor for ascribing a particular Use Factor, we are also clear that it is not for us to do this exercise. Consequently, we direct that this grievance of the petitioners with regard to the Use Factor assigned to school buildings be considered by the Corporation and the MVC in the light of observations made above. In the meanwhile, however, as we have found the classification based on fee structure alone to be violative of Article 14 of the Constitution and beyond the mandate of the amended Act of 1957, all schools, irrespective of the fee structure, would have to be assigned a single Use Factor. And, since government / government aided schools have been assigned a UF of one (1), that would be applicable for all schools till the exercise is completed by the MVC and the Corporation in the light of the discussion above.

60. We now come to the next submission regarding a uniform UAV for all schools across the city of Delhi. It is argued that there should not be any differentiation between schools in different locations as all schools fulfill the same purpose of imparting education. Here, we cannot agree with the petitioners. The UAVs have been designed on the basis of colonies / localities irrespective of the use to which the buildings are put. We cannot introduce a facet of Use Factor into the concept of another parameter such as the Unit Area Value (UAV). That would play havoc with the scheme of taxation. Then, even businesses would claim a

uniform UAV throughout the city. They would say, for example, a shop is a shop whether it is in Greater Kailash or in a colony falling in a different category. In fact, even residential flat owners may say that a residential flat anywhere in Delhi should have the same UAV as, after all, a residential flat in any area in Delhi remains a residential flat. UAVs are assigned independent of the use factor and therefore we cannot read a particular use into the mode of computing the UAV. So, this argument on the part of the petitioners does not hold much water.

61. The third submission is that there should be no vacant land tax in respect of playgrounds of schools. It is submitted that these playgrounds are essential for schools and moreover the building bye-laws do not permit constructions on these lands. Consequently, both for the benefit of students and under statutory compulsion, these areas have to be kept vacant. Thus, it is contended that such vacant lands belonging to schools ought to be exempted from taxation. Insofar as this submission is concerned, we feel that courts cannot dictate as to which buildings or lands should or should not be exempt from tax. It is for the legislature and the Corporation working within the statute to consider this aspect.

Conclusions

62. In view of the foregoing discussion, the challenge to the Unit Area Method and to the validity of the Delhi Municipal Corporation (Amendment) Act, 2003 and the provisions introduced by it in the Delhi Municipal Corporation Act, 1957, fails. So, too, the consequential challenge to the Delhi Municipal Corporation (Property Tax) Bye-laws, 2004. Subject to the observations and directions in respect of private-

unaided schools, the writ petitions are dismissed. The parties are left to bear their own costs.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

August 23, 2012
HJ/dutt